No. _____

IN THE
SURPREME COURT OF THE UNITED STATES
October Term 2020

JUSTIN STROLIS,
Petitioner,
v.
LUCAS HEISE,
individually, for actions taken under color of law
as a deputy with the Augusta-Richmond County
Sheriff's Department,
Respondent.

APPENDIX

Petition for Writ of Certiorari
To the Eleventh Circuit

JOHN P. BATSON
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Member Supreme Court Bar
Attorney for Petitioner Strolis
Counsel of Record

June 21, 2021

APPENDIX

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IN THE STATE COURT
OF RICHMOND COUNTY

Justin Strolis,

Plaintiff,

v.

Lucas Heise, individually, for actions taken under color of law, as a deputy with the Augusta Richmond County Sheriff's Department,

Defendant.

Civ. Act. No. 2018RCSC000974

Complaint
Jury Trial requested
Damages

COMPLAINT

COMES NOW, Plaintiff, who shows the Court the following:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction under the Supremacy Clause over the federal claim because this action asserts one or more deprivations of one or more federal constitutional rights that is actionable under 42 U.S.C. § 1983, to provide remedial relief of damages and injunctive relief for deprivation of federal rights.

2. This court has jurisdiction under state law because the challenged deprivations occurred in Augusta-Richmond County, and upon information and belief, Defendant Heise resides and works within Augusta-Richmond County.

3. Venue is proper in this jurisdiction for the reasons asserted in 2.

Parties

4. Plaintiff incorporates each and every allegation above as if fully stated herein.

5. Plaintiff Justin Strolis is an adult competent to bring these claims.

6. Defendant Deputy Lucas Heise is sued individually, for actions taken under color of law, as a deputy as with the Augusta-Richmond County Sheriff's Department, and upon information and belief resides in Augusta-Richmond County, at 2440 Deodara Drive, Augusta, GA 30904.

Facts

7. In 2015, Justin Strolis, was 34 years old, and had been employed by Southeastern Grocers (Bi-Lo, Harveys, Winn-Dixie and other) for six years, without a write-up.

8. Mr. Strolis was in line for a promotion to store manager, which meant a pay increase of about $5.00 per hour.

9. Then on July 9, 2015, Detective Heise, for reasons personal and contrary to objective, competent, impartial law enforcement, including but not limited to self-promotion in his employment, formally began the reckless prosecution of Strolis by causing a warrant for the arrest of Strolis to signed in the absence of probable cause, for breaking and entering autos.

10. The events that led to arrest of Strolis begin June 10, 2018, with a person who Strolis had known since their youth, Joshua Dominguez contacting him from Atlanta saying he was coming to town, and asking did Strolis want to see him, and that Dominguez' mother was getting him a room at the Masters Inn.

11. On the 10th of June, after Strolis got off work in the afternoon he met Dominguez at Strolis' father's house in North Augusta, where Strolis lived.

12. Dominguez and Strolis went to the Masters Inn, were checked in, and then went to the room and in the evening left to go downtown.

13. They went to a bar called The Pub, that is now closed, and had a couple of beers and then went back, arriving at the hotel at about 11:00 PM.

14. Dominguez fell asleep at about midnight and Stroll fell asleep some time after that.

15. The next morning on June 11th, Dominguez took Strolis back to North Augusta, and that night, on into June 12th, Strolis stayed in North Augusta at his father's house, where Strolis lived.

16. Strolis' father was present and knew his son was there, when they went to bed on July 11th and woke up early on the 12th to get Strolis ready to go to work.

17. Strolis clocked into work at 6:06 AM.

18. Meanwhile, in the early morning hours of June 12th, Dominguez, who had a felony record for breaking into cars, stealing credit cards and using them, broke

into ten plus cars in the Ramsgate area, between the hours of midnight and about 6:00 AM.

19. In home security video secured as part of the investigation, only Dominguez is seen entering cars, and there is no reasonable belief that the video could identify another person involved.

20. In the early morning hours of June 12, 2015, Joshua Dominguez broke into ten plus cars owned by other persons, and took personal property, including their credit cards, from the cars without their permission, on a street in Richmond County, Georgia.

21. One victim was Allison Holiday, who at about 10:50 pm (told Deputy Fred Lowe that officers that her Wells Fargo Debit card had been used twice without her permission since the theft. Crim 43 of 417. Tab 1.

22. Holiday told Lowe that one was an online charge through match.com, and the second made at a Raceway Gas Station, but the station was unknown at that time. Crim 43 of 417. Tab 1.

23. Holiday told Officer Kenneth Atterton that one of her cards had been used online after the break in, in the early morning hours for a Boost Mobile account in the amount of $140. 43 of 417. Tab 1.

24. Holiday called Heise at around 10:00 pm and told him that the Wells Fargo was used to pay Match.Com $131.94 on 06.12.15 and for purchases at Raceway on

3021 Washington Road between the hours of 0200 and 0600 on 06.12.15. 45 of 417. Tab 2.

25. By June 25, 2015, Heise had determined through a subpoena to the Match .com legal team and documentation provided (Crim 44 of 417) a picture of Dominquez from the match.com website, a city location of Snellville, and a last login (Crim 48 of 417) (Tab 4).

26. With the information obtained from Match.com, he was able to get a picture of Dominguez and a photograph from the "LERMS database," and the photos matched. Crim 50 of 417; Tab 5.

27. On June 26, 2015 Heise prepared a subpoena to get the records of Dominguez from Windstream Communication Inc. to get the account information, in particular address and owner, of the IP address of computer that Dominguez had been using. Crim 50 of 417; Tab 5.

28. On June 30, 2015, at 1407 hours, Heise searched the national criminal database "GCIC" for a criminal background on Dominguez, and learned that he had prior convictions for entering an auto, 5 prior convictions of Financial Transaction Card Fraud, and 4 prior convictions for theft by receiving in Gwinnett County Superior Court; and several convictions in Florida, including for burglary, possession of burglary tools while loitering, trespassing and larceny, and Heise added this important and serious criminal record to the file. 51 of 417. Tab 6.

29. On June 30, 2015, Heise applied for and received arrest warrants for Joshua Dominguez for charges of Financial Transaction Card Fraud and for Financial Transaction Card Theft, and then took action to upload them the GCIC. 51 of 417. Tab 6.

30. When the warrant is on the GCIC, any officer, wherever, and in particular in Georgia, may use the information in the GCIC database, that is the warrant, as a basis to arrest Dominguez.

31. At 1800 hours Heise created a "Be on the look out" for the arrest of Joshua Dominguez, for Credit Card Theft and Fraud, in connection with several entering auto incidents in Richmond County, in the Ramsgate Drive neighborhood, and the BOLO was forwarded to the RCSO Intel Unit and Public Affairs Unit for dissemination. 52 of 417. Tab 7.

32. July 1, 2015, at 1100, Heise then took action to get account information from the cell phone company Sprint, including all incoming and outgoing calls. 52 of 417. Tab 7.

33. Using the Match.com account information, it was learned that the IP address of a computer that Dominguez had used to log in to Match.com, was owned by Nick Vashi, and the computer was located at the Masters Inn, at 3027 Washington, Rd., Augusta. 53 of 417. Tab 8.

34. As of July 1, Heise, knew of the connection of Dominguez to the Masters Inn.

35. Heise sought and obtained a subpoena for phone number 305-967-2263, believed to be Dominguez', to get incoming and outgoing calls, and other information, that might give location during use at a particular time, then at 1508 received an email with this information and transfer it to CDs.

36. Since the break ins, Heise had obtained cell phone records of Dominguez and noticed a frequently contacted number, that turned out to be Strolis' number.

37. At 1600, Inv. Heise called 803-624-2041, and Justin Strolis answered, Heise asked Strolis to come to 400 Walton Way, the Sheriff's office, to be interviewed and give a statement.

38. Strolis agreed to come to 400 Walton Way at 1900 Hours on 070115.

39. At 1720, Detective Michael Harden of the Gwinnett County Police Department told Heise that a cell phone connected to Dominguez was giving the location of 1760 Pineland Rd., Duluth, GA at 0755 hours, and Heise informed him that Dominguez was wanted for 14 credit card thefts and fraud, and Detective Harden indicated he would try to locate Dominguez.

40. At 1900 Heise began the interview of Strolis, that was video-taped.

41. Strolis denied breaking into any cars, and was sure about working the day Dominguez and his mother came into town, which was the day that Dominguez' Mother made arrangement to pay for the Masters-Inn, which was June 10th.

42. June 10th, was the day Dominguez and Strolis checked into the Masters Inn, then the next morning on June 11th, Dominguez took Strolis back to North Augusta, and worked until the afternoon.

43. In the interrogation Heise is leading and interrupting Strolis, causing Justin to give a time line that was inaccurate.

44. Strolis does admit to deleting some text messages but informs Heise that it was because it refenced marijuana.

45. Strolis, at one point, does say that the 11th, after they had checked in at Masters Inn, which was the 10th, he and Dominguez went to The Pub, which was at Riverfront, and then came back to the hotel and Dominguez went to sleep around midnight and he went to sleep at 1:00 am.

46. At another point in the interview, Strolis was sure that he worked on the 11th, and then Strolis went to his father's house in North Augusta, and spent the night there, on into the 12th of June.

47. The interview of Strolis ended at 2130 hours on July 1, 2016. (Crim57 of 471)

48. On July 1, 2015, at 2140 hours, Det. Hardin in Gwinnett called (Crim 58 of 417) that Dominguez had been arrested, with a vehicle stolen from North Carolina, and that inside the vehicle were wallets and drivers licenses of people from around Atlanta, and in Dominguez' front pocket was a cell phone with number 305-967-2263. (Crim 58 of 471).

49. On July 2, 2015, Strolis called Officer Heise to let Strolis know that Dominguez had been arrested.

50. Heise went to the Masters Inn and got copies of bills, etc for the stay of Dominguez, which ran from June 10th, through the morning of June 13th.

51. Strolis has said that he had been contacted by Dominguez the day they were coming into town, and that Dominguez' mother was renting a room, which began on June 10th.

52. On July 2, Heise, had a warrant executed for the phone records of Strolis, but Verizon could not do a locator of cell phones, because the contacts had been deleted, which Strolis had explained because they referenced marijuana.

53. On July 6, 2015, Heise set up an interview of Dominguez in Gwinnett County jail for July 7th.

54. On July 7th, Heise conducted an interview of Dominguez, that was audiotaped.

55. Heise again engaged in interrogation that directed and shaped answers that Heise sought out of his own self-promotion, and conclusion based on mere association form cell phone records, and Dominguez, to curry favor with Heise, was prompted to say that it was Strolis' idea to break into cars, and that Strolis worked the other side of the street.

56. Dominguez denies giving Strolis a stolen gun, where Strolis said Dominguez had given him a stolen gun.

57. Dominguez had a prior felony record of which Heise was aware, and objectively reasonable officer would have sought to do further investigation to made a palpable connection between Strolis and the break ins before taking out an arrest warrant for Strolis.

58. An officer who was not overconfident and not operating out of self-promotion, would not have taken out a warrant for the arrest of Strolis, based on the assumption that Dominguez, who had something to gain form lying about Strolis, was the final source about whether Strolis participated in the break ins over the word of Strolis, and other evidence, reflecting that Heise was operating under a confused set of dates and what happened when, that could have clarified by talking to Strolis' father, and looking at Strolis check in records from work.

59. Strolis had been scared by the method of Heise's interrogation and when Heise asked Strolis on July 8, 2015, to come back for another interview, without

Heise suggesting that Strolis could come with an attorney, Strolis did not want to be interviewed again.

60. There was no evidence that Strolis had any of the loot of the break-ins, and that any and all of it was in Dominguez' possession, and he had in fact used some of the stolen credit cards, but there was no evidence that Strolis ever possessed or used the credit cards, which of course was why people break in cars.

61. Heise, who ignored readily available exonerating evidence, and who, contrary to objective evidence and reason, relied upon the word of the Joshua Dominguez, by then a convicted felon for previously breaking and entering autos, and credit card theft and fraudulent use of the credit cards of others, and who was seen and identified in videos breaking into cars in the early morning hours of June 12, 2015, with no other person identified in the video, to cause the arrest of Strolis.

62. There is one video that may have another person, but there was never any attempt to have the video investigated if that were the case.

63. There was never a search warrant taken out to see if they could obtain or recover anything from Justin that had been taken out of any of the cars.

64. Justin's fingerprints were never found in any of the cars.

65. Justin was never seen on the video.

66. They did not seize any clothing that was distinct or unique from Justin that was observed on one video.

67. According to Justin's dad, a person in the video has white/light sneakers and no search was done for the sneakers, and if one had been done, Justin's sneakers were black.

68. Heise never asked to look at them and did not photograph them.

69. Inv. Heise made no effort to determine if Mr. Strolis' was working on the early morning of June 12, 2015.

70. Heise did not offer to meet with Strolis and his lawyer if he wanted one. Inv. Heise had no basis to request an arrest warrant for Mr. Strolis.

71. On July 9, 2015, Heise swore out an arrest warrant for Strolis, falsely claiming under oath, that Strolis had "entered vehicles without authority, on the other side of the street in Ramsgate neighborhood," in Richmond County.

72. The warrant was the result of reckless, self-promoting interrogation, believing a suspect with a criminal record whose information would have been viewed as suspect by a reasonable officer, and rushing to cause an arrest where an objectively reasonable officer would have done more investigation.

73. On July 9, 2015, Heise contacted North Augusta authorities and had Strolis arrested while Strolis was at work.

74. This arrest caused Strolis extreme humiliation and began the downslide of his career with Bi-Lo.

75. Strolis was held in Aiken County jail until being transferred to Richmond County July 15th.

76. Strolis continues to have anxiety realizing that his reputation was ruined after years of doing the right thing.

77. When Strolis' name is Googled, the first listing is Justin Strolis, Fugitive from justice on Augusta crime.com.

78. Strolis had $3000 lost wages while jailed.

79. Strolis had to pay $710 for bond.

80. Strolis lost the opportunity for a promotion, and has lost other employment opportunities on account of the prosecution and arrest.

81. Strolis lost more wages which will with greater certainty be proven at trial.

82. Strolis had to hire an attorney, the cost of which will be provided before trial.

83. The reckless investigation drove and caused the indictment and continuation of the indictment and prosecution.

84. Plaintiff's attorney had to provide the information that was readily available that Heise recklessly refused to seek, in malicious pursuit of his own goals, with an entire want of care for Plaintiff and the law.

85. The actions and inaction of Heise were in were deliberate and in reckless disregard of the rights of Plaintiff and others.

86. On August 3, 2016, the charges were nolle prosequi, resulting in a determination favorable to Plaintiff.

87.

88. Claim I

89. Plaintiff incorporates each and very paragraph above as if stated herein.

90. Defendant Heise caused a malicious prosecution to be carried out against Plaintiff, that ended favorably for Plaintiff, actionable under OCGA §51-7-40, et seq., with reckless disregard, and malicious intent.

91. Claim II

92. Plaintiff incorporates each and very paragraph above as if stated herein.

93. Defendant h Heise violated plaintiffs right under the Forth and Fourteenth a Amendments to be free from prosecution without probable cause or instituted and carried out with deliberate indifference to facts showing there was no probable cause, causing a denial of due process and equal protection under the law.

94. The deprivation of rights and injuries caused thereby is actionable under 42 U.S.C. § 1983,

W H E R E F O R E, Plaintiff prays judgment against Defendant, for the following:

a. Compensatory damages as allowed by law;

b. Special damages, as more particularly shown at trial;

d. Damages for injuries caused by deprivation of Constitutional rights under the United States Constitution and deprivation of rights under Georgia law;

e. Punitive damages against each Defendant individually;

f. Reasonable attorney fees, costs and expenses of litigation under 42 U.S.C. § 1988;

g. Injunctive and declaratory relief further ordered.

A JURY TRIAL IS HEREBY REQUESTED.

This the 3rd day of August, 2018.

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IN THE STATE COURT OF RICHMOND COUNTY, GEORGIA

CIVIL ACTION FILE NO. 2018RCSC000974

Justin Strolis, PLAINTIFF,

VS.

Lucas Heise, DEFENDANT.

AMENDED STANDING ORDER FOR MEDIATION IN CIVIL CASES

In accordance with the mandate of the Georgia Constitution of 1983 that the judicial branch of government provide "speedy, efficient and inexpensive resolution of disputes and prosecutions," and pursuant to the Georgia Supreme Court's Alternative Dispute Resolution Rules encouraging the use of alternative dispute resolution by the courts of this state, this **Amended Standing Order for Mediation in Civil Cases** is hereby entered. As set forth herein, all contested civil matters filed in the State Court of Richmond County, **unless exempted** as set forth below, must be mediated in accordance with this Order.

MEDIATION REQUIRED.

Mediation is a prerequisite to placement of a case on a trial calendar and should occur after all responsive pleadings have been filed and discovery has been completed. Mediation shall be conducted in accordance with this Order and the rules of the Augusta Judicial Circuit (AJC) Alternative Dispute Resolution (ADR) Program.

The parties shall agree upon a mediator from the AJC roster of mediators registered by the Georgia Office of Dispute Resolution (http://godr.org/) who have been chosen for service in the

AJC ADR Program. A copy of the roster is available at the AJC ADR Program website at www.augustaga.gov/1438/ADR. Should the parties fail to agree upon a mediator, the Court or the ADR Director will appoint one for them and may set the fee. Should the parties desire to use a mediator not on the AJC ADR Program roster, they may **petition the Court** to utilize any mediator **provided he/she is registered with the Georgia Office of Dispute Resolution in the appropriate category.** If approved, prior to mediation, Plaintiff shall notify the ADR Director in writing of the name of the mediator and the time and location of the mediation, and the mediator will be paid in accordance with the agreement with the mediator.

Parties shall contact the mediator directly and schedule the mediation. The plaintiff's counsel shall provide the date of the mediation and the name of the mediator selected on the Notice of Mediation Status (Attachment A hereto) by email or U.S. Mail to the ADR Director **prior to the scheduled session.** Unless otherwise agreed, the parties shall share the cost of the mediator equally and should be prepared to pay the mediator at the conclusion of the session. Any party unable to afford the cost of mediation may submit a Request for Fee Waiver or Fee Reduction, available on the AJC ADR website, to the AJC ADR office.

The parties and their counsel shall negotiate in ***good faith*** to resolve all issues in the case with the mediator. Within ***seven*** calendar days after mediation the parties shall notify the ADR Director whether mediation was successful by completing and submitting to the ADR Director a copy of the Attestation Form (Attachment B hereto). In the absence of settlement, the parties lose none of their rights to a final hearing or trial.

Compliance with this Order does not require the parties to reach a settlement. The mediator has no authority to compel settlement. Any settlement is entirely voluntary.

APPEARANCE.

The presence of parties at all mediation conferences is required unless the court excuses attendance for good cause shown. The requirement that a party appear at a mediation conference is satisfied if the following persons are physically present:

(a) The party and/or:

(1) The party's representative who has:

(i) Full authority to settle without further consultation; and

(ii) A full understanding of the dispute and full knowledge of the facts;

(2) A representative of an insurance carrier for any insured party if that representative has full authority to settle without further consultation, except that telephone consultations with persons immediately available are permitted. Appearance of an insurance carrier's representative by telephone is permitted only if all parties agree.

DISCRETIONARY EXEMPTIONS.

Any party may petition the court to exempt the case from mediation by filing a Mediation Exemption Petition, a copy of which shall also be provided to the ADR Director. An exemption from mediation may be requested for the following reasons:

(1) The issue(s) to be considered has been previously mediated by a mediator registered with the Georgia Office of Dispute Resolution;

(2) The issue(s) presents a question of law only;

(3) Good cause shown before the judge to whom the case is assigned.

Any exemption shall be within the discretion of the court.

MANDATORY EXEMPTIONS.

The following shall be exempt from mediation except upon petition of all parties or upon *sua sponte* motion of the Court:

(a) Appeals from rulings of administrative agencies;

(b) Forfeitures of seized properties;

(c) Bond validations; and

(d) Declaratory relief.

CONFIDENTIALITY AND PRIVILEGE.

The Georgia Supreme Court Alternative Dispute Resolution Rules and the Augusta Judicial Circuit Alternative Dispute Resolution Rules provide protections, immunities, and benefits to parties, counsel, and registered neutrals in properly conducted court-connected mediations. All submissions provided to a registered mediator, discussions, representations, and statements made in connection with a court-connected mediation proceeding shall remain confidential and privileged consistent with Georgia law. Parties and neutrals acting in a court-annexed or court-referred ADR process are entitled to these confidentiality and immunity protections. (Supreme Court ADR Rule 6.1 and 6.2.) Non-registered mediators do not have the confidentiality or immunity protections provided by the Supreme Court of Georgia.

ATTESTATION OF MEDIATION PARTICIPATION OR EXEMPTION.

Prior to requesting a pretrial conference or trial date, the requesting party is directed to submit a file stamped copy of the Attestation Form filed with the Clerk of Court to the ADR Director. Failure to attest will result in continuance of the matter until compliance is demonstrated.

EFFECTIVE DATE OF ORDER

This Order shall become effective January 25, 2018, and shall apply to all civil cases, including existing cases, except those exempted as described above.

SO ORDERED this 3rd day of August, 2018.

PATRICIA W. BOONER

Judge
State Court of Richmond County, Georgia

IN THE STATE COURT OF RICHMOND COUNTY, GEORGIA

CIVIL ACTION FILE NO. _____

_____,	)
PLAINTIFF,	)
	)
VS.	)
	)
_____,	)
DEFENDANT.	)

NOTICE OF MEDIATION STATUS
(Attachment A)

☐ I do hereby confirm that the parties in the above-styled action have selected and agreed to the following registered mediator:

Mediator's Name:_____

Date of Mediation:_____

☐ Parties request a mediator be assigned by the AJC ADR Program.

☐ Case Dismissed/Case Settled prior to mediation.

☐ Mediation exemption granted. (See copy attached.)

This _____ day of _____, 20____.

_____
Plaintiff's Counsel

Printed Name: _____

IN THE STATE COURT OF RICHMOND COUNTY, GEORGIA

CIVIL ACTION FILE NO. _____

_____, PLAINTIFF,

VS.

_____, DEFENDANT.

ATTESTATION FORM
(Attachment B)

I do hereby attest that the parties in the above-styled action have:

- ☐ **Attended Mediation:**

  Date:_____

  Mediator's Name:_____

  Outcome:_____

- ☐ Case Dismissed/Case Settled prior to mediation.

- ☐ **Granted an Exemption** (See copy attached.)

This _____ day of _____, 20____.

_____
Requesting Party's Signature

Printed Name: _____

Sworn to and subscribed before me,
this _____ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

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

JUSTIN STROLIS,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CV 118-137
	*	
LUCAS HEISE, Individually, for Actions Taken Under Color of Law, as a Deputy with the Augusta Richmond County Sheriff's Department,	*	
	*	
Defendant.	*	

O R D E R

Before the Court is Defendant Lucas Heise's ("Defendant") motion for summary judgment (Doc. 14). The Clerk of Court gave Plaintiff Justin Strolis ("Plaintiff") notice of the motion for summary judgment and informed Plaintiff of the summary judgment rules, the right to file affidavits or other materials in opposition, and the consequences of default. (Doc. 16.) Thus, the notice requirements of Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985), are satisfied. The time for filing materials in opposition has expired, and the motion is ripe for consideration.[1]

[1] The Court notes Plaintiff's pending motion to strike certain portions of Chief Dekmark's expert report (Doc. 14-6). (Doc. 17.) In evaluating Defendant's motion for summary judgment, however, the Court declines to consider Chief Dekmark's expert report; thus, it finds Plaintiff's motion to strike (Doc. 17) moot.

I. BACKGROUND

A. Vehicle Break-Ins

Early in the morning on June 12, 2015, ten vehicles were reportedly broken into on Ramsgate Drive in Augusta, Georgia, and Richmond County officers responded to the scene at 7:11 a.m. (Vehicle Break-Ins Investigator File, Doc. 25-4, at 1-4; see generally, Strolis Case File, Doc. 25-3; Def.'s Br. Supp. Mot. for Summ. J., Doc. 14-1, at 1.) The following belongings were reported stolen: a total of $250, two driver's licenses, a school ID card, six credit or debit cards, a purse, a wallet, and a Tag Heuer watch. (Strolis Case File, at 4, 8, 9, 12, 20, 24, 25.)

On June 15, 2015, Defendant was assigned to investigate the reported crime, and he began by reviewing the reports from the officers who responded to the break-ins. (Id. at 1; Vehicle Break-Ins Investigator File, at 4; Def.'s Br. Supp. Mot. for Summ. J., at 1.) From those reports, Defendant viewed the video from one home's exterior-facing camera, which captured a male approximately 5'11" to 6' tall break into vehicles in the driveway. (Vehicle Break-Ins Investigator File, at 5-7.) Two of the stolen credit cards were used. Card 1 was used at a Raceway gas station located at 3021 Washington Road and on Match.com to pay for an account for "Joshua Dominguez" ("Dominguez"). (Strolis Case File, at 9; Vehicle Break-Ins Investigator File, at 6, 8, 11-12.) Card 2 was used to pay a Boost Mobile account. (Strolis Case File, at 13;

Vehicle Break-Ins Investigator File, at 6, 15, 30.) Cards 1 and 2 were taken from cars parked on opposite sides of Ramsgate Drive. (See Ramsgate Map, Doc. 25-12.)

Defendant subpoenaed Match.com and Sprint Communications, the owner of Boost Mobile, for all records associated with payments made using Cards 1 and 2. (Vehicle Break-Ins Investigator File, at 9-10.) Both subpoenas returned records connected to Dominguez. (Id. at 11-12, 15.)

Defendant ran a criminal background check on Dominguez, which showed his prior convictions, including one for "entering an automobile with the intent to commit a theft" and six "for Financial Transaction Card Fraud." (Id. at 14.) Defendant applied for and received warrants for Dominguez's arrest and uploaded the warrants into the Georgia Crime Center Information Center. (Id. at 14.) Additional records received showed "[t]he IP address that was used to log [i]nto Joshua Dominguez's Match.com account belongs to Masters Inn located at 3027 Washington Rd." (Id. at 16.)

Defendant then received the call records from Dominguez's Boost Mobile phone. (Id. at 17-19, 22.) The records revealed that between June 11, 2015, and July 1, 2015, Dominguez called or received calls from Plaintiff 124 times. (Id. at 19-20.) On July 1, 2015, Defendant asked Plaintiff to come to the Richmond County Sheriff's Office for an interview, and Plaintiff came in later that day. (Id. at 20.)

B. Plaintiff's Interview

The interview is discussed in further detail throughout this Order, but the Court, here, provides a brief summary. Plaintiff admitted to being friends with Dominguez and, although not altogether clear about the dates, admitted to being with Dominguez sometime between June 10-12, 2015. (Pl.'s Int.[2] Pt. 2, at 9:20.) Throughout the interview, Plaintiff repeated to Defendant the same story about his time with Dominguez. Plaintiff stated that Dominguez was coming to Augusta from Atlanta and Dominguez called him to hang out while he was in town. (Id. at 7:47-8:07.) The first day they hung out, Plaintiff left work around 4:30 p.m., connected with Dominguez and Dominguez's mother at Plaintiff's home where Plaintiff lives with his father, Dominguez's mother offered to pay for Dominguez and Plaintiff to stay at the Masters Inn, and Dominguez and Plaintiff checked in to the Masters Inn. (Id. at 7:45-8:53.) Later that evening, they went out to a bar in downtown Augusta, and went back to the Masters Inn. (Id.) The next morning, Dominguez drove Plaintiff home and they did not hang out the rest of the time Dominguez was in Augusta, although they did speak on the phone regularly. (Pl.'s Int. Pt. 1, 38:55-39:04;

[2] The Court examined the video recording of Defendant's interview of Plaintiff that is broken into three parts and the audio recording of Defendant's interview of Dominguez on the CD that Defendant supplied to the Clerk's office. (See Notice of Filing, Doc. 15.)

Pl.'s Int. Pt. 2, at 8:49-9:01; Vehicle Break-Ins Investigator File, at 19-20.)

In the interview, Plaintiff appeared confused about the exact dates he hung out with Dominguez. At one point, Defendant asked whether it could have been the 12th when they checked into the Masters Inn, to which Plaintiff responded, "I believe it was the 12th." (Pl.'s Int. Pt. 2, at 9:22-9:33, 10:01-10:13.) Later on, Plaintiff stated that he met up with Dominguez and the events outlined above occurred on the Eleventh. (Id. at 28:07-28:30.) Defendant asked, "Are you sure this was the [Eleventh], relatively speaking?" and Plaintiff responded, "Relatively speaking, I can't be 100%." (Id. at 28:30-28:40.) Defendant asked Plaintiff to verify the date using his phone log, and Plaintiff stated that he was unable to verify because he deleted the information. (Id. at 28:40-29:12.) The date Plaintiff and Dominguez initially met up appears to have actually been June 10, 2015. (Pl.'s Resp. Def.'s St. Undisputed Mat. Facts, Doc. 25-1, at 4, 11.)

Plaintiff consistently denied knowing anything about "the cars" on Ramsgate Drive but admitted to knowing Dominguez broke into cars more generally. (See, e.g., Pl.'s Int. Pt. 1, at 34:12-34:25; Pl.'s Int. Pt. 2, 5:00-5:30, 9:23, 22:45-23:12, 25:38-26:59.) Plaintiff also told Defendant that Dominguez broke into vehicles near Ramsgate Drive seven years ago. (Pl.'s Int. Pt. 2, at 26:06-26:59.) Defendant seemed to believe Dominguez and

Plaintiff broke into the cars on Ramsgate Drive sometime after going to the bar downtown. (Id. at 9:00-9:30.) Defendant knew the crimes occurred early in the morning on June 12, 2015, and stated, "All these crimes are committed between, eh, 1:00 in the morning and 3:30 when he made all the charges." (Pl.'s Int. Pt. 3, at 00:11-00:21.) Then Defendant stated, "He was with you that night at the Masters Inn because guess what they got." (Id. at 00:42-00:47.) Plaintiff responded, "Surveillance." (Id. at 00:49.)

C. Information Received Between Interviews

The morning after interviewing Plaintiff, Defendant went to the Masters Inn "in an attempt to confirm that Dominguez and [Plaintiff] rented a room at the Master[]s Inn on [June 11, 2015, through June 12, 2015]." (Vehicle Break-Ins Investigator File, at 23.) Defendant spoke with the general manager who explained that Dominguez's mother "rented [a room] for [three] nights from [June 10, 2015, through June 12, 2015]." (Id.) The general manager informed Defendant "that he only held video for [ten] days and no longer had any video from [June 10, 2015, through June 13, 2015]." (Id.)

Defendant also received phone records from Plaintiff's phone from June 11, 2015, through June 12, 2015. (Id. at 24-28.) Verizon Wireless, Plaintiff's cell phone service provider, was "unable to provide any [location information] on the cell phone due to the

information being deleted from their servers within [ten] days of the date of [June 12, 2015]." (Id. at 22-23.)

D. Dominguez's Interview

In the evening after interviewing Plaintiff, Defendant was informed Dominguez was arrested in Duluth, Georgia. (Vehicle Break-Ins Investigator File, at 21-22.) On July 7, 2015, Defendant drove to the Gwinnett County Jail to interview Dominguez along with a Gwinnett County Officer, Detective Michael Hardin. (Id. at 20, 28-29.) Early in the interview, Dominguez admitted to breaking into the cars on Ramsgate Drive. (Dominguez's Int., at 25:15-25:22.) Defendant asked if Plaintiff was with Dominguez the night of the break-ins, and Dominguez responded, "Possibly." (Id. at 28:40-28:46.) Defendant asked if Plaintiff "goes into the cars too?" (Id. at 30:50.) Dominguez responded, "He was working the other side of the street." (Id. at 30:51.) A few minutes later Defendant inquired whether Plaintiff broke into cars any other night and Dominguez responded that he only did it on the Eleventh. (Id. at 38:00.) Defendant also asked, "And [Plaintiff] was with you for the entire Ramsgate?" (Id. at 38:05.) Dominguez replied, "He went back to the car for about two hours afterwards. Said he was tired." (Id. at 38:07-38:15.)

E. Plaintiff's Arrest

On July 8, 2015, Defendant asked Plaintiff to come in for another interview, and Plaintiff refused. (Vehicle Break-Ins

Investigator File, at 32.) The next day, Defendant applied for and received a warrant to arrest Plaintiff for entering an automobile to commit a theft. (Id. at 33; Arrest Warrant,[3] Doc. 14-4.) Later that same day, Defendant and another detective went to the grocery store where Plaintiff worked and made the arrest. (Vehicle Break-Ins Investigator File, at 34.)

F. Nolle Prosequi

Later, Dominguez "pled guilty to ten counts of entering an automobile with intent to commit a theft, three counts of financial transaction card fraud, and two counts of financial transaction card theft." (Def.'s St. Undisputed Mat. Facts, Doc. 20, ¶ 11 (undisputed).) On August 3, 2016, the State moved for and received entry of a nolle prosequi order for Plaintiff because "[i]nformation not available at the time of arrest/indictment indicates that there is no longer sufficient evidence to prove guilt beyond a reasonable doubt." (Nolle Prosequi Order, Doc. 14-7.)

G. Procedural Posture

On August 3, 2018, Plaintiff filed this Complaint in the State Court of Richmond County, Georgia. (Compl., Doc. 1-1, at 3-17.) On August 28, 2018, Defendant removed the case to this Court. (Notice of Removal, Doc. 1.) On June 17, 2019, Defendant moved

[3] See discussion on validity of arrest warrant *infra* Section III(2).

for summary judgment. (Def.'s Mot. for Summ. J., Doc. 14.) Plaintiff responded (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., Doc. 25), Defendant replied (Def.'s Reply Supp. Mot. for Summ. J., Doc. 31), and Plaintiff sur-replied (Pl.'s Sur-Reply Opp'n Def.'s Mot. for Summ. J., Doc. 33). For the following reasons, the Court **GRANTS** Defendant's motion for summary judgment as to all of Plaintiff's federal claims. Plaintiff's state claims are **HEREBY REMANDED** to the State Court of Richmond County, Georgia.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only if "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). Facts are "material" if they could "affect the outcome of the suit under the governing law," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and a dispute is genuine "if the non[-]moving party has produced evidence such that a reasonable factfinder could return a verdict in its favor." Waddell v. Valley Forge Dental Assocs., Inc., 276 F.3d 1275, 1279 (11th Cir. 2001). The Court must view factual disputes in the light most favorable to the non-moving party, Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted), and must "draw all justifiable inferences in [the non-movant's] favor." United States v. Four Parcels of Real Prop., 941 F.2d 1428, 1437 (11th Cir. 1991)

(citation, internal quotation marks, and internal punctuation omitted). The Court should not weigh the evidence or determine credibility. Anderson, 477 U.S. at 255. But "[t]he mere existence of a scintilla of evidence in support of the [non-movant]'s position will be insufficient" for a jury to return a verdict for the non[-]moving party. Id. at 252; accord Matsushita Elec. Indus., 475 U.S. at 587 ("When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." (footnote omitted)); Gilliard v. Ga. Dep't of Corr., 500 F. App'x 860, 863 (11th Cir. 2012).

The moving party has the initial burden of showing the Court, by reference to materials in the record, the basis for the motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Because the standard for summary judgment mirrors that of a directed verdict, the initial burden of proof required by either party depends on who carries the burden of proof at trial. Id. at 322-23. When the movant does not bear the burden of proof at trial, it may carry the initial burden in one of two ways — by negating an essential element of the non-movant's case or by showing that there is no evidence to prove a fact necessary to the non-movant's case. See Clark v. Coats & Clark, Inc., 929 F.2d 604, 606-08 (11th Cir. 1991) (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 153, 157, 160 (1970); Celotex Corp., 477 U.S. at 320, 322-25).

If — and only if — the movant carries its initial burden, the non-movant must "demonstrate that there is indeed a material issue of fact that precludes summary judgment." Id. at 608. When the non-movant bears the burden of proof at trial, the non-movant must tailor its response to the method by which the movant carries its initial burden. For example, if the movant presents evidence affirmatively negating a material fact, the non-movant "must respond with evidence sufficient to withstand a directed verdict motion at trial on the material fact sought to be negated." Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1116 (11th Cir. 1993). On the other hand, if the movant shows an absence of evidence on a material fact, the non-movant must either show that the record contains evidence that "was 'overlooked or ignored' by the moving party," id. at 1116 (quoting Celotex, 477 U.S. at 332 (Brennan, J., dissenting)), or "come forward with additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency" id. at 1116–17. The non-movant cannot carry its burden by relying on the pleadings or by repeating conclusory allegations contained in the complaint. See Morris v. Ross, 663 F.2d 1032, 1033–34 (11th Cir. 1981). Rather, the non-movant must respond with affidavits or as otherwise provided by Federal Rule of Civil Procedure 56. In reaching its conclusions herein, the Court has evaluated the Parties' briefs, other submissions, and the evidentiary record in this case.

III. DISCUSSION

Plaintiff brings malicious prosecution claims against Defendant under state law, Count I, and federal law, Count II. (Compl., ¶¶ 88-94.) The Court begins with (A) Plaintiff's federal malicious prosecution claim, then discusses (B) Plaintiff's state malicious prosecution claim.

A. Federal Malicious Prosecution Claim

Defendant argues Plaintiff's federal claim of malicious prosecution fails because Defendant is entitled to qualified immunity. (Def.'s Br. Supp. Mot. for Summ. J., at 8-9.) For the following reasons, the Court agrees. Qualified immunity is a judicially created affirmative defense under which "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). For qualified immunity to apply, a public official first must show "he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred." Lumley v. City of Dade City, 327 F.3d 1186, 1194 (11th Cir. 2003) (citations omitted). To determine whether a government official was acting within the scope of his discretionary authority, courts consider whether the official "was (a) performing a legitimate job-related function (that is,

pursuing a job-related goal), (b) through means that were within his power to utilize." Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1265 (11th Cir. 2004). Once a defendant establishes that he was "acting within [his] discretionary authority, the burden shifts to the plaintiff to demonstrate that qualified immunity is not appropriate" by showing the facts as pleaded by the non-movant reveal that the defendant's conduct violated a constitutional right and that right was clearly established. Bowen v. Warden, Baldwin State Prison, 826 F.3d 1312, 1319 (11th Cir. 2016); Lumley, 327 F.3d at 1194.

The Eleventh Circuit recognizes "malicious prosecution as a violation of the Fourth Amendment and a viable constitutional tort cognizable under § 1983." Wood v. Kesler, 323 F.3d 872, 881 (11th Cir. 2003). As a Section 1983 claim, malicious prosecution "provide[s] a broad remedy for violations of federally protected civil rights." Blue v. Lopez, 901 F.3d 1352, 1359-60 (11th Cir. 2018). Malicious prosecution requires a plaintiff to "prove (1) the elements of the common law tort of malicious prosecution[] and (2) a violation of [his] Fourth Amendment right to be free from unreasonable seizures." Black v. Wigington, 811 F.3d 1259, 1266 (11th Cir. 2016). "The common[]law elements include: (1) a criminal prosecution instituted or continued by the present defendant; (2) with malice and without probable cause; (3) that terminated in the plaintiff accused's favor; and (4) caused damage

to the plaintiff accused." Id. The "unreasonable seizure" element of a malicious prosecution claim "requires a seizure 'pursuant to legal process.'" Id. at 1267 (quoting Heck v. Humphrey, 512 U.S. 477, 484 (1994)). "Legal process includes an arrest warrant." Id.

Both Parties appear to assume Defendant was engaged in a discretionary function when he investigated the crime, applied for an arrest warrant, and arrested Plaintiff. The Court finds Defendant engaged in discretionary functions when he performed the acts of which Plaintiff complains. Stanton v. McIntosh Cty., No. CV 209-092, 2010 WL 11526845, at *6 (S.D. Ga. Sept. 29, 2010) (quoting Brock v. City of Zephyrhills, 232 F. App'x 925, 927-28 (11th Cir. 2007)) ("The acts of obtaining and executing a warrant for an arrest . . . qualify as discretionary functions of law enforcement officers."). As such, the burden shifts to Plaintiff to show qualified immunity is inappropriate because Defendant's conduct violated a constitutional right and that right was clearly established. It is a clearly established right under the Fourth Amendment that arrests must be supported by probable cause. Killmon v. City of Miami, 199 F. App'x 796, 799 (11th Cir. 2006) (stating that it is clearly established that arrests must be supported by probable cause and in the qualified immunity context, an officer maintains immunity "if there was arguable probable cause to make the arrest"). Thus, "[i]n the context of an arrest, the

Eleventh Circuit . . . frames this inquiry as whether an officer had 'arguable probable cause.'" Strickland v. City of Dothan, 399 F. Supp. 2d 1275, 1291 (M.D. Ala. Nov. 8, 2005) (quoting Montoute v. Carr, 114 F.3d 181, 184 (11th Cir. 1997)).

Plaintiff argues Defendant is not entitled to qualified immunity because Defendant (1) acted without arguable probable cause and (2) fabricated evidence on the arrest warrant.

1. Arguable Probable Cause

Plaintiff argues Defendant violated his constitutional right to be free from malicious prosecution when he arrested him without probable cause. "Because lack of probable cause is a required element to prove a § 1983 claim for malicious prosecution in violation of the Constitution, the existence of probable cause defeats the claim." Kjellsen v. Mills, 517 F.3d 1232, 1237 (11th Cir. 2008). "Probable cause exists when the facts and circumstances within the officers' knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed . . . an offense." Miller v. Harget, 458 F.3d 1251, 1259 (11th Cir. 2006) (citation and internal quotation marks omitted); see also Michigan v. DeFillippo, 443 U.S. 31, 37 (1979) (In determining whether an officer had arguable probable cause, we look to the "facts and circumstances within the officer's knowledge."); Abercrombie v. Beam, 728 F. App'x 918, 923 (11th

Cir. 2018). Even "[i]f an officer lacked probable cause to arrest, we must consider whether arguable probable cause supported the arrest at the time." Carter v. Butts Cty., 821 F.3d 1310, 1319 (11th Cir. 2016) (emphasis omitted). "If so, the officer is still entitled to qualified immunity." Id. at 1319; see also Carter v. Gore, 557 F. App'x 904, 908 (11th Cir. 2014).

An officer possesses arguable probable cause if "reasonable officers in the same circumstances and possessing the same knowledge as the [d]efendant[] could have believed that probable cause existed to arrest." Grider v. City of Auburn, 618 F.3d 1240, 1257 (11th Cir. 2010). Thus, even if the officer is mistaken, the cloak of immunity is not lost where his belief was reasonable. Id. Furthermore, an officer may have arguable probable cause that a suspect committed a crime even without "definitive proof that every element of a crime has been established." Abercrombie, 728 F. App'x at 923 (citing Brown v. City of Huntsville, 608 F.3d 724, 735 (11th Cir. 2010)).

Plaintiff supports his claim that Defendant acted without probable cause in obtaining and executing the arrest warrant by arguing: (a) Defendant failed to reasonably investigate (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 6-10), and (b) Dominguez's testimony was not credible (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 10-16, 20).

a. *Reasonable Investigation*

i. Relevant Case Law

"[A] police officer is not required to explore and eliminate every theoretically plausible claim of innocence before making an arrest." Kingsland v. City of Miami, 382 F.3d 1220, 1229 (11th Cir. 2004) (citation and internal quotation marks omitted). An officer, however, "may not 'unreasonably disregard certain pieces of evidence' by 'choosing to ignore information that has been offered to him or her' or by 'electing not to obtain easily discoverable facts' that might tend to exculpate a suspect." Cozzi v. City of Birmingham, 892 F.3d 1288, 1294 (11th Cir. 2018) (quoting Kingsland, 383 F.3d at 1229, 1233), *cert. denied sub nom.*, Thomas v. Cozzi, 139 S. Ct. 395 (2018). As explained below, Courts in this circuit find officers unreasonably disregard evidence when (1) there is evidence known to the officer or within the officer's field of vision that (2) contradicts the evidence supporting the officer's probable cause belief such that (3) a reasonable officer would have serious doubts as to whether there was probable cause. Only if that is shown do courts state that officers should have continued investigating to discover easily discoverable facts verifying whether the plaintiff-arrestee committed the accused crime. Daniels v. Bango, 487 F. App'x 532, 538 (11th Cir. 2012) (After showing contradictory facts that would have prompted a reasonable officer to continue investigating, the Eleventh Circuit

found the officer-defendants' investigation was "cursory" and could have included "simple" techniques to discover "easily discoverable facts" that would have "verif[ied] [the] identification."); see also Abercrombie, 728 F. App'x at 921, 925 (finding contradictory evidence, then finding the easily discoverable evidence included readily-apparent video surveillance and eyewitnesses). Given how fact-intensive this inquiry is, the Court fully examines several relevant cases — which have also been cited by both Parties — in evaluating whether the circumstances in this case show Defendant unreasonably disregarded evidence.

In Daniels, the officer-defendants, acting undercover and "with a hidden surveillance camera," purchased narcotics from a narcotics dealer on July 26, 2007. 487 F. App'x at 533. The dealer did not conceal his face; the purchase lasted twenty minutes; the dealer referred to himself as 'Toe' or 'Tobe'" but later told the officers his first name was James; and the dealer told the officers that he "just got out of jail last night," "went to court today," and faced "'fifteen years'" for 'burglary with a firearm and robbery with a firearm.'" Id. at 533-34. Later that day, the officer-defendants checked the booking blotter for someone with the name James who was booked within the last three months and found James Daniels. Id. at 534. James Daniels was charged with burglary and petit theft, released on July 24, 2007, and sentenced to time served with his case closed. Id. The

officer-defendants stopped their search there even though the only fact that matched the dealer was the name "James," which was a suspect fact given that the dealer referred to himself as "Toe" or "Tobe."

On these facts, the Eleventh Circuit found: "The material inconsistencies between the suspect's story and the information in the search results should have led a reasonable officer to harbor serious doubts about the conclusion that [the plaintiff] was the suspect on the video tape." Id. at 538 (citing, among others, Tillman v. Coley, 886 F.2d 317, 321 (11th Cir. 1989)). These inconsistencies were not noted on the affidavit for the arrest warrant and included that the dealer stated he was released the night before, whereas the plaintiff-arrestee was released two days before and that the dealer said he went to court that morning and was facing punishment of fifteen years, but the plaintiff-arrestee's case was closed after he was sentenced to time served. Id. The affidavit also "omitted the fact that [the officer-defendants] had twenty minutes of close contact with the suspect in broad daylight and with an unobstructed view of the suspect's face." Id.

In Tillman, the officer-defendant was told the drug dealer appeared to be a twenty-four-year-old who identified herself as Mary Tillman. 886 F.2d at 318. The officer-defendant arrested a Mary Tillman he knew who was forty-one years old. Id. The Eleventh

Circuit held that the officer-defendant lacked arguable probable cause because the officer could see that the age of the plaintiff-arrestee contradicted the known evidence and a reasonable officer would have investigated the age discrepancy. Id. at 321; see also Cozzi, 892 F.3d at 1297 (finding no arguable probable cause because officer-defendant "had been told the readily verifiable exculpatory fact that the perpetrator's multiple tattoos did not match [the plaintiff-arrestee]'s single tattoo"; thus, the tattoos amounted to "plainly exculpatory and easily verifiable information" that the officer "unreasonably disregarded").

The Eleventh Circuit has also made the understandable point that it is impossible for an officer to unreasonably disregard facts that are unknown to him or her. For example, in Damali v. City of East Point, the plaintiff-arrestee argued the officer, instead of basing his arrest only on the fact that his name was the same name provided by the arrested robber, could have conducted minor inquiries to corroborate the identification. 766 F. App'x 825, 828 (11th Cir. 2019). The Eleventh Circuit disagreed because there was no evidence the officer ignored contradictory information that was offered to him or investigated in a biased fashion. Id. (citing Kingsland, 382 F.3d at 1229).

That brings the Court to two cases cited by the Parties where there was evidence of officer bias. In Kingsland, the plaintiff-arrestee and an off-duty officer were in a car accident. 382 F.3d

at 1223. The plaintiff-arrestee alleged it was the off-duty officer's fault. Id. The off-duty officer argued the reverse and additionally claimed he smelled cannabis on the plaintiff-arrestee's person and in her vehicle. Id. The plaintiff-arrestee offered evidence raising issues of fact as to whether the officer-defendants conducted a biased investigation. Id. at 1231. Bias was shown because the officer-defendants were faced with two accounts of what occurred, accepted one account with no investigation, and chose to either ignore facts contradicting or misrepresent the facts supporting the believed account. Id.

To demonstrate the officer-defendants ignored contradictory facts, the plaintiff-arrestee showed there was no evidence she had drugs on her person or in her vehicle; thus, it was unlikely the officer-defendants smelled "a strong odor of cannabis emitting from her breath," as was stated in the arrest warrant. Id. at 1224 n.5, 1225, 1228. Consequently, evidence revealed the officer-defendants knew facts contradicted their accusation that the plaintiff-arrestee used cannabis, making the "information on which the[] [officers-defendants] base[d] their arrest less than 'reasonably trustworthy' under the circumstances." Id. at 1231. Given the contradictory evidence, a reasonable officer would have searched the vehicle for the illicit substance, used drug-sniffing dogs, or interviewed the readily available eyewitnesses. Id. at 1228, 1231. Supporting the allegation that the officer-defendants

misrepresented facts, the plaintiff-arrestee additionally showed that the arrest warrant charged driving under the influence of alcohol until her "[b]reathalyzer results came back" negative, at which point "[t]he second officer told the first officer to write that [the plaintiff-arrestee] had a strong odor of cannabis emitting from her breath. At that point, the first officer threw away the form he was writing on and started writing a new form." Id. at 1224.

The facts in Abercrombie are similar to Kingsland. The officer-defendant arrived to the AAMCO store, the scene of an alleged "fight"; only interviewed the self-proclaimed victim and her fiancé, who reported the plaintiff-arrestee "had thrown a document at her and struck her"; and then arrested the plaintiff-arrestee on that alone. 728 F. App'x at 920. The Eleventh Circuit found evidence contradicting the victim's story that would have prompted a reasonable officer to "'investigate objectively' and clarify the factual situation." Id. at 925 (quoting Kingsland, 382 F.3d at 1229). The contradictory evidence was that, first, even though the alleged victim claimed she was afraid of the plaintiff-accused, the officer-defendant saw her standing near the plaintiff-arrestee and, second, eyewitnesses "were confused as to why [the plaintiff-arrestee] was being handcuffed." Id.

ii. Factual Application of Relevant Case Law

Applying the above case law, the facts offered by Plaintiff are not contradictory such that Defendant lacked probable cause to believe Plaintiff assisted in the break-ins. (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 9.) For example, first, Dominguez being the only person who used Cards 1 and 2 does not foreclose the possibility that Plaintiff assisted in the break-ins. (See id.) Second, Plaintiff not having a car or driver's license does not make it impossible that he purchased gas at the Raceway gas station after the break-ins as claimed by Dominguez. (See id.) Third, Plaintiff not possessing any stolen goods does not mean he did not participate in the break-ins because he could have sold the goods directly to others or allowed Dominguez to retain them. (See id.) Fourth, the fact that Dominguez claimed responsibility for the items reported stolen does not foreclose the possibility that other items were taken but not reported stolen. (See id.) As to this fourth point, Dominguez does not claim responsibility for all the items that were reported stolen. Dominguez did not remember taking a watch, but a Tag Heuer watch was reported stolen. (Dominguez's Int., at 36:38-36:45.) Dominguez also claims to have stolen items that were not reported stolen. Dominguez admits to taking gift cards, yet no gift card was specifically reported as stolen. (Id. at 37:00-37:14.)

The only evidence potentially revealing Plaintiff did not commit the crime was that the dates Plaintiff provided were incorrect. Plaintiff initially met up with Dominguez on the Tenth, not the Eleventh. Prior to Plaintiff's arrest, Defendant was aware that Dominguez's mother booked a room at the Masters Inn from June 10, 2015, to June 12, 2015. No video was available to verify who used the room on which dates. Plaintiff told Defendant that the day he met up with Dominguez in Augusta was the first day he arrived, and Dominguez confirmed he met up with Plaintiff the first night he was in town. (Dominguez's Int., at 1:12:15.) There is an inconsistency, then, about the date Dominguez's mother held the room at the Masters Inn for and whether that means Plaintiff and Dominguez were together on June 11, 2015. The question, then, is whether that discrepancy would require a reasonable officer to further investigate whether Plaintiff committed the crime.

The difference in dates that Dominguez's mother held the room at the Masters Inn for raises suspicion about the date Plaintiff and Dominguez were together. During his interview of Plaintiff, Defendant requested Plaintiff to verify the dates, but Plaintiff could not because he deleted his phone logs. Although this inconsistency is more than what was seen in Damali, this inconsistency does not reach the level of those in the other cases identified above. Here, the contradictory information did not directly contradict key facts regarding the identity of the

perpetrator, nor did it concern whether a crime was actually committed. The contradictory information raised by Plaintiff is information inconsistent with one piece of circumstantial evidence; it does not directly contradict evidence revealing Plaintiff was with Dominguez the early morning of the Twelfth.

Even if this inconsistency would lead a reasonable officer to continue investigating, Defendant continued to investigate. He first attempted to gain location data from Plaintiff's cell phone, which was, unfortunately, unavailable. Defendant then interviewed Dominguez who provided credible testimony[4] implicating Plaintiff in the break-ins and confirming Plaintiffs' timeline. Given the information Defendant's additional investigation provided, the Court finds Defendant further investigated the inconsistency and the additional evidence provided arguable probable cause to believe Plaintiff assisted in the break-ins. As such, at this point, Defendant still retains immunity as to Plaintiff's federal malicious prosecution claim.

b. *Credibility of Dominguez's Testimony*

Plaintiff argues Defendant could not rely solely on Dominguez's testimony for probable cause to arrest Plaintiff. Plaintiff cites the rule from Ortega v. Christian that "making a statement against one's penal interests without more will not raise

[4] The credibility of Dominguez's testimony is analyzed *infra* Section (III)(A)(i)(b).

an informant's tip to the level of probable cause required under the Fourth Amendment." 85 F.3d 1521, 1525 (11th Cir. 1996); (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 10). As pointed out by Defendant, Dominguez is not an informant, but a co-defendant who was directly involved in the crime. The standard is different for one who allegedly knows information about a defendant's involvement in a crime, i.e., an informant, and one who was an accomplice in the crime facing punishment.

As stated by the Eleventh Circuit, "[O]ur longstanding circuit precedent is clear that uncorroborated testimony from an admitted accomplice is sufficient to support probable cause, 'unless it is incredible or contradicts known facts to such an extent no reasonable officer would believe it.'" Damali, 766 F. App'x at 827 (quoting Craig v. Singletary, 127 F.3d 1030, 1045, 1045-46 (11th Cir. 1997)). In Damali, the plaintiff-arrestee argued the officer-defendant unreasonably relied on the robber's statements because one of her statements "contradicted known facts." Id. at 828. The robber told the officer-defendant that a Mr. Damali was an accomplice in the robbery and that she had a long criminal relationship with Mr. Damali. Id. The officer-defendant, however, then arrested a Mr. Damali – the plaintiff-arrestee – who he knew had no criminal record. Id. The Eleventh Circuit discussed that there are reasonable ways of interpreting the robber's allegation that make the allegedly contradictory

information not contradictory. Specifically, the robber providing that "she had a long criminal relationship with Mr. Damali does not necessarily mean that the suspect she identified would have actually possessed a criminal record." Id.

The Court reiterates that Defendant did not rely solely on Dominguez's testimony, but also interviewed Plaintiff, who informed Defendant that he was with Dominguez around the time the crime occurred; reviewed the Masters Inn records, which showed Dominguez's mother indeed held a room from June 11, 2015, through June 12, 2015; and analyzed the phone records that showed Plaintiff and Defendant were in frequent communication around the days of the break-ins. Further, Defendant's investigation confirmed many of the details of Dominguez's story. In this section, however, the Court focuses on Dominguez's testimony alone to determine whether "it is incredible or contradicts known facts to such an extent no reasonable officer would believe it."

Plaintiff argues Dominguez's testimony is not credible for four reasons:

> (1) Dominguez did not offer information unless prompted by [Defendant] to implicate [Plaintiff] by asking leading questions;
> (2) Dominguez displayed personal animosity toward [Plaintiff], which [Defendant] manipulated and further incited;
> (3) Dominguez showed that his statements, in an attempt to cooperate were motivated by self-interest and a lesser sentence; [and]

> (4) Dominguez made many statements that [Defendant] knew were false and showed that Dominguez was not credible.

(Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 14.) The Court addresses each challenge in turn.

Plaintiff expands on the first challenge by pointing out Dominguez's initial hesitation to name Plaintiff. (Id.) Plaintiff cites two non-binding cases for the proposition that a co-defendant hesitating before naming an alleged accomplice may make it so that no reasonable officer would believe the testimony. (Id. at 11-12.) First, in Reynolds v. City of Daytona Beach, the district court found the plaintiff-arrestee "set forth sufficient allegations to survive [the] [d]efendants' motion to dismiss" as to the plaintiff's false arrest claim. No. 6:18-cv-1921-Orl-28LRH, 2019 WL 2412433, at *6 (M.D. Fla. May 22, 2019). The plaintiff was arrested for physically assaulting his granddaughter by striking her in the face with a slipper. Id. at *2. The district court reasoned that "it could be concluded that [the officer-defendant] lacked both probable cause and arguable probable cause to effect [the] arrest" if either: (a) the officer-defendants "coaxed the [alleged victim] to state that [the plaintiff-arrestee] struck her with a shoe," which was alleged in the complaint; or (b) if the officer "knew that the [alleged victim's] story was false." Id. at *6. The district court explained the facts that could allow a reasonable person to find

the officer "knew" the story was false: "[the alleged victim] was (1) hesitant with her responses, (2) initially did not state that any physical contact occurred, and (3) provided three different versions of the story." Id. The complaint further offered many examples of how it was visible at the scene that the alleged victim's story was false, such as the fact that the officer "observed no physical injury to the [alleged victim]'s face" and that the plaintiff "was old and frail, and unlikely to be able to take a shoe from [the alleged victim]'s foot, who was much younger and mobile." Id. In sum, the Court showed that the alleged victim's story changed multiple times and physical evidence at the crime scene conflicted with the alleged victim's story.

Second, Plaintiff cites Hill v. New Orleans City, where the district court found the plaintiff-arrestee survived summary judgment on the Fourth Amendment claim because the facts the officer-defendant omitted from the affidavit "certainly appear[ed] to have been the result of deliberate manipulation in order to secure a finding of probable cause." No. 13-2463, 2015 WL 222185, at *12 (E.D. La. Jan. 13, 2015). The facts omitted were not just that the witness hesitated before identifying the plaintiff, but also that there was an exculpatory identification by the rape victim and physical evidence at the crime scene tending to show the plaintiff-arrestee was not the rapist. Id. The fact that the

victim hesitated was not enough on its own to raise an issue as to whether there was arguable probable cause.

Here, the fact that Dominguez hesitated at first before implicating Plaintiff does not make his testimony incredible especially because Defendant had proof the two associated around the days of the crime and that Plaintiff offered dates placing Plaintiff with Dominguez the night of the crime. In response to Defendant inquiring about the first time Dominguez saw Plaintiff, Dominguez did state, "[I]t was a couple weeks before that." (Dominguez's Int. at 1:12:20-40.) It is unclear what Defendant is referring to here because he otherwise consistently states he saw Plaintiff when he came to Augusta around June 11, 2015. Plaintiff also argues Dominguez said Plaintiff "took about a two-hour break during the robbery, which [Defendant] knew lasted only about two hours." (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 14.) The testimony clearly states as follows:

> Defendant: "And [Plaintiff] was with you for the entire Ramsgate?"
>
> Dominguez: "He went back to the car for about two hours afterwards. Said he was tired."

The Court's job is not to determine what Dominguez intended to say or all potential interpretations of his statement. Rather, the Court's job is to determine whether Defendant's interpretation was unbiased and reasonable. See Damali, 766 F. App'x at 828. It is

more than reasonable that, here, Dominguez said Plaintiff went back to the car after two hours of breaking into vehicles. Further, later in the interview, Dominguez stated something mumbled, which Defendant immediately repeated as Dominguez stating that Plaintiff "topped out after a couple hours. Sat in the car and waited." (Dominguez's Int., at 1:13:18-1:13:27.)

In Rodriguez, there was no evidence that the alleged victim had been struck apart from the alleged victim's statement to that affect, which only came out after multiple interviews with the officer. Furthermore, the accused consistently and clearly denied physically touching the alleged victim. In contrast, here, there is hesitation by Dominguez before implicating Plaintiff, Plaintiff's own testimony placing him with Dominguez on the early morning of the 12th, and two statements by Dominguez that reasonably do not contradict any known facts. These facts do not rise to the level of finding Defendant "knew" Dominguez's testimony was false.

As to Plaintiff's second challenge, Plaintiff cites no authority showing that animosity towards the named co-defendant makes the testimony incredible. The court in Craig addressed Plaintiff's third argument:

> [E]ven when a co-defendant's confession seeks to shift some of the blame to another, the co-defendant's admission of guilt to the core crime is enough indication of "reasonably trustworthy information" to satisfy probable cause. . . . Ordinarily, unless it is

> incredible or contradicts known facts to such an extent no reasonable officer would believe it, a co-defendant's confession that he and the suspect committed the crime can supply probable cause to arrest the suspect.

127 F.3d at 1045-46. Thus, the fact that there may be some self-interest in shifting the blame does not, on its own, make the testimony incredible. Furthermore, Plaintiff seems to argue Dominguez made statements about Plaintiff "in pursuit of a lesser sentence" (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 15-16), however, the discussion Plaintiff refers to was only related to drug activity in Gwinnett County and not related to the break-ins.[5] (Dominguez's Int., at 1:20:15-1:22:00.) Thus, there is no evidence that Dominguez implicated Plaintiff in the break-ins in an informant capacity.

Turning to Plaintiff's final argument, the Court must determine whether Dominguez's testimony "contradicts known facts to such an extent no reasonable officer would believe it." Craig, 127 F.3d at 1045. Plaintiff offers four pieces of evidence that allegedly contradict known facts and two pieces of evidence that Dominguez's testimony was unreliable because of memory difficulties. (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 16.) The first two pieces of evidence offered by Plaintiff in this section are not contradictory; they show Dominguez trying to shift the blame. The Court refers back to Section II(A)(1)(a)(ii)

[5] To protect any persons potentially implicated by this informant discussion, the Court includes only limited analysis concerning this point.

regarding Plaintiff's third and fourth pieces of allegedly contradictory evidence: (3) That Dominguez claimed responsibility for the items reported stolen; and (4) That "Dominguez alleged that [Plaintiff] used one of the stolen credit cards to buy gas. . . . However, [Defendant] knew or must have known that [Plaintiff] did not own a vehicle or have a valid drivers license." (Id.)

The final two pieces of evidence allegedly show Dominguez's statements were unreliable because of memory difficulties. (Id.) The first is that Dominguez stated he did not immediately remember the number of vehicles he broke into. (Id.) Moments later, however, Dominguez rejected Defendant's offered answer of "four or five" cars and stated it was "ten, eleven, twelve. Something like that." (Dominguez's Int., at 1:13:03-1:13:15.) Second, Plaintiff states Dominguez's testimony is unreliable because when Defendant asked what he remembered "near the Eleventh? Or before? . . . Two weeks [b]efore? A month before?," Dominguez responded, "[L]ike I said, I don't remember that far back." (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 16 (quoting Dominguez's Int., at 39:31-39:51).) Dominguez, however, offered many details about his time in Augusta, so the argument that Dominguez genuinely could not remember what happened is unfounded even if he struggled at times to remember specifics. After evaluating Plaintiff's arguments that Dominguez's testimony was unreliable, the Court finds that

there is insufficient evidence to show it was so unreliable as a matter of law that no reasonable officer would have believed him. As such, Defendant still retains his shield of immunity.

2. Fabrication of Evidence

Lastly, Plaintiff argues Defendant is not entitled to qualified immunity because Defendant fabricated evidence on the arrest warrant. (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J., at 20-22.) As an initial matter, there are two arrest warrants in the record, and the Parties dispute which arrest warrant is official. Defendant's Exhibit C (Doc. 14-4) is a signed and sealed affidavit and arrest warrant ("Arrest Warrant") whereas Plaintiff's Exhibit G (Doc. 25-5, at 31-32) is an unsigned and unsealed warrant application ("Warrant Application"). Although the Court must view the evidence in the light most favorable to the non-movant Plaintiff, there is no evidence that the Warrant Application was used to obtain the Arrest Warrant. Plaintiff argues that there is "a reasonable inference" that the Warrant Application could be reduced to admissible form at trial because Defendant "could testify as to whether he signed it." (Pl.'s Sur-Reply Opp'n Def.'s Mot. for Summ. J., at 16, 16 n.10.) Plaintiff did not depose Defendant to determine whether the unsigned and unsealed Warrant Application was used in obtaining the Arrest Warrant. Unlike Plaintiff's apparent assertion that the significance of the Warrant Application "lies solely in the fact

that it was made" (see id. at 16 n.10), the significance of the Warrant Application is only in its use in obtaining the Arrest Warrant. Plaintiff's argument that the Warrant Application being in the case file "raises a reasonable inference that [Defendant] submitted it" is lacking at this stage. (Id. at 16.)

Nevertheless, even were the Court to consider the Warrant Application, the Court finds Defendant did not fabricate evidence. Plaintiff does not argue that the evidence within the Warrant Application does not amount to probable cause.[6] Rather, Plaintiff argues that certain pieces of evidence contained within the Warrant Application are fabricated.

"[I]t is a violation of the Fourth Amendment's protections against unreasonable searches and seizures for an officer to present false information to a judicial officer in support of a warrant application." Slater v. Henderson, No. Civ.A. 5:03-CV-241, 2006 WL 1517068, at *1 (M.D. Ga. May 24, 2006). Thus, officers are not entitled to qualified immunity if they "fabricated or unreasonably disregarded[7] certain pieces of evidence to establish

[6] Plaintiff does argue that Defendant omitted evidence in the Warrant Application "showing [Defendant] knew Dominguez's implication of [Plaintiff] was unbelievable." (Pl.'s Resp. Opp'n Def.'s Mot. for Summ. J. at 21-22.) This additional evidence is similar to that offered by Plaintiff previously in an attempt to show Defendant lacked arguable probable cause. See Carter, 557 F. App'x at 908 ("[S]tatements made in support of a warrant need not actually be true, but they needed 'to be "truthful" in the sense that the information put forth is believed or appropriately accepted by the affiant as true.'") (quoting Franks v. Delaware, 438 U.S. 154, 166 (1978)). Because the Court already considered whether this additional evidence shows Defendant did not have arguable probable cause, the Court refers to its previous discussion.

[7] See *supra* note 6.

probable cause or arguable probable cause." Kingsland, 382 F.3d at 1233. The Supreme Court in Franks provided that a warrant is void if the warrant includes "a false statement [made] knowingly and intentionally, or with reckless disregard for the truth" and "the allegedly false statement is necessary to the finding of probable cause." 438 U.S. at 155-56. To prevail on his claim that Defendant fabricated evidence, then, Plaintiff must show Defendant included the allegedly false information in the arrest warrant either knowingly and intentionally or with reckless disregard for the truth.

Plaintiff argues Defendant fabricated two pieces of evidence. First, Plaintiff claims that "Dominguez never suggested that they 'went through the neighborhood breaking into vehicles together.'" (Pl.'s Resp. Opp'n Mot. for Summ. J., at 21.) Second, Plaintiff argues that there is no evidence "the robbery was in Ramsgate neighborhood 'because' they used to hang[]out near there.'" (Id.) After examining the record, the Court finds sufficient evidence showing Defendant reasonably believed both asserted facts.

First, Plaintiff challenges not the truth of Dominguez's statements, but that Dominguez never made the asserted statement at all. Throughout his interview, however, Dominguez suggested Plaintiff was with him during the break-ins working the other side of the street. (See, e.g., Dominguez's Int., at 30:50-31:01, 36:40, 37:45-38:18, 1:12:50-1:13:15.) Although Defendant used

different words than Dominguez, Dominguez clearly named Plaintiff as being with him during the break-ins. Thus, Plaintiff is incorrect when stating Dominguez never made the asserted statement.

Second, Plaintiff challenges the specific assertion that the break-ins were on Ramsgate Drive "because" Plaintiff and Dominguez used to hang out there. The Court finds that it was not unreasonable for Defendant to believe Plaintiff and Dominguez had a connection to Ramsgate Drive or the adjoining neighborhood. During Plaintiff's interview, it was discussed that Dominguez's brother used to live in that neighborhood and that Plaintiff used to hang out there with Dominguez. (Pl.'s Int. Pt. 2, at 18:20-18:30; see also Dominguez's Int., at 30:40-30:50.) Furthermore, Plaintiff told Defendant that Dominguez broke into cars on Ramsgate Drive many years prior to the incident in question. As such, it was not unreasonable for Defendant to believe Plaintiff and Dominguez returned to Ramsgate Drive because of their past connection to the area.

Having found the above, the Court finds that even if the Court accepts the unsigned and unsealed Warrant Application, Defendant did not fabricate any evidence therein used to establish probable cause. As such, Defendant maintains qualified immunity as to Plaintiff's federal malicious prosecution claim.

B. State Malicious Prosecution Claim

Because the Court finds Plaintiff's federal law claim fails, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claim under 28 U.S.C. § 1367. See Raney v. Allstate Ins. Co., 370 F.3d 1086, 1089 (11th Cir. 2004) ("We have encouraged district courts to dismiss any remaining state claims when, as here, the federal claims have been dismissed prior to trial.") As such, Plaintiff's state law claims are **REMANDED** to the State Court of Richmond County, Georgia.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment (Doc. 14) is **GRANTED** as to Plaintiff's federal law claims. The Court **REMANDS** Plaintiff's state law claims to the State Court of Richmond County, Georgia. As no claims remain, the Clerk is directed to **ENTER JUDGMENT** in favor of Defendant, **TERMINATE** all other pending motions, if any, and **CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 23rd day of March, 2020.

J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11554
Non-Argument Calendar

D.C. Docket No. 1:18-cv-00137-JRH-BKE

JUSTIN STROLIS,

Plaintiff-Appellant,

versus

LUCAS HEISE,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(November 3, 2020)

Before JORDAN, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Justin Strolis appeals the district court's grant of summary judgment in favor of Deputy Lucas Heise on his 42 U.S.C. § 1983 claim for malicious prosecution. He

contends the district court erred in granting qualified immunity because Deputy Heise lacked arguable probable cause to arrest him and fabricated evidence in the arrest warrant affidavit. After careful review of the record and the parties' briefs, we affirm.

I

On the morning of June 12, 2015, Richmond County deputies responded to an incident on Ramsgate Drive in Augusta, Georgia, where at least ten vehicles had been broken into. D.E. 34 at 2. After arriving at the scene at 7:11 a.m., the deputies learned that several belongings had been stolen from the vehicles, including (1) a total of $250, (2) two driver's licenses, (3) a school ID card, (4) six credit or debit cards, (5) a purse, (6) a wallet, and (7) a Tag Heuer watch. *Id.* Deputy Heise was assigned to the investigation and, when reviewing the case files and reports, he discovered a residential security video that captured a male breaking into vehicles in the driveway. *Id.*

Deputy Heise soon learned that two of the credit cards that had been stolen were being used. One of the cards was used at a Raceway gas station and to pay for an account on Match.com. *Id*. The other card was used to pay for a Boost Mobile account. *Id.* The Match.com account was traced to a user named Joshua Dominguez. *Id*.

During the investigation, Deputy Heise subpoenaed Match.com and Sprint Communications, the owner of Boost Mobile, to obtain all records associated with the two stolen credit cards. D.E. 34 at 3. The subpoena yielded records that traced to transactions Mr. Dominguez made. *Id*. A background check on Mr. Dominguez revealed several prior convictions, including a conviction for "entering an automobile with the intent to commit a theft" and convictions for "financial transaction card fraud." *Id*. The subpoenaed records also revealed that the IP address used to log into Mr. Dominguez's Match.com account came from the Masters Inn, a hotel in Augusta, Georgia. *Id*. The records from Boost Mobile indicated that between June 11, 2015, and July 1, 2015, Mr. Dominguez called or received calls from Mr. Strolis 124 times. *Id*.

On July 1, 2015, Deputy Heise asked Mr. Strolis to come to the Richmond County Sheriff's Office for an interview. Mr. Strolis agreed. *Id*. at 4. During the interview, Mr. Strolis acknowledged that he was a friend of Mr. Dominguez. He also stated that he met with Mr. Dominguez between June 10, 2015 and June 12, 2015, although he could not recall the exact date. *Id*. at 4. Mr. Strolis acknowledged that Mr. Dominguez called him to "hang out" while Mr. Dominguez was visiting Augusta from Atlanta. *Id*. Mr. Dominguez's mother had offered to pay for lodging at the Masters Inn, where Mr. Strolis stayed with Mr. Dominguez. *Id*. Mr. Strolis told Deputy Heise that on the day he spent time with Mr. Dominguez, the two men

went to a bar in downtown Augusta and then returned to the Masters Inn. *Id.* According to Mr. Strolis, Mr. Dominguez drove him home the next morning and they did not see each other again while Mr. Dominguez was in Augusta, but they spoke on the phone regularly. *Id.*

Although Mr. Strolis acknowledged all of these facts in the interview with Deputy Heise, he was uncertain about the exact dates he was with Mr. Dominguez. Mr. Strolis said he could not verify the dates he was with Mr. Dominguez because he had deleted that information from his phone. *Id.*

During the interview, Mr. Strolis adamantly denied any involvement with the vehicle break-ins. *Id.* He conceded, however, that he was aware Mr. Dominguez had broken into vehicles in the past and, specifically, that Mr. Dominguez had broken into vehicles near Ramsgate Drive seven years ago. *Id.* Because Mr. Strolis admitted to being with Mr. Dominguez around the date of the break-ins, was unable to confirm the dates he was with Mr. Dominguez, had communicated frequently on the phone with Mr. Dominguez during and after the break-ins, and had deleted all of the data from his phone, Deputy Heise suspected Mr. Strolis was involved in the break-ins. *Id.*

Deputy Heise continued his investigation by going to the Masters Inn to verify that Mr. Strolis and Mr. Dominguez stayed there during the relevant dates associated with the break-ins. *Id.* at 6. The hotel's personnel disclosed that Mr. Dominguez's

mother had rented a room from June 10, 2015 to June 12, 2015. *Id.* Because the Masters Inn only held video footage for ten days, it no longer had the footage from those dates. *Id.* Verizon Wireless was unable to provide location information from Mr. Strolis' phone because he had deleted his data log from Verizon's servers. *Id.* at 6-7.

On July 7, 2015, after learning that Mr. Dominguez was detained at Gwinnett County Jail in Duluth, Georgia, for charges unrelated to the break-ins, Deputy Heise interviewed him along with Gwinnett County Officer Michael Hardin. *Id.* at 7. Mr. Dominguez promptly confessed to the vehicle break-ins on Ramsgate Drive and acknowledged it was possible that Mr. Strolis was with him during the break-ins. *Id.* When asked whether Mr. Strolis had broken into any vehicles, Mr. Dominguez responded that Mr. Strolis "was working on the other side of the street." D.E. 34 at 7. Deputy Heise also asked Mr. Dominguez whether Mr. Strolis was with him for the entire criminal incident on Ramsgate Drive and Mr. Dominguez replied that, "[Mr. Strolis] went back to the car for about two hours afterwards. Said he was tired." *Id.*

Deputy Heise solicited another interview with Mr. Strolis on July 8, 2015, but Mr. Strolis declined. *Id.* The next day, Deputy Heise applied for and received an arrest warrant for Mr. Strolis on the charge of entering an automobile to commit a theft and Mr. Strolis was arrested that day. *Id.* at 8. The state later moved for and

received a *nolle prosequi* order for Mr. Strolis because of insufficient evidence to prove his guilt beyond a reasonable doubt. *Id.*

On August 3, 2018, Mr. Strolis filed a complaint in state court in part alleging malicious prosecution under 42 U.S.C. § 1983. D.E. 1-1 at 3. Deputy Heise removed the case to federal court. D.E. 2. Deputy Heise later moved for summary judgment, which the district court granted as to the federal claim for malicious prosecution on the grounds of qualified immunity. The district court remanded the remaining claim for malicious prosecution under Georgia law to state court. D.E. 34 at 9.

II

"We review the denial of summary judgment based on qualified immunity *de novo*, viewing the facts in the light most favorable to the nonmovant." *Williams v. Aguirre*, 965 F.3d 1147, 1156 (11th Cir. 2020) (quoting *Hunter v. City of Leeds*, 941 F.3d 1265, 1274 n.8 (11th Cir. 2019)). Summary judgment is warranted "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 making this determination, we 'view the evidence and all factual inferences therefrom in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in favor of the non-movant.'" *Skop v. City of Atlanta*, 485 F.3d 1130, 1136

(11th Cir. 2007) (quoting *Kingsland v. City of Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004)).

III

Deputy Heise contends he is entitled to qualified immunity on Mr. Strolis' claim of malicious prosecution. "Qualified immunity shields public officials from liability for civil damages when their conduct does not violate a constitutional right that was clearly established at the time of the challenged action." *Echols v. Lawton*, 913 F.3d 1313, 1319 (11th Cir. 2019) (internal quotation marks omitted). To receive qualified immunity, the officer "bears the initial burden to prove that he acted within his discretionary authority." *Dukes v. Deaton*, 852 F.3d 1035, 1041 (11th Cir. 2017). Officers who act within their discretionary authority are "entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). Mr. Strolis does not dispute that Deputy Heise acted within his discretionary authority, so he bears the burden of proving that Deputy Heise is not entitled to qualified immunity.

Mr. Strolis argues that Deputy Heise violated his clearly established right under the Fourth Amendment to be free from an unreasonable seizure as a result of a malicious prosecution. *See Whiting v. Traylor*, 85 F.3d 581, 583-84 (11th Cir.

1996). For this claim, he must prove both "a violation of [his] Fourth Amendment right to be free of unreasonable seizures" and "the elements of the common law tort of malicious prosecution." *Paez v. Mulvey*, 915 F.3d 1276, 1285 (11th Cir. 2019) (internal quotation marks omitted). Under the common-law elements of malicious prosecution, Mr. Strolis must prove that Deputy Heise "instituted or continued" a criminal prosecution against him, "with malice and without probable cause," that terminated in his favor and caused damage to him. *Id.* (internal quotation marks omitted).

Mr. Strolis contends that the district court erred in granting qualified immunity because Deputy Heise lacked arguable probable cause to arrest him and because the warrant affidavit contained overstatements and mischaracterizations. We disagree.

A police officer who applies for an arrest warrant can be liable for malicious prosecution if he should have known that his application "failed to establish probable cause," or if he made statements or omissions in his application that were material and "perjurious or recklessly false." *Black v. Wigington*, 811 F.3d 1259, 1267 (11th Cir. 2016) (quoting *Malley v. Briggs*, 475 U.S. 335, 345 (1986)) (citing *Franks v. Delaware*, 438 U.S. 154, 156, 165-71 (1978)). "Concomitantly, a police officer cannot be liable for malicious prosecution if the arrest warrant was supported by

probable cause." *Black*, 811 F.3d at 1267 (citing *Wood v. Kesler*, 323 F.3d 872, 882 (11th Cir. 2003)).

In *Franks v. Delaware*, 438 U.S. 154, 155 (1978), the Supreme Court explained that a warrant is constitutionally flawed if it contains a "false statement [made] knowingly and intentionally, or with reckless disregard for the truth." The Court made clear that when supporting a warrant, the statements need not actually be true; instead, a showing "that the information put forth is believed or appropriately accepted by the affiant as true" will suffice. *See id*. at 164-65.

We have ruled that uncorroborated statements from admitted co-conspirators and accomplices is sufficient to support a finding of probable cause as long as the testimony "is not on its face incredible or otherwise insubstantial." *Craig v. Singletary*, 127 F.3d 1030, 1044 (11th Cir. 1997) (en banc); *see also Damali v. City of East Point*, 766 F. App'x 825, 827 (11th Cir. 2019) ("[O]ur longstanding circuit precedent is clear that uncorroborated testimony from an admitted accomplice is sufficient to support probable cause, 'unless it is incredible or contradicts known facts to such an extent no reasonable officer would believe it.'") (quoting *Craig*, 127 F.3d at 1045).

Because the existence of valid probable cause defeats a claim of malicious prosecution, we consider whether probable cause supported Deputy Heise's affidavit for a warrant to arrest Mr. Strolis. *See Marx v. Gumbinner*, 905 F.2d 1503, 1506

(11th Cir. 1990); *see also Dahl v. Holley*, 312 F.3d 1228, 1236 (11th Cir. 2002)). After carefully reviewing the record, we conclude that Deputy Heise had arguable probable cause to believe Mr. Strolis was involved in the vehicle break-ins. First, during his interview, Mr. Dominguez admitted to breaking into the vehicles and stated Mr. Strolis was with him and was operating on the other side of the street. *Id.* at 7. And Mr. Strolis' own testimony—while somewhat equivocal—placed the two of them together on the morning of June 12, 2015, when the vehicle break-ins occurred. *Id.* at 31. Based on the surrounding circumstances and facts Deputy Heise had gathered from his investigation, Mr. Dominguez's revelation to Deputy Heise that Mr. Strolis was involved in the break-ins was not implausible, nor was it otherwise contradicted by known facts. *Id.* at 31-32.

In addition to Mr. Dominguez's incriminating statements about Mr. Strolis, independent evidence confirmed the reliability of Mr. Dominguez's confession, including Mr. Strolis' own testimony that he may have been with Mr. Dominguez on the date of the vehicle break-ins. D.E. 34 at 4. Furthermore, Verizon Wireless' subpoenaed records showed that Mr. Strolis' location information was not available because Mr. Strolis had deleted the data from his cell phone. *Id.* at 6-7. Finally, the phone records Deputy Heise reviewed showed that Mr. Strolis and Mr. Dominguez were in frequent communication around the dates of the vehicle break-ins. *Id.* at 27. These facts confirmed many of the details of Mr. Dominguez's story and indicate

that Deputy Heise had information beyond Mr. Dominguez's testimony to support his belief that there was probable cause to arrest Mr. Strolis in connection with the break-ins. *Id.*

Under this Circuit's binding precedent, the identification of Mr. Strolis by Mr. Dominguez—who was a known participant in the vehicle break-ins—was sufficient to establish probable cause and support Deputy Heise's affidavit for Mr. Strolis' arrest. *See Craig*, 127 F.3d at 1045-46 ("[U]nless it is incredible or contradicts known facts to such an extent no reasonable officer would believe it, a co-defendant's confession that he and the suspect committed the crime can supply probable cause to arrest the suspect."); *see also Damali*, 766 F. App'x at 827 ("Under [*Craig*], the identification of Mr. Damali by Ms. Sypho—who was a known participant in the Family Dollar Store robbery—was sufficient to establish probable cause and support Detective Gray's affidavit for Mr. Damali's arrest.").

As to Mr. Strolis' argument that Deputy Heise either fabricated evidence or made overstatements in the warrant affidavit that would prevent a magistrate from finding probable cause, this too lacks support in the record. The warrant affidavit submitted by Deputy Heise states that, "[w]hile co-defendant Joshua Dominguez was entering said vehicle, [Justin Strolis] entered other vehicles, without authority, on the other side of the street in the Ramsgate neighborhood." Appellee's brief at 21. This statement, rather than constituting a mischaracterization or an

overstatement, instead refers directly to portions of Mr. Dominguez's interview, during which Mr. Dominguez stated that Mr. Strolis was "working the other side of the street." D.E. 34 at 7. Although Deputy Heise used different language than Mr. Dominguez, it is clear Mr. Dominguez incriminated Mr. Strolis in the break-ins during his interview with Deputy Heise. This testimony, coupled with the information gathered during Deputy Heise's independent investigation, amounted to probable cause sufficient to support the arrest warrant.

Because we conclude Deputy Heise had probable cause to believe Mr. Strolis was involved in criminal activity and Deputy Heise did not fabricate evidence included in his warrant affidavit, we conclude that the district court properly granted summary judgment in favor of Deputy Heise based on qualified immunity.

IV

For the foregoing reasons, we affirm the district court's grant of summary judgment in favor of Deputy Heise.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11554-BB

JUSTIN STROLIS,

Plaintiff - Appellant,

versus

LUCAS HEISE,
individually, for actions taken under color of law,
as a deputy with the Augusta Richmond County Sheriff's Department,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JORDAN, LAGOA, and BRASHER, Circuit Judges

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JUSTIN STROLIS, PLAINTIFF, vs. LUCAS HEISE, individually, for actions taken under color of law, as a deputy with the Augusta Richmond County Sheriff's Department, DEFENDANT.	CIVIL ACTION FILE NO. 1:18-cv-00137-JRH-BKE DECLARATION OF JUSTIN STROLIS

DECLARATION OF JUSTIN STROLIS

I, Justin Strolis, declare under penalty of perjury under the laws of the United States of America that the following is true and correct based on my personal knowledge.

1. My name is Justin Strolis, I am an adult competent to make this statement and my signature is below.
2. On July 1, 2015, Investigator Heise interrogated me for about two hours, and I told him I had spent an evening and night with Dominguez, and then he had taken me home the next day, that I then spent that night at home with my father, and had been taken to work early the next morning by my father, and that I had not participated in burglarizing cars.
3. During this interrogation, I gave him information about the car I had ridden in with Joshua Dominguez on July 10 and 11, 2015, telling him I thought it was a Mercury Sable, and when he asked about the color, I said that it was pretty dark.
4. After the interrogation, I had the impression that I was to notify Heise if I learned anything else, and on July 2, Dominguez' mother called me and said Joshua had been

arrested, so on July 2, I called Heise and told him about the arrest, and again Heise asked some questions, and he again asked about the vehicle I had ridden in with Joshua Dominguez.

5. During this phone call, I again told him the car was a Mercury Sable, dark in color.
6. During this phone call, many of the questions Investigator Heise asked were the same as the ones he asked during the interrogation on July 1, and then I informed Investigator Heise that I had no new information, and that I would call him if I discovered any new information.
7. On July 8, Investigator Heise called me again, at approximately 10:00 AM, while I was working at the Bi-Lo Grocery Store at 1111 Edgewood Avenue, North Augusta, SC 29841.
8. I informed Investigator Heise that I was very busy managing the store's meat department.
9. He asked me about the car again.
10. I repeated the information about a dark Mercury Sable, that I told him during the interrogation on July 1 and the July 2 phone call.
11. During the call from Heise on July 8, I had to put him on hold several times, so I could give instructions to the employees I supervised and managed.
12. When I told Heise that I was too busy to talk, he said that I needed to return to the Sheriff's Office to give another statement.
13. I told him that I was very busy and that I had already given him all the information I had.
14. Because they were the same questions I had been asked during the interrogation on July 1 and the phone call on July 2, I told him that I did not want to answer any more questions.

15. I did not want to be interrogated at the Sheriff's office because I was afraid it would take a long time again like it had on July 1, and was afraid of the confusing and abusive way Heise would ask a question and then ignore my answer, his confusing presentation of dates, and then try to change what I was saying, that I had told him he could check with my father and check my work records, and had told him I did not burglarize any cars, and did not know how else I could tell him, and his oddly timed laughter and pacing around the room, and talking about waterboarding Afghani prisoners.
16. I also did not want to go to the Sheriff's office because I told him during the interview that my work records could verify the dates, I also said that my father could verify where I was, but Heise wasn't interested in this.
17. Heise just kept pushing the dates that he was fabricating for me, and he refused to accept my request to check the sources that I could help him easily get to verify the fact that I had not been with Dominguez when he was breaking into cars in Augusta, but was at my father's house, asleep, and then got up early and went to work.
18. When I told him that I would not go to the Sheriff's office without a lawyer, Heise then became upset, and indicated that I would regret not talking to him, and he said in that case, he would get a warrant for my arrest.
19. On July 9, Investigator Heise had me arrested while I was working at the Bi-Lo Grocery.
20. After the arrest Heise came to the jail in Aiken County, and began to interrogate me again, and said, "Sorry it had to come to that, Justin."
21. I said, "Well, you made good on your promise, didn't you?"
22. He said, "I'm a man of my word."

23. I saw Investigator Heise only two times: (1) when he interrogated me on July 1; and (2) when he arrested me on July 9.

24. I spoke with Investigator Heise on the phone only three times: (1) when he called me on July 1 to give a statement at the Sheriff's Office; (2) when we talked on July 2 only to repeat many of the questions he asked me during the interrogation; and (3) when he called me on July 8 to again ask the same questions he asked during the interrogation on July 1 and the phone call on July 2.

25. Outside of these phone calls and meetings, Investigator Heise made no contact with me during his investigation, nor did he ask me to get my father on the phone or any work records.

26. At my father's request, I retrieved the attached work records, which I printed from the Bi-Lo computer system. See Attachment #1.

Respectfully submitted this 11th day of July, 2019.

Justin Strolis

Exhibit C

STATE OF GEORGIA

COUNTY OF RICHMOND

SUPERIOR COURT STATE WARRANT # 004

May TERM, 2015

CLERK OF SUPERIOR, STATE AND JUVENILE COURT FILED FOR RECORD

2015 JUL -9 PM 2:03

CLERK OF SUPERIOR COURT RICHMOND COUNTY, GA

AFFIDAVIT

Personally came **Lucas J. Heise**, who on oath says that to the best of his/her personal knowledge and belief, **Justin Strolis** did, on **Jun 12, 2015** at approximately **2:00 AM** in Richmond County, Georgia, commit the offense of: **ENTERING AUTOMOBILE TO COMMIT A THEFT - Felony** in violation of O.C.G.A **16-8-18**, a **Felony** under the laws of the state of Georgia, in that said accused on the above stated date and time, **with intent to commit a theft, did enter an automobile, to-wit: a green 2003 Suzuki Vitara bearing a Georgia tag of PNE2952, with VIN: 2STE5V236104880, the property of and removed a credit card bearing number there from, according to the owner. While co-defendant Joshua Dominguez was entering said vehicle, said accused entered other vehicles, without authority, on the other side of the street in Ramsgate neighborhood. Said offense occurred at 3123 Edinburgh Drive in Augusta, Richmond County, Georgia.**

And this affiant makes this affidavit that a warrant may be issued for his arrest.

Sworn to and subscribed before me,

9 July 2015

X

Affiant, **Lucas J. Heise**

WARRANT

To any Sheriff, Deputy Sheriff, Coroner, Constable, Marshal or other Law Enforcement Officer in Georgia

Greetings:

For sufficient cause made known to me in the aforementioned affidavit, incorporated by reference herein, and other sworn testimony establishing probable cause for the arrest of the accused, you are hereby commanded to arrest the defendant named in the foregoing affidavit, charged by the prosecutor therein with the offense against the laws of the State named in said affidavit, and bring him/her before judicial officer of Georgia, to be dealt with as the law directs.

HEREIN FAIL NOT.

9 July 2015

Civil Court
Richmond County, Georgia

I, Nicole D. Lovett, Deputy Clerk of the Civil Court of Richmond County, do hereby certify the foregoing page is a true copy of the original of file and of record in this office. Witness my signature and the seal of said court hereto affixed at Augusta, Georgia this the 9th day of July, 2015.