FILED
United States Court of Appeals
Tenth Circuit

October 25, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JEFFREY HALL,

Plaintiff - Appellant,

v.

VAL BROWN; KEVIN MURRAY; SALT LAKE CITY,

Defendants - Appellees.

No. 22-4080
(D.C. No. 2:20-CV-00674-HCN)
(D. Utah)

ORDER AND JUDGMENT[*]

Before **HARTZ**, **MORITZ**, and **ROSSMAN**, Circuit Judges.[**]

After a brief but violent encounter with Defendant Salt Lake City Police Department Officers Val Brown and Kevin Murray, Plaintiff Jeffrey Hall sued the Officers and Defendant Salt Lake City under 42 U.S.C. § 1983. He alleged

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[*] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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. 32.1 and 10th Cir. R. 32.1.

[**] 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.

violations of rights protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution.

The district court granted summary judgment to the Defendants after concluding Mr. Hall failed to show any constitutional violations. Mr. Hall appeals. We exercise our jurisdiction under 28 U.S.C. § 1291 and affirm.

I

A

Around 10:30 p.m. on the evening of December 16, 2017, Officers Brown and Murray were dispatched to a reported disturbance at a wedding reception in Salt Lake City. Dispatchers informed the Officers a man was "being violent with his wife and others" and was "possibly intoxicated." R.10. When they arrived at the scene of the reception, Officers Brown and Murray spoke with the security guard, who told them a man had pushed him and an attendee at the wedding. That man, later identified as Mr. Hall, had by this time been taken outside the venue by his wife and several other guests.

Officers Brown and Murray located Mr. Hall in the parking lot. Both Officers exited their patrol car and Officer Brown asked Mr. Hall to "come here and talk to me for a minute." R.11. Mr. Hall told them to "f— off" several times, but then approached the Officers as they walked toward him. R.11–12. He continued to curse at the Officers and told them to talk to his

brother, a police officer for Salt Lake City. Officer Brown asked him again to "[c]ome here," and repeatedly requested Mr. Hall calm down. R.12; Ex. 6 at 1:28.

Mr. Hall was soon within arm's length of Officer Brown. He raised his hand and pointed his finger directly in Officer Brown's face. At that time, the Officers took Mr. Hall to the ground. While the Officers attempted to grab Mr. Hall's arms and pin them to the ground, they struck Mr. Hall in the head and face at least five times. While doing so, they directed Mr. Hall to "[p]ut [his] hands behind [his] back!" and commanded Mr. Hall: "Do not fight us!" R.14.

After restraining Mr. Hall, the Officers radioed for medical assistance. Mr. Hall was transported to the hospital for treatment. He suffered orbital skull fractures, facial lacerations, and some permanent vision impairments.

In September 2018, the charges against Mr. Hall stemming from this incident were dismissed with prejudice.[1] An internal affairs investigation commenced by Mr. Hall's brother apparently yielded "no reprimands against" either Officer Brown or Officer Murray. R.24.

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[1] A no-contest plea to assaulting a peace officer was held in abeyance under Utah Code § 77-2a-1 and eventually dismissed with prejudice in April 2021.

B

In September 2020, Mr. Hall filed the present action in federal district court in Utah. He sued the Officers under 42 U.S.C. § 1983, alleging deprivations of his Fourth Amendment right against excessive force, his First Amendment right to be free from retaliation for the exercise of protected speech, and his Fourteenth Amendment right against the Officers' use of "deliberate, material falsehoods for the purpose of generating or influencing subsequent criminal charges." R.27–28. Mr. Hall also claimed Defendant Salt Lake City failed to train and supervise their officers. And he alleged violations of the Utah Constitution.

In August 2022, the district court granted the Defendants' summary judgment motion based on qualified immunity, entered judgment in favor of Defendants on Mr. Hall's federal claims, and dismissed the state law claims.

As to Mr. Hall's Fourth Amendment claim, the district court held "the amount of force employed by the officer[s] here—taking Mr. Hall to the ground and briefly delivering several blows that objectively reasonable officers could have intended as compliance strikes to subdue a struggling suspect . . . —does not amount to an unreasonable seizure." R.437. The district court rejected Mr. Hall's First Amendment retaliation claim, reasoning Officers "had a sufficient non-retaliatory justification" for their

use of force. R.441. Under controlling Supreme Court caselaw, it concluded Mr. Hall therefore "[could not] prevail on this claim." R.441. And the district court granted summary judgment to the Officers on Mr. Hall's fabrication-of-evidence claim under the Fourteenth Amendment, holding the Officers' reporting of the incident was "not so flagrantly divorced from reality as to shock [] the conscience," the standard required to bring such a claim. R.444.

The district court found the § 1983 claim against Salt Lake City could not advance in the absence of a constitutional violation by the Officers. R.444. And, having resolved all Mr. Hall's federal causes of action, the district court declined supplemental jurisdiction over Mr. Hall's Utah state law claims.

Mr. Hall timely appeals.

II

Mr. Hall challenges the district court's grants of summary judgment on his Fourth Amendment excessive force claim, his First Amendment retaliation claim, and his Fourteenth Amendment fabrication claim against the Defendant Officers. He also appeals the grant of summary judgment on his municipal liability claim against Defendant Salt Lake City. After discussing the standard of review applicable here, we address each claim in turn. For the reasons we explain, we discern no error and affirm.

A

We review the district court's grants of summary judgment *de novo*, viewing the evidence and drawing all reasonable inferences therefrom in the light most favorable to Mr. Hall, as the non-moving party. *Helvie* v. *Jenkins*, 66 F.4th 1227, 1231 (10th Cir. 2023). While we generally "adopt[] the plaintiff's version of the facts," we "do not have to accept versions of the facts contradicted by objective evidence, such as video surveillance footage." *Palacios* v. *Fortuna*, 61 F.4th 1248, 1256 (10th Cir. 2023) (quoting *Est. of Beauford* v. *Mesa Cnty.*, 35 F.4th 1248, 1261 (10th Cir. 2022)); *Thomas* v. *Durastanti*, 607 F.3d 655, 659 (10th Cir. 2010) (explaining courts need not accept factual recitations or inferences undermined by "clear contrary video evidence of the incident at issue").

Generally, a district court may "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "In the ordinary case, then, a plaintiff can survive summary judgment by establishing genuine issues of material fact that a jury must decide." *Helvie*, 66 F.4th at 1232 (citing *Est. of Taylor* v. *Salt Lake City*, 16 F.4th 744, 758 n.5 (10th Cir. 2021)).

Because Officers Brown and Murray asserted a qualified immunity defense on the claims against them, Mr. Hall's obligations at summary

judgment were a little different. The doctrine of qualified immunity holds public officials "immune from suit under 42 U.S.C. § 1983 unless they have violated a statutory or constitutional right that was clearly established at the time of the alleged conduct." *City & Cnty. of San Francisco* v. *Sheehan*, 575 U.S. 600, 611 (2015) (citation omitted). In other words, Mr. Hall needed to show (1) the Officers violated his rights under the Federal Constitution or a Federal statute *and* (2) the unlawfulness of the Officers' conduct was clearly established at the time of the incident. *District of Columbia* v. *Wesby*, 583 U.S. 48, 62–63 (2018). If Mr. Hall's claims failed on either prong, summary judgment based on qualified immunity was appropriate.

We have discretion to decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson* v. *Callahan*, 555 U.S. 223, 236 (2009). Like the district court, we address only the first prong of each claim and conclude Mr. Hall failed to establish constitutional violations.

B

First, we consider Mr. Hall's Fourth Amendment excessive force claim. On appeal, Mr. Hall argues the district court erred in concluding there was no Fourth Amendment violation by the Officers "because their use of force was reasonable as a matter of law." Opening Br. at 20. According to Mr. Hall, the district court also mistakenly adopted "the officers' version

of events" and disregarded "all contrary inferences." *Id.* at 29.[2] We cannot agree.

To decide whether the Officers' use of force was objectively reasonable, we review the totality of the circumstances, apply the familiar factors set forth by the Supreme Court in *Graham* v. *Connor*, and consider "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." 490 U.S. 386, 396 (1989). The Court has frequently reminded us that our determination of "reasonableness" must be based on "the perspective of a reasonable officer

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[2] At times, Mr. Hall seems to suggest the reasonability-of-force inquiry is a question only for the jury. *See, e.g.*, Opening Br. at 20 ("The court erred by taking this ultimate determination [the reasonability of force as a matter of law] upon itself, rather than recognizing that a jury might disagree."). To be sure, it is generally the jury's role as factfinder "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the basic facts to the ultimate facts." *United States* v. *Nieto*, 60 F.3d 1464, 1469 (10th Cir. 1995) (citation omitted).

But if Mr. Hall is arguing a court at the summary judgment stage categorically may not find a use of force reasonable as a legal matter, this argument is foreclosed by clear precedent binding upon this court. *See Scott* v. *Harris*, 550 U.S. 372, 381 n.8 (2007) ("At the summary judgment stage, . . . once we have determined the relevant set of facts and drawn all inferences in favor of the nonmoving party *to the extent supportable by the record*, the reasonableness of [an officer's] actions . . . is a pure question of law.") (citation omitted).

on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." *Kingsley* v. *Hendrickson*, 576 U.S. 389, 397 (2015).

Applying the first *Graham* factor, we consider the "severity of the crime[s] at issue." 490 U.S. at 396. Like the district court, we conclude this factor favors Mr. Hall. In considering this factor, we focus only on the crime the Officers had probable cause to believe Mr. Hall had committed (or was committing). *Henry* v. *Storey*, 658 F.3d 1235, 1239 (10th Cir. 2011). Here, the Officers were told Mr. Hall may have been assaulting other guests, but assault is a Class B misdemeanor under Utah Code § 76-5-102. As we have explained, "the first *Graham* factor may weigh against the use of significant force if the crime at issue is"—as here—"a misdemeanor." *Lee* v. *Tucker*, 904 F3d 1145, 1149 (10th Cir. 2018); *see also Andersen* v. *DelCore*, 79 F.4th 1153, 1164 (10th Cir. 2023) (explaining "misdemeanor crimes ordinarily 'weigh against the use of significant force'" (quoting *Wilkins* v. *City of Tulsa*, 33 F.4th 1265, 1274 (10th Cir. 2022))).

We turn to the second *Graham* factor, "undoubtedly the most important." *Est. of Taylor*, 16 F.4th at 763 (quoting *Est. of Valverde ex rel. Padilla* v. *Dodge*, 967 F.3d 1049, 1060–61 (10th Cir. 2020)). Applying this factor, we ask whether the Officers reasonably believed Mr. Hall "pos[ed] an immediate threat to the safety of the officers or others." *Pauly* v. *White*, 874 F.3d 1197, 1215–16 (10th Cir. 2017) (alteration in original).

On appeal, Mr. Hall identifies several disputed facts he claims preclude summary judgment on this point. For example, where the district court found Mr. Hall aggressively and unmistakably advanced on officers until he was within two feet of Officer Brown, Mr. Hall argues he was simply complying with Officer Brown's command to "[c]ome here, buddy." Opening Br. at 22–23. Mr. Hall argues a jury could find he was nonthreatening—as a matter of fact—because he was intoxicated. And he argues he raised his hand and pointed his finger at the Officers not to threaten them, but to "drunkenly lecture" them.

But as Defendants persuasively explain, our inquiry "is not whether [Mr. Hall] *actually* intended to comply with commands or was *actually* too intoxicated to pose any threat; rather the question is whether the Officers' belief that he presented a threat was reasonable." App'ees' Br. at 23. After reviewing the record, including the video footage, and drawing all reasonable inferences for Mr. Hall, we discern no error in the district court's ruling.

There is no dispute that, upon arriving at the scene, the Officers knew Mr. Hall had been using physical force of some kind against other guests and the security guard. Mr. Hall advanced in a highly aggravated state

until he was within striking distance of Officer Brown.[3] Officer Brown repeatedly asked that Mr. Hall "calm down," to which Mr. Hall replied: "Oh, what are you gonna tase me? F—n' a—e." Ex. 6 at 1:30. When Mr. Hall raised his hand toward Officer Brown's face, Officer Brown immediately initiated his "takedown" of Mr. Hall. Though Mr. Hall was on the ground, his hands briefly remained free while the Officers attempted to grab his arms. The striking stopped within seconds, as soon as Mr. Hall was restrained on the ground by Officers Brown and Murray.

Under these circumstances, we conclude, like the district court, "it was objectively reasonable for the [O]fficers to believe that Mr. Hall was attempting to assault Officer Brown and then to fight off the [O]fficers after the takedown and thus [Mr. Hall] represented a threat to their safety." R.437; *cf. McCowan* v. *Morales*, 945 F.3d 1276, 1284 (10th Cir. 2019) (finding *unreasonable* a "gratuitous use of force against . . . a fully compliant and subdued misdemeanant arrestee . . . who posed no threat to anyone").

The third *Graham* factor—whether the Officers believed Mr. Hall may have been resisting arrest—weighs in their favor for essentially the same reasons. The video shows Mr. Hall landing on the ground on his side and

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[3] That Officer Brown told Mr. Hall to "[c]ome here, buddy," does not alter our view of the nature of Mr. Hall's approach toward the Officers.

pivoting to his back with his arms raised.[4] We find the Officers could reasonably have believed Mr. Hall was struggling against—or resisting—restraint by them.[5] Indeed, once Mr. Hall was restrained, the application of force promptly stopped. *Cf. Wise* v. *Caffey*, 72 F.4th 1199, 1208 (10th Cir. 2023) (concluding when plaintiff's resistance ended, "so too did the justification for [the officer's] use of force"); *McCoy* v. *Meyers*, 887 F.3d 1034, 1045 (10th Cir. 2018) ("[T]he justification for using force ceased once [plaintiff] was handcuffed and his legs were bound." (citing *Weigel* v. *Broad*, 544 F.3d 1143, 1152 (10th Cir. 2008) (internal quotation marks omitted))).

We cannot endorse the Officers' conduct in arresting Mr. Hall. But reviewing the totality of the circumstances confronted by Officers Hall and Murray—on the scene, at the time, and not with 20/20 hindsight—we conclude the several strikes delivered in immediate succession and within

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[4] The parties dispute whether Mr. Hall landed on his side or his back. *See* Opening Br. at 9 ("Hall landed on his back."); App'ees' Br. at 24 ("Plaintiff landed on his side and rolled onto his back with both arms free and in the air."). The video appears to show Mr. Hall landing on his side, but, even if he landed on his back, our analysis would remain unchanged.

[5] We should not and do not credit the Officers' argument that this was a "'guard' position where [Mr. Hall] could attempt to assault them, put them in a defensive hold, or reach for their weapons." App'ees' Br. at 27–28. This may be true, but it would require the drawing of inferences in the light most favorable to *the Officers* rather than *Mr. Hall*. *See Jordan* v. *Jenkins*, 73 F.4th 1162, 1167 (10th Cir. 2023).

seconds were an objectively reasonable use of force against Mr. Hall, consistent with the Fourth Amendment.[6]

C

Mr. Hall then appeals the district court's grant of summary judgment on his First Amendment claim alleging retaliation for protected speech. He urges reversal because the district court "erred in assuming that one's First Amendment rights cannot be violated unless some other constitutional violation has occurred." Opening Br. at 30.[7] But that is not what the district court held. Rather, we recognize the district court to have correctly

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[6] In any event, we agree with Defendants that, even if Mr. Hall could establish a constitutional violation, he has failed to show any clearly established law placing the unconstitutional nature of the Officers' conduct here "beyond debate." App'ees' Br. at 33 (quoting *Rivas-Villegas* v. *Cortesluna*, 595 U.S. 1, 5 (2021)). *Perea* v. *Baca*, 817 F.3d 1198 (10th Cir. 2016), *Casey* v. *City of Federal Heights*, 509 F.3d 1278 (10th Cir. 2007), and *Cavanaugh* v. *Woods Cross City*, 625 F.3d 661 (10th Cir. 2010)—the cases offered by Mr. Hall—are readily distinguishable. Mindful of the Supreme Court's directive in *City of Tahlequah* v. *Bond*, 595 U.S. 9, 12–13 (2021), we cannot find them to serve as precedents establishing, with the requisite specificity, the unlawfulness of the conduct here.

[7] Mr. Hall also contends reversal on his First Amendment claim is required if we reverse his Fourth Amendment claim. For the reasons discussed, we discern no basis to reverse summary judgment on Mr. Hall's Fourth Amendment claim, so we need not reach this argument.

understood Mr. Hall's claim and properly applied controlling precedent to analyze it.

"[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman* v. *Moore*, 547 U.S. 250, 256 (2006). To make out his First Amendment claim, Mr. Hall was required to "establish a 'causal connection' between the [Officers'] 'retaliatory animus' and [Mr. Hall's] 'subsequent injury.'" *Nieves* v. *Bartlett*, 139 S. Ct. 1715, 1722 (2019) (quoting *Hartman*, 547 U.S. at 259). Specifically, Mr. Hall needed to show First Amendment retaliatory animus was *the* "'but-for' cause" of his injury, "meaning that the adverse action against [him] would not have been taken absent the retaliatory motive." *Id.* (quoting *Hartman*, 547 U.S. at 260).

We conclude he did not do so here. Like the district court, we have found the Officers' use of force was reasonable under the Fourth Amendment. R.441. And like the district court, we find this reasonableness to constitute independent, nonretaliatory grounds for the "adverse consequences" suffered by Mr. Hall. *Nieves*, 139 S. Ct. at 1722, 1724. When *permissible*, nonretaliatory grounds are *insufficient* to "provoke the adverse consequences," the *impermissible* retaliation "is subject to recovery as the but-for cause of official action offending the Constitution." *Hartman*, 547

U.S. at 256 (citing *Crawford-El* v. *Britton*, 523 U.S. 574, 593 (1998); *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U.S. 274, 283–84 (1977)). But here, where a nonretaliatory basis *is* sufficient to "provoke the adverse consequences," a First Amendment retaliation claim may not advance. Mr. Hall has presented no availing contrary argument. Accordingly, we cannot conclude that any retaliatory animus the Officers may have had could serve as the "but-for" cause of Mr. Hall's injury. Mr. Hall's First Amendment claim thus fails as a matter of law.

D

Mr. Hall next appeals the district court's grant of summary judgment on his Fourteenth Amendment Due Process claim. He insists disputed factual issues undermine the district court's conclusion that the discrepancies in the probable cause statements failed to support the alleged violation of his rights. We disagree.

The constitutional right at issue is Mr. Hall's "due process right not to be deprived of liberty as a result of the fabrication of evidence by a government officer." *Truman* v. *Orem City*, 1 F.4th 1227, 1236 (10th Cir. 2021). To state a fabrication-of-evidence claim, we have held a plaintiff must allege: "(1) the defendant knowingly fabricated evidence, (2) the fabricated evidence was used against the plaintiff, (3) the use of the fabricated evidence deprived the plaintiff of liberty, and (4) if the alleged

unlawfulness would render a conviction or sentence invalid, the defendant's conviction has been invalidated or called into doubt." *Id.*

We have also explained, "[w]here the alleged fabrication of evidence was performed by a member of the executive branch"—like the Officers here, *id.* at n.4—we can only find a due process violation where the conduct "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense." *Crowson* v. *Washington Cnty.*, 983 F.3d 1166, 1190 (10th Cir. 2020) (quoting *County of Sacramento* v. *Lewis*, 523 U.S. 833, 847 (1998)).

In relevant part, the declaration of probable cause prepared in reliance on Officer Brown's statement reads:

> Officer Brown attempted to speak with [Mr. Hall] from a distance. [Mr. Hall] told Officer[s] to "f*ck off" and gestured to them with his middle fingers. [Mr. Hall] became more aggressive and walked towards Officer Brown coming within one foot of him[. Mr. Hall] threw his hands up with balled fists and stated, "What are you going to do, tase me?" [Mr. Hall] then attempted to poke Officer Brown in his chest with his finger. Due to [Mr. Hall's] aggressive actions, Officer Brown and Officer Murray attempted to gain control of [Mr. Hall] and took him to the ground. [Mr. Hall] was resisting and rolled onto his back in a "guard position" as the officers were trying to restrain him.

R.443. The district court correctly concluded there are some "minor discrepancies between this statement and what is clearly depicted in the body cam video." *Id.*

But that is not enough. Mr. Hall must show Officers did more than "intentionally or recklessly cause[] injury . . . by abusing or misusing government power." *Uhlrig* v. *Harder*, 64 F.3d 567, 574 (10th Cir. 1995). He must show "a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking." *Id.* On this record, Mr. Hall cannot make the requisite showing. Like the district court, we conclude that these minor discrepancies—even if we were to find them knowing and deliberate falsehoods—are not "conscience shocking." R.443–44.

E

As Mr. Hall rightly concedes, his municipal liability claim travels with his constitutional claims against the Officers.

We have consistently held "[a] municipality may not be held liable where there was no underlying constitutional violation by any of its officers." *Hinton* v. *City of Elwood*, 997 F.2d 774, 782 (10th Cir. 1993); *see also Harmon* v. *City of Norman*, 61 F.4th 779, 794 (10th Cir. 2023) (same). That principle is dispositive here. Because we find Officers Brown and Murray did not violate Mr. Hall's constitutional rights, Salt Lake City cannot be liable to Mr. Hall under 42 U.S.C. § 1983.

III

For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

ENTERED FOR THE COURT

Veronica S. Rossman
Circuit Judge