FILED
United States Court of Appeals
Tenth Circuit

August 7, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CHRISTOPHER JOE CLARK,

Plaintiff - Appellant,

v.

JONATHAN COLE MURCH, Police Officer for the City of Durango; JUSTIN MOORE, Police Officer for the City of Durango; CONNER LOWANDE, Police Officer for the City of Durango; WILLIAM VANCE DAVIS, Police Officer for the City of Durango; SEAN MURRAY, Deputy District Attorney for the Sixth Judicial District; ZACHERY ROGERS, Deputy District Attorney for the Sixth Judicial District; CHRISTIAN CHAMPAGNE, District Attorney for the Sixth Judicial District,

Defendants - Appellees.

No. 22-1330
(D.C. No. 1:21-CV-00390-PAB-MEH)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ**, **TYMKOVICH**, and **MATHESON**, Circuit Judges.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Police officers in Durango, Colorado, arrested Christopher Joe Clark. Local prosecutors pursued a criminal case against him. Shortly before trial, the prosecution dismissed the case. Mr. Clark then filed this 42 U.S.C. § 1983 lawsuit against the police officers and prosecutors. The district court concluded that, because there was probable cause to arrest Mr. Clark, his claims should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm on the alternative grounds that the officer defendants are entitled to qualified immunity and the prosecutor defendants are entitled to absolute immunity.

I. BACKGROUND

A. *The Complaint's Allegations*

To evaluate a complaint's sufficiency under Rule 12(b)(6), a court generally may review only the complaint itself. *See Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). But a court may also consider documents referenced in the complaint if the parties do not dispute their authenticity and they are central to the plaintiff's claims. *Id.* In addition to the allegations in Mr. Clark's third amended complaint, the operative complaint here, the magistrate judge and the district court considered police reports, transcripts from state-court proceedings, and police

bodycam recordings that the officers submitted with their motion to dismiss.[1] Taken together in the light most favorable to Mr. Clark, these materials allege the following.

The victim reported that a white man in his late thirties or early forties approached him at night in an alley and asked for money. The man wore a "puffy black jacket" and probably had facial hair. ROA at 193. The victim denied having money and got into his car. The man hit one of the car windows with a hard object like a knife or flashlight. The victim drove away and called the police.

Although the victim described the suspect, he also told an officer "it was dark" when the encounter occurred and he "didn't get a real good look" at him. *Id.* But he thought he would recognize the man if he saw him again. The police initially showed the victim a photo of a man (not Mr. Clark) whom they thought may have committed the crime, but the victim did not identify that man as the perpetrator.

Officers searching the area encountered Mr. Clark about two hours after the victim reported the crime. Mr. Clark, a white man then in his early forties, was wearing dark clothing and had a box cutter in his pocket. The police photographed Mr. Clark and the box cutter. One officer showed the photos to the victim and reported to the other officers that the victim "confirmed" Mr. Clark attacked him and used the box cutter on the car window. *Id.* at 269.

[1] Mr. Clark has attached several similar documents to his reply brief, but only some of them appear in the record. We consider only those materials contained in "the record before the district court." *United States v. Kennedy*, 225 F.3d 1187, 1191 (10th Cir. 2000).

Mr. Clark alleged that, before showing the victim photos of him and the box cutter, the officer said, "We're pretty sure we got the guy who did this because he fits the bill as someone who would do this. We just need you to confirm it." *Id.* at 190 (quotations omitted). After viewing the photos, the victim said, "That makes sense, I guess it is him." *Id.* (quotations omitted).

The police arrested Mr. Clark for aggravated robbery or attempted aggravated robbery. At a preliminary hearing, a judge found probable cause only for menacing. The prosecution ultimately dismissed the case just days before the scheduled trial.

B. ***Procedural History***

Mr. Clark filed this lawsuit against the police officers and prosecutors involved in his arrest and prosecution. He claimed (1) violations of the Fourth and Fourteenth Amendments for false arrest, false imprisonment, malicious prosecution, and denial of the right to a fair trial; (2) the police fabricated the victim's identification and the prosecutors presented false testimony against him in court; and (3) the district attorney failed to adequately train and supervise his deputies. The defendants all moved for dismissal. The officers claimed qualified immunity. The prosecutors claimed absolute and qualified immunity.

The magistrate judge concluded that (1) Mr. Clark's claims must fail because there was probable cause to arrest and prosecute him, (2) the *Rooker-Feldman*

doctrine[2] barred his claims, and (3) the prosecutor defendants enjoyed absolute immunity. The magistrate judge thus recommended that the district court dismiss his claims. The district court, relying only on the first ground—existence of probable cause as barring the claims—accepted the recommendation and dismissed the case. *Id.* at 525 n.5. Mr. Clark appeals.[3]

II. DISCUSSION

We first conclude the *Rooker-Feldman* doctrine does not bar Mr. Clark's suit. We then turn to the merits and conclude the district court correctly dismissed the claims.

A. *The* Rooker-Feldman *Doctrine*

The district court said nothing about the *Rooker-Feldman* doctrine. The defendant officers say it bars Mr. Clark's claims.

Although the district court did not address *Rooker-Feldman*, we must because the doctrine is jurisdictional. *See Campbell v. City of Spencer*, 682 F.3d 1278, 1281 (10th Cir. 2012). If it applies, the district court should have dismissed this case for lack of jurisdiction. We review this issue de novo. *See id.*

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[2] The *Rooker-Feldman* doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[3] Mr. Clark represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

"*Rooker-Feldman* is a jurisdictional prohibition on lower federal courts exercising appellate jurisdiction over state-court judgments." *Id.* It applies only in "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). It prohibits federal claims seeking "to *modify or set aside* a state-court judgment." *Mayotte v. U.S. Nat'l Bank Ass'n*, 880 F.3d 1169, 1174 (10th Cir. 2018).

Rooker-Feldman does not apply here. Mr. Clark does not seek to modify or set aside a state-court judgment. The state court never entered a judgment against him; it dismissed his prosecution. Although the state court found probable cause, the orders it entered before dismissing the case do not implicate *Rooker-Feldman*. *See Webb ex rel. K.S. v. Smith*, 936 F.3d 808, 816–17 (8th Cir. 2019) (holding that *Rooker-Feldman* did not apply when state courts "never issued any judgments" but instead merely "entered orders in cases that were later voluntarily dismissed").

B. ***Rule 12(b)(6) Dismissal***

We review a Rule 12(b)(6) dismissal de novo. *Serna v. Denver Police Dep't*, 58 F.4th 1167, 1169 (10th Cir. 2023). We accept as true all well-pleaded facts in Mr. Clark's complaint, view them in the light most favorable to him, and draw all reasonable inferences in his favor. *See Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021). We do not, however, assume the truth of conclusory

allegations. *See id.* "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see Strain v. Regalado*, 977 F.3d 984, 989 (10th Cir. 2020).

Because Mr. Clark's criminal prosecution was dismissed before trial, the district court correctly dismissed his claim that he was denied a fair trial. *See Morgan v. Gertz*, 166 F.3d 1307, 1310 (10th Cir. 1999). We turn to his remaining claims—false arrest, false imprisonment, and malicious prosecution. Mr. Clark does not dispute the district court's conclusion that the existence of probable cause will defeat these claims. He challenges the district court's determination that the police had probable cause to arrest him.

1. **The Officer Defendants**

We affirm dismissal of the defendant officers on the alternative ground that they are entitled to qualified immunity due to lack of a constitutional violation under clearly established law.[4]

[4] Although the district court did not address the clearly-established prong of qualified immunity, we have discretion to affirm on any ground the record adequately supports. *See Elkins v. Comfort*, 392 F.3d 1159, 1162 (10th Cir. 2004). Whether a right was clearly established is a legal question, *Garrett v. Stratman*, 254 F.3d 946, 951 (10th Cir. 2001), and the parties briefed the issue both in the district court and on appeal. Under these circumstances, we will exercise our discretion to consider the clearly-established prong. *See Elkins*, 392 F.3d at 1162 (identifying factors bearing on whether we should affirm on a ground the district court did not rely on).

a. *Legal background*

i. Qualified immunity

When a defendant asserts qualified immunity in a motion to dismiss, the plaintiff must show that (1) the defendant violated a constitutional right and (2) the right was clearly established. *See Doe v. Woodard*, 912 F.3d 1278, 1289 (10th Cir. 2019). Courts have discretion to decide which qualified-immunity prong to consider first. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011).

ii. Probable cause

Whether the officers lacked probable cause to arrest Mr. Clark goes to prong one of the qualified immunity analysis.

Under the Fourth Amendment, a warrantless arrest requires probable cause. *See Devenpeck v. Alford*, 543 U.S. 146, 152 (2004); *A.M. v. Holmes*, 830 F.3d 1123, 1140 (10th Cir. 2016) (identifying the "basic federal constitutional right of freedom from arrest without probable cause" (quotations omitted)). Probable cause "is not a high bar." *Kaley v. United States*, 571 U.S. 320, 338 (2014). Police officers have probable cause to arrest if "the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." *Adams v. Williams*, 407 U.S. 143, 148 (1972) (alterations and quotations omitted); *see Koch v. City of Del City*, 660 F.3d 1228, 1239 (10th Cir. 2011). Courts may also apply less "skepticism and careful scrutiny" to the reliability

of "an identified victim or ordinary citizen witness" than the often-anonymous informant who "supplies information on a regular basis." *Easton v. City of Boulder*, 776 F.2d 1441, 1449–50 (10th Cir. 1985) (quotations omitted). Courts assess probable cause "from the standpoint of an objectively reasonable police officer" under the totality of the circumstances. *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

iii. Arguable probable cause

The prong-two qualified immunity analysis in a false arrest case addresses whether a reasonable law enforcement officer could believe there was probable cause to arrest.

"In the context of a qualified immunity defense on an unlawful search or arrest claim, we ascertain whether a defendant violated clearly established law by asking whether there was arguable probable cause for the challenged conduct." *Stonecipher v. Valles*, 759 F.3d 1134, 1141 (10th Cir. 2014) (quotations omitted). "Arguable probable cause is another way of saying that the officers' conclusions rest on an objectively reasonable, even if mistaken, belief that probable cause exists." *Id.* (citing *Cortez v. McCauley*, 478 F.3d 1108, 1120 (10th Cir. 2007) (en banc)); *see also Figueroa v. Mazza*, 825 F.3d 89, 100 (2d Cir. 2016) ("A police officer has arguable probable cause 'if either (a) it was objectively reasonable for the officer to believe that probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met.'" (quoting *Zalaski v. City of*

Hartford, 723 F.3d 382, 390 (2d Cir. 2013))). "A defendant 'is entitled to qualified immunity if a reasonable officer could have believed that probable cause existed to arrest or detain the plaintiff.'" *Stonecipher*, 759 F.3d at 1141 (quoting *Cortez*, 478 F.3d at 1120); *see Kaufman v. Higgs*, 697 F.3d 1297, 1300 (10th Cir. 2012). Thus, "in the § 1983 qualified-immunity context, an officer may be mistaken about whether he possesses *actual* probable cause to effect an arrest, so long as the officer's mistake is reasonable." *A.M.*, 830 F.3d at 1140 (emphasis in original).

b. *Analysis*

We resolve this appeal regarding the officers by focusing on the second prong of qualified immunity—clearly established law. Here, as explained above, the issue turns on arguable probable cause. We thus assume without deciding the defendant officers lacked probable cause and turn to whether reasonable officers in the circumstances here could have believed there was probable cause.

i. Arguable probable cause that an offense occurred

Mr. Clark contends the police lacked probable cause to arrest him for aggravated robbery because no robbery occurred. But it does not matter whether probable cause existed for the offense that the officers cited when they arrested him as long as they had probable cause to arrest him for some offense. *See Devenpeck*, 543 U.S. at 153. An officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." *Id.*

Mr. Clark makes no argument that the police lacked probable cause to believe a menacing had occurred, nor could he. When the police arrested Mr. Clark, a person committed felony menacing under the Colorado statute by knowingly placing or attempting "to place another person in fear of imminent serious bodily injury" using a deadly weapon. Colo. Rev. Stat. § 18-3-206(1)(a) (2019). Because the victim's account established probable cause that a menacing had occurred, the arguable probable cause standard is clearly met.

ii. Arguable probable cause that Mr. Clark committed the offense

Mr. Clark disputes the police had probable cause that he was the menacing person. He makes two arguments. First, although he concedes that some of his features matched the victim's description of the perpetrator, he points to others that conflicted. For example, the victim said the perpetrator probably had facial hair, but Mr. Clark had none. And Mr. Clark says he did not appear "transient," as the victim had described the perpetrator. Aplt. Br. at 3 (quotations omitted). Second, Mr. Clark targets the procedure leading to the victim's identification of him—showing the victim a single photograph and suggesting that it depicted the perpetrator—as too suggestive. *See Simmons v. United States*, 390 U.S. 377, 383 (1968).

Although Mr. Clark raises valid questions as to whether the officers had probable cause that he was the perpetrator, he has not shown that arguable probable cause was lacking. Often "a general description" of a suspect "is a sufficient basis for the existence of probable cause." *United States v. Miller*, 532 F.2d 1335, 1338

(10th Cir. 1976). Even though Mr. Clark did not "match exactly" the victim's description of the perpetrator, "he bore a fair resemblance" to it. *Pasiewicz v. Lake Cnty. Forest Pres. Dist.*, 270 F.3d 520, 524 (7th Cir. 2001).

The officers also relied on Mr. Clark's possessing the box cutter and the victim's identification. Mr. Clark offers no reason to question "the victim's veracity." *Stansbury v. Wertman*, 721 F.3d 84, 90 (2d Cir. 2013) (quotations omitted). Also, the victim ruled out another man as a suspect after seeing his photo, demonstrating his ability to exclude possible suspects. And even though the identification procedure that Mr. Clark described was suggestive, it may still contribute to an arguable probable cause finding. *See id.* at 91 n.7.[5]

Taken as a whole, Mr. Clark's appearance, his possessing the box cutter, and the victim's identification of him as the perpetrator was enough for a reasonable officer to think that Mr. Clark had menaced the victim. *See Brodnicki v. City of Omaha*, 75 F.3d 1261, 1265 (8th Cir. 1996) (holding that circumstances established probable cause to arrest even though the plaintiff's "physical appearance" was "somewhat inconsistent with" the victim's description). Thus, consistent with the prong-two arguable probable cause standard, "a reasonable officer could have believed that" the identification, coupled with the similarities between Mr. Clark and the victim's description and his possession of the box cutter, provided probable cause

[5] Mr. Clark alleged that the police used a suggestive procedure to secure the victim's identification of him. We disagree with his contention, however, that he alleged facts showing the police fabricated the victim's identification.

to arrest Mr. Clark. *Stonecipher*, 759 F.3d at 1141 (quotations omitted). At a minimum, "officers of reasonable competence could disagree on whether the probable cause test was met." *Figueroa*, 825 F.3d at 100 (quotations omitted). The defendant officers are therefore entitled to qualified immunity.[6]

2. **The Prosecutor Defendants**

The magistrate judge concluded the prosecutor defendants enjoyed absolute immunity. The prosecutors reassert immunity on appeal. Even though the district court did not address prosecutorial immunity, we exercise our discretion to consider it as an alternative basis to affirm. *See Elkins v. Comfort*, 392 F.3d 1159, 1162 (10th Cir. 2004).

Absolute immunity covers "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial." *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). It extends to claims alleging inadequate training and supervision on matters "directly connected with the conduct of a trial." *Van de Kamp v. Goldstein*, 555 U.S. 335, 344 (2009). Mr. Clark sued the prosecutors based on their conduct preparing for and participating in court proceedings. Absolute immunity protects that conduct. *See Buckley*, 509 U.S. at 273. It also protects the district attorney's training and supervision related to that conduct. *See Van de Kamp*, 555 U.S. at 344.

[6] Mr. Clark relies on *Wilkins v. DeReyes*, 528 F.3d 790 (10th Cir. 2008), *abrogated in part by Thompson v. Clark*, 142 S. Ct. 1332, 1341 (2022), and *Wolford v. Lasater*, 78 F.3d 484 (10th Cir. 1996). These cases differ too much factually from this case. Neither involved a victim's description or identification of a perpetrator.

III. **CONCLUSION**

We affirm the district court's judgment.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge