

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

HARRY BARNETT,

PETITIONER,

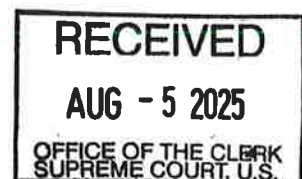
vs.

KULISEK *et al*

RESPONDENTS.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit**

**MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI**



1. Pursuant to Rule 13.5 of the Rules of the Supreme Court of the United States, Petitioner Harry Barnett respectfully requests a 49-day extension of time, up to and including September 30th, within which to file a petition for a writ of certiorari for case: 23-2509 in the 7th Circuit U.S. Court of Appeal

2. The cases involved in the writ are:

Barnett v. Kulisek, 7th Circuit U.S. Court of Appeal case: 23-2509
Barnett v. Elsmore 11th Circuit U.S. Court of Appeal case: 23-12517

3. The due date for Kulisek is August 12, 2025, and Elsmore is September 30, 2025.

4. Both cases involve, but are not limited to, Fourth Amendment malicious prosecution claims, with a circuit split between the Seventh and Eleventh Circuits as to the viability and elements required of a claim, and thereby is of national importance.

5. This court has jurisdiction based upon 28 U.S.C. § 1651 as the two lower Courts are U.S. District Courts, and entered judgments in these matters.

6. An extension is required in order to have additional time to seek counsel to handle the writ of these cases, as Elsmore was recently issued by the District Court, and it is intended that both cases would be filed in one writ.

7. This is the first request for an extension of time.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the time to file a petition for a writ of certiorari in Kulisek be extended by 49 days, to and including September 30, 2025, the due date of Elsmore, so one common writ may be filed for both cases.

Respectfully submitted,

/S/ Harry Barnett

HARRY BARNETT, Petitioner

HARRY BARNETT

1213 14th St #66

Key West, Florida 33040

Phone: 847-997-8570

Email: harryb1@sbcglobal.net

PRO SE PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Plaintiff's **MOTION FOR EXTENSION TO FILE WRIT OF CERTIORARI** has been furnished by email to: Julian Henriques at julian.henriques@cityofchicago.org, on behalf of Alexander Kulisek and the City of Chicago, this 29th day of April, 2025.

/S/ Harry Barnett

Harry Barnett

1213 14th St. #66

Key West, FL 33040

Harryb1@sbcglobal.net

847-997-8570

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

May 14, 2025

Before

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 23-2509

HARRY BARNETT,
Plaintiff-Appellant,

v.

CITY OF CHICAGO, *et al.*,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division

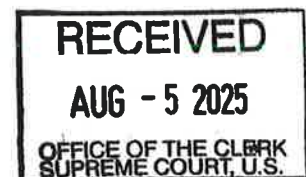
No. 1:18-cv-07946

Sara L. Ellis,
Judge.

ORDER

On consideration of the petition for panel rehearing filed by Plaintiff-Appellant on April 29, 2025, all members of the original panel have voted to deny the petition for panel rehearing.

Accordingly, the petition for panel rehearing is hereby DENIED.



NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted April 15, 2025*

Decided April 16, 2025

BeforeTHOMAS L. KIRSCH II, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 23-2509

HARRY BARNETT,
*Plaintiff-Appellant,**v.*CITY OF CHICAGO, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 18 C 7946

Sara L. Ellis,
*Judge.***ORDER**

Harry Barnett sued Alexander Kulisek, a police officer for the City of Chicago, and the City of Chicago, alleging that they violated his rights under the Fourth Amendment by unlawfully causing him to be detained pretrial. *See* 42 U.S.C. § 1983.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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The district court entered judgment for the defendants. We affirm because probable cause supported Barnett's detention.

In September 2016, Barnett met with a former employee who wanted to sell him a scooter. The employee told Barnett that he had been hired to clean out the contents of a home and had acquired the scooter during the "cleanout." Barnett purchased the scooter for \$60. He then posted an advertisement on Craigslist seeking to re-sell the scooter, explaining that he did not have the title or a key. His post included a picture of the vehicle identification number (VIN), but Barnett did not attempt to run the VIN to determine the last registered owner.

Kulisek, an officer with the Chicago Police Department, saw the advertisement and recognized the scooter as his. The scooter recently had been reported stolen from a shed on his parents' property. He contacted Barnett to arrange a meeting to see the scooter. Kulisek and a fellow officer met Barnett in plainclothes. When Barnett showed them the scooter, Kulisek confirmed that it was his and arrested Barnett.

At the police station, Barnett explained to Kulisek and other officers how he came to possess the scooter. Barnett showed them the text messages he had exchanged with his former employee, identified the employee from police mugshots, explained that the employee acquired the scooter in a "cleanout," and confirmed that he did not run the VIN. The incident narrative section on Barnett's arrest report stated in relevant part:

[Barnett] was arrested in that he was found to be in possession of a 1987 Yamaha moped, that was taken in a burglary ... [Barnett] attempted to sell said property to [officers] working in covert capacity. ... [Barnett] made no attempt to identify the owner and failed to take reasonable measures to restore the property to the owner, intending to deprive the owner permanently of the use/benefit of the property.

Barnett was charged with theft of lost or mislaid property. 720 ILCS 5/16-2. A person violates the statute where he obtains control over lost or mislaid property and "(a) ... knows, or is aware of, or learns of a reasonable method of identifying the owner, and (b) [f]ails to take reasonable measures to restore the property to the owner, and (c) [i]ntends to deprive the owner permanently of the use or benefit of the property." *Id.*

A judicial officer determined that probable cause existed to detain Barnett for theft of lost or mislaid property. In total, Barnett was detained for about six hours

before being released on bond. Eleven days later, after a bench trial, the trial judge found Barnett guilty of theft of lost or mislaid property. At a post-trial hearing two months later, however, the trial court acquitted him. The court reasoned that the scooter, which Kulisek had testified at trial was stolen, did not qualify as lost or mislaid.

In 2018, Barnett brought this federal suit, alleging that Kulisek fabricated evidence in the arrest report to secure a judicial determination of probable cause to detain Barnett on a charge of theft of lost or mislaid property. Specifically, Barnett objected to Kulisek's statements that Barnett had made no attempt to identify the owner of the scooter and intended to deprive the owner of the property. According to Barnett, this information, which matched the elements of the offense of theft of lost or mislaid property, *see* 720 ILCS 5/16-2, was inaccurate and tainted the judicial determination of probable cause. Barnett also alleged that the City of Chicago has a practice of allowing police to fabricate evidence in police reports to support improper pretrial detention. *See Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978).¹

The district court characterized Barnett's allegations against Kulisek as arising under the Fourth Amendment. The district court determined that Kulisek was entitled to summary judgment on Barnett's claim that Kulisek deliberately misled the judicial officer by providing false information in the arrest report, which caused Barnett to be detained pretrial without probable cause.² The district court reasoned that because probable cause existed to detain Barnett for a different crime—theft, *see* 720 ILCS 5/16-1—Kulisek could not be held liable for a violation of the Fourth Amendment. Because there was no underlying constitutional violation, the City of Chicago also was

¹ Barnett also alleged that State's Attorneys Anita Alvarez and Kimberly Foxx prosecuted him based on fabricated evidence and without probable cause. The district court dismissed these claims, and Barnett does not challenge their dismissal.

² At an earlier stage of the proceedings, the district court granted Kulisek's motion to dismiss Barnett's claims of "malicious prosecution." The court reasoned that there was not a free-standing, federal theory of malicious prosecution, *see Manuel v. City of Joliet*, 903 F.3d 667, 670 (7th Cir. 2018), and the statute of limitations had expired on any similar state-law claim. To the extent that the court was incorrect about the availability of a Fourth Amendment claim under § 1983 for malicious prosecution, *see Thompson v. Clark*, 596 U.S. 36, 43–44 (2022), that conclusion was harmless. As we will discuss, because probable cause supported Barnett's pretrial detention for theft of lost or mislaid property, any claim under the Fourth Amendment fails.

entitled to summary judgment on the *Monell* claim. *See Haro v. Porter Cnty.*, 129 F.4th 992, 999 (7th Cir. 2025). Barnett appeals.

Barnett first argues that the district court was wrong to conclude that the existence of probable cause for a different charge insulated Kulisek from liability. *See Chiaverini v. City of Napoleon*, 602 U.S. 556, 561 (2024) (“[T]he presence of probable cause for one charge does not automatically defeat a Fourth Amendment malicious-prosecution claim alleging the absence of probable cause for another charge.”). But the existence of probable cause to detain Barnett for the charged offense— theft of lost or mislaid property—is a defense to any claim under the Fourth Amendment for unlawful pretrial detention. *See Washington v. City of Chicago*, 98 F.4th 860, 863 (7th Cir. 2024). Thus we begin and end our analysis there.

A judicial determination of probable cause is entitled to a presumption of validity. *See id.* at 870; *Lewis v. City of Chicago*, 914 F.3d 472, 477 (7th Cir. 2019). But the presumption can be rebutted by a showing that an officer “knowingly or intentionally or with a reckless disregard for the truth, made false statements to the judicial officer, and that the false statements were necessary to the judicial officer’s determination that probable cause existed for the arrest.” *Lewis*, 914 F.3d at 477 (quoting *Whitlock v. Brown*, 596 F.3d 406, 410 (7th Cir. 2010)).

Barnett maintains that Kulisek included false information in his arrest report— namely, the elements for the offense of theft of lost or mislaid property. He argues that Kulisek was deliberately misleading: Kulisek knew the evidence did not support a charge of theft of lost or mislaid property because he believed the scooter was stolen.

Probable cause requires an objective assessment based on the information known to the officer and the conclusions that reasonably can be drawn from that information. *Washington*, 98 F.4th at 875. The assessment must be specific to the charge: It depends on the elements of the predicate criminal offense as defined by state law. *Doe v. Gray*, 75 F.4th 710, 719 (7th Cir. 2023). Probable cause is “not a high bar,” and requires “only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Washington*, 98 F.4th at 875 (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018)). Probable cause exists at the time of pretrial detention if the officer had sufficient knowledge of facts and circumstances, based on reasonably trustworthy information, that would lead a prudent person to believe the plaintiff had committed the crime. *Id.*

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Here, even if we omit Kulisek's alleged false statements, "there remain[s] enough uncontested, reliable evidence to support probable cause as a matter of law." *Id.* at 874. Barnett's own admissions and the remaining undisputed facts were sufficient for a reasonable person to believe that Barnett committed the crime of theft of lost or mislaid property. Barnett explained to officers that he purchased the scooter from his former employee even though it did not have a key or title, and that the employee told Barnett that he had obtained the scooter while cleaning out items from a vacated property. After obtaining the scooter, Barnett attempted to re-sell it on Craigslist. And although Barnett identified the scooter's VIN in the advertisement, he did not attempt to run a search to identify who had title to the scooter. Barnett also admitted that he did not have a receipt for his purchase of the scooter from his former employee and did not take any "reasonable measures" to return the scooter to its registered owner. These facts surpass the threshold for probable cause to support Barnett's detention for theft of lost or mislaid property.

Barnett counters that Kulisek misled the judicial officer by asserting that the known facts supported a charge of theft of lost or mislaid property despite Kulisek's belief that the scooter was stolen. But Kulisek did not mislead the judicial officer. The arrest report recounted that the scooter had been taken in a burglary. To be sure, Barnett was acquitted based on Kulisek's testimony at trial that the scooter was stolen. But "probable cause demands much less than proof beyond a reasonable doubt." *Id.* at 876. And here, a reasonable jury could not find that the information known to Kulisek at the time of Barnett's pretrial detention did not support probable cause to believe Barnett committed the offense of theft of lost or mislaid property.

AFFIRMED