IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

EDWARD SHANE LUCAS, Plaintiff, v. RYAN MULCAHY, Defendant.	Civil Action No. 2:24-CV-0006

DEFENDANT'S REPLY BRIEF IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

Defendant Ryan Mulcahy ("Deputy Mulcahy") files this Reply Brief in Support of His Motion for Summary Judgment. *See* doc. 39.

Plaintiff's Response in Opposition again misses the mark. Plaintiff continues to litigate claims that he has not, and cannot, assert in this case. The entirety of Plaintiff's Response in Opposition focuses on Deputy Mulcahy's decision to stop Plaintiff and his subsequent DUI investigation. *See* doc. 45 at 1–7. In doing so, Plaintiff presents a one-sided account which flatly ignores large portions of the record. *Id.*

Ultimately, however, that is irrelevant. The problem in this case for Plaintiff is that Deputy Mulcahy's stop of Plaintiff, his DUI investigation, and his decision to conduct a warrantless arrest of Plaintiff have no bearing on the central issue in this case: the constitutionality of the legal process justifying Plaintiff's detainment

pursuant to the two arrest warrants procured by Michael Ward. *Williams v. Aguirre*, 965 F.3d 1147, 1158 (11th Cir. 2020); *see, e.g., Sylvester v. Fulton Cnty. Jail*, 94 F.4th 1324, 1330 (11th Cir. 2024) ("A 'malicious prosecution' claim is that an officer used a constitutionally deficient legal process to effectuate an arrest—here, an allegedly defective warrant.").[1] Plaintiff's sole claim—according to his own pleadings—is one for malicious prosecution pursuant to 42 U.S.C. § 1983. *See* doc. 15 at ¶ 15; doc. 37 at 1. And in arguing claims that are not—and cannot be—a part of this case, Plaintiff fails to point to any evidence which supports his malicious prosecution claim sufficient to overcome Deputy Mulcahy's defense of qualified immunity. *See* generally doc. 45 at 1–7.

[1] Even if such evidence *was* relevant, the record overwhelmingly supports Deputy Mulcahy's independent decisions to stop and arrest Plaintiff, including his observation of Plaintiff's driving habits, his pre-stop knowledge that Plaintiff's license was expired and that the registration for Plaintiff's vehicle was suspended, the odor of marijuana emanating from Plaintiff's vehicle, the odor of alcohol emanating from Plaintiff's person, Plaintiff's bloodshot and watery eyes, Plaintiff's deficient performance on the field sobriety tests that were administered to him, and the signs of impairment that Deputy Mulcahy detected while conducting his examination. *See, e.g.* doc. 39-1 at 28:13–28:20; doc. 39-2 at 18:8–18:18; 70:21–80:1; 91:9–93:13; doc. 39-3 at 2; doc. 39-13 at 3–4.

Nearly every piece of evidence referenced above is uncontroverted. Plaintiff's primary contention is that the footage of Deputy Mulcahy's pursuit of Plaintiff, which is in the record, (*see* Ex. 3 to Def.'s Motion for Summary Judgment), does not depict Plaintiff's erratic driving habits. *See* doc. 45 at 1–6. According to Plaintiff, this is dispositive proof that Deputy Mulcahy did not have reasonable suspicion to stop him. *See* doc. 45 at That ignores the fact that the footage picks up mid-pursuit, that Plaintiff plead guilty to failure to maintain lane, and that Deputy Mulcahy had a wholly separate ground that granted him reasonable suspicion to stop Plaintiff's vehicle: the fact that Plaintiff's license was expired and his vehicle's tag was suspended in violation of O.C.G.A. § 40-5-20(a) and § 40-6-15(a).

Specifically, Plaintiff has pointed to no evidence to suggest that intentional or reckless misstatements or omissions were made—attributable to Deputy Mulcahy—necessary to support the arrest warrants issued by Long County Magistrate Judge Tonda Bierly. *See Williams*, 965 F.3d at 1165. The elements for the two warrants that Judge Bierly issued, felony possession of a controlled substance in violation of O.C.G.A. § 16-13-30(a) and misdemeanor possession of marijuana in violation of O.C.G.A. § 16-13-2(b), are straightforward.[2] And Investigator Ward's application, supplemented by his testimony as to how the suspected drugs were located and tested, gave Judge Bierly sufficient probable cause to issue those warrants.

Plaintiff has not countered the fact that the suspected drugs were indeed found in his car. Plaintiff has not produced any evidence that Investigator Ward's testing of the suspected drugs was flawed, faulty, or inaccurate. Plaintiff has not pointed to any evidence which demonstrates that Deputy Mulcahy was, in any way, involved in the process of procuring arrest warrants for him. Plaintiff has not identified any evidence that Deputy Mulcahy made any reckless or intentional misstatements or omissions concerning the suspected drugs recovered from Plaintiff's vehicle. Plaintiff has not—and cannot—demonstrate that any reckless or intentional misstatements or

[2] O.C.G.A. § 16-13-30(a): "Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance."

O.C.G.A. § 16-13-2(b): "Notwithstanding any law to the contrary, any person who is charged with possession of marijuana, which possession is of one ounce or less, shall be guilty of a misdemeanor and punished by imprisonment for a period not to exceed 12 months or a fine not to exceed $1,000.00, or both, or public works not to exceed 12 months."

omissions were contained in the arrest warrant applications for Plaintiff. And Plaintiff has not challenged the testimony of Investigator Ward which details how the warrants for Plaintiff's arrest were obtained. Plaintiff's failure to point to any such evidence is fatal to his malicious prosecution claim. *See Paez v. Mulvey*, 915 F.3d 1276, 1285 (11th Cir. 2019).

Further, Plaintiff has not responded at all to Deputy Mulcahy's arguments that (1) his warrantless arrest of Plaintiff cannot be the basis for a malicious prosecution claim and (2) that Deputy Mulcahy did not initiate or continue a criminal prosecution of Plaintiff: an essential element of a malicious prosecution claim. *See, e.g., Goldring v. Henry*, No. 19-13820, 2021 WL 5274721, at *4 (11th Cir. Nov. 12, 2021). As such, Deputy Mulcahy considers these arguments to be unopposed. Rather than repeat these arguments, Deputy Mulcahy incorporates by reference those sections of his original Motion for Summary Judgment. *See* doc. 39 at 15–19.

Finally, the caselaw that Plaintiff cites in his Response in Opposition does nothing to undercut Deputy Mulcahy's arguments. The criminal cases that Plaintiff cites have to do with the standard for probable cause or reasonable suspicion, which are not in dispute and are largely irrelevant. Of the civil cases that Plaintiff identifies, *Salazar v. City of Palm Bay* is a false arrest case that does not parallel the facts of the present case. *See* No. 6:09-CV-ORL-31GJK, 2011 WL 4481065, at *1–2 (M.D. Fla. Sept. 27, 2011). *Martin v. Miami-Dade Cnty.* is a case that Deputy Mulcahy cited in his original Motion for Summary Judgment which explains, in detail, the distinction between claims for false arrest and malicious prosecution. No. 23-10841, 2024 WL

1434329, at *6–7 (11th Cir. Apr. 3, 2024). *Martin* does not harm Deputy Mulcahy's position, it strengthens it. Finally, Plaintiff points to a handful of cases which discuss the effect of video evidence in the record. *See, e.g., Scott v. Harris*, 550 U.S. 372, 380–81 (2007). Deputy Mulcahy, of course, does not dispute that the Court must view facts in the light depicted by the video footage. Again, the video footage in this case buttresses Deputy Mulcahy's arguments, it does not undermine them.

In sum, Plaintiff's forceful argument is ultimately misplaced. He has brought—by his own admission—a single claim in this case: one for malicious prosecution in violation of 42 U.S.C. § 1983.[3] But throughout the briefing, both on this motion and Plaintiff's own motion for summary judgment, Plaintiff has focused on matters that have no bearing on the malicious prosecution analysis. As a result, Plaintiff has failed to introduce any evidence or point to any caselaw that defeats Deputy Mulcahy's defense of qualified immunity. Nor can he. Deputy Mulcahy did not violate Plaintiff's constitutional rights. That is the case because (1) Deputy Mulcahy's warrantless arrest of Plaintiff cannot form the basis for a malicious prosecution claim; (2) Deputy Mulcahy did not initiate criminal proceedings against Plaintiff; and (3) the record contains no evidence of constitutional infirmities in the legal process underlying

[3] Even if Plaintiff had asserted a state law claim—which he has not—such a claim would be barred by official immunity. *Schultz v. Lowe*, 364 Ga. App. 345, 348 (2022). There is no doubt that effectuating an arrest is a discretionary act. *See Reed v. DeKalb Cnty.*, 264 Ga. App. 83, 86 (2003) (holding that the decision to effectuate a warrantless arrest is generally a discretionary act requiring personal judgment and deliberation on the part of the officer); *Delong v. Domenici*, 271 Ga. App. 757, 759 (2005) (holding that placing an individual under arrest is a discretionary act). And the record is bereft of evidence that Deputy Mulcahy acted with actual malice in arresting Plaintiff. *Merrow v. Hawkins*, 266 Ga. 390, 392 (1996).

Plaintiff's seizure. Given that Plaintiff cannot satisfy multiple essential elements of his claim, Deputy Mulcahy respectfully requests that this Court grant summary judgment in his favor.

Submitted this 1st day of November, 2024.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing upon all parties in this case by Statutory Electronic Service e-mail, and via U.S. Mail, addressed as follows:

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