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United States Court of Appeals
Tenth Circuit

October 29, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

BLENDI CUMANI, M.D.; ROLAND SHEHU,

Plaintiffs - Appellants,

v.

CHRIS QUEEN,

Defendant - Appellee.

No. 24-8072
(D.C. No. 2:23-CV-00055-ABJ)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **McHUGH**, **EID**, and **ROSSMAN**, Circuit Judges.

On October 27, 2019, Chris Queen, a Senior Game Warden for the Powell District of Wyoming, investigated an alleged illegal elk shooting. Based on his findings, he filed an Affidavit of Probable Cause. The affidavit formed the basis for criminally charging two hunters, Blendi Cumani and Roland Shehu, with wasting and abandoning two elk in violation of Wyoming Statute § 23-3-303(a). Cumani and Shehu pleaded not guilty and were acquitted after a jury trial in Wyoming state court. After their acquittals, they sued Queen under 42 U.S.C. § 1983, alleging malicious prosecution and false arrest.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Queen filed a motion for summary judgment, and the district court granted it on both claims. Specifically, it ruled that Cumani and Shehu had not shown that they were detained after the institution of legal process, and therefore, they had failed to prove their malicious prosecution claim. The district court also ruled that Queen did not violate the Fourth Amendment because he had reasonable suspicion sufficient to seize Cumani and Shehu for an investigative detention.

On appeal, Cumani and Shehu argue that the district court erred in granting summary judgment because a malicious prosecution claim does not require the seizure of a person. Additionally, they contend that their seizure by Queen rose to the level of an arrest and that Queen did not have the requisite probable cause.

We disagree. Exercising jurisdiction under 28 U.S.C. § 1291, we hold that the district court properly granted summary judgment on the malicious prosecution and false arrest claims. Accordingly, we affirm.

I.

On the morning of October 27, 2019, Cumani and Shehu were hunting in the Heart Mountain region of Park County, Wyoming. Cumani and Shehu were joined by another hunter, George Schnell, and a hunting guide named Tyler Viles. The group was hunting for elk.

At the time, Chris Queen was on duty as a Senior Game Warden for the Powell District of Wyoming, which encompasses the northern half of Heart Mountain. Queen's role included three general categories of duties: (1) law enforcement, (2) wildlife management, and (3) other miscellaneous tasks. As part of his law

enforcement duties, Queen handled field contacts regarding hunting, fishing, and watercraft; investigated potential violations of wildlife regulations; conducted field forensics; enforced state wildlife regulations; and issued citations or made arrests for any violations. Queen also held a "Brown Card" during his employment, which allowed him to take wildlife pursuant to certain state regulations, including if he determined that any particular wildlife had "sustained an injury or contracted a disease or parasite which is life threatening to the individual animal or the wildlife population." App'x Vol. I at 61.

Around 8:00 a.m. that day, Queen received a call from a man named Brett Richmond. Richmond told Queen that someone in a group of hunters on Heart Mountain had shot and killed a bull elk on an antlerless elk license, which was prohibited both by Wyoming law and by the regulations of the Wyoming Game and Fish Commission.

Viles—the hunting guide who was leading the hunt—worked for Richmond as an elk-hunting guide. Richmond owned a local outfitting company, and he had long had access to hunt on a particular ranch on Heart Mountain, often offering guided hunts to groups. Cumani and Shehu were clients of Richmond's outfitting company. Over the years, it was repeatedly reported to Queen that hunters guided by Richmond's company "had illegally shot bull [male] elk on cow/calf elk licenses or antlerless elk licenses." *Id.* at 62. Indeed, in the two weeks prior to October 27, 2019, Queen claims that he learned of two such incidents involving Richmond's hunters. When Richmond called Queen, he told Queen that Viles was guiding the

group of hunters who had illegally shot a male elk, and he texted Viles's phone number to Queen. He testified later in his deposition that Queen told him, referring to Cumani and Shehu, that "somebody was gonna have to pay for it, and it's gonna be those Albanians." Aplt. Br. at 31; App'x Vol. II at 402.

Shortly thereafter, Queen received a call from Brian Peters, the manager of the Nature Conservancy's Heart Mountain Ranch Preserve. Peters reported that he had heard gunshots and seen two elk—a male and a female—fall behind their herd as if wounded. Peters also said that another hunter, Heath Worstell, was in the area.

Queen then called Viles, who confirmed that Schnell had illegally killed a male elk. Queen became upset and raised his voice at Viles. Queen decided to meet with Viles's hunting group, including Cumani and Shehu, at a place known as "the corrals." While on his way to meet the hunting group, Queen called Worstell, the other hunter that Peters had indicated was in the same area as Viles's hunting group. Queen states that his aim was to determine whether anyone else in the area was also hunting elk and whether they had licenses to do so. Worstell told Queen that he had not shot any elk that day but that he had seen four people shoot at a herd and injure two elk. Worstell did not, however, identify who in the group had done the shooting. Queen also admitted in his deposition that Worstell did not have a line of sight to the shooting and was over a mile away from where the injured elk were found.

When Queen arrived at the corrals at around 10:30 a.m., he spoke with Viles about the male elk that was illegally shot by Schnell. Queen believed that Viles's description of the hunting location matched the area where both Peters and Worstell

had described seeing the shooting of the two wounded elk. Queen then asked to see Cumani, Shehu, and Schnell's elk licenses. The hunters had four cow licenses and had validated three of them, meaning that they had killed three female elk. Queen also inspected the hunters' guns and wrote down their serial numbers.

At some point during the morning, Cumani told Queen that he was going to return to North Dakota, where he lived. Queen allegedly replied, "No, you're not. You're going to Richmond's house. You're not to leave Richmond's house." App'x Vol. II at 232. Queen claims that he merely told Cumani, Shehu, and Schnell to stay in the area while Queen conducted his investigation. Queen did not remove his handgun from his holster, handcuff anyone, or seize any guns. Cumani, Shehu, and Schnell complied and remained in the area.

Around 11:30 a.m., Queen and Viles visited the shooting location where Schnell had illegally shot the male elk. They spoke to another hunter in the area, Kade Fitzgerald, who stated that he had not shot any elk that day. Queen and Viles returned to the corrals where Cumani, Shehu, and Schnell were waiting.

Queen then met with Peters at The Nature Conservancy to search for the injured elk. They discovered a female elk that did not move when they approached her, which Queen claims indicated that the elk was wounded. Invoking his Brown Card, Queen killed the elk. He alleges that he saw fresh wounds in the elk's front legs, which he believed were consistent with a bullet exploding and fragmenting.

Queen proceeded to search for the second wounded elk. He claims that he found and killed a wounded male elk around 1:00 p.m. Contrary to Queen's account,

Richmond asserts that he and Viles watched Queen through a spotting scope and saw Queen shoot an *unwounded* male elk. Queen looked for bullets with a metal detector but did not find any. After dispatching both elk, he field dressed and loaded them into his truck with Peters's help at 4:30 p.m. Queen did not hear any further gunshots the entire time that he was investigating, and he was always within a few miles of the shooting location that Viles had shown him.

In the early evening, Queen returned to Richmond's house, where Cumani and Shehu were waiting. Viles claims that Queen was upset and told Richmond that he needed to get a good lawyer. Richmond saw one elk carcass in the back of Queen's truck and claims that the wounds appeared to be caused by a fence wire, rather than a bullet. At around 7:30 p.m., Queen permitted Cumani and Shehu to leave Richmond's house. Cumani and Shehu claim that Queen said that "[e]verything was okay" and that he was sorry to have held them up. *Id.* at 336.

However, the next day, Queen once again investigated the shooting location that Viles had shown him. Queen found two more elk carcasses near the wounded elk he had found the day before, and in one of these carcasses he discovered a bullet. Queen then went to Cumani and Shehu's shooting location to collect bullet casings, and he determined that the bullets from Cumani and Shehu's guns were similar in size to the bullet found in the elk carcass. Queen also discovered that the two elk carcasses that he found could be seen through a scope from Cumani and Shehu's shooting location. By this point, Queen had contacted every person who he believed could have been hunting in the area, but only Cumani, Shehu, and Schnell had

confirmed that they had shot at elk. But Cumani and Shehu note that ballistics experts at the Wyoming Division of Criminal Investigation could not determine whether the bullet fragments that Queen found belonged to either Cumani or Shehu.

On January 16, 2020, Queen filed an Affidavit of Probable Cause that provided the basis for criminally charging Cumani and Shehu with wasting and abandoning two elk in violation of Wyoming Statute § 23-3-303(a). Cumani and Shehu pleaded not guilty. After a four-day jury trial in Wyoming state court, they were acquitted. After their acquittals, they sued Queen for malicious prosecution and false arrest under § 1983. Queen moved for summary judgment.

The district court ruled that Cumani and Shehu had not shown that they were detained after the institution of legal process and therefore failed to prove the malicious prosecution claim. Additionally, the court ruled that Queen did not violate the Fourth Amendment or § 1983 because he had reasonable suspicion sufficient to seize Cumani and Shehu for an investigative detention. It found that Queen would have had probable cause to arrest Cumani and Shehu and that, if Queen had proceeded with an arrest, his actions would have been protected by qualified immunity. Thus, the court granted summary judgment in favor of Queen on all claims.

This appeal followed.

II.

We review a district court's grant of summary judgment de novo, applying the "same legal standard used by the district court." *Hooks v. Atoki*, 983 F.3d 1193, 1205

(10th Cir. 2020) (internal quotation marks omitted). Summary judgment is proper if the movant demonstrates 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). Under this standard, summary judgment is proper if a reasonable juror could not return a verdict for the nonmoving party. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). We "examine the record and 'all reasonable inferences that might be drawn from it in the light most favorable to the non-moving party.'" *Berry & Murphy, P.C. v. Carolina Cas. Ins.*, 586 F.3d 803, 808 (10th Cir. 2009) (quoting *Antonio v. Sygma Network, Inc.*, 458 F.3d 1177, 1181 (10th Cir. 2006)).

III.

A.

Plaintiffs may sue under § 1983 for malicious prosecution. *See Coones v. Bd. of Cnty. Comm'rs of the Unified Gov't of Wyandotte Cnty.*, 166 F.4th 1, 25 (10th Cir. 2026). A malicious prosecution claim is actionable when "(1) the defendant caused the plaintiff's continued confinement or prosecution; (2) the original action terminated in favor of the plaintiff; (3) no probable cause supported the original arrest, continued confinement, or prosecution; (4) the defendant acted maliciously; and (5) the plaintiff sustained damages." *Id.* (quotation omitted). However, unlike a false arrest claim, a malicious prosecution claim concerns detention only "[a]fter the institution of legal process." *Mondragon v. Thompson*, 519 F.3d 1078, 1083 (10th Cir. 2008). And "[b]ecause [a malicious prosecution] claim is housed in the Fourth

Amendment," a plaintiff must also "prove that he was seized as a result of the malicious prosecution." *Thompson v. Clark*, 596 U.S. 36, 43 n.2 (2022).

B.

On appeal, Cumani and Shehu assert that a malicious prosecution claim does not require the seizure of a person as a matter of law. Because it is undisputed that Cumani and Shehu were not seized after Queen initiated their prosecution, this issue presents a purely legal question.[1]

We hold that a malicious prosecution claim requires the seizure of a person. The Supreme Court plainly stated in *Thompson* that "[b]ecause [a malicious prosecution] claim is housed in the Fourth Amendment," a plaintiff must "prove that he was seized as a result of the malicious prosecution." 596 U.S. at 43 n.2. We have long recognized this principle. *See Myers v. Koopman*, 738 F.3d 1190, 1194 (10th Cir. 2013) (holding that the plaintiff "correctly styled his Fourth Amendment claim as one for malicious prosecution because he was seized after the institution of legal process"); *Sanchez v. Hartley*, 810 F.3d 750, 760 (10th Cir. 2016) (explaining that "an arrestee can bring a malicious-prosecution claim when legal process is initiated and results in an unreasonable seizure under the Fourth Amendment").

Cumani and Shehu, by contrast, rely exclusively on the dissenting opinion in *Thompson* to support their argument that a malicious prosecution claim does not

[1] Cumani and Shehu also claim that Queen is not protected by qualified immunity for his actions, but because their malicious prosecution claim fails for lack of seizure, we do not reach this question.

require the seizure of a person. We have found no binding authority to support their position.

Therefore, we hold that the district court properly granted summary judgment in favor of Queen on the malicious prosecution claim.

IV.

A.

A plaintiff may recover under § 1983 for a false arrest claim if he shows that he was arrested by a state actor without probable cause. *See Cottrell v. Kaysville City*, 994 F.2d 730, 733 (10th Cir. 1993). Additionally, if an officer makes a warrantless arrest without probable cause, that is a constitutional violation under the Fourth Amendment. *See Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1312 (10th Cir. 2002).

There are three types of law enforcement encounters: consensual encounters, investigative detentions (also known as *Terry* stops), and arrests. *See United States v. Madden*, 682 F.3d 920, 925 (10th Cir. 2012). Consensual encounters do not implicate the Fourth Amendment, unlike investigative detentions and arrests. *See id.* An investigative detention is "a seizure within the meaning of the Fourth Amendment but, unlike an arrest, it need not be supported by probable cause." *Oliver v. Woods*, 209 F.3d 1179, 1186 (10th Cir. 2000). Rather, an officer may conduct an investigative detention if he has an objective basis for "reasonable suspicion supported by articulable facts that criminal activity may be afoot, even if the officer lacks probable cause." *Id.* By contrast, a warrantless arrest is allowed when an

officer "has probable cause to believe that a person committed a crime." *Romero v. Fay*, 45 F.3d 1472, 1476 (10th Cir. 1995).

Whether an officer has probable cause is an objective inquiry. *See United States v. Valenzuela*, 365 F.3d 892, 896 (10th Cir. 2004). We have recognized that "[p]robable cause to make an arrest exists 'if facts and circumstances within the arresting officer's knowledge . . . are sufficient to lead a prudent person to believe that the arrestee has committed or is committing an offense.'" *McFarland v. Childers*, 212 F.3d 1178, 1186 (10th Cir. 2000) (quoting *Jones v. City & Cnty. of Denver*, 854 F.2d 1206, 1210 (10th Cir. 1988)). Importantly, "[r]easonable suspicion is a less demanding standard than probable cause" partly because "reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990). That said, probable cause "is not a high bar." *Kaley v. United States*, 571 U.S. 320, 338 (2014). To have probable cause, officers need "only the kind of fair probability on which reasonable and prudent [people] . . . act." *Id.* (quotation omitted).

Determining when an investigative detention ripens into an arrest is a fact-intensive inquiry. *See Hemry v. Ross*, 62 F.4th 1248, 1254 (10th Cir. 2023). We "consider[] both the officers' forceful measures and the detention's length." *Id.* If officers use forceful measures, such as brandishing firearms or using handcuffs, "a *Terry* stop escalates into an arrest unless 'the circumstances reasonably warrant such measures.'" *Id.* (quoting *United States v. Melendez-Garcia*, 28 F.3d 1046, 1052 (10th Cir. 1994)). To determine if the use of force was reasonable, we examine "the

totality of the circumstances as viewed from the perspective of a reasonable officer on the scene." *Lundstrom v. Romero*, 616 F.3d 1108, 1121 (10th Cir. 2010). This includes whether the use of force was "reasonably necessary for the safety of officers or bystanders." *Soza v. Demsich*, 13 F.4th 1094, 1101 (10th Cir. 2021). We assess whether a detention's length was proper by considering the "purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes." *United States v. Sharpe*, 470 U.S. 675, 685 (1985).

B.

On appeal, Cumani and Shehu contend that their seizure by Queen rose to the level of an arrest and that Queen did not have the requisite probable cause.[2] They argue that Queen does not have qualified immunity for his actions. We hold that Queen did not arrest Cumani and Shehu but merely seized them in an investigative detention, and he had reasonable suspicion to do so. Therefore, we do not find it necessary to reach the qualified immunity issue on appeal.

An investigative detention is valid when (1) "the detention is justified at its inception," and (2) "the officer's actions were reasonably related in scope to the circumstances that first justified the interference." *Lundstrom*, 616 F.3d at 1120

[2] We note that Cumani and Shehu did not properly brief the reasonable suspicion issue in their opening brief. *See* Aple. Br. at 23 (noting that Cumani and Shehu "fail[ed] to recognize that probable cause is not the threshold standard for an investigative detention—it is the lower standard of reasonable suspicion"). While Cumani and Shehu did address the issue in their reply brief, "[i]n this Circuit, we generally do not consider arguments made for the first time on appeal in an appellant's reply brief and deem those arguments waived." *United States v. Leffler*, 942 F.3d 1192, 1197 (10th Cir. 2019).

(internal quotation marks omitted). We begin with the first step to determine if Queen properly seized Cumani and Shehu in an investigative detention.

An investigative detention is justified at its inception if an officer has an "objectively reasonable articulable suspicion that a detainee committed or is about to commit a crime." *Id.* (internal quotation marks omitted). Here, Queen clearly had reasonable suspicion because he knew that Cumani and Shehu were hunting elk with a group that morning; moreover, he knew that someone else in their group, Schnell, had already committed a hunting violation by illegally shooting a male elk. Furthermore, Queen had phone conversations with Peters and Worstell, which alerted him to additional possible illegal elk shootings in the area where Cumani and Shehu were hunting.

Cumani and Shehu argue that Queen should not have relied on these phone conversations because neither Peters nor Worstell actually saw who shot the wounded elk. But "reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *Valenzuela*, 365 F.3d at 896 (quotation omitted). As a result, Queen had grounds for reasonable suspicion that Cumani and Shehu were responsible for shooting the two wounded elk.

Turning to the second step, we ask whether Queen's actions were reasonably related in scope to the circumstances. Put differently, we must decide whether Queen seized Cumani and Shehu in an investigative detention or whether his conduct rose to the level of an arrest. We evaluate two factors: an officer's use of force and the length of the detention. *Hemry*, 62 F.4th at 1254–56. Here, it is undisputed that

Queen did not use handcuffs, pull out a firearm, or use any force beyond telling Cumani and Shehu to remain at Richmond's house during the investigation.

Cumani and Shehu claim that their experience growing up in communist Albania made them comply with Queen's request because they were fearful of law enforcement officers. We do not doubt the sincerity of that fear, but it does not transform the detention into an arrest. The inquiry turns on the officer's conduct—whether "the officer's actions were reasonably related in scope to the circumstances that first justified the interference"—not on an individual's subjective reaction to it. *Lundstrom*, 616 F.3d at 1120 (internal quotation marks omitted). And in the related context of determining whether a seizure occurred, we have held that the "particular personal traits or subjective state of mind of the defendant are irrelevant" unless they were "known to the officer and influenced his conduct." *United States v. Little*, 18 F.3d 1499, 1505 (10th Cir. 1994) (en banc) (quotation omitted). Nothing in the record suggests that Queen knew of Cumani and Shehu's fear of law enforcement, and we will not presume that all persons from a particular country share it. *See id.* at 1505 & n.7 (rejecting "any rule that would classify groups of travelers according to gender, race, religion, national origin, or other comparable status").

Cumani and Shehu point to Richmond's testimony that Queen told him over the phone that "somebody was gonna have to pay for [the wounded elk], and it's gonna be those Albanians." Aplt. Br. at 31; App'x Vol. II at 394, 402, 403. But whether a seizure was reasonable is judged objectively, "without regard to [the officer's] underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397

(1989); *see also id.* ("An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional."). It is undisputed that Queen used no force to cause Cumani and Shehu to stay inside Richmond's home. A dispute about Queen's motive is therefore not a dispute of material fact here.

Furthermore, while Cumani and Shehu remained at Richmond's house for several hours, the length of a detention is not a dispositive factor in determining whether the detention becomes an arrest. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 543 (1985). Instead, courts "probe the factual context and the detention's underlying justification" to determine if the length of time was necessary for the investigation. *Hemry*, 62 F.4th at 1256 (quotation omitted). Once suspicion is dispelled, the detention should cease. *See United States v. Peters*, 10 F.3d 1517, 1522 (10th Cir. 1993). In this case, as the district court noted, Queen "diligently investigat[ed] the potential crime during that entire period; the detention was necessary because he would have needed to seize [Cumani and Shehu's] weapons as evidence if he had found any bullets; and once his suspicion was dispelled, he told [Cumani and Shehu] they could leave." App'x Vol. III at 558. As a result, the record shows that Queen seized Cumani and Shehu in an investigative detention; he did not arrest them.

Therefore, we hold that the district court properly granted summary judgment in favor of Queen on the false arrest claim.

V.

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment.

Entered for the Court

Allison H. Eid
Circuit Judge