In the United States Court of Appeals
for the
Fifth Circuit

Case No. 23-30238

GREGORY JAMES BLEDSOE, ON BEHALF OF HIMSELF

Plaintiff-Appellee,

-v.-

DEAN WILLIS, IN HIS INDIVIDUAL CAPACITY AS SERGEANT OF THE SHREVEPORT POLICE DEPARTMENT; DAVID MCCLURE, IN HIS INDIVIDUAL CAPACITY AS OFFICER OF THE SHREVEPORT POLICE DEPARTMENT,

Defendants-Appellants.

ON APPEAL FROM THE MARCH 30, 2023 ORDER IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, CIVIL ACTION NO. 5:21-CV-4367

BRIEF FOR PLAINTIFF-APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel for Plaintiff-Appellee Gregory James Bledsoe hereby states that the below persons and/or entities have an interest in the outcome of this appeal. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Gregory James Bledsoe, Plaintiff-Appellee;
2. Dean Willis, Defendant-Appellant;
3. David McClure, Defendant-Appellant;
4. Brittany B. Arvie, Defendant;
5. James E. Stewart, Senior, Defendant;
6. Counsel for Plaintiff-Appellee Gregory James Bledsoe: Erin Bridget Wheeler and Nora Ahmed of the ACLU of Louisiana, and Jacqueline Lesser, Masallay Komrabai-Kanu and Kishala Srivastava of Ice Miller LLP.
7. Counsel for Defendants-Appellants Nicholas M. Buckle.

/s/ *Jacqueline M. Lesser*
Attorney of Record

STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellee submits that oral argument is not necessary because the Court may only consider the Complaint when ruling on a motion to dismiss and oral argument would not be beneficial at this procedural juncture.

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STATEMENT OF JURISDICTION

Plaintiff-Appellee Gregory James Bledsoe submits that the Jurisdictional Statement in Defendants-Appellants' brief accurately sets forth the basis for this Court's jurisdiction over this appeal. Plaintiff-Appellee hereby incorporates Defendants-Appellants' Jurisdictional Statement by reference.

STATEMENT OF THE ISSUES

1. Whether the District Court correctly determined that Plaintiff-Appellee pled sufficient facts to establish that the independent intermediary doctrine does not insulate Defendants-Appellants police officers from liability due to the lack of probable cause attendant to the institution of proceedings against Plaintiff Appellee?

2. Whether the District Court correctly ruled that Plaintiff-Appellee pled sufficient facts to establish the requisite element of "malice," which includes recklessly providing false, material information for use in an affidavit, resulting in a warrant being issued without probable cause?

3. Whether the District Court correctly ruled that Plaintiff-Appellee's allegations are sufficient to defeat qualified immunity at the pleading stage?

STATEMENT OF THE CASE

Plaintiff-Appellee, Gregory James Bledsoe ("Plaintiff" or "Mr. Bledsoe"), seeks relief under 42 U.S.C. § 1983 based on the wrongful arrest, and reckless filing of a warrant without probable cause and his ensuing detention without basis. Plaintiff asserts constitutional and Louisiana state law claims of malicious prosecution against Defendants-Appellant David McClure ("Defendant McClure") and Defendant-Appellant Dean Willis ("Defendant Willis") (collectively "Defendants") in their individual capacities.

The facts of this case are as follows: On or around August 4, 2015, Defendant McClure was dispatched to investigate a reported burglary at 267 Dalzell Street (the "Dalzell Street Property"). He interviewed the purported victim, who noted that the front door window had been" "busted out;" he interviewed neighbors, who advised that they had not observed the burglary; and he lifted fingerprints from the front-door window, and rear and back bedroom doorknobs of the Dalzell Street Property. On August 7, 2015, Defendant McClure returned to the Dalzell Street Property for a follow up, but he did not take note that the "busted out" front-door window had been repaired. The only note taken was a statement by the purported victim that there was a "small splatch" of blood near the now-fixed front-door window.

Defendant McClure did not ask the victim who fixed the front-door window. Notably, the blood splatch was not mentioned in the initial report taken days earlier.

Crucially, Defendant McClure did not state in his narrative supplement from August 7, 2015 that the window near which the blood had been identified was now fixed. Defendant Willis also failed to include this pertinent information in his affidavit that was submitted in support of Mr. Bledsoe's arrest.

Based on the deficient police investigation at the hands of Defendants, Mr. Bledsoe was wrongfully arrested for felony burglary at the Dalzell Street Property – a crime which he did not commit – based solely on the blood sample collected during the second visit (the result of his repair workmanship), which was later submitted for DNA testing. There was no other evidence tying Mr. Bledsoe to the scene of the alleged crime. Defendants displayed, at the very least, an egregious level of recklessness when they procured an arrest warrant for Mr. Bledsoe—the repairman—without sufficient probable cause. The deficient investigation resulted in the provision of an inaccurate and incomplete official report to a judge, who relied upon it in issuing a warrant for Mr. Bledsoe's arrest.

When Mr. Bledsoe refused to give in to the immense pressure against him and take a plea deal for a crime he did not commit, he was wrongfully and diligently prosecuted by the Caddo Parish District Attorney's Office in the underlying action. As a direct result of Defendants' actions, Mr. Bledsoe was wrongfully arrested,

detained for five years, and punished for a crime he did not commit and for which he should have never been charged.

A. Relevant Factual Background.

i. Defendants' Deficient Investigation Led To The Wrongful Arrest And Detention Of Mr. Bledsoe.

As alleged in the Complaint, the facts of this case begin with Defendant McClure's initial, reckless and deficient investigation into a residential burglary at the Dalzell Street Property. The deficiency of the investigation was compounded by Defendant Willis' subsequent reckless investigation, months later, into the same crime, in which Mr. Bledsoe played no role.

On or around August 4, 2015, Defendant McClure was dispatched to the Dalzell Street Property to investigate a reported burglary. (ROA.20, ¶41.) After arriving to the scene, Defendant McClure interviewed the burglary victim, Sandra Robinson ("Robinson"). (ROA.20, ¶42.) She stated that she had not been on the Dalzell Street Property since August 2, 2015, and that when she arrived back home, she noticed that the front door was unlocked, and that the window of the front door had been "busted out." (*Id*.)

Defendant McClure explicitly noted in his report that from his observations the "suspect(s) entered through the front door & exited out the back," and had "entered a back bedroom, opened a window, and propped it open." (ROA.20, ¶43.)

During his investigation on August 4, 2015, Defendant McClure lifted fingerprints from the rear and bedroom doorknobs, in addition to the front-door window. He also interviewed neighbors, who had not witnessed the burglary. (ROA.20, ¶44.) No other piece of evidence, circumstantial or otherwise, was recorded in Defendant McClure's report.

On August 7, 2015, Defendant McClure returned to the Dalzell Street Property for a follow-up investigation with the purported victim, Robinson. (ROA.21, ¶46.) On that date, Robinson mentioned that she had just noticed a "small splatch" of blood near the front-door window that had been "busted out." (*Id.*). Notably, the broken front-door window had been repaired, but that repair was not mentioned in Defendant McClure's August 7, 2015 supplemental narrative report. Predictably, the newly found "splatch" of blood had not been mentioned in Defendant McClure's earlier August 4 narrative report. (ROA.21, ¶¶46 – 47.) The blood Defendant McClure collected on August 7 was nevertheless later submitted for DNA testing; the results matched Mr. Bledsoe's DNA. (ROA.21, ¶47, ¶¶49-50.)

Approximately eight months later, Defendant Willis was assigned to continue the investigation of the burglary at the Dalzell Street Property. (ROA.21, ¶51.) According to his April 21, 2016 narrative report, Defendant Willis was notified that the DNA collected from the front-door window was a match for Mr. Bledsoe. (ROA.21, ¶52.) Defendant Willis contacted the victim, Robinson, to ask if she knew

Mr. Bledsoe or had given him permission to enter the Dalzell Street Property. (ROA.22, ¶53.)

Neither Defendant Willis nor Defendant McClure documented asking Robinson: (1) whether she owned the Dalzell Street Property; (2) whether she had personally repaired the broken front-door window, and if not, whether she knew who had repaired it; or (3) if any other items were damaged during the burglary. (ROA.22, ¶¶55–57.) Moreover, neither one of Defendants made any additional inquiries, including to determine who owned the Dalzell Street Property, or to determine how the front-door window was repaired between August 4 and August 7. Although fingerprints had been taken on August 4, they were later found to be unusable. (ROA.22, ¶¶55–57.)

Between the date of Defendant McClure's initial investigation and report (August 4) and the date of his supplemental report (August 7), Mr. Bledsoe, a repairman, was called to fix the broken front-door window at the Dalzell Steet Property subject to a work order received from the property management company that managed the Dalzell Street Property: Port City Realty. (ROA.12, ¶6, 24, ¶71.) Mr. Bledsoe was tasked with fixing the window as a part of his regular duties and responsibilities. (ROA.24, ¶¶69-70.)

While repairing the broken window, Mr. Bledsoe cut himself. (ROA.24, ¶72.) Once he completed the work order, Mr. Bledsoe left the Dalzell Street Property, and

the management company paid him for his repair work. (ROA.24, ¶73.) It was Mr. Bledsoe's blood that was found near the front-door window after he repaired the window, between Defendant McClure's first and second visit to the Robinson rental unit. (ROA.21, ¶46.) Defendant McClure did not consider at all why he missed the blood splatch the first time or why/how the window was fixed. (*Id.*)

The DNA sample identified Mr. Bledsoe as the source of the blood. (ROA.21, ¶50.) In the follow up investigation months later, Defendant Willis only inquired about whether Robinson knew Mr. Bledsoe. She did not, and Defendants did not inquire any further regarding why there was a gap in information between Defendant McClure's first and second visit to the Dalzell Street Property, why no blood was discovered during the first visit – when the "busted out" front-door window was examined, or why there was no inquiry on how the front-door window was repaired between those two visits. (ROA.21, ¶51; ROA.22, ¶53, ¶¶55–57.) The only "evidence" linking Mr. Bledsoe to the alleged crime was the "splatch of blood" that appeared between Defendant McClure's first and second visit. No neighbors were aware of any break-in. (ROA.21, ¶45.) The fingerprints that were lifted by Defendant McClure on August 4 were inconclusive. Based upon this wholly deficient and incomplete investigation, when the DNA sample revealed that the blood was Mr. Bledsoe's, Defendant Willis signed an affidavit for an arrest warrant for Mr. Bledsoe, where he identified the purported circumstances of the alleged

burglary, including the "busted out" front-door window. (ROA.33, ¶¶126–127.) Defendant Willis sought the issuance of the arrest warrant based *solely* on the DNA match to the "small splatch" of blood collected as the fingerprints collected during the initial investigation were "non-identifiable." (ROA.22, ¶¶55-57.) The judge who issued Mr. Bledsoe's arrest warrant relied directly on Defendant Willis's affidavit and the facts stated therein (or lack thereof) from Defendant McClure's investigation to conclude that probable cause existed to arrest Mr. Bledsoe. (ROA.22, ¶59.)

Mr. Bledsoe was later arrested, and despite presenting exonerating evidence detailing his authorization to fix the broken front door window via a "broken window work order," he was still prosecuted by Defendants and the other defendants for a crime he did not commit. (ROA.23, ¶50.) Mr. Bledsoe was held for nearly two years in jail and then released on home detainment for an additional period of time. Finally, in January 2021, during a one-day bench trial that occurred more than five years after the alleged burglary incident, Mr. Bledsoe was acquitted of all charges due to a lack of evidence. (ROA.28, ¶¶89–90.)

B. Relevant Procedural Background.

i. Mr. Bledsoe Filed The Underlying Lawsuit Against Defendants For Malicious Prosecution.

On December 21, 2021, Mr. Bledsoe sued several parties, including Defendants, alleging a federal Fourth Amendment malicious prosecution claim under 42 U.S.C. § 1983, and a state law malicious prosecution claim against Defendants. (ROA.11.)

On March 2, 2022, Defendants jointly filed their motion to dismiss erroneously arguing that: (1) there is no federal claim for malicious prosecution under the Fourth Amendment; (2) Defendants "should be held to a "heightened-pleading standard" in a suit against "a state actor" including facts supporting a contention that a plea of qualified immunity cannot be sustained; (3) that the independent intermediary doctrine insulates Defendants from liability; and (4) Mr. Bledsoe failed to plead a malicious prosecution claim under Louisiana state law. (ROA. 249.)

ii. The District Court Denied Defendants' Motion To Dismiss

On March 30, 2023, the District Court denied Defendants' motion to dismiss – finding that a standalone Fourth Amendment malicious prosecution claim has been recognized by the Supreme Court, and that Mr. Bledsoe had plausibly alleged claims for malicious prosecution under both federal and state law for the wrongful initiation of charges without probable cause. (ROA.258.) The District Court held that Mr. Bledsoe plausibly alleged in his Complaint the six elements set forth in *Armstrong v. Ashley*, 60 F.4th 262, 279 (5th Cir. 2023) for malicious prosecution:

(1) the commencement or continuance of an original criminal proceeding; (2) its legal causation by the present defendant against the plaintiff who was a defendant in the original proceeding; (3) its bona fide termination in favor of the present plaintiff; (4) the absence of probable cause for the criminal proceeding; (5) malice; and (6) damages. (ROA.254.)

In particular, as the first three elements (commencement of action; legal causation, and the termination in favor of the Plaintiff) and the last element (damages) were not in dispute, the District Court found that Mr. Bledsoe's allegations as to the fourth element (the absence of probable cause for his arrest) withstood attack at the pleading stage from Defendants' qualified immunity claims. (*Id.*) The District Court rejected Defendants' sole argument that the independent intermediary doctrine applied, finding that the Plaintiff alleged facts that if taken as true showed a lack of probable cause. (*See* ROA.254-255.) Specifically, the District Court stated that the Complaint plausibly supported that "an arrest warrant would not have been issued but for the reckless investigation that omitted exculpatory evidence regarding the source of the blood and Bledsoe's contract with Port City Realty." (ROA.256) "The Court finds that, with respect to the fourth element, Plaintiff is able to meet his burden at this stage of litigation." (*Id.*) The District Court concluded that Mr. Bledsoe also plausibly pled the fifth element of *Armstrong*, requisite malice, by alleging with sufficient specificity that the defendants "acted

recklessly – first, in their procurement of an arrest warrant without sufficient probable cause and based on a 'clearly deficient investigation,' and second, in furnishing an inaccurate official narrative report which the Caddo Parish District Attorney's Office and the trial court judge relied upon, and third, as a result of their failure to contact the owner of the Dalzell Street Property." (ROA.256–257.) The District Court held that Mr. Bledsoe pled recklessness, which is a culpable state of mind that satisfies the malice, or "*mens rea*," element in malicious prosecution claims. (ROA.252.); *see also Miller v. E. Baton Rouge Par. Sheriff's Dep't.,* 511 So.2d 446, 453 (La. 1987) ("Malice may be inferred from the lack of probable cause or inferred from a finding that the defendant acted in reckless disregard of the other person's rights") (internal citations omitted).

Based on the facts as plausibly alleged on a Rule 12(b)6 Motion, the District Court found that Defendants "should have been aware that their unreasonable behavior violated the law . . . both federal and state law have always been clear that officers cannot arrest someone without probable cause." (ROA.257.) Specifically, the District Court held that Mr. Bledsoe plausibly alleged that the "arrest warrant would not have been issued ***but for*** the reckless investigation that omitted exculpatory evidence regarding" key information. (ROA.256.) (emphasis added).

Defendants filed their notice of appeal on April 15, 2023. (ROA.273.)

SUMMARY OF THE ARGUMENTS

The District Court properly denied Defendants' motion to dismiss, and, for the reasons set forth in this brief, this Court should affirm the District Court's decision.

First, the independent intermediary doctrine does not apply here because, as alleged, Defendants presented a deficient affidavit based on reckless actions and an incomplete investigation, which broke the chain of causation between the magistrate judge's issuance of the warrant and Defendants' wrongful actions. Here, the judge relied solely on the reckless and deficient affidavit presented by Defendant Willis, which was based solely on Defendant McClure's scattershot investigation. Second, Defendants are incorrect as a matter of law that malice under *Armstrong* may only be proven by overt, intentional acts. Not only is recklessness a basis for malice, but malice may also be inferred from allegations of a lack of probable cause for an arrest, as alleged in detail in Mr. Bledsoe's Complaint. Indeed, Mr. Bledsoe has alleged factual examples pertaining to the recklessness of Defendants' investigation, which under the relevant caselaw constitutes sufficient *mens rea* for malice. Third, Mr. Bledsoe has pled sufficient facts to defeat Defendants' presumption of qualified immunity.

STANDARD OF REVIEW

The Court reviews *de novo* the district court's decision to grant a motion to dismiss. *Lampton v. Diaz,* 639 F.3d 223, 225 (5th Cir. 2011) (affirming the denial of the motion to dismiss and recognizing that "[i]n determining immunity, we accept the allegations of the respondent's complaint as true."). On a motion to dismiss, a claim is facially plausible when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. When considering a motion to dismiss, a court does not analyze a plaintiff's likelihood of success; rather the court determines whether the plaintiff has pled a legal claim. *U.S. ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 376 (5th Cir. 2004) ("Even if it seems almost a certainty to the court that the facts alleged cannot be proved to support the legal claim, the claim may not be dismissed so long as the complaint states a claim.") (internal citations and quotations omitted).

ARGUMENT

I. THE INDEPENDENT INTERMEDIARY DOCTRINE DOES NOT APPLY WHERE THE PLAINTIFF HAS PLED SUFFICIENT FACTS TO SHOW THAT THE DEFENDANTS DID NOT HAVE PROBABLE CAUSE FOR THE ARREST AND THE MAGISTRATE RELIED ON THE DEFECTIVE AFFIDAVIT.

In their first argument, Defendants erroneously attempt to bifurcate the actions of Defendants McClure and Willis. However, the reckless behavior of *both* officers led to the criminal proceeding against Mr. Bledsoe. It is true that Defendant

McClure initially handled the deficient investigation, including the questioning of Robinson and the submission of the blood sample for DNA testing. Although Defendant Willis did not handle the initial investigation, he prepared the affidavit for the arrest warrant submitted for the judge's review.

At bottom, attempting to split the activities of the two Defendants does not insulate either from liability. Notably, Defendants misquote the *Melton v. Philips* decision on the issue of co-defendant officer liability. Without question, an officer who has provided information for the purpose of it being included in a warrant application has also assisted in preparing the warrant application and may be liable for misstatements or omissions. 875 F. 3d 256, 264 (5th. Cir. 2017) *rehearing en banc granted* in 875 F.3d 256 (5th Cir. 2017).

Defendants dispute the District Court's ruling on their motion to dismiss, which held that the independent intermediary doctrine did not apply because the trial judge issuing the warrant for Mr. Bledsoe's arrest relied on a defective affidavit. (ROA.256.) Defendants further argue that Mr. Bledsoe did not allege sufficient facts to show a lack of probable cause – under the theory that a lack of probable cause could only apply where there is a "knowing and intentional omission" rather than a reckless one. Both arguments fail as neither is based on relevant law or the facts as alleged.

The independent intermediary doctrine only shields an officer from liability by breaking the probable cause chain "when all the facts are presented, and the intermediary's decision is truly independent of the wrongfulness of the defendant's conduct." *Melton*, 837 F.3d at 510. However, it does not apply where "[a]ny misdirection of the magistrate . . . by omission or commission [from the officer] perpetuates the taint of the original official behavior." *Hand v. Gary*, 838 F.2d 1420, 1428 (5th Cir. 1988); *see also Winfrey v. Rogers*, 901 F.3d 483, 494 (5th Cir. 2018) (observing "that the warrant requirement is meant 'to allow the magistrate to make an independent evaluation of the matter,' . . . [which] requires affiants to 'set forth particular facts and circumstances underlying the existence of probable cause,' including those that concern the reliability of information and the credibility of the source to avoid 'deliberately or reckless false misstatement[s]'" (*quoting Franks v. Delaware*, 438 U.S. 154, 165 (1978)).

In *Melton*, the Fifth Circuit held that the intermediary doctrine did not shield the defendant officer from liability when his actions "tainted" the judge's decision to issue an arrest warrant. 837 F.3d at 510. In so holding, the Fifth Circuit rejected the defendant's assertion that his "negligent act [wa]s not sufficient to taint the deliberations of the intermediary," and further agreed with plaintiff that "[defendant]'s arguments ignore[d] the plaintiff's contention that [defendant] misrepresented the facts, intentionally or recklessly, by falsely identifying the

plaintiff as the suspected assailant and thus tainted the county judge's decision" to issue the warrant. *Id*.; *see also Smith v. Tullis*, No. 5:15–CV–493–DAE, 2016 WL 6634948, at *8 (W.D. Tex. Nov. 8, 2016) (rejecting defendants' assertion that the "Justice of the Peace's decision to issue the arrest warrant br[oke] the chain of causation between their actions and the alleged [malicious prosecution]," when one defendant "recklessly misrepresented" that she had personal knowledge of a fact to support the arrest warrant and the other defendant "presented [the] warrant application with facts he knew were unsupported by the evidence.").

Here, Defendants' actions and omissions "tainted" the judge's evaluation of whether to issue the warrant for Mr. Bledsoe's arrest. *See, e.g., Guidry v. Cormier*, 2021 WL 3824129, at *6 (W.D. La. Mar. 8, 2021) ("taint" exception to intermediary doctrine applies when an officer's "malicious motive" leads them to withhold relevant information or when he willfully omits exculpatory evidence in the drafting of an affidavit). Among other defects alleged in the Complaint, these actions include: (1) failure to document who owned the Dalzell Street Property; (2) failure to document that Robinson was merely a tenant; (3) failure to document that the broken front door window initially observed was fixed when Defendant McClure returned to the scene; (4) failure to determine who fixed the broken front door window; and (5) failure to contact the Dalzell Street Property owner or the property management agent to inquire whether anyone, including Mr. Bledsoe, had

permission to enter the Dalzell Street Property. (ROA.13, ¶10; ROA.14, ¶15 – ¶17; ROA.16, ¶25; ROA.22, ¶56.)

The law is clear that the independent intermediary doctrine ***does not apply*** where "the Affidavit contained so many relevant omissions that it did not accurately present the probable cause issue to [the] Judge . . . for an independent assessment." *Guidry*, 2021 WL 3824129, at *5–*6.

Defendants argue that their actions or inaction, which led to the prosecution and incarceration of an entirely innocent man for years "at most, amount to negligence," under a theory that the cause of action should require pleading that these defendants "should have known of exculpatory information." (Defendants' Brief, p. 18.). They would have, had they conducted a proper investigation. In any event, Defendants had a responsibility to ***complete*** the investigation of the burglary and, as alleged in the Complaint, their failure to do so accurately and competently was reckless. Defendants have cited no caselaw to the contrary.[1]

Indeed, *Winn v. City of Alexandria*, 685 So. 2d 281, 289 (La.App. 2 Cir 1996), cited by Defendants for the proposition that a negligence standard is not sufficient

[1] *Brewer v. Hayne*, 860 F. 3d 819, 825 (5th Cir. 2017), a review of a summary judgment decision, involved the question of whether forensic specialists were insulated from liability. *Hart v. O'Brien*, 127 F. 3d 424 (5th Cir. 1997) likewise involved summary judgment. *Wattigny v. Lambert,* 453 So.2d 1272, 1279 (La. App. 3 Cir. 1984) is a defamation case, looking at "reckless disregard for the truth" under the defamation standard related to the First Amendment under the standard set for by *New York Times v. Sullivan*, 76 U.S. 254 (1964).

to establish a malicious prosecution claim, is actually a decision rendered after a full trial and on a completely different set of facts. That case in particular notes that to make out a claim for malicious prosecution: "[t]he appearances must be such as to ***lead a reasonable person to set the criminal process in motion; unfounded suspicion and conjecture will not suffice***." (citing Prosser & Keeton, at p. 876. *see also Johnson v. Pearce*, 313 So.2d 812 (La.1975)). Without question, further information was readily available to the Defendants (albeit not recorded) if they had conducted a proper investigation, and the criminal process was set forth solely on conjecture. *Winn*, 685 So. 2d at 285. "***Verification may be required to establish probable cause where the source of the information seems unworthy, or where further information about a serious charge would be readily available***." *Winn*, 685 So.2d at 285 (internal citations omitted) (emphasis added); *see State v. Raheem*, 464 So.2d 293 (La.1985); *Cf. Plassan v. Louisiana Lottery Co*., 34 La. Ann. 246 (1882). (emphasis added).

Furthermore, Mr. Bledsoe successfully pled that a defective warrant was issued in his case. A defective warrant is one that issues without probable cause based on an affidavit that contains a substantially false statement or material omission that was either intentionally or recklessly false; and which would not issue if the hypothetical corrected version of the affidavit did not contain the false statement or material omission. *Franks*, 438 U.S. at 171–72. In this case, a

hypothetical correct statement would have included the fact that Robinson did not own the Dalzell Street Property, that she did not know who fixed her window; that no blood was observed by Defendant McClure when he arrived on the scene on August 4, 2015; and that said blood under the fixed window, matched that of a repairman who worked for the property and had been paid to repair Robinson's window, and was only discovered under the fixed window at the residence days after the alleged burglary.

Stated otherwise, a corrected affidavit would read as follows: *Upon return to Ms. Robinson's home, it was noticed that the broken glass window in the door had been repaired. Ms. Robinson was asked who had repaired the glass, and when she advised that she rented her home, and a management company took care of the repairs, it was determined that Mr. Bledsoe was called to repair the window pursuant to a work order. When Mr. Bledsoe repaired the window, he cut himself. The only evidence procured at the scene, days after the burglary, was Mr. Bledsoe's blood; when he was questioned, he advised that he cut his finger as he repaired the window. Although fingerprints were taken, they were not conclusive*. Surely, a warrant for Mr. Bledsoe's arrest could not be issued based on this hypothetical, corrected affidavit that served to show only that he was the repairman who had in fact repaired the window.

At bottom, the two cases cited by Defendants, in support of their contention that the warrant issued was not defective, do not stand for the theories asserted. *Davis v. Strain*, 676 Fed.App'x. 285, 287 (5th Cir. 2017) is not a case about the independent intermediary doctrine and *Melton v. Phillips*, 875 F.3d 256, 264 (5th Cir. 2017) applies the doctrine in situations, where, such as here, the defendant "makes knowing and intentional omissions that result in a warrant being issued without probable cause."

Tellingly, Defendants have pointed to no cases in support of their theory that a case may be dismissed on a *motion to dismiss* where the plaintiff has pled facts that, if proven, show a reckless investigation leading to the submission of a deficient affidavit upon which an arrest warrant issues. The cases that Defendants cite are further distinguishable because they are summary judgment decisions or trial court decisions.

Defendants do not argue on appeal that the omissions alleged *were not material.* Instead, they argue the omissions – which put an innocent man in jail for two years despite significant exculpatory evidence – were not intentional and were at most negligent. In other words, the failure of Defendants to do their job was a "whoops" moment. (Defendants Brief, p. 18). This is not the case. Defendants' actions were reckless and material. Indeed, as correctly explained by the District Court, "an officer can still be liable if the officer deliberately or *recklessly* provides

false, material information for use in an affidavit or makes knowing and intentional omissions that result in a warrant being issued without probable cause." *See Anokwuru v. City of Hous.*, 990 F.3d 956, 963-64 (5th Cir. 2021) (internal quotation marks and citations omitted) (emphasis added). Finding that Plaintiff satisfied the fourth element of "lack of probable cause," the District Court found that Mr. Bledsoe plausibly alleged "that an arrest warrant would not have been issued but for the reckless investigation that omitted exculpatory evidence regarding the source of the blood, and Bledsoe's contract with Port City Realty." (ROA.256.)

There can be no doubt that Defendant Willis submitted an affidavit containing statements about Defendants' investigation which were made with a reckless disregard for the truth. More specifically, the affidavit failed to include the following pertinent information:

- The fact that Defendants never asked Robinson about the ownership status of the Dalzell Street Property or whether Robinson was in charge of handling the repairs for the Dalzell Street Property;
- The fact that Robinson did not know who fixed the window, which was broken during the burglary;
- The fact that there was no blood observed when Officer McClure first arrived at the Dalzell Street Property on August 4, 2015;

- The fact that Officer McClure gathered fingerprints when he first arrived at the Dalzell Street Property on August 4, 2015, but there is nothing in the record noting that the fingerprints were ever reviewed at the time;
- The fact that the Dalzell Street Property was owned and managed by third-parties and that the property management company was authorized to make repairs at the Dalzell Street Property;
- The fact that the broken window had been repaired between the two dates in which Officer McClure visited the Dalzell Street Property; and
- The fact that the repairman's blood, which was identified days after the alleged burglary and after the window had been repaired, was found at the scene – under the fixed window.

(ROA.13, ¶¶10–12; ROA.14, ¶17; ROA.16, ¶25; ROA.22, ¶57; ROA.33–34, ¶¶127–130).

This information was readily available to Defendants at the time the request for an arrest warrant was made and cannot be dismissed as inconsequential. *See Guidry*, 2021 WL 3824129, at *5. In *Guidry*, the affidavit and ensuing warrant were facially void of probable cause because the affidavit contained so many relevant omissions that it did not accurately present the probable cause issue to the judge "for an independent assessment [because] . . . [i]f proven, Plaintiff's allegations would

demonstrate the willful omission of exculpatory facts and statements that should have been presented to [the judge] for consideration." *Id*. So too here.

II. PLAINTIFF SUFFICIENTLY PLED MALICE UNDER *ARMSTRONG* AS TO DEFENDANTS TO SUSTAIN HIS MALICIOUS PROSECUTION CLAIMS.

The District Court correctly held that Mr. Bledsoe satisfied the pleading requirements pertaining to malice, the fifth element of the *Armstrong* analysis. Defendants are legally incorrect that malice requires an intentional affirmative act, a specific familiarity with Mr. Bledsoe, a reason to bear hatred or ill will, or that the actions alleged must show that the prosecution intended to obtain a private advantage. To the contrary, the "knowing" requirement that Defendants seek this Court to adopt has been rejected by this Court as contrary to Supreme Court precedent. *Wilson v. Stroman,* 33 F.4th 202 (5th Cir. 2022).

Malice may be established four alternative ways, by demonstrating (1) any feeling of hatred, animosity, or ill will towards the plaintiff; (2) use of prosecution for the purpose of obtaining a private advantage; (3) that defendant made the charge with knowledge that it was false, *or with reckless disregard for the charge's truth or falsity*; and (4) that an inference of malice exists because there was a conspicuous lack of probable cause for the charges at issue. *Williams v. DiVittoria*, 777 F. Supp. 1332, 1337–38 (E.D. La. 1991) (emphasis added).

It is beyond questions that, ". . . malice may be inferred from a lack of probable cause, or from a finding that the defendant acted in reckless disregard for other person's rights." *Jeremy Raye Deshotel v. CardCash Exchange, Inc.*, No. 6:19-cv-373, 2020 WL 2319300, at *11 (W.D. La. Apr. 2, 2020) (finding plaintiff's claims sufficient to state a cause of action for malicious prosecution under Louisiana law).

Defendants acted with malice when conducting a woefully deficient investigation and acted recklessly by: (1) procuring an arrest warrant based on a deficient investigation for Mr. Bledsoe without sufficient probable cause, an investigation in which Defendants did not inquire who was on the property, who fixed the broken window, and whether Mr. Bledsoe was lawfully on the Dalzell Street Property; (2) Defendant Willis signed and provided an inaccurate affidavit for an arrest warrant that the Caddo Parrish District Attorney's Office and the judge relied upon, seeking the warrant on the *sole* basis that there was a DNA match to a "small splatch" of blood collected at the Dalzell Street Property – a collection made days after the alleged burglary and matching that of the repairman who had fixed the window in the interim; and (3) Defendants did not make a single effort to contact, let alone attempt to contact, the owner of the Dalzell Street Property to ascertain whether Mr. Bledsoe was lawfully on the Dalzell Street Property.

Despite Defendants' characterization, a showing of malice does not require that Mr. Bledsoe plead that Defendants bore hatred, or ill-will towards him.

"Because malice may be inferred from a lack of probable cause, or from a finding that the defendant acted in reckless disregard for other person's right . . . the plaintiff's claims are sufficient to state a cause of action for malicious prosecution under Louisiana law." *Jeremy Raye Deshotel v. CardCash Exchange, Inc.*, No. 6:19-cv-373, 2020 WL 2319300, at *11 (W.D. La. Apr. 2, 2020). Mr. Bledsoe too has met his burden of pleading malice.

III. MR. BLEDSOE SUFFICIENTLY PLED FACTS AND PRESENTED CLEARLY ESTABLISHED LAW TO DEFEAT DEFENDANTS' QUALIFIED IMMUNITY DEFENSE.

When the motion to dismiss asserts the qualified immunity defense, as is the case here, the plaintiff must plead specific facts, as have been alleged here, that allow the court to draw the reasonable inference that the defendant is liable for the harm alleged and that defeat a qualified immunity defense. *McLin v. Ard*, 866 F.3d 682, at 688 (5th Cir. 2017) (*citing Zapata v. Melson*, 750 F.3d 481, 485 (5th Cir. 2014) (citation omitted)). When determining immunity, the court accepts "the allegations of [the plaintiff's] complaint as true." *Loupe v. O'Bannon*, 824 F.3d 534, 536 (5th Cir. 2016) (*quoting Kalina v. Fletcher*, 522 U.S. 118, 122 (1997)). Though the doctrine of qualified immunity protects government officials from civil damages liability when their actions could reasonably have been believed to be legal," *id.* at 688-89 (citation omitted), it does not protect "the plainly incompetent or those who

knowingly violate the law," *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Thus, the plaintiff can show the defense's inapplicability by satisfying a two-part test, which the court can consider in any order: "(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." *McLin*, 866 F.3d at 689 (*quoting Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)).

Defendants have not offered any arguments or facts in support of their contention that the action should be dismissed at the pleading stage based on qualified immunity. As the District Court held, the Complaint alleges a violation of a constitutional right, specifically a right afforded under the Fourth Amendment. (ROA.251-252.) Mr. Bledsoe has articulated facts that support his contention that Defendants' actions were not objectively reasonable based on clearly established law. *See Saucier v. Katz*, 533 U.S. 194 201, 121 S.Ct. 1251 (2001). Indeed, both federal and state law have always been clear that officers cannot arrest someone without probable cause. In fact, in the event that charges are dismissed against a plaintiff, a lack of probable cause and malice are presumed against a defendant. *McCoy v. Burns*, 379 So.2d 1140, 1140 (La. App. 2d Cir. 1980) (finding in favor of plaintiff on malicious prosecution claim after defendant failed to overcome the presumption of malice and lack of probable cause where the grand jury returned a no true bill on all charges).

A lack of probable cause should accordingly be presumed in this case. After being detained, Mr. Bledsoe went to trial on reduced charges, one of which the prosecutor admitted could not be proven, and other of which was dismissed. (ROA.28, ¶89; ROA.29, ¶99.) Moreover, this is not a situation where there is other evidence sufficient to establish probable cause. *See Davis*, 676 Fed.App'x. at 287. To the contrary, there is no other evidence than Mr. Bledsoe's blood that was used to as the basis for the issuance of the warrant for his arrest. (ROA.16, ¶25.) It is the case now, and was at the time of Mr. Bledsoe's arrest, axiomatic that Defendants must know the factual predicate for probable cause prior to arrest. *See, e.g., Sibron v. New York,* 392 U.S. 40, at 62–63, 88 S.Ct. 1889 (1968); *Henry v. U.S.,* 361 U.S. 98, 102, 80 S.Ct. 168 (1959); *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 207 (5th Cir. 2009). It is also undisputed that officers may not withhold exculpatory evidence. *See Smith v. Cain*, 565 U.S. 73, 132 S.Ct. 627, 630 (2012) (stating that "the State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment.")

The District Court's citation to *Miller v. E. Baton Rouge*, is instructive as to what qualifies as patently unreasonable conduct. In *Miller*, the Supreme Court of Louisiana held police officers' unverified and unsubstantiated claims without more are not a reasonable basis for a warrant for arrest and do not constitute probable cause. *Miller v. E. Baton Rouge Par. Sheriff's Dep't*, 511 So. 2d 446, 452 (La. 1987).

Like *Miller*, here, exculpatory evidence was available at the time of arrest. Reversing the Court of Appeal's finding of probable cause for arrest in a malicious prosecution case, the Louisiana Supreme Court, *in Miller*, noted the availability of entirely exculpatory evidence, which the defendant did not, but should have pursued. "The reputation of the accused, his opportunity to offer explanation, and the need for prompt action, if any, are all factors in determining whether unverified information furnishes probable cause. Prosser & Keeton, at p. 877. *See Hibernia Nat. Bank v. Bolleter*, 390 So.2d 842 (La.1980*); Jefferson v. S.S. Kresge Co*., 344 So.2d 1118 (La.App. 3d Cir.1977); *Hardin v. Barker's of Monroe, Inc.*, 336 So.2d 1031 (La.App. 2d Cir.1976).

Here, Defendants, like the *Miller* defendant, "did not act like a man of average caution when [they] based their arrest" on such limited information as a blood sample that was not even recorded as present at the original investigation and which belonged to the repairman. Under *Miller*, this alone would not be considered reliable information, or furnish a reasonable ground for belief in Mr. Bledsoe's guilt. Like *Miller*, there was no corroborating evidence such as fingerprint evidence. *Id*. at 454.

Indeed, both Defendants were well aware that a police officer may be held liable for false arrest where the presenting affidavit is so lacking in indicia of probable cause as to render official belief in its existence unreasonable. *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986).

CONCLUSION

Plaintiff pled sufficient facts to establish the absence of probable cause and the presence of malice necessary to sustain his malicious prosecution claims against Defendants. Accordingly, based on the facts alleged in the Complaint and clearly established Fourth Amendment case law, Defendants are not entitled to qualified immunity. The District Court therefore properly denied Defendants motion to dismiss.

Plaintiff Gregory James Bledsoe respectfully requests the Court to affirm the District Court's denial of Defendants motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief has been served via the Court's electronic filing system to all counsel of record on July 27, 2023.

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Dated: July 27, 2023

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