App. 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 18-12238

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D.C. Docket No. 6:15-cv-00469-GKS-DCI

SEANA BARNETT,

Plaintiff-Appellant,

versus

SARA MACARTHUR, et al.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Florida

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(April 15, 2020)

Before JORDAN, GRANT, and DUBINA, Circuit Judges.

JORDAN, Circuit Judge:

In the early morning hours of March 15, 2014, Seminole County Deputy Sara MacArthur arrested Seana Barnett on suspicion of driving under the influence of alcohol and transported her to the Seminole County Jail. At the Jail, Ms. Barnett twice took a breathalyzer test, and both times the results were a blood alcohol level of 0.000. Though the tests

established that Ms. Barnett was not intoxicated by alcohol and there was no evidence that she was impaired by any other drug or substance, she was detained for eight hours—even after she posted bond—pursuant to the DUI eight-hour "hold policy" of the Seminole County Sheriff's Office. Two months later, the state entered a *nolle prosequi* on the DUI charge against Ms. Barnett.

Ms. Barnett sued Deputy MacArthur and the Sheriff of Seminole County under 42 U.S.C. § 1983, alleging that they violated her Fourth Amendment rights by falsely arresting her and by unlawfully detaining her. She also asserted state-law claims for false imprisonment and malicious prosecution. Deputy MacArthur and the Sheriff moved for summary judgment on all claims. The district court denied qualified immunity to Deputy MacArthur, and we affirmed that ruling on interlocutory appeal. *See Barnett v. MacArthur*, 715 F. App'x 894 (11th Cir. 2017).

The district court ultimately granted summary judgment in part against Ms. Barnett but allowed the § 1983 unlawful arrest and detention claim against Deputy MacArthur and the state-law false imprisonment claim against the Sheriff to proceed to trial. As relevant here, the district court ruled that the Sheriff—as a representative of the County—could not be liable under § 1983 pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978), because his "hold policy" was permitted by Florida law. The jury ultimately returned a verdict in favor of the defendants on the two claims that survived summary judgment.

Ms. Barnett appeals the district court's grant of summary judgment on some of her claims and the denial of her motion for a new trial following the jury's verdict on the remaining two claims. We reverse the entry of summary judgment in favor of the Sheriff on the *Monell* claim related to Ms. Barnett's detention, but summarily affirm in all other respects.[1]

## I

We begin by setting out the evidence presented at summary judgment on the detention claim against the Sheriff under *Monell*.

### A

On March 15, 2014, at around 6:00 p.m., Ms. Barnett went out to dinner with her friend Alicia Norwood in downtown Orlando. After dinner, they walked around the area. At the end of the evening, Ms. Barnett drove Ms. Norwood home, from downtown Orlando back to Seminole County, in Ms. Norwood's car.

On the drive home, at around 3:25 a.m., Ms. Barnett stopped for about 8 to 10 seconds at a green light. She stopped to assess which way to turn because it was dark, she was unfamiliar with the area, and Ms. Norwood was providing confusing directions, initially

[1] For example, the district court correctly granted summary judgment to the Sheriff on Ms. Barnett's state-law malicious prosecution claim. That claim, which requires a showing of malice, is barred by Fla. Stat. § 768.28(9)(a). *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1330 (11th Cir. 2015).

telling her to make a left and then changing her mind about which way to go to take a shortcut home. There were no other cars nearby.

After seeing the vehicle stop at a green light, Deputy MacArthur activated her in-car video and followed Ms. Barnett for a short distance before initiating a traffic stop. According to Deputy MacArthur, she observed Ms. Barnett driving about 10 miles under the speed limit (35 miles per hour in a 45-miles-per-hour zone), drifting from left to right within her lane, and varying her speed between 35 and 40 miles per hour. Ms. Barnett disputes that she was driving erratically. She contends that the video shows no perceptible drifting in her lane and does not show her varying her speed, other than when she slowed down to turn left. For purposes of our discussion, we accept Ms. Barnett's version of events.

When Deputy MacArthur approached the car and spoke to Ms. Barnett, she asked for her driver's license, registration, and proof of insurance. Ms. Barnett provided her driver's license, but according to Deputy MacArthur, she needed to be reminded again to provide her registration and proof of insurance. She attempted to open the glove compartment to retrieve the documents, but "fumbled" with the button and was unable to open it. The parties dispute whether Ms. Barnett's eyes were "glassy" and "bloodshot," so we assume they were not.

Before it became clear to Ms. Barnett that she was being investigated for driving under the influence, Deputy MacArthur asked her if she had any medical

issues. She said no, thinking that she was being asked if she had any medical conditions—such as a seizure disorder—that would prevent her from driving safely.

Deputy MacArthur then asked Ms. Barnett if she had been drinking, and she responded that she had a glass of wine with dinner at around 6:00 p.m. that evening. After that, Deputy MacArthur asked if she was willing to participate in field sobriety exercises. Ms. Barnett agreed, but she did not know what the exercises would entail. Deputy MacArthur proceeded to conduct horizontal and vertical gaze nystagmus evaluations, a walk and turn exercise, a one-leg stand, a finger-to-nose test, and a number-counting exercise. Upon realizing what the tests involved, Ms. Barnett repeatedly told Deputy MacArthur that her performance could be affected by injuries she sustained in an automobile accident in October 2013, including muscle tears in her leg for which she was going to physical therapy.[2]

This was Deputy MacArthur's first or second time making a DUI arrest, and the parties dispute whether she explained, administered, and interpreted the results of the field sobriety tests properly. The parties also dispute how well Ms. Barnett performed on the field sobriety tests, some of which occurred outside the

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[2] Ms. Barnett had also undergone neck surgery just two days earlier. Ms. Barnett asserts in her brief that she told Deputy MacArthur about this surgery after learning what the field sobriety tests entailed, but it is unclear from the record whether Deputy MacArthur was informed about the neck surgery. *See* D.E. 64 at 211.

view of Deputy MacArthur's dashboard video camera. Deputy MacArthur claims that she witnessed multiple indicators of impairment, while Ms. Barnett denies there were any such indicators. Again, we accept Ms. Barnett's factual assertions.

Deputy MacArthur arrested Ms. Barnett for driving under the influence. On the way to the Seminole County Jail, Deputy MacArthur told Ms. Barnett that she thought she was impaired because of alcohol.

At her deposition, Deputy MacArthur testified that there was no indication that Ms. Barnett had been using drugs. Specifically, she did not observe any evidence of drugs in Ms. Barnett's vehicle, find any drugs in her purse, or smell marijuana in her car. Ms. Barnett, moreover, did not slur or speak in a manner that suggested she was impaired. Indeed, Deputy MacArthur testified that she did not have probable cause to believe that Ms. Barnett was under the influence of drugs. *See* D.E. 64 at 104 ("Q. Well, you didn't have any probable cause to believe she was under any drugs or any kind of prescription medicine or anything when you arrested her, correct? . . . A. Correct."). In the arrest and offense reports, Deputy MacArthur indicated that the arrest was alcohol-related and that any drug use was unknown: "Alcohol Related: Y"; "Drug Related: U." *See* D.E. 35-4 at 2; D.E. 64-14 at 1.

**B**

When Ms. Barnett arrived at the Jail, Keith Betham, the breath test operator, observed her for 20

minutes and then conducted breathalyzer testing. Ms. Barnett provided two breath samples, both of which registered 0.000 for alcohol. Mr. Betham testified at his deposition that after observing Ms. Barnett, he did not see any signs that she was impaired by drugs. He nevertheless obtained a urine sample from Ms. Barnett at Deputy MacArthur's request. The urine test results, which came back around four weeks later, confirmed that Ms. Barnett did not have any drugs in her system.

Even though the breathalyzer tests established that Ms. Barnett was not intoxicated, she was required to remain at the jail for eight hours from the time of her arrest pursuant to the "hold policy" of the Seminole County Sheriff's Office. Mr. Betham testified that under this policy, even if a DUI arrestee's breathalyzer test results are 0.000, and even if there is no indication that the arrestee is under the influence of drugs, she still must wait eight hours from the time of the arrest to be released—even if she posts bond.

Shane Love, the Captain of Operations at the Jail, confirmed at his deposition that it is the policy of the Seminole County Sheriff's Office to detain DUI arrestees for at least eight hours, even if their breathalyzer test results are 0.000. Deputy MacArthur similarly testified that once she arrested Ms. Barnett, she was going to have to stay in jail for eight hours pursuant to this policy.

In accordance with the hold policy, Ms. Barnett's jail arrest card stated that she was arrested at 4:10 a.m. and noted that she "can go at 12:10"—eight hours

later. D.E. 64-17. Ms. Barnett ultimately was released a little over eight hours from the time of her arrest, at 1:13 p.m., despite having posted bond at 10:58 a.m.

## II

Ms. Barnett challenges the district court's grant of summary judgment in favor of the Sheriff on her § 1983 detention claim under *Monell*. She argues that she was unlawfully detained pursuant to the Sheriff's hold policy, which violates the Fourth Amendment because it requires continued detention even where, as here, there is no probable cause for such detention. Exercising plenary review, *see*, *e.g.*, *Ft. Lauderdale Food Not Bombs v. City of Ft. Lauderdale*, 901 F.3d 1235, 1239 (11th Cir. 2018), and viewing the evidence in the light most favorable to Ms. Barnett, *see*, *e.g.*, *Scott v. Harris*, 550 U.S. 372, 378 (2007), we agree with her that the district court should not have entered summary judgment in favor of the Sheriff on her detention claim.[3]

### A

The detention claim against the Sheriff in his official capacity is in effect a claim against Seminole

[3] Ms. Barnett does not (and cannot) argue that she was arrested as a result of the Sheriff's hold policy. She asserts only that she was unlawfully detained based on the policy. So, for purposes of our discussion on the *Monell* claim, we assume without deciding at the summary judgment stage that Deputy MacArthur had probable cause to arrest Ms. Barnett.

County. *See Monell*, 436 U.S. at 690 n.55 (explaining that "official capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent"). A municipality can be sued directly under § 1983 when one of its customs, practices, or policies causes a constitutional injury. *See id.* at 690. The plaintiff must demonstrate, however, that the municipality was the "moving force" behind the injury. *See Bd. of Cty. Comm'rs of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 404 (1997). As we explain, Ms. Barnett presented sufficient evidence that she was unconstitutionally detained as a result of the Sheriff's hold policy to survive summary judgment.

The Fourth Amendment, in relevant part, protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. One of the Amendment's protections is the right to be free from arrest without probable cause. *See Kingsland v. City of Miami*, 382 F.3d 1220, 1232 (11th Cir. 2004) ("Plainly, an arrest without probable cause violates the right to be free from an unreasonable search under the Fourth Amendment.") (citation and internal quotation marks omitted).

Probable cause exists when "an arrest is objectively reasonable based on the totality of the circumstances." *Id.* "This standard is met when the facts and circumstances within the officer's 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, is committing, or is about to commit an offense." *Id.*

(citation and internal quotation marks omitted). Stated differently, probable cause to arrest "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *D.C. v. Wesby*, 138 S. Ct. 577, 586 (2018) (citation and internal quotation marks omitted). An officer's "on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest." *Gerstein v. Pugh*, 420 U.S. 103, 113–14 (1975). As we have noted, we assume for summary judgment purposes that Deputy MacArthur had probable cause to arrest Ms. Barnett.

But probable cause to make a warrantless arrest is not the end of the matter, for "[d]etention [in jail] . . . is a type of seizure of the person to which Fourth Amendment protections attach." *Alcocer v. Mills*, 906 F.3d 944, 953 (11th Cir. 2018). Just as "probable cause may cease to exist after a warrant is issued," *United States v. Grubbs*, 547 U.S. 90, 95 n.2 (2006), it may also dissipate after an officer makes a warrantless arrest. *See*, *e.g.*, *BeVier v. Hucal*, 806 F.2d 123, 128 (7th Cir. 1986) ("The continuation of even a lawful arrest violates the Fourth Amendment when the police discover additional facts dissipating their earlier probable cause."); *McConney v. City of Houston*, 863 F.2d 1180, 1185 (5th Cir. 1989) ("[O]nce a responsible officer actually does ascertain beyond a reasonable doubt that one who has been so arrested is not intoxicated, the arrestee should be released."); *Nicholson v. City of Los Angeles*, 935 F.3d 685, 691 (9th Cir. 2019) ("It is

well-established that a person may not be arrested, or must be released from arrest, if previously established probable cause has dissipated.") (citation and internal quotation marks omitted); 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 5.3(d) (5th ed. 2012) ("Even if a particular arrest was lawfully made upon probable cause to believe that the person arrested had committed an offense, additional information coming to the attention of the police after the arrest may establish an absence of probable cause, in which case the arrested person is entitled to be released."). *Cf. Thompson v. Olson*, 798 F.2d 552, 556 (1st Cir. 1986) (addressing false imprisonment claim under Maine law: "following a legal warrantless arrest based on probable cause, an affirmative duty to release arises only if the arresting officer ascertains beyond a reasonable doubt that the suspicion (probable cause) which forms the basis for the privilege to arrest is unfounded").

**B**

It is undisputed that the Sheriff's hold policy mandates an eight-hour detention of a person like Ms. Barnett who is charged with a DUI—even if her breathalyzer test results show that her blood alcohol content is .000 and even if she posts bond. The summary judgment evidence in the district court (including the testimony of Mr. Betham and Captain Love) makes that clear, and the Sheriff concedes the point in his brief. *See* Answer Br. at 20–28.

In granting summary judgment in favor of the Sheriff, the district court reasoned that the hold policy is consistent with Florida Statute § 316.193(9), which allows the option of holding a person for eight hours after a DUI arrest. *See* D.E. 111 at 18. This constituted error for two independent reasons. First, unlike the hold policy, § 316.193(9) does not mandate the blanket eight-hour detention of all DUI arrestees. Second, even if it did, the statute could be unconstitutional as applied to Ms. Barnett through the Sheriff's hold policy.

The language of § 316.193(9) is as follows:

> A person who is arrested for a violation of this section may not be released from custody:
>
> (a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893 and affected to the extent that his or her normal faculties are impaired;
>
> (b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; *or*
>
> (c) Until 8 hours have elapsed from the time the person was arrested.

(emphasis added). Subsections (a), (b), and (c) are separated by an "or," and that word is "almost always disjunctive[.]" *United States v. Woods*, 571 U.S. 31, 45 (2019). So, as we explained in Deputy MacArthur's interlocutory appeal, "[§] 316.193 simply requires one of three conditions to be met to ensure sobriety prior to releasing a DUI arrestee, one of which is an eight

hours lapse from the time of arrest and one of which is a blood-alcohol level below 0.05." *Barnett*, 715 F. App'x at 908. Unlike the Sheriff's hold policy, pursuant to which officers are *required* to detain DUI arrestees for eight hours, § 316.193 gives officers discretion in determining when to release a DUI arrestee and allows for three release options (only one of which is an eight-hour hold). *See id.* "When an officer exercises this discretion under Florida law, the *Constitution* requires her to exercise her discretion in a way that does not violate a person's Fourth Amendment rights." *Id.*

But even if the Sheriff's hold policy were consistent with (or mandated by) § 316.193, the existence of a state statute does not answer the federal constitutional question. It has long been understood that a state law must conform to the Constitution, and if it does not do so it must yield. *See*, *e.g.*, *M'Culloch v. Maryland*, 17 U.S. 316, 361 (1819) (explaining that, due to the Supremacy Clause, "the states are prohibited from passing any acts which shall be repugnant to a law of the United States"). The same goes for a municipal ordinance or policy. *See*, *e.g.*, *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 58–59 (1991) (holding that a county policy which provided for probable cause determinations within two days of a warrantless arrest, exclusive of weekends and holidays, was inconsistent with the Fourth Amendment). So, the fact that § 316.193 permits holding a DUI arrestee for up to eight hours does not immunize the Sheriff's hold policy, as applied to Ms. Barnett, from constitutional scrutiny. *See Cooper v. Dillon*, 403 F.3d 1208, 1222–23 (11th

Cir. 2005) (holding that a city could be liable for enforcing an unconstitutional policy, even though the policy was consistent with a Florida statute, because the statute itself was unconstitutional). *See also Christensen v. Park City Mun. Corp.*, 554 F.3d 1271, 1278–80 (10th Cir. 2009) (holding that a municipality can be held liable under *Monell* if its ordinance is applied unconstitutionally); *Amnesty America v. Town of West Hartford*, 361 F.3d 113, 125–26 (2d Cir. 2004) (same).[4]

On this record, Ms. Barnett's detention claim against the Sheriff must be decided by a jury. Viewing the evidence in the light most favorable to her, Ms. Barnett was kept in custody pursuant to (and because of) the Sheriff's mandatory eight-hour hold policy after her two breathalyzer test results registered blood-alcohol readings of 0.000 and after she posted bond. The only remaining question then, is whether a reasonable jury could find that the hold policy, as applied to Ms. Barnett, violated her Fourth Amendment rights. On this issue, we are persuaded by the Fifth Circuit's opinion in *McConney.*

In *McConney*, the plaintiff claimed that after being arrested for public intoxication, he was unlawfully detained pursuant to a city policy requiring anyone who was arrested on such a charge to be held for four hours, even after the officers learned that he was not

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[4] The Sheriff cannot assert qualified immunity because he is being sued in his official capacity under a municipal liability theory. *See Owen v. City of Indep.*, 445 U.S. 622, 638 (1980) (holding that a "municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983").

intoxicated. *See* 863 F.2d at 1185. The Fifth Circuit affirmed the district court's entry of judgment against the city in accordance with the jury's verdict. *See id.* at 1188. It explained that "a person may constitutionally be detained for at least four or five hours following a lawful warrantless arrest for public intoxication without the responsible officers having any affirmative duty during that time to inquire as to whether the person is intoxicated, even if requested to do so." *Id.* at 1185. But, the Fifth Circuit cautioned, "once a responsible officer actually does ascertain beyond a reasonable doubt that one who has been so arrested is in fact not intoxicated, the arrestee should be released." *Id.* The Fifth Circuit based its decision in part on a First Circuit state-law false imprisonment case involving suspected intoxication, which had adopted this same standard from the Restatement (Second) of Torts § 134, comment f. *See id.* (citing *Thompson*, 798 F.2d at 556).

We agree with the Fifth Circuit. Following a warrantless DUI arrest based on probable cause, officers do not have an affirmative Fourth Amendment duty to investigate or continually reassess whether the arrestee is or remains intoxicated while in custody. But where, as here, the officers seek and obtain information which shows beyond a reasonable doubt that the arrestee is not intoxicated—in other words, that probable cause to detain no longer exists—the Fourth Amendment requires that the arrestee be released. Here, as in *McConney*, a reasonable jury viewing the evidence in the light most favorable to Ms. Barnett

could find that her continued detention pursuant to the Sheriff's eight-hour hold policy violated the Fourth Amendment.[5]

First, a jury could find that the officers at the Seminole County Jail obtained information showing beyond a reasonable doubt that there was no longer probable cause to continue holding Ms. Barnett. Her two breathalyzer test results resulted in blood-alcohol readings of 0.000, which indicated that she had no alcohol whatsoever in her system. And Deputy MacArthur and Mr. Betham admitted there was no evidence that Ms. Barnett—who did not smell of marijuana or slur her words—was under the influence of drugs.

Second, a jury could easily find that the Sheriff's hold policy was the "moving force" behind the Fourth Amendment violation (i.e., Ms. Barnett's continued detention). *See Brown*, 520 U.S. at 404. Ms. Barnett's jail arrest card stated that she "can go at 12:10," eight hours after her arrest, which is consistent with the mandatory hold policy. Mr. Betham and Captain Love testified that DUI arrestees are detained for eight hours under the hold policy. And, Mr. Betham told Ms. Barnett that although there was nothing in her system, she had to stay in custody for eight hours.

One of our own cases supports the conclusion we reach. In *Alcocer v. Mills*, we held under the Fourth Amendment that officials could not continue to hold a

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[5] Our holding does not mean that the hold policy is categorically unconstitutional. That is a question we do not and need not decide.

person arrested for driving on a suspended license after she posted bond unless they could "show they had probable cause" to believe she had committed another offense. *See Alcocer*, 906 F.3d at 953–54 ("Any facts that might have underpinned the conclusion that [the plaintiff] was in the United States illegally were not a part of the probable cause that supported [her] original detention, which was for the misdemeanor of driving with a suspended license. For this reason, independent probable cause was required to warrant [the plaintiff's] continued detention after she had satisfied all conditions of her bond on her original detention."). *Alcocer* is consistent with our conclusion that where police have no probable cause to detain an arrestee, the arrestee must be released.[6]

**C**

The Sixth Circuit has rejected the argument that "[w]hen subsequent developments disprove the correctness of a previous police determination that probable cause exists, . . . the police no longer have

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[6] In *State v. Atkinson*, 755 So. 2d 842, 845 (Fla. 5th DCA 2000), Florida's Fifth District Court of Appeal held that § 316.193(9) "is not unconstitutional in allowing temporary detention of an apparently drunk driver, nor does such detention give rise to any viable claim of double jeopardy by the detainee at any subsequent criminal trial." We have considered *Atkinson*, but conclude that it is distinguishable because in that case the arrestees, unlike Ms. Barnett, had "refused a breath test or were measured as having an unlawful alcohol level." *Id.* at 843. There was, in other words, no evidence in *Atkinson* demonstrating beyond a reasonable doubt that the arrestees were not intoxicated.

justification under the Fourth Amendment to continue the incarceration, and must release the suspect." *Peet v. City of Detroit*, 502 F.3d 557, 565 (6th Cir. 2007). We choose not to follow *Peet* for two reasons.

First, the Sixth Circuit incorrectly suggested that there were no cases or authorities supporting the Fourth Amendment proposition it rejected. *See id.* When *Peet* was decided in 2007, however, the Fifth and Seventh Circuits had already held under the Fourth Amendment that a person must be released from custody if the probable cause that existed for her arrest has dissipated. *See BeVier*, 806 F.2d at 128; *McConney*, 863 F.2d at 1185. For some reason, the Sixth Circuit did not acknowledge, consider, or discuss those decisions.

Second, the Sixth Circuit was concerned that investigators would have an affirmative duty to re-evaluate the matter of probable cause with every new piece of information or evidence they received. *See id.* The Fourth Amendment standard we announce, borrowed from the *McConney* decision of the Fifth Circuit, does not place on police officers an affirmative and independent duty to further investigate in order to continually reassess the matter of probable cause in warrantless arrest cases. It only requires that the officers release an arrestee if evidence they obtain demonstrates beyond a reasonable doubt that there is no longer probable cause for the detention. That standard, we believe, properly balances the competing liberty interests and law enforcement concerns and remains faithful to the Fourth Amendment's textual

command that seizures and detentions be reasonable. *See Riley v. California*, 573 U.S. 373, 381 (2014) ("As the text makes clear, the ultimate touchstone of the Fourth Amendment is reasonableness.") (citation and internal quotation marks omitted).[7]

**D**

One final matter warrants discussion. The Sheriff contends that he cannot be liable under *Monell* because the jury found in favor of Deputy MacArthur on the individual Fourth Amendment detention claim against her. As the Sheriff sees things, the jury verdict means that there was no Fourth Amendment violation, and without a Fourth Amendment violation there cannot be municipal liability under *Monell*. *See* Answer Br. at 17–20.

The syllogism is superficially seductive, but on this record it does not work. It is true, as the Sheriff says, that "an inquiry into a governmental entity's custom or policy is relevant only when a constitutional deprivation has occurred." *Rooney v. Watson*, 101 F.3d 1378, 1381 (11th Cir. 1996). But the problem for the Sheriff is that the jury verdict in favor of Deputy MacArthur does not constitute a finding that Ms. Barnett

[7] We express no view on what the Fourth Amendment may or may not require when an arrest is made pursuant to a valid warrant and the arrestee claims that new evidence has caused probable cause to dissipate. For one case addressing such a scenario, see *Brady v. Dill*, 187 F.3d 104, 111 (1st Cir. 1999).

suffered no Fourth Amendment violation as a result of the detention.

We have held that "*Monell* . . . and its progeny do not require that a jury must first find an individual defendant liable before imposing liability on local government." *Anderson v. City of Atlanta*, 778 F.2d 678, 686 (11th Cir. 1985). For example, municipal liability can exist if a jury finds that a constitutional injury is due to a municipal policy, custom, or practice, but also finds that no officer is individually liable for the violation. *See id.* ("[I]f the jury were to find, as it did, that the deprivation of Mr. Anderson's constitutional rights was a result of understaffing, then it would logically find no fault on the part of the individual arresting officers.").

This is not a controversial concept, as many of our sister circuits have come to the same conclusion. *See Garcia v. Salt Lake Cty.*, 768 F.2d 303, 310 (10th Cir. 1985) ("*Monell* does not require that a jury find an individual defendant liable before it can find a local governmental body liable [under § 1983]. . . . Although the acts and omissions of no one employee may violate an individual's constitutional rights, the combined acts or omissions of several employees acting under a governmental policy or custom may violate an individual's constitutional rights."); *Fagan v. City of Vineland*, 22 F.3d 1283, 1292 (3d Cir. 1994) (en banc) ("We hold that in a substantive due process case arising out of a police pursuit, an underlying constitutional tort can still exist even if no individual police officer violated the Constitution. . . . A finding of municipal liability does not depend automatically or necessarily on the liability of

any police officer."); *Barrett v. Orange Cty. Human Rights Comm'n*, 194 F.3d 341, 350 (2d Cir. 1999) ("We agree with our sister circuits that under *Monell* municipal liability for constitutional injuries may be found to exist even in the absence of individual liability, at least so long as the injuries complained of are not solely attributable to the actions of named individual defendants."); *Speer v. City of Wynne*, 276 F.3d 980, 985–86 (8th Cir. 2002) ("Our court has . . . rejected the argument that . . . there must be a finding that a municipal employee is liable in his individual capacity as a predicate to municipal liability. . . . [S]ituations may arise where the combined actions of multiple officials or employees may give rise to a constitutional violation, supporting municipal liability, but where no one individual's actions are sufficient to establish personal liability for the violation."); *Fairley v. Luman*, 281 F.3d 913, 917 (9th Cir. 2002) ("If a plaintiff establishes that he suffered a constitutional injury *by the City*, the fact that individual officers are exonerated is immaterial to liability under § 1983."); *Thomas v. Cook Cty. Sheriff's Dep't*, 604 F.3d 293, 305 (7th Cir. 2010) ("[A] municipality can be held liable under *Monell*, even when its officers are not, unless such a finding would create an inconsistent verdict."). So has a leading treatise on § 1983. *See* Sheldon Nahmod, Civil Rights and Civil Liberties Litigation: The Law of Section 1983 § 6:13 at 6–49 (2019 ed.) ("[A]s a general matter a local government can be independently liable for its own unconstitutional policy or custom which caused harm to a plaintiff, even if its officials or employees did not

themselves violate the plaintiff's constitutional rights in the course of implementing that policy or custom.").[8]

Where, as here, a jury has returned a verdict in favor of an individual defendant on a § 1983 claim, the question is whether that verdict "can be harmonized with a concomitant verdict or decision imposing liability on the municipal entity. The outcome of the inquiry depends on the nature of the constitutional violation alleged, the theory of municipal liability asserted by the plaintiff, and the defenses set forth by individual actors." *Speer*, 276 F.3d at 986. *Accord Thomas*, 604 F.3d at 305. We conclude that the jury verdict in favor of Deputy MacArthur does not preclude a finding of municipal liability due to the Sheriff's mandatory eight-hour hold policy.

At trial, there was no evidence that Deputy MacArthur had any discretion or role in keeping Ms. Barnett in custody after arresting her and taking her to the Jail. Indeed, Captain Love testified that Deputy MacArthur turned Ms. Barnett over to the staff at the Jail, and he confirmed that deputies had no discretion to release DUI arrestees before eight hours had

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[8] The same holds true when an individual defendant is protected from § 1983 liability by qualified immunity. In that situation, the municipality is not necessarily absolved of liability. *See*, *e.g.*, *Horton v. City of Santa Maria*, 915 F.3d 592, 604 (9th Cir. 2019); *Int'l Ground Transp. v. Mayor & City Council of Ocean City*, 475 F.3d 214, 219–20 (4th Cir. 2007) (plurality opinion); Nahmod, Civil Rights and Civil Liberties Litigation § 6:13 at 6–46.

passed. *See* D.E. 175 at 156–57. Mr. Betham testified that the Jail's booking staff—not Deputy MacArthur—wrote on Ms. Barnett's jail arrest card that she could be released at 12:10 (eight hours after she arrived), consistent with the Jail's policy that when an individual is arrested for impaired driving, she must be held for eight hours. *See* D.E. 179 at 38; D.E. 167-18. Ms. Barnett similarly testified that after her breath test results were negative, Mr. Betham told her that she had to stay at the Jail for eight hours anyway. *See* D.E. 181 at 123. Deputy MacArthur confirmed that even if Ms. Barnett posted bond before the end of the eight-hour period, she would have to stay at the Jail for eight hours. *See* D.E. 179 at 251.

Given this evidence, defense counsel told the jury in closing argument that Deputy MacArthur could not be held liable on the Fourth Amendment detention claim because the undisputed evidence showed that Ms. Barnett was kept in custody pursuant to the Sheriff's mandatory hold policy, a policy that Deputy MacArthur had no discretion to deviate from:

> The other thing . . . as to the stay at the jail, the testimony has been—and I don't recall any conflict on it—that it was the policy of the Sheriff that, if somebody's arrested for DUI, driving under the influence, they're brought to the jail; they're going to be there for eight hours. So that wasn't Deputy MacArthur's decision that Ms. Barnett was continued to be detained at the jail. That was the policy of the

> Sheriff and . . . she didn't do anything wrong in terms of that.

D.E. 181 at 252.

The district court instructed the jury that, on the individual detention claim against Deputy MacArthur, Ms. Barnett had to show that Deputy MacArthur "intentionally committed acts that violated [her] constitutional right not to be arrested or detained without probable cause." D.E. 165 at 30. When the jury asked whether Ms. Barnett could have been released after her 0.000 breathalyzer test results, the district court declined to answer that question. *See* D.E. 183 at 21–23. So the jury was not asked to determine whether, as a general matter, Ms. Barnett suffered a Fourth Amendment violation due to the hold policy.

Because the jury found only that Deputy MacArthur had not "intentionally committed acts that violated [Ms.] Barnett's Fourth Amendment right . . . not to be arrested or detained without probable cause," DE. 169 at 1 (verdict form), its verdict says nothing about whether the continued detention of Ms. Barnett—after her breathalyzer tests and after posting bond—due to the Sheriff's hold policy violated the Fourth Amendment. Stated differently, the jury was asked to decide only whether Deputy MacArthur was personally responsible (due to "intentionally committed acts") for any Fourth Amendment violations, and not whether Ms. Barnett suffered a Fourth Amendment violation due to her continued detention. Under the circumstances—including the evidence presented, the

defense theory, the jury instructions, and the verdict form—the jury's verdict in favor of Deputy MacArthur does not insulate the Sheriff from a § 1983 claim under *Monell* for Ms. Barnett's continued detention pursuant to the eight-hour mandatory hold policy.

## III

We reverse the district court's grant of summary judgment on Ms. Barnett's Fourth Amendment detention claim against the Sheriff under *Monell* and remand for a trial on that claim. In all other respects, we affirm.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

**SEANA BARNETT,**

**Plaintiff,**

**v.**

**SARA MACARTHUR and DONALD ESLINGER,**

**Defendants.**

**Case No: 6:15-cv-469-Orl-18DCI**

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## ORDER

(Filed Nov. 16, 2016)

THIS CAUSE comes for consideration on Defendants Sara MacArthur ("MacArthur") and Donald Eslinger's ("Eslinger") (collectively, the "Defendants") Motion for Summary Judgment (the "Motion") (Doc. 76) to which Plaintiff Seana Barnett ("Barnett") responded in opposition (Doc. 92), and Defendants replied (Doc. 97). For the reasons that follow, the Motion will be granted in part and denied part.

## I. BACKGROUND[1]

On March 15, 2014, Barnett went to dinner around 6:00 p.m. with her friend, Alicia Norwood ("Norwood") in downtown Orlando. (Barnett Deposition, Doc. 77 at 68:8-24, 70:4-6.) After spending several hours at dinner, Barnett and Norwood walked around downtown Orlando. (*Id.* at 73:2-5.) Barnett drank some wine at dinner and, a few hours later, she drank a minimal amount of Bailey's Irish Cream.[2] (Barnett Dep. at 70:25-71:13.) Barnett was the designated driver for Norwood, and she undertook the task of driving both herself and Norwood home from downtown Orlando in Norwood's vehicle (the "Vehicle"). (*Id.* at 72:6, 74:14-20.) During the drive home, Barnett stopped the Vehicle at a green light on Lake Mary Boulevard. (*Id.* at 75:15- 20, 76:19-21.) When Barnett stopped the Vehicle at the green light in "the left straight through lane," MacArthur was stopped at the intersection waiting to turn onto Lake Mary Boulevard. (MacArthur Dep. at 44:18-45:21.) MacArthur testified that she observed

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[1] Defendants provided the Court with a DVD of video and audio recordings from MacArthur's patrol car dash camera and from the rear sear of MacArthur's patrol car. (*See* Doc. 27.) Defendants also provided the Court with audio files of Barnett's jail telephone calls. (*See*, Doc. 88.) Although the Court's recitation of the undisputed facts does not include citations to the DVDs, the Court reviewed and considered the videos in the course of adjudicating the instant motion.

[2] Immediately after Bartlett was placed under arrest, she informed MacArthur that, hours prior, she drank Bailey's Irish Cream and wine. (MacArthur Deposition, Doc. 64 at 269:15-270:5.) Prior to arresting Barnett, MacArthur did not know that Barnett drank Bailey's Irish Cream. (*Id.* at 270:13-18.)

the Vehicle stopped at the green light for approximately eight to ten seconds. (*Id.* at 45:20-21.) At this time, there were no vehicles or pedestrians in the roadway. (*Id.* at 104:25-105:6.) When the Vehicle passed by, MacArthur activated her dashboard video camera and pulled in behind the Vehicle. (*Id.* at 46:3-47:18.) After Barnett turned the Vehicle left onto a side street, MacArthur initiated a traffic stop, and Barnett pulled the Vehicle over in response. (Doc. 64-13 at 1.)

Soon after MacArthur stopped Barnett, Barnett informed MacArthur that she drank a small amount of wine around 6:00 p.m. the prior evening. (Barnett Dep. at 82:8-12.) Barnett also provided her driver's license to MacArthur, but she was unable to provide registration and insurance despite being reminded twice and fumbling with the button on the Vehicle's glove compartment. (MacArthur Dep. at 107:8-15; Doc. 64-14 at 2.) Upon MacArthur's request, Barnett agreed to perform field sobriety exercises. (Doc. 64-14 at 2.) Prior to explaining and initiating the field sobriety testing, MacArthur asked Barnett if she had any medical issues, to which Barnett responded she did not. (MacArthur Dep. at 165:15-166:7.) MacArthur subsequently conducted a horizontal gaze nystagmus evaluation, a walk and turn exercise, a one leg stand exercise, a finger to nose exercise, and a number counting exercise. (Doc. 64-14 at 3.) MacArthur's dashboard video captured audio and video for a portion of the field sobriety exercises, although only audio is available for exercises that took place outside of the camera's view. (MacArthur Dep. at 107:16-108:7.) During the heel to toe

exercise, Barnett informed MacArthur that she had muscle tears in her legs due to injuries from a prior accident and that she sees a chiropractor on a regular basis. (*Id.* at 207:10-208:24) At the conclusion of the field sobriety exercises, MacArthur conversed with Joel Saslo ("Saslo"), another law enforcement officer on the scene; however, MacArthur turned off the audio, and the majority of their conversation is not audible. (*Id.* at 262:7-268:23.) After approximately four (4) minutes of unrecorded conversation between MacArthur and Saslo, the audio returns and MacArthur began arresting Barnett. (*See id.)*

Subsequently, MacArthur transported Barnett to the Seminole County jail, where Barnett was processed and given a breathalyzer test. (Barnett Dep. at 96:7-15.) Barnett provided two (2) breath samples, both of which tested negative (.000) for alcohol. (Doc. 64-14 at 4; Doc. 654.) The breath tests was administered by DUI technician, Keith Betham ("Betham"), who observed that he could smell a "moderate" amount of alcohol on Barnett's breath and that her eyes were "glassy, bloodshot and watery." (Betham Deposition, Doe. 65 at 91:2-17.) Betham also observed that Barnett's pupils were normal, she did not act unusual, and he could understand her speech. (*Id.* at 91;18-92:3.) Thereafter, upon request, Barnett provided a urine sample for drug testing and was informed that it would take several months for the results of the urine test to come back. (Barnett Dep. at 98:1-13.) After providing a urine sample, Barnett was processed as an inmate, finger printed, and instructed to undress and take a shower.

(*Id.* at 98:15-17.) At the time, Barnett was menstruating and had to remove her sanitary napkin. (*Id.* at 98;17-18.) During the course of her jail stay, Barnett was put in two (2) different jail cells with numerous female inmates, some of whom purportedly ridiculed and harassed her. (*Id.* at 99:7-16, 100:8-101:18.) Shortly after 1:00 p.m. on March 16, 2014, Barnett posted bond and was released from *jail*. (*Id.* at 102:7-15; Love Deposition, Doc. 79 at 47:16-21.)

MacArthur copied Barnett's offense and arrest report, as well as her DUI citation, which were scanned and forwarded to the state attorney. (*See* MacArthur Dep. at 93:5-6.) On or about April 15, 2014, the results of Barnett's urine testing were produced. (*See* Doc. 66-13 at 1.) As reflected on the Florida Department of Law Enforcement's laboratory report, Barnett's urine was specifically analyzed for amphetamines, barbiturates, benzodiazepines, cannabinoids, carisoprodol, cocaine, methadone, opiates, and oxycodone. (*Id.*) Indisputably, no drugs were identified as being in Barnett's system via the urine testing. (*Id.*) Barnett was arraigned on April 16, 2014, and a nolle prosequi was entered on May 2, 2014. (Doc. 82-1 at 1-2.)

MacArthur did not smell alcoholic beverages or marijuana on Barnett at any time prior to the arrest, nor did MacArthur observe any evidence of illegal drugs. (MacArthur Dep. at 76:2377:5). Both MacArthur and Saslo looked in Barnett's purse to locate her cellular telephone, and MacArthur did not see any kind of drugs in Barnett's purse. (*Id.* at 273:19-24.) MacArthur did not search the Vehicle and testified that she did

not feel there was a reason to search the Vehicle. (*Id.* at 68:6-11.) Additionally, Barnett did not slur her speech or have any indication from the way she spoke that she was impaired. (*Id.* at 77:6-10.) Barnett also didn't stumble around or lose her balance getting out of the Vehicle. (*Id.* at 77:11-14.) Barnett assisted Saslo "in putting down an orange tapeline on the ground with no apparent difficulty." (*Id.* at 256:12-17.) MacArthur testified that Barnett's adeptness at assisting with the orange tape could be a clue that Barnett was not impaired but that she did not consider this when deciding to arrest Barnett. (*Id.* at 256:12-257:11.)

On October 16, 2015, Barnett filed her eight (8) count Amended Complaint (Doc. 50) against Defendants in this case, wherein Barnett asserts federal and state law claims against MacArthur in her individual capacity and federal and state law claims against Eslinger in his official capacity as Sheriff of Seminole County, Florida. (*See id.* 1116-7.) Defendants now move for summary judgment on all of Barnett's claims. (Doc. 76.)

## II. LEGAL STANDARD

A court may grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case under the applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Disputed issues

of material fact preclude the entry of summary judgment, but factual disputes that are irrelevant or unnecessary do not. *Id.* "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

In determining whether the moving party has satisfied its burden, the Court considers all inferences drawn from the underlying facts in a light most favorable to the party opposing the motion and resolves all reasonable doubts against the moving party. *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). The moving party may rely solely on the pleadings to satisfy its burden. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). A nonmoving party bearing the burden of proof, however, must go beyond the pleadings and submit affidavits, depositions, answers to interrogatories, or admissions that designate specific facts indicating there is a genuine issue for trial. *Id.* at 324. If the evidence offered by the non-moving party "is merely colorable, or is not significantly probative," the Court may grant summary judgment. *Anderson*, 477 U.S. at 249-50. Similarly, summary judgment is mandated against a party who fails to prove an essential element of its case "with respect to which [the party] has the burden of proof." *Celotex*, 477 U.S. at 323.

## III. ANALYSIS

### A. Federal Claims against MacArthur: Count I, Count VII

*1. Qualified Immunity Standard*

Pursuant to the doctrine of qualified immunity, government officials performing discretionary functions are shielded from suits in their individual capacities, except when "their conduct violates 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Andujar v. Rodriguez*, 486 F.3d 1199, 1202 (11th Cir. 2007) (quoting *Dalrymple v. Reno*, 334 F.3d 991, 994 (11th Cir. 2003)). In order to be eligible for qualified immunity, a law enforcement officer must prove that he or she was acting within the scope of his discretionary duties when the alleged wrong occurred, *Hawthorne v. Sheriff of Broward Cnty.*, 212 F. App'x 943, 946 (11th Cir. 2007). A government official's actions are within his discretionary authority when "'undertaken pursuant to the performance of his duties and within the scope of his authority.'" *Rich v, Dollar*, 841 F.2d 1558,1564 (11th Cir. 1988) (quoting *Barker v. Norman*, 651 F.2d 1107, 1121 (5th Cir. July 1981), and *Douthit v. Jones*, 619 F.2d 527, 534 (5th Cir. 1980)). If a law enforcement officer was acting within the scope of his or her discretionary authority, the burden then shifts to the plaintiff to establish that the law enforcement officer violated a constitutional right that was clearly established at the time of the misconduct. *Pearson v. Callahan, 555* U.S. 223, 232 (2009); *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1263-64 (11th Cir. 2004), A

plaintiff can show a right is clearly established through "(1) [presenting] case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law." *Lewis v. City of W. Palm Beach, Fla.*, 561 F.3d 1288, 1291-92 (11th Cir. 2009) (citations omitted). A constitutional right is clearly established if it is "'sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)); *Saucier v. Katz*, 533 U.S. 194, 202 (2001) ("The relevant, dispositive inquiry in determining whether a [constitutional] right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.").

*2. Count I: 42 U.S.C. § 1983 Claim against MacArthur for Arrest and Continued Detention*

In Count 1, Barnett brings a 42 U.S.C. § 1983 claim against MacArthur for MacArthur's arrest and continued detention of Barnett. (Doc. 50 ¶¶ 63-77.) Purportedly, "MacArthur's conduct violated [Barnett's] clearly established rights under the Fourth Amendment to the United States Constitution to be free from involuntary detention in the absence of probable cause and under the Fourteenth Amendment to the United

States Constitution to be free from involuntary detention without due process of law." (*Id.* ¶ 74.) Barnett states that "MacArthur acted intentionally and with malice and/or reckless indifference to [Barnett's] federally protected rights." (*Id.* ¶ 75.) MacArthur argues that she is entitled to qualified immunity because there was arguable probable cause for Barnett's arrest and continued detention at the jail after administration of the breathalyzer test and acquisition of a urine sample from Barnett. (Doc. 76 at 2.) MacArthur further avers that summary judgment in her favor is appropriate because actual probable cause existed for Barnett's arrest and continued detention. (*Id.* at 2-3.)

*a. Barnett's § 1983 Arrest Claim*

"A warrantless arrest without probable cause violates the Fourth Amendment and provides the basis for a § 1983 claim." *Holt v. U.S. Atty. Gen.*, 486 F. App'x 97, 99 (11th Cir. 2012) (citing *Marx v. Gumbinner*, 905 F.2d 1503, 1505 (11th Cir. 1990)). Under both federal and Florida law, a law enforcement officer has probable cause to arrest somebody when, under the totality of the circumstances, "the facts and circumstances within the officer's 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, is committing, or is about to commit an offense." *Lee v. Ferraro*, 284 F. 3d 1188, 1195 (11th Cir. 2002) (quotation marks and citation omitted). If a law enforcement officer "fabricated or unreasonably disregarded certain pieces of evidence to

establish probable cause or arguable probable cause [for arrest,] . . . the question whether arguable probable cause for the arrest existed is aptly suited for a jury." *Kingsland v. City of Miami*, 382 F.3d 1220, 1233 (11th Cir. 2004).

Allegedly, Barnett's erratic driving pattern, admittance to consumption of alcohol, and poor performance on field sobriety exercises led MacArthur to conclude, based on her training and experience, that Barnett was operating the Vehicle with impaired normal faculties in violation of Section 316.193(1), Florida Statutes. (Doc. 64-14 at 3; *see* MacArthur Dep. at 44:4-45:21; 47:6-15, 52:22-23, 55:3-15, 57:2-20.) Barnett does not seemingly dispute that she was driving under the speed limit and, during a recorded jail telephone conversation with her son, Barnett admitted to falling asleep while driving the Vehicle and swaying in the road. (*See* Doc. 92 at 3.) Additionally, Barnett indisputably stopped the Vehicle at a greenlight in the middle of the road during the early morning hours. Further, Barnett admitted to drinking alcohol earlier the prior evening and had difficulty retrieving the Vehicle's insurance and registration upon MacArthur's request. It is also notable that Macarthur's dashboard video shows Barnett ask MacArthur to repeat instructions for the field sobriety test exercises, and Barnett also appears to sway at times and begin exercises prematurely.

Despite the presence of some material, undisputed facts, genuine issues of material fact remain unresolved. The parties dispute whether Barnett's eyes

were bloodshot and whether Barnett was driving the Vehicle erratically. Indisputably, however, there were no vehicles travelling on the same roadway when the Vehicle was stopped at the green light, and Barnett began moving the Vehicle when other vehicles started approaching. Also, although Barnett admits to falling asleep and swaying while driving, there is no evidence of when such actions took place and whether they occurred immediately before or during MacArthur's efforts to initiate a traffic stop. Further, MacArthur testified that Barnett moved the Vehicle "really far over" and almost hit a mailbox in the course of pulling the Vehicle over. (MacArthur Dep. at 55:3-10.) However, in contrast to MacArthur's testimony, the video evidence does not clearly show that Barnett moved the Vehicle "really far over" and that she almost hit a mailbox when MacArthur was pulling her over. The video evidence does show, however, that another vehicle was approaching the Vehicle at the referenced time, and it is thus conceivable that Barnett was simply being cautious in her efforts to move the Vehicle out of the approaching vehicle's way. (*See* MacArthur Dep. at 55:11-15.) Otherwise, the video evidence does not show, clearly and uncontrovertibly, that Barnett was driving the Vehicle erratically as suggested by MacArthur. Thus, whether Barnett's driving presented an objectively reasonable basis for suspecting that she was under the influence is not sufficiently clear. *See Nicholas v. State*, 857 So. 2d 980, 982 (Fla. 4th DCA 2003) (noting that "there is no statutory definition of erratic driving and it is necessarily determined on a case by case basis" and holding there was no probable cause for the

initial stop or the DUI arrest of plaintiff after plaintiff turned from the wrong lane, where plaintiff was observed driving for a short period of time and did not interfere with any traffic). Further, even if Barnett performed poorly on portions of her field sobriety tests, there are genuine disputes of material fact as to whether MacArthur properly administered the field sobriety tests and whether a reasonable law enforcement officer would have determined that Barnett failed enough of the tests for purposes of effectuating an arrest. (*See* Expert Reports at Does. 35-6, 81-1); *see Strickland v. City of Dothan, Ala.*, 399 F. Supp. 2d 1275, 1289 (M.D. Ala. 2005), *aff'd sub nom. Strickland v. Summers*, 210 F. App'x 983 (11th Cir. 2006) ("It is not objectively reasonable to rely on a performance in a field-sobriety test for a finding of probable cause for a DUI arrest when the test has been administered incompetently."). There is also a dispute as to the credence that should have been given to Barnett's professed medical conditions when assessing her performance on the field sobriety exercises.

MacArthur admits that there were no indicators that Barnett was on drugs and that she did not have probable cause to believe that Barnett was under the influence of drugs or prescription medication. (MacArthur Dep. at 81:16-18, 104:6-12.) MacArthur further testified that Barnett spoke clearly and did not stumble when she was getting out of the Vehicle or when she was assisting Saslo with putting tape on the ground. Also, there is no allegation or evidence that MacArthur smelled alcohol on Barnett's breath at any

time prior, during, or after Barnett's arrest. Additionally, although Barnett drank alcohol prior to driving, she informed MacArthur that she drank a minimal amount of alcohol many hours prior to her arrest and walked around downtown Orlando for hours after she drank. *See Strickland*, 399 F. Supp. 2d at 1287 ("[Plaintiff's] admission that he drank an alcoholic beverage over four hours earlier does not indicate that he was impaired at the time of the stop. . . ."). It is not clear that MacArthur properly considered potentially exculpatory evidence in determining whether probable cause existed to arrest Barnett, through communicating with Norwood or questioning Barnett about her medical conditions, for example. *See Kingsland*, 382 F.3d at 1228 ("[O]fficers should not be permitted to turn a blind eye to exculpatory information that is available to them, and instead support their actions on selected facts they chose to focus upon. . . ."). Upon review of the entire record, and drawing all inferences in favor of Barnett to the extent supportable by the record and the law, the Court is not persuaded that MacArthur is entitled to summary judgment based on actual or arguable probable cause for Barnett's arrest.

*b. Barnett's § 1983 Continued Detention Claim*

As provided under Section 316.1934, Florida Statutes, "if a person registers 'at the time' of a breathalyzer test, a 'breath-alcohol level of 0.05 or less, it is presumed that the person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.'" *Festa v. Santa Rosa*

*County Florida*, 413 F. App'x 182, 186 (11th Cir. 2011) (quoting Fla. Stat. § 316.1934(2)(a)). The presumptions delineated in Section 316.1934(2)(a), Florida Statutes "do not limit the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired." Fla. Stat. § 316.1934(2)(c).

Defendants aver that, as set forth in *Festa v. Santa Rosa County Florida*, 413 F. App'x 182 (11th Cir. 2011), there is a lack of constitutional authority, statutory authority, or case law establishing that Barnett had a clearly established constitutional right to be released upon registering 0.000 on the breathalyzer test. (Doc. 76 at 15-18); *see Bannister v. Conway*, 2013 WL 5770802, at *6 (N.D. Ga. Oct. 23, 2013) (granting qualified immunity to law enforcement officers on plaintiff's unreasonable detention claims and noting that "the constitutional duty to release is itself not clearly established"). However, controlling Eleventh Circuit case law[3] does establish that "[f]ollowing a lawful warrantless arrest, a police office has an affirmative duty to release an arrestee if he ascertains beyond a reasonable doubt that the probable cause which formed the basis of the arrest was unfounded." *Strickland*, 399 F. Supp. 2d at 1291 (quotation marks and citation

[3] *See United States v, Hogan*, 986 F.2d 1364, 1369 (11th Cir. 1993) ("[I]t is the firmly established rule of this Circuit that each succeeding panel is bound by the holding of the first panel to address an issue of law, unless and until that holding is overruled en banc, or by the Supreme Court.").

omitted); *cf. Cruz v. Davidson*, 552 F. App'x 865, 868 (11th Cir. 2013) (linking probable cause analysis to a § 1983 detention claim and finding that probable cause for arrest is sufficient to justify subsequent detention for purposes of the Fourth Amendment).

MacArthur testified that she did not believe Barnett was driving under the influence of any drug besides alcohol and that she did not observe any drugs or feel compelled to search the Vehicle for drugs. In fact, MacArthur admitted that she did not have probable cause to believe that Barnett was impaired by any substance besides alcohol. Especially after the breathalyzer test established that Barnett did not have any alcohol in her system, MacArthur did not have actual or arguable probable cause to detain Barnett. To the extent that MacArthur had discretionary authority over Barnett's continued detention after she blew a .000, MacArthur is not protected by qualified immunity.[4] Even if there was initial probable cause for arrest, the question remains whether a reasonable officer in MacArthur's position could have believed there was probable cause to detain Barnett, either for purposes of obtaining a urine sample or booking her into jail to be held for a minimum of eight (8) hours. As Barnett's continued detention was not supported by arguable or actual probable cause, MacArthur is not entitled to summary judgment in her favor.

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[4] The parties dispute whether MacArthur is able to meet her burden of proving that she was acting within the scope of her discretionary authority for purposes of a qualified immunity analysis. (*See* Doc. 92 at 17-18; Doc. 99 at 7.)

*3. Count VII: 42 U.S.C. § 1983 Claim against MacArthur for Malicious Prosecution*

In Count VII, Barnett brings a 42 U.S.C. § 1983 claim against MacArthur for MacArthur's alleged malicious prosecution of Barnett. (Doc. 50 ¶¶ 107-09.) Purportedly, "MacArthur's conduct violated [Barnett's] clearly established rights under the Fourth Amendment to the United States Constitution to be free from involuntary detention in the absence of probable cause and under the Fourteenth Amendment to the United States Constitution to be free from involuntary detention and prosecution without due process of law." (*Id.* ¶ 108.) MacArthur argues that there was both actual and arguable probable cause for the proceedings against Barnett, and she is entitled to qualified immunity. (Doc. 76 at 2, 4.) MacArthur further states that she did not act with malice, she was "not the legal cause of the prosecution," and Barnett "was not seized in relation to the prosecution." (*Id.* at 4.)

The Eleventh Circuit "has identified 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). In order to state a claim for malicious prosecution under § 1983, a plaintiff must establish elements of both a common law malicious prosecution claim and an unlawful arrest in violation of the Fourth Amendment. *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1256-57, 1257 n.25 (11th Cir. 2010); *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir. 1996) (a warrantless arrest without probable cause violates the Constitution and forms

the basis of a 42 U.S.C. § 1983 malicious prosecution claim), In order to state a claim for malicious prosecution, a plaintiff must allege facts demonstrating:

> (1) an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued; (2) the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant; and (6) the plaintiff suffered damage as a result of the original proceeding.

*Infante v. Whidden*, No. 2:12-cv-41-FtM-29UAM, 2013 WL 5476022, at *7 (M.D. Fla. Sept. 30. 2013) (quoting *Alterra Healthcare Corp. v. Campbell*, 78 So. 3d 595, 602 (Fla. 2d DCA 2011)). A law enforcement officer will be entitled to qualified immunity from a § 1983 malicious prosecution claim if there was arguable probable cause for the arrest. *Crosby v. Monroe Cnty.*, 394 F.3d 1328, 1332-33 (11th Cir. 2004) (law enforcement officer that reasonably, albeit mistakenly, concludes that there is probable cause to arrest someone is entitled to immunity from suit).

As discussed *supra*, MacArthur did not, for purposes of summary judgment, have actual or arguable probable cause to arrest and detain Barnett. However,

in order to establish a § 1983 malicious prosecution claim, a plaintiff must also show that her Fourth Amendment right to be free from unreasonable seizures was violated. *Kesler*, 323 F.3d at 881. The plaintiff must thus prove "that she was seized in relation to the prosecution, in violation of her constitutional rights." *Kingsland*, 382 F.3d at 1235. Further, "[i]n the case of a warrantless arrest, the judicial proceeding does not begin until the party is arraigned or indicted." *Id.* Conditions of pretrial release and the obligation to attend court proceedings associated with prosecution have been deemed as insufficient deprivations of liberty to qualify as a Fourth Amendment seizure for purposes of a § 1983 claim. *See Donley v. City of Morrow, Georgia*, 601 F. App'x 805, 813-14 (11th Cir. 2015) (finding that plaintiff's warrantless arrest, arraignment, and conditions of pretrial release do not constitute a significant deprivation of liberty and seizure under the Fourth Amendment); *Kingsland*, 382 F.3d at 1236 ("While we sympathize with [plaintiff's] anxiety and inconvenience . . . we cannot go so far as to say that the conditions of her pretrial release . . constituted a seizure violative of the Fourth Amendment."). In this case, a criminal proceeding was filed against Barnett on March 17, 2014, and Barnett appeared at her arraignment on April 16, 2014. Subsequently, on May 2, 2014, the state entered a nolle prosequi in the case. For purposes of establishing a § 1983 malicious prosecution claim against MacArthur, there are no allegations or evidence that Barnett was "seized" after charges were filed against her such that Barnett's liberty was deprived in violation of her Fourth Amendment right

to be free from seizure. Thus, MacArthur is entitled to summary judgment in her favor on Count VII.

## B. Federal Claims against Eslinger: Count II, Count VIII

*1. Municipal Liability Standard*

"Local governing bodies [] can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where [] the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658, 690 (1978). However, it is well-settled that "under § 1983, local governments are responsible only for 'their *own* illegal acts.'" *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479 (1986)). Official capacity suits against a law enforcement officer "represent only another way of pleading an action against an entity of which an officer is an agent." *Monell*, 436 U.S. at 691 n.55. A "municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.* at 691. "Instead, to impose § 1983 liability on a municipality, a plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation."

*McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004). Additionally, "[i]f the decision to adopt [a] particular course of action is properly made by [the] government's authorized decisionmakers, it surely represents an act of official government 'policy' as that term is commonly understood." *Pembaur*, 475 U.S. at 481. In order to correctly plead that a municipality should be held liable for the actions of its employees because it ratified said actions, a plaintiff must show a "persistent failure to take disciplinary action against officers," which "can give rise to the inference that a municipality has ratified conduct, thereby establishing a 'custom' within the meaning of *Monell*." *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1443 (11th Cir. 1985) (citation omitted). Further, "a municipality's failure to correct the constitutionally offensive actions of its employees can rise to the level of a custom or policy 'if the municipality tacitly authorizes these actions or displays deliberate indifference' towards the misconduct." *Griffin v. City of Opa-Locka*, 261 F.3d 1295, 1308 (11th Cir. 2001) (quoting *Brooks v. Scheib*, 183 F.2d 1191, 1193 (11th Cir. 1987)).

*2. Count 11: 42 U.S.C. § 1983 Claim against Eslinger for Arrest and Continued Detention*

In Count II, Barnett alleges a 42 U.S.C. § 1983 claim against Eslinger in his official capacity for Barnett's arrest and continued detention in purported violation of her Fourth and Fourteenth Amendment rights. (Doc. 50 ¶¶ 78-83.) As grounds therefore, Barnett avers that Eslinger's official written policy

governing DUI detection, arrests, and detentions "was the moving force behind MacArthur's actions including her decision to arrest [Barnett] for DUI despite the fact that MacArthur knew or should have known she did not have probable cause for the arrest." (*Id.* ¶ 80.) Barnett argues that Eslinger's "official policy, practice[,] and custom was [also] the moving force behind MacArthur's . . . continued detention of Barnett after she arrived at the jail showing no signs of impairment, and after her breathalyzer test results showed she had zero alcohol in her system." (*Id.* ¶ 81.) Barnett attests that Eslinger has an "official policy, practice or custom of requiring that DUI arrestees be detained in jail for a minimum of eight (8) hours from the time of the arrest, regardless of whether there is probable cause to believe the arrestee is impaired subsequent to their arrest and regardless of whether any arguable probable cause for the arrest has since dissipated." (*Id.*) Barnett also states that "Eslinger's official policy, practice and custom of having deputies deliberately turn off their microphones so there is no record of wrongdoing by the deputies further demonstrates reckless indifference to [Barnett's] and other citizen's federally protected rights." (*Id.* ¶ 82.) Purportedly, Eslinger's policies violated Barnett's constitutional rights to be free from involuntary detention in the absence of probable cause and to be free from involuntary detention without due process of law. (*Id.* ¶ 83.) Eslinger requests summary judgment on the grounds that "DUI Sheriff'[s] Policy E-19 is not facially unconstitutional; that [Eslinger] was not deliberately indifferent to known or obvious consequences of the policy; and that there is not a

policy of 'failing to investigate' DUI evidence. . . ." (Doc. 76 at 3.)

MacArthur explained the indicators that she looks for when performing field sobriety tests and testified that she was acting under Policy E-19, Eslinger's DUI Countermeasures Policy when she arrested Barnett. (MacArthur Dep. at 68:24-69:8.) Although the written purpose of Policy E19 is "to vigorously enforce DUI traffic laws of the State of Florida," Policy E-19 is not facially unconstitutional as it does not itself violate federal law or direct the violation of federal law. (*See* Policy E-19 at Doc. 79-2.) Under Policy E-19, law enforcement officers are directed to arrest somebody for driving under the influence only if they have probable cause to believe the person is, in fact, under the influence of a chemical substance. (*Id.* at 2.) It is reasonable to assume that an arrestee may begin to look and act better over the course of time in jail, and an arrestee's negative breath alcohol test does not rule out impairments by controlled or chemical substances that require further laboratory testing. Policy E-19 and Eslinger's routine practice of holding people that have been arrested for DUI for at least eight (8) hours (the "Hold Policy") are not facially unconstitutional and were not moving forces behind any violation of Barnett's constitutional rights related to her arrest or detention. (*See* Love Deposition, Document 79 at 20:16-18.) In so finding, the Court notes that "[t]he practice of detaining an intoxicated driver is to protect the driver and the community from an unreasonable danger imposed by drunken driving." *Slate v. Atkinson*, 755

So. 2d 842, 844 (5th DCA 2000) ("Section 316.193(9), Florida Statutes (1997), is not unconstitutional in allowing temporary detention of an apparently drunk driver, . ."), Also, Florida law provides that a person who is arrested for driving under the influence may not be released from custody:

> (a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893 and affected to the extent that his or her normal faculties are impaired;
>
> (b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or
>
> (c) Until 8 hours have elapsed from the time the person was arrested.

Fla, Stat. § 316.193(9). The language of Section 316.193(9), Florida Statutes, thus allows for the option of holding a person for eight (8) hours after a DUI arrest. Additionally, Barnett fails to provide sufficient evidence showing that Eslinger deliberately ignored a pattern or history of unconstitutional DUI arrests that are attributable to Policy E-19.

Barnett also claims that Eslinger implements or otherwise condones a policy that allows law enforcement officers to turn off their microphones when effectuating a traffic stop, and "the purpose is to avoid creating a record of wrongdoing by the deputies." (Doc. 92 at 29.) However, Captain Shane Love ("Love"), Eslinger's Rule 30(b)(6) representative, testified that

it is not the practice or policy of the Seminole County Sheriff's Office for deputies to cease recording audio when discussing whether to arrest someone. (Love Dep. at 22:21-25.) Instead, Policy E-49 requires law enforcement officers to leave their microphones turned on after a DUI arrest unless, for example, the person has already been arrested and the officer is waiting for the arrestee's car to be towed. (*Id.* at 24:13-18; *see* Policy E-49 at Doc. 79-5.) Also, MacArthur testified she wasn't trained to turn off her microphone when having discussions with other deputies. (MacArthur Dep. at 64:15-18.) Upon review, Policy E-49 is not facially unconstitutional, and there is no evidence that Eslinger commonly ignored the requirement that deputies keep their microphones turned on absent extenuating circumstances that were not applicable in Barnett's case.

There is insufficient evidence to support Barnett's claims in Count II that Policy E-19, the Hold Policy, Policy E-49, or any other policy at issue were facially unconstitutional or were the "moving force" behind the constitutional injuries at issue. *See* Gilmere v. City of Atlanta, 737 F.2d 894, 901 (11th Cir. 1984) (In order to establish municipal liability under § 1983, "[t]he official policy or custom 'must be the moving force of the constitutional violation.'" (internal quotation marks and citation omitted)). There is also insufficient evidence to allow a reasonable juror to conclude that Eslinger tacitly or explicitly authorized Barnett's arrest or continued detention without probable cause, or that Eslinger was deliberately indifferent to the alleged known or obvious consequences of the policies at

issue. Accordingly, summary judgment in Eslinger's favor on Count II will be granted.

*3. Count VIII: 42 U.S.C. § 1983 Claim against Eslinger for Malicious Prosecution*

In Count VIII, Barnett avers that Eslinger's "official policy, practice and custom to seek prosecution of all DUI arrestees regardless of the circumstances . . . violated [Barnett's] clearly established rights under the Fourth Amendment . . . to be free from involuntary detention in the absence of probable cause." (*Id.* ¶ 12.) Barnett states that her Fourteenth Amendment right "to be free from involuntary detention and prosecution without due process of law" was also violated. (*Id.*) Eslinger avers that summary judgment in his favor on Count VIII is appropriate because "[Barnett] was not seized in relation to the prosecution[,] . . . probable cause existed for the proceedings[,] and there was no malice on the part of MacArthur." (Doc. 76 at 4.) Eslinger alleges that "there is no genuine issue of material fact that [Eslinger's] policies were not the moving force behind the alleged constitutional violations." (*Id.*)

As discussed *supra*, a criminal proceeding was filed against Barnett on March 17, 2014, and Barnett appeared at her arraignment on April 16, 2014. Subsequently, on May 2, 2014, the state entered a nolle prosequi in the case. For purposes of establishing a § 1983 malicious prosecution claim, there are no allegations or evidence that Barnett was "seized" after charges

were filed in that her liberty was deprived in violation of her Fourth Amendment right to be free from seizure. Thus, Eslinger is entitled to summary judgment on Count VIII.

### C. State Law Claims against MacArthur: Count IV, Count V

*1. State Law Immunity Standard*

Section 768.28, Florida Statutes, provides statutory immunity from civil suit for law enforcement officers employed by the State of Florida. *See* Fla. Stat. § 768.28. Specifically, Florida's law enforcement officers are immune from individual liability for tortious acts they perform within the scope of their employment provided they have not "acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Fla. Stat. § 768.28(9)(a); *see Drudge v. City of Kissimmee*, 581 F. Supp. 2d 1176, 1194-95 (M.D. Fla. 2008); *Geidel v. City of Bradenton Beach*, 56 F. Supp. 2d 1359, 1367-68 (M.D. Fla. 1999). In the context of Section 768.28(9)(a), "conduct committed in bad faith has been characterized as conduct acted out with actual malice," while "wanton and willful" conduct must be "worse than gross negligence" and "more reprehensible and unacceptable than mere intentional conduct." *Kastritis v. City of Daytona Beach Shores*, 835 F. Supp. 2d 1200, 1225 (M.D. Fla. 2011) (citations omitted).

*2. Count IV: Common Law False Imprisonment Claim against MacArthur*

In Count IV, Barnett brings a common law false imprisonment claim against MacArthur. (Doc. 50 ¶¶ 89-92.) Barnett avers that "MacArthur unlawfully detained and deprived [Barnett] of her liberty, against her will, under circumstances that were unreasonable or unwarranted." (*Id.* 91.) Barnett further states that "MacArthur was not within the course and scope of her employment when she falsely imprisoned [Barnett] and/or MacArthur was acting in bath faith or with malicious purpose that was wanton and willful when she falsely imprisoned [Barnett.]" (*Id.* 90.) MacArthur argues that she is entitled to summary judgment and as grounds therefore states that she has personal immunity under Section 768,28(9)(a), Florida Statutes because "there is no genuine issue of material fact that [MacArthur] did not act with bad faith, malicious purpose[,] or with wanton and willful disregard of human rights and safety." (Doc. 76 at 3.) MacArthur further avers that probable cause existed for Barnett's arrest and detention. (*Id.*)

Florida law provides that "a person is guilty of a DUI offense if the person is driving or in actual physical control of a vehicle, and that person is affected by a substance to the extent that his normal facilities are impaired or he has a breath-alcohol level over .08." *Holt*, 486 F. App'x at 99 (citing Fla. Stat. § 316.193). The tort of false arrest is defined as "the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and

deprivation of his liberty." *Johnson v. Weiner*, 19 So. 2d 699, 700 (Fla. 1944); *see Willingham v. City of Orlando*, 929 So. 2d 43, 48 (Fla. 5th DCA 2006). "Like it does in 1983 actions, the existence of probable cause or arguable probable cause defeats a Florida false arrest claim." *See Caldwell v. Nocco*, No. 8:14-cv-2167-T-30AEP, 2015 WL 9302835, at *4 (M.D. Fla. Dec. 22, 2015) (citation omitted). However, under Florida law and in contrast to § 1983 actions, the defendant has the burden of proving arguable probable cause as an affirmative defense. *Id.*

Although MacArthur admits that she stated "I will" in response to another law enforcement officer yelling out "have fun," she avers that she was being sarcastic about upcoming paperwork. (*See* MacArthur Dep. at 279:23-280:2.) Regardless, the video and audio evidence show MacArthur treating Barnett in a respectful and professional manner before, during, and after Barnett's arrest. MacArthur's conduct related to Barnett's arrest and detention does not evidence bad faith, actual malice, or wanton and willful disregard of human rights, safety, or property sufficient to override MacArthur's state law immunity from Barnett's claims. Thus, the Court will enter summary judgment in MacArthur's favor on Count IV.

*3. Count V: Common Law Malicious Prosecution Claim against MacArthur*

In Count V, Barnett alleges that MacArthur was the legal cause of the criminal proceeding against

Barnett that was commenced on March 17, 2014 in the Eighteenth Judicial Circuit of the State of Florida. (Doc. 50 ¶¶ 94-95.) As grounds therefore, Barnett avers that "MacArthur provided information she knew or should have known to be false and/or misleading to the State Attorney, upon which information the State Attorney relied to commence the original criminal proceeding." (*Id.* ¶ 96.) Barnett states that, "[t]he original criminal proceeding was commenced and continued without probable cause" and that MacArthur acted intentionally and with malice. (*Id.* ¶¶ 98-100.) MacArthur argues that she is entitled to summary judgment on Count V because "there is no genuine issue of material fact that MacArthur did not act with actual malice; that probable cause existed; and finally that MacArthur was not the legal cause of the prosecution." (Doc. 76 at 3.)

Under Florida law, in order to prevail on a malicious prosecution claim, a plaintiff must establish the absence of probable cause for an arrest and the presence of malice therein, amongst other elements. *See Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1968). The element of malice may be proven through a showing of actual malice or an inference of legal malice. *Douglas v. United Slates*, 796 F. Supp. 2d 1354, 1367 (M.D. Fla. 2011). However, although legal malice may be sufficient to support a malicious prosecution claim, legal malice is not the type of malice contemplated under Section 768.28(9) that results in a state employee losing individual immunity for actions taken

inside the course and scope of his or her employment. *See Moore v. Seminole Cty., Fla.*, No. 6:13-cv-224-Orl-31GJK, 2014 WL 4278744, at *6 (M.D. Fla. Aug. 29, 2014), *aff'd sub nom. Moore v. Pederson*, 806 F.3d 1036 (11th Cir. 2015) ("Stated differently, the cases cited by Moore may establish that legal malice is sufficient to prevail on a malicious prosecution claim under Florida law, but they do not establish that legal malice is sufficient to overcome the immunity from personal liability provided by Fla. Stat. § 768.28(9).").

In this case, the video and audio evidence show MacArthur treating Barnett in a respectful and professional manner. Additionally, although MacArthur submitted Barnett's case package to the State Attorney's Office, which did not include every detail about her interactions with Barnett, there is no evidence that MacArthur omitted information or otherwise mislead the State Attorney's Office as to the evidence in bath faith or with a malicious intent or in wanton and willful disregard of Barnett's constitutional rights. Further, there is no evidence that MacArthur contacted anyone, including personnel in the State Attorney's Office, in an effort to influence Barnett's case in any manner. Accordingly, MacArthur is entitled to immunity from Barnett's malicious prosecution claims and will be awarded summary judgment on Count V.

## D. State Law Claims against Eslinger: Count III, Count VI

*1. Municipal Liability Standard*

In accordance with Section 768.28, Florida Statutes, a government entity may be held liable for torts, negligent and intentional, committed by an employee, unless the employee committed same outside the course and scope of employment or was acting in bad faith, or with a malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, and property. *See* Fla. Stat. § 768.28 (providing the statutory framework for Florida's waiver of sovereign immunity in tort actions); *Geidel*, 56 F. Supp. 2d at 1365 (explaining that a municipality can be held liable for an intentional tort committed by an employee when the waiver of sovereign immunity set forth in Section 768.28, Florida Statutes, applies). As set forth in Section 768.28(5), "[t]he state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances." Fla. Stat. § 768.28(5); *see Caldwell*, 2015 WL 9302835, at *6 ("In circumstances where, as here, personal liability is foreclosed by Florida's immunity statute, a remedy remains available against the agency itself, or its representatives in their official capacities.").

*2. Count III: Common Law False Imprisonment Claim against Eslinger*

In Count III, Barnett avers that MacArthur falsely imprisoned Barnett in violation of Florida common law. (Doc. 50 ¶¶ 85-86.) Barnett alleges that "Eslinger unlawfully detained and deprived [Barnett] of her liberty, against her will, under circumstances that were unreasonable or unwarranted." (*Id.* ¶ 87.) Eslinger argues that summary judgment in his favor on Count III is appropriate because probable cause existed for Barnett's arrest and detention. (Doc. 76 at 3.)

Genuine issues of material fact preclude the entry of summary judgment on the issue of MacArthur having probable cause to arrest and detain Barnett. Additionally, a reasonable juror could find that the record evidence, particularly the breathalyzer test results, demonstrates beyond a reasonable doubt that Barnett was not impaired and should have been immediately released from detention.[5] Thus, the Court will not award summary judgment in Eslinger's favor on Count III.

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[5] As set forth in Defendants' Motion for Summary Judgment, the cases referenced by *Mathis v. Coals*, 24 So.3d 1284 (Fla. 2d DCA 2010) "generally stand for the proposition that continued detention is inappropriate only if it is determined 'beyond a reasonable doubt that the probable cause which formed the basis for the arrest was unfounded.'" (Doc. 76 at 24); *see Mathis*, 24 So.3d at 1290 (citations omitted).

*3. Count VI. Common Law Malicious Prosecution Claim against Eslinger*

In Count VI, Barnett avers that "Eslinger was the legal cause of the commencement of the criminal proceeding against [Barnett] as it is his official policy, practice and procedure to file charges with the state to have DUI arrestees prosecuted regardless of the circumstances." (Doc. 50 ¶ 104.) Purportedly, "Eslinger's implementation of an official policy, practice and custom of filing charges with the state to have DUI arrestees prosecuted regardless of the circumstances is malicious and in reckless disregard of [Barnett's] rights, safety, and welfare . . . " (*Id.* ¶ 105.) In his defense, Eslinger argues that Section 768,28(9), Florida Statutes, does not recognize a malicious prosecution claim against him in his official capacity and he "cannot be liable by virtue of sovereign immunity and separation of powers." (Doc. 76 at 3-4.) Eslinger further posits that there is no genuine issue of material fact that probable cause existed for Barnett's arrest, and there is a lack of malice and causation. (*Id.* at 4.)

Barnett avers that, pursuant to Eslinger's "official policy, practice and procedure," charges were filed against her solely because she was a DUI arrestee, without proper regard to the specific facts of her case. (*See* Doe. 50 ¶ 104.) However, despite extensive discovery in this case, including but not limited to deposition testimony and the exchange of numerous policy documents, Barnett has not elicited concrete evidence of such policy. Accordingly, based on the evidence in this case, a reasonable juror could not conclude that

Eslinger is liable for malicious prosecution of Barnett because of an "official policy, practice and procedure" or otherwise. The Court will thus award summary judgment in Eslinger's favor on Count VI.

### E. Barnett's § 1983 Fourteenth Amendment Claims

As provided under the Fourteenth Amendment to the United States Constitution, no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Due Process Clause of the Fourteenth Amendment "is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security." *DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.*, 489 U.S. 189, 195 (1989). "[Nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *Id.* With respect to conduct by a government actor, such "will rise to the level of a substantive due process violation only if the act can be characterized as arbitrary or conscience shocking in a constitutional sense." *Waddell v. Hendry Cnty. Sheriff's Office*, 329 F.3d 1300, 1305 (11th Cir. 2003). "[O]nly the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.'" *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 129 (1992)). Further, whether conduct is egregious is evaluated from the time the government actor made the decision rather than from hindsight. *Waddell*, 329 F.3d

at 1305. Additionally, "[i]n some cases, a state official's deliberate indifference will establish a substantive due process violation." *Id.* at 1306.

Defendants posit that they are entitled to summary judgment on Barnett's Fourteenth Amendment claims contained in her 42 U.S.C. § 1983 claims. (Doc. 76 at 30-31.) Barnett admits that her § 1983 malicious prosecution claims against Defendants do not implicate the Fourteenth Amendment. (*See* Doc. 92 at 34-35.) Accordingly, summary judgment will be granted in Defendants' favor on Barnett's Fourteenth Amendment claims in Count VII and Count VIII. Additionally, Barnett's false arrest and continued detention claims are properly brought and analyzed under the Fourth Amendment, rather than the Fourteenth Amendment. *See Strickland*, 399 F. Supp. 2d 1285 (analyzing motorist's § 1983 claims related to his arrest for driving under the influence and his subsequent, approximately seven (7) hour, detention under the Fourth Amendment and finding that motorist's "arrest and his subsequent detention—both of which involve a 'seizure' . . . should be analyzed under the 'objective reasonableness' standard of the Fourth Amendment") (citing *Tinney v. Shores*, 77 F.3d 378, 381 (11th Cir. 1996)). Accordingly, the Court will grant summary judgment in MacArthur's favor on Count I and will grant summary judgment in Eslinger's favor on Count II to the extent that Barnett relies on the Fourteenth Amendment to bring said claims.

### F. Punitive Damages

Pursuant to Section 768.72(2), Florida Statutes, "[a] defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence." Fla. Stat. § 768.72(2). In § 1983 cases, punitive damages awards "are appropriate where a defendant's conduct is motivated by evil intent or involves callous or reckless indifference to federally protected rights." *H.C. by Hewett v. Jarrard*, 786 F.2d 1080, 1089 (11th Cir. 1986) (citing *Smith v. Wade*, 461 U.S. 30, 56 (1983)). The Court finds MacArthur's conduct prior, during, and after Barnett's arrest did not rise to the level that is necessary to support Barnett's claims for punitive damages. Accordingly, MacArthur will be awarded summary judgment in her favor on Barnett's punitive damages claims.

## IV. CONCLUSION

For the foregoing reasons, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendants Sara MacArthur and Donald Eslinger's Motion for Summary Judgment (Doe. 76) is **GRANTED in part** and **DENIED in part**.

2. Defendants' Motion for Summary Judgment (Doc. 76) is **GRANTED** in that summary judgment is awarded in Defendants' favor on Count II, Count IV, Count V, Count VI, Count VII, and Count VIII, The

Court also awards summary judgment in Defendants' favor on Plaintiff Seana Barnett's Fourteenth Amendment claims and punitive damages claims.

3. In all other respects, Defendants' Motion for Summary Judgment (Doc. 76) is **DENIED**.

4. The Clerk of Court is directed to **ENTER JUDGMENT** accordingly.

**DONE** and **ORDERED** in Orlando, Florida on this 16th day of November, 2016

/s/ G. Kendall Sharp
**G. KENDALL SHARP**
SENIOR UNITED STATES
DISTRICT JUDGE

Copies furnished to:

Counsel of Record

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 18-12238-AA

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SEANA BARNETT,

Plaintiff - Appellant,

versus

SARA MACARTHUR,
individually,
SHERIFF, SEMINOLE COUNTY FLORIDA,
in his official capacity as Sheriff of Seminole County, Florida,

Defendants - Appellees,

DONALD ESLINGER,
in his official capacity as former Sheriff of Seminole County, Florida,

Defendant.

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Appeal from the United States District Court
for the Middle District of Florida

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

BEFORE: JORDAN, GRANT, and DUBINA, 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 Panel Rehearing is also denied. (FRAP 40)

ORD-46

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**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

SEANA BARNETT,

Plaintiff,

vs.

SARA MACARTHUR, individually, and DENNIS M. LEMMA, in his official capacity as SHERIFF OF SEMINOLE COUNTY, FLORIDA,

CASE NO.: 6:15-CV-469-Orl-18-DCI

Defendants. /

# VERDICT

(Filed Mar. 15, 2018)

**Federal Claim Against MacArthur for False Arrest and Detention in Violation of the Fourth Amendment of the U.S. Constitution (42 U.S.C. 1983)**

Do you find from a preponderance of the evidence:

1. That Defendant MacArthur intentionally committed acts that violated Plaintiff Barnett's Fourth Amendment right under the United States Constitution not to be arrested or detained without probable cause?

   Answer Yes or No No

   If your answer is "Yes," proceed to question 2.

If your answer is "No," skip questions 2-4 and proceed to question 5.

2. That the conduct of Defendant MacArthur caused loss, injury or damage to Plaintiff Barnett?

Answer Yes or No _____

If your answer is "Yes," proceed to question 3.

If your answer is "No," skip questions 3-4 and proceed to question 5.

3. That Plaintiff Barnett should be awarded compensatory damages?

Answer Yes or No _____

If your answer is "Yes," in what amount? $ _____

If you answered "Yes," after filling in the amount, skip question 4 and proceed to question 5.

If your answer is "No," proceed to question 4.

4. That Plaintiff Barnett should be awarded nominal damages?

Answer Yes or No _____

**Common Law Claim Against Defendant Sheriff for False Imprisonment**

Do you find from a preponderance of the evidence:

5. That Defendant Sheriff, by and through the conduct of Defendant MacArthur, caused Plaintiff Barnett to be falsely imprisoned?

   Answer Yes or No No

   If your answer to question 5 is Yes, answer question 6.

   If your answer to question 5 is No, skip questions 6 through 8.

6. That the Defendant Sheriff has proven the affirmative defense that probable cause existed for the arrest and detention of Plaintiff Barnett by a preponderance of the evidence?

   Answer Yes or No _____

   If your answer is Yes, skip questions 7-8.

   If your answer is No, proceed to question 7.

7. That the conduct of Defendant MacArthur caused loss, injury or damage to Plaintiff Barnett?

   Answer Yes or No _____

8. That Plaintiff Barnett should be awarded compensatory damages?

   Answer Yes or No _____

   If your answer is Yes, in what amount?
   $ _____

SO SAY WE ALL THIS 15 DAY OF MARCH, 2018.

/s/ Lisa Donaldson
Foreperson's Signature