UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6928

KELLEN BROWN, Administrator of the Estate of Tiffany Brown,

Plaintiff - Appellant,

v.

LEON LOTT, in his capacity as Sheriff of the Richland County Sheriff's Department; JOE PHILLIP SMITH, in his individual capacity,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. J. Michelle Childs, District Judge. (3:19-cv-00595-JMC)

Submitted: March 29, 2022 Decided: June 10, 2022

Before MOTZ and RUSHING, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed in part; vacated and remanded in part by unpublished per curiam opinion.

ON BRIEF: Chris S. Truluck, THE SHEALEY LAW FIRM, LLC, Columbia, South Carolina, for Appellant. Andrew F. Lindemann, LINDEMANN & DAVIS, P.A., Robert D. Garfield, CROWE LAFAVE, LLC, Columbia, South Carolina, for Appellee.

PER CURIAM:

Kellen Brown, Administrator of the Estate of Tiffany Brown, appeals the district court's order adopting the report and recommendation of the magistrate judge and granting summary judgment to Defendants in Kellen's suit alleging violations of 42 U.S.C. § 1983 and state law. The suit arose out of a physical altercation between Charisse Brown (Kellen's ex-wife) and Tiffany (Kellen's fiancée at the time) which resulted in Tiffany's arrest for assault and battery. The charges against Tiffany were eventually dismissed when she was found to be immune from prosecution on the grounds of self-defense. We affirm in part and vacate in part.

"This [c]ourt reviews the district court's grant of summary judgment de novo, applying the same legal standards as the district court and viewing the facts and inferences drawn from the facts in the light most favorable to the nonmoving party." *Perkins v. Int'l Paper Co.*, 936 F.3d 196, 205 (4th Cir. 2019) (alterations and internal quotation marks omitted). Summary judgment is appropriate only "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). The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party "discharges this burden, the nonmoving party must present specific facts showing that there is a genuine issue for trial." *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 540 (4th Cir. 2015) (internal quotation marks omitted).

The relevant inquiry on summary judgment is "whether the evidence . . . presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *McAirlaids, Inc. v. Kimberly-Clark Corp.*, 756 F.3d 307, 310 (4th Cir. 2014) (internal quotation marks omitted). In evaluating a summary judgment motion, this court must "not weigh the evidence or make credibility determinations." *Betton v. Belue*, 942 F.3d 184, 190 (4th Cir. 2019). "To create a genuine issue for trial, the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Humphreys*, 790 F.3d at 540 (internal quotation marks omitted). Instead, "there must be evidence on which the jury could reasonably find for the nonmovant." *Thompson v. Virginia*, 878 F.3d 89, 97 (4th Cir. 2017) (alteration and internal quotation marks omitted).

I.

Kellen first asserts that the district court erred in determining that Joe Phillip Smith, the officer who arrested Tiffany, had probable cause for the arrest. "Probable cause to justify an arrest means facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed an offense." *Humbert v. Mayor & City Council of Balt. City*, 866 F.3d 546, 555 (4th Cir. 2017) (alterations and internal quotation marks omitted). "Probable cause is . . . determined by a 'totality-of-the-circumstances' approach." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 230 (1983)); *see*

Gates, 462 U.S. at 243 n.13 ("[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.").

Here, Smith was in possession of Charisse's statement, which was supported by her and Kellen's nine-year-old son's statement, as well as photographs of Charisse's injuries. Smith also had Tiffany's statement, which not surprisingly disputed her responsibility for the fight. While Smith also obtained a statement from Kellen stating that Charisse was the aggressor, Kellen averred that he did not see the beginning of the physical fight. We find that this evidence easily supports a finding of probable cause. *See Torchinsky v. Siwinski,* 942 F.2d 257, 262 (4th Cir. 1991) ("It is surely reasonable for a police officer to base his belief in probable cause on a victim's reliable identification of his attacker.").

Kellen contends that evidence of past aggression by Charisse, threatening phone calls by Charisse, and Charisse's negative influence on their son defeated probable cause. However, while evidence of Charisse's character and the difficult relationship between the adults involved may relate to the sufficiency of the evidence at trial, it is not directly material to the incident in question and does not undermine the showing of probable cause. Probable cause does "not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands." *Gerstein v. Pugh*, 420 U.S. 103, 121 (1975). Similarly, had Smith brought this evidence and the statements of Kellen and Tiffany to the magistrate judge's attention, it would not have defeated the finding of probable cause. Even given a more detailed picture of the relationship and history of the parties, a reasonable person could still have believed that Tiffany assaulted Charisse. *See Paez v. Mulvey,* 915 F.3d 1276, 1289-90 (11th Cir. 2019) ("[P]robable cause is a

preliminary determination. The investigating officers were not required to resolve legal matters in dispute, understand the nuances of any possible defense, or answer them in order to decide whether there was probable cause."); *see also United States v. Wharton*, 840 F.3d 163, 168-69 (4th Cir. 2016) (holding that, with regard to omissions in the warrant affidavit, "[a]n omission is material if it is necessary to the neutral and disinterested magistrate's finding of probable cause [and] [e]ven if relevant, information is not material unless its inclusion in the affidavit would defeat probable cause" (citations, alterations and internal quotation marks omitted)).

Kellen also asserts that Smith should not have relied upon their son's statement, given that Charisse was the custodial parent and that, as such, a bias in her favor would be expected. However, Kellen presents no evidence to support this conclusion. Kellen points only to the statement of the magistrate judge at Tiffany's immunity hearing that a child will generally support the custodial parent. This statement is not binding on this court and, in any event, was made *after* Tiffany's arrest. Accordingly, Smith was not required to ignore the minor's statement in determining whether probable cause existed.

Given the totality of the circumstances, probable cause supported Tiffany's arrest warrant. While Smith was aware that Tiffany disputed her guilt and that Charisse had a history of physical altercations and threatening behavior against Tiffany and Kellen, such did not undermine the existence of probable cause and was instead evidence for a judge or jury to weigh. As such, the district court properly granted summary judgment on all of Kellen's claims that required a showing of a lack of probable cause, including his Fourth Amendment claim for unlawful arrest.

II.

Next, Kellen asserts that material issues of fact existed regarding whether Smith violated a duty to further investigate the case by questioning other witnesses and delving into Charisse's past. We have held that, "[a]lthough an officer may not disregard readily available exculpatory evidence of which he is aware, the failure to pursue a potentially exculpatory lead is not sufficient to negate probable cause." *Wadkins v. Arnold*, 214 F.3d 535, 541 (4th Cir. 2000); *accord McKinney v. Richland Cnty. Sheriff's Dep't*, 431 F.3d 415, 418-19 (4th Cir. 2005) ("The fact that [an officer] did not conduct a more thorough investigation before seeking the arrest warrant does not negate . . . probable cause . . . ."). Moreover, an officer need not "exhaust every potentially exculpatory lead or resolve every doubt about a suspect's guilt before probable cause is established." *Torchinsky*, 942 F.2d at 264.

We find that Smith's failure to further investigate did not defeat probable cause. Smith did not ignore any exculpatory evidence as the existence of other witnesses was, at most, an exculpatory lead. Moreover, Kellen told Smith that, although Charisse was the instigator of the fight, he did not see the beginning of the physical fight. Thus, while Tiffany stated that the fight began inside the house, all the other statements – by Charisse, Kellen, and their son – supported the conclusion that the physical fight began at the door or just outside. As such, Smith could reasonably have believed that the witnesses inside the house would not add anything relevant to his investigation. Moreover, even had Smith obtained the statements of the other witnesses, Smith would still have been faced with conflicting statements, and Charisse and her son's statement would have still supported

probable cause, as probable cause deals with probabilities, not certainty. *See Karamanoglu v. Town of Yarmouth,* 15 F.4th 82, 88 (1st Cir. 2021) ("[P]robable cause to believe one person committed a crime by definition does not foreclose the possibility that probable cause would also exist to believe another person committed the same or a parallel crime."). Further, Charisse's history of physical altercations and threatening behavior, as discussed above, would not defeat probable cause. Accordingly, the district court correctly found that, as a matter of law, Smith did not violate a duty to investigate. Thus, summary judgment was properly granted on any constitutional claim resting on that alleged duty.

III.

Kellen next argues that the district court improperly granted summary judgment on his claim that Smith maliciously continued to prosecute Tiffany for three months after receiving exculpatory affidavits from four other witnesses. This claim relies on Kellen's assertion that there was no prosecutor assigned to the case until Tiffany's immunity hearing, so that, until that time, Smith was acting as the prosecutor. "A malicious prosecution claim under § 1983 is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of the common law tort." *Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012) (internal quotation marks omitted). "To state such a claim, a plaintiff must allege that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in plaintiff's favor." *Id.* Thus, given that probable cause existed to arrest Tiffany, this claim fails.

IV.

Finally, Kellen asserts that the district court failed to conduct a proper de novo review of the magistrate judge's rulings with regard to his state law claims.[*] Kellen timely filed objections to the magistrate judge's report. While many of Kellen's arguments referred back to facts and arguments raised with regard to his federal claims, Kellen also directly addressed the magistrate judge's rejection of each of his state claims, raising specific challenges to the magistrate judge's reasoning. Nonetheless, the district court stated as follows:

> It appears virtually all of Plaintiff's objections related to the state law claims are rehashed contentions that the Magistrate Judge properly considered and addressed. Rather than specifically objecting to portions of the Report, Plaintiff looks to reassert her previously denied arguments. However, the court declines to hear Plaintiff's reused arguments. The court otherwise observes no clear error on the face of the record. Accordingly, the court finds the state law claims for gross negligence and recklessness; false imprisonment; intentional infliction of emotional distress; defamation and malicious prosecution; assault and battery; and negligent hiring, training, retention, and supervision shall be dismissed for the reasons thoroughly discussed within the Report.

The district court must review de novo those portions of the report to which specific objections are made. *United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019). A court's failure to apply the proper de novo standard of review warrants vacatur and remand. *See id.* Here, the district court declined to consider the arguments raised in Kellen's objections regarding his state claims and improperly reviewed the recommendations only for clear error. While certain of Kellen's objections were

[*] Appellees do not address this issue in their brief on appeal.

adequately considered by the district court when considering identical arguments with regard to his federal claims, we conclude that the following state claims were not adequately reviewed de novo by the district court: gross negligence and recklessness, intentional infliction of emotional distress, state malicious prosecution, defamation, and negligent hiring, training, retention, and supervision.

Accordingly, we vacate the portions of the district court's order granting summary judgment on the state law claims listed above and remand for de novo review of the magistrate judge's report and recommendation. We express no opinion on the merits of the claims remanded. We affirm the remainder of the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART;
VACATED AND REMANDED IN PART