

No. 25-

IN THE
Supreme Court of the United States

DONNA BIRKS,

Petitioner,

v.

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a Fourteenth Amendment claim for deprivation of liberty without due process of law, founded on an allegation that a latent print analyst caused plaintiff's murder conviction and subsequent imprisonment when the analyst erroneously testified to a match of the plaintiff's palm print to a latent print on the murder weapon, is foreclosed by plaintiff's own testimony during the same criminal trial that he picked up and removed the weapon from the murder scene.
2. Whether the submission of latent print evidence in a criminal prosecution and trial, which later is determined to have been inaccurate, is a due process violation where the latent print analyst was not subjectively aware at the time she testified to it that her opinion evidence was inaccurate.
3. Whether, for qualified immunity purposes, it was clearly established in the 2004-2006 timeframe that the unknowing and unintentional submission of inaccurate latent print evidence was a due process violation under the Fourteenth Amendment.
4. Whether the law was clearly established by 2006 that a latent print analyst, who is required to have a positive print match verified by a another credentialed analyst, deprived a criminal defendant of due process by asking a fellow credentialed analyst working alongside her in the same lab to verify her positive identification, where she harbored subjective concerns about the competence of her colleague due to his age and infirmity.

5. Whether the Eleventh Circuit erred in denying a latent print analyst qualified immunity on an entirely novel form of §1983 due process liability founded solely upon the analyst's negative personal opinions as to the competence of her more experienced and equally credentialed co-worker print analyst, whom she asked to verify her positive print identification.

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rules 12.6 and 14.1(b), the parties to the action below are Plaintiff Clemente Javier Aguirre-Jarquin, Defendant Dennis Lemma in his official capacity as Sheriff of Seminole County, Florida, and Defendants Robert Hemmert, Jacqueline Grossi, and Donna Birks, in their individual capacities.

Only Defendant Birks is the petitioner here. Thomas Poulton, Esq., counsel of record for Petitioner Birks, is also counsel for the remaining defendants below, Defendant Dennis Lemma in his official capacity as Sheriff of Seminole County, Florida, and individual capacity Defendants Robert Hemmert and Jacqueline Grossi. These remaining defendants are not interested parties to the Petition for Writ of Certiorari by Birks.

RELATED CASES

Aguirre-Jarquin v. Hemmert, Grossi, Birks, and Lemma, No. 6:20-cv-25-RBD-DCI, United States District Court for the Middle District of Florida. Judgment entered Feb. 22, 2023.

Aguirre-Jarquin v. Seminole County, No. 23-10811, United States Court of Appeals for the Eleventh Circuit. Judgment entered November 4, 2025.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Donna Birks, at all material times a forensic latent print examiner employed by the Seminole County Sheriff's Office, Florida, respectfully petitions for a writ of certiorari to review the judgments of the United States Court of Appeals for the Eleventh Circuit and of the district court below.

OPINIONS BELOW

The opinion of the Court of Appeals is reported and is reproduced in the Appendix at pages 1a to 70a. It can also be found at *Aguirre v. Seminole County*, 158 F.4th 1276 (11th Cir. 2025) (published decision). The decision of the district court is reproduced in the Appendix at pages 73a to 117a. It is unreported but can be found at *Aguirre-Jarquin v. Hemmert*, 2023 WL 2558479 (M.D. Fla. Feb. 22, 2023). Citations to these decisions in the Petition will be first to the reporter case citation and then to the Appendix page number, as "App."

JURISDICTION

On November 4, 2025, the Eleventh Circuit entered judgment. App. 71a. Birks timely filed a petition for panel rehearing and rehearing *en banc* on November 25, 2025. The Eleventh Circuit Court of Appeals entered an order denying the petition on January 22, 2026. App. at 118a. Justice Clarence Thomas, on behalf of the Court, on March 24, 2026, extended the time for filing of this Petition for Writ of Certiorari to May 22, 2026. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Respondent Clemente Javier Aguirre-Jarquin seeks damages for an alleged violation of his Fourteenth Amendment due process rights pursuant to 42 U.S.C. § 1983. The Fourteenth Amendment to the United States Constitution provides in relevant part “nor shall any State deprive any person of life, liberty, or property, without due process of law.”

Section 1983, Title 42, United States Code, provides in relevant part that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress”

STATEMENT OF THE CASE

The Murder Investigation and Trial of Clement Aguirre-Jarquin

At approximately 9 a.m. on the morning of June 17, 2004, the bodies of Cheryl Williams and Carol Bareis were discovered inside their home at 121 Vagabond Way in Altamonte Springs, Florida (the “Williams residence”). The two women had been stabbed to death. The Seminole County Sheriff’s Office (SCSO) responded to the scene and deputies canvassed the neighborhood. Clement Aguirre-

Jarquín lived in a shed at 117 Vagabond Way, next door to the Williams residence. Aguirre and other neighbors were questioned that morning as to any knowledge of the murders. Aguirre lied, claiming he knew nothing about the murders. *Aguirre*, 158 F.4th at 1283-85; App. 4a-7a.

The crime scene reflected that the perpetrator had left bloodied footprints in the Williams residence. That evening, investigators again spoke to Aguirre and, only after investigators asked Aguirre to examine his shoes for blood did Aguirre admit that he had been in the scene of the murders. Aguirre told investigators that he had gone into the Williams residence looking for beer, that he found the body of Cheryl Williams, picked her up and determined that she was dead, and that he then returned to his home wearing his bloodied clothes and shoes.

Aguirre admitted that he bagged his bloodied clothes and placed them on the roof of the shed in which he lived, planning to burn the clothes later; he was still wearing the shoes when questioned. Aguirre stated that he was drunk and did not remember the prior night's events very well. A search warrant was executed on Aguirre's residence and investigators found a plastic bag containing Aguirre's blood-soaked clothing on the roof. Aguirre was arrested and taken to jail on charges of tampering with evidence. *Aguirre*, 158 F.4th at 1285-86; App. 8a-10a.

The ten-inch chef's knife used to commit the murders was found between Aguirre's residence and the Williams residence. The knife was the same make and model of knives used at the restaurant where Aguirre worked. The head chef of that restaurant stated that a ten-inch chef's knife was missing from the restaurant. *Aguirre*, 158 F.4th

at 1287; App. 11a-12a; 50a-52a; 54a. *Aguirre-Jarquin v. State*, 9 So.3d 593, 598 (Fla. 2009) (“*Aguirre v. State, I*”).

Donna Birks, a certified latent print examiner employed by the SCSO, was provided with a photograph of a latent print found on the handle of the knife. Birks collected exemplars from Aguirre and compared them against the latent print. Birks concluded that there was a positive match between the latent print on the knife and the print from Aguirre’s left palm. William McQuay, another latent print examiner employed in the Latent Print Unit of the SCSO, verified Birks’ results. Birks then communicated the report of her palm print match to Detective Robert Hemmert, the lead homicide investigator. A grand jury indicted Aguirre on two counts of first-degree premeditated murder for the killings of Williams and Bareis. *Aguirre*, 158 F.4th at 1287; App. 12a-13a.

Aguirre’s trial took place from February 20 to 28, 2006. Birks’ findings were disclosed to Aguirre as part of pretrial discovery and Birks testified at the trial to her latent print examination and her conclusion that the latent print was of sufficient quality to make a comparison. She testified that the latent print on the knife positively matched Aguirre’s left palm print. *Aguirre*, 158 F.4th at 1288; App. 13a.

The initial Florida Supreme Court review of the matter, *Aguirre v. State, I*, further catalogued the evidence against Aguirre. Aside from Birks’ testimony concerning the palm print match, a number of witnesses testified at the trial. Samantha Williams, the daughter of Cheryl Williams and the granddaughter of Carol Bareis,

also lived in the Williams residence. Samantha testified that several months before the murders she awoke at 2 a.m. to find Aguirre standing over her bed. She screamed at him, forcefully told him to leave, and escorted him out of the house, telling Aguirre the next day not to enter the Williams residence again without permission. *Aguirre v. State*, I, 9 So.3d at 598; *Aguirre*, 158 F.4th at 1285; App. 6a.

As to the physical evidence, the soles of Aguirre's shoes in fact contained Cheryl Williams' blood, as did Aguirre's underwear, socks, T-shirt, and shorts. Aguirre's T-shirt, shorts, and underwear also contained Bareis' blood and DNA. *Aguirre v. State*, I, 9 So.3d at 599.

Aguirre testified at the criminal trial in his own defense. According to Aguirre, after drinking all night he went home at 5 a.m. and watched television. He got up and walked next door to the Williams residence, searching for beer. Aguirre went inside and found Cheryl's body, lifted her onto his lap and tried to revive her. He realized she was dead and he put her back on the floor. Aguirre then walked toward the living room and found the body of Carol Bareis.

At his trial, Aguirre admitted to handling the murder weapon in the murder scene. The Florida Supreme Court described his testimony:

While in the house, Aguirre noticed the murder weapon sitting on a box near where Cheryl was lying. He stated that he feared the killer was still inside the house; therefore, he picked up the knife and screamed, "Is anybody here?" There was no reply. He then walked to Samantha's

room. She was not there, but her room had been ransacked.

Thereafter, Aguirre ran outside towards his residence and tossed the knife into the grass.

Aguirre v. State, I, 9 So.3d at 600.

The Eleventh Circuit in its opinion in this case also noted that Aguirre testified in his criminal trial to handling the knife:

He testified to entering 121 Vagabond Way in the early morning and touching Cheryl to see if she was alive. But he then added new details. He said he saw the Sysco knife near Cheryl. He also said he went into Bareis's room and checked her body. He picked up the knife and went into Samantha's room, looking for somebody. Discovering no one, he left the house while holding the knife. He eventually discarded the weapon in the yard.

Aguirre, 158 F.4th at 1288; App. 13a.

Aguirre testified that he ran outside towards his residence, stripped off all his clothes, placed them in a plastic bag, set the bag on top of his shed, and bathed. He explained that he did not call police and report the murders because he was an illegal immigrant and afraid of deportation. *Aguirre v. State, I, 9 So.3d at 600.* The jury found Aguirre guilty of two counts of first-degree murder and of one count of burglary with an assault or battery. Aguirre was sentenced to death. *Aguirre, 158 F.4th at 1288; App. 14a.*

Post-Conviction Proceedings

Tara Williamson was hired by the SCSO in 2005, a year after Aguirre's conviction, and Birks trained Williamson in latent print examination. In a memorandum to SCSO administrators, Williamson alleged that Birks engaged in improper latent print procedures, identifications, and verifications. This spawned an administrative investigation of the SCSO's Latent Print Unit.

Birks was first hired by the SCSO in 1994. In 2001 – three years before her examination of the latent print on the murder weapon in this case – she was certified as a latent print examiner by the Latent Print Certification Board of the International Association for Identification (IAI). McQuay was hired by the SCSO in 1998, was also certified by the IAI in the relevant period and had served as president of the Florida Division of the IAI. The investigation showed that McQuay worked as a latent print examiner at the SCSO, including verification of latent print comparisons, until he retired in 2005.¹ Williamson claimed that Birks had expressed criticism that McQuay's health was deteriorating and that Birks doubted his continuing capabilities.

As part of the investigation, the SCSO had outside latent print analysts examine Birks' work in a number of cases, including Aguirre's. None of these examiners

1. The Eleventh Circuit erroneously stated in its opinion in this case that McQuay was retired when he verified Birks' result in June, 2004. *Aguirre*, 158 F.4th at 1287, 1299. App. 12a, 13a. The record however shows that McQuay did not retire until almost a year later, in May of 2005. District court doc. 185-1, paragraphs 5 and 8, and 209-10, p. 29.

arrived at the same conclusion Birks earlier reached as to the match between Aguirre's palm print and the latent print on the knife. However, the examiners did not reach a unanimous conclusion amongst themselves, with one examiner finding that the latent print from the knife could not reliably be used for verification, and one finding that Birks' conclusion that there was a positive match between the latent print and Aguirre was erroneous.

Aguirre moved for a new trial, in part based on Birks' palm print match testimony. The state trial court denied Aguirre's motion, determining that because Aguirre testified to having handled the murder weapon at the scene, Birks' testimony as to the print match was cumulative. The court further determined that even if the testimony at trial had shown the latent print on the knife to be of no value, Aguirre would have had to testify and the evidence against Aguirre was so damning that the jury would not have acquitted him. *Aguirre*, 158 F.4th at 1288; App. 14a-15a.

Aguirre appealed the denial of his motion for new trial. The Florida Supreme Court in *Aguirre v. State, I*, affirmed the denial of Aguirre's motion noting the "vast amount of evidence linking Aguirre to the murders." *Aguirre, I*, 9 So.3d at 603. As to the palm print match by Birks, the Florida Supreme Court held that Birks' testimony did not warrant a new trial:

"[E]ven though the newly discovered evidence showed that Aguirre's print was not identifiable on the murder weapon, his print on the weapon was cumulative due to Aguirre's admission of handling the weapon. Given the above, the trial court did not abuse its discretion in denying the

motion for new trial based on newly discovered evidence.”

Id.

Seven years later the Florida Supreme Court considered a second appeal by Aguirre. This appeal focused on post-conviction self-incriminating statements by Samantha Williams, made four years *after* Aguirre’s criminal trial, and the result of additional DNA testing. *Aguirre-Jarquin v. State*, 202 So.3d 785 (Fla. 2016) (“*Aguirre v. State, II*”). The Florida Supreme Court in *Aguirre v. State, II*, did not re-address the palm print identification by Birks but did grant Aguirre’s motion to vacate his conviction and sentence based on the statements by Samantha Williams, made years after Aguirre’s conviction, and the DNA evidence, remanding the case for a new trial.² The State subsequently elected not to re-try Aguirre. *Aguirre*, 158 F.4th at 1289; App. 16a-17a.

District Court Proceedings

Aguirre sued Birks, the SCSO, Hemmert, and Grossi. As relevant here, Aguirre sued Birks in her individual capacity under 42 U.S.C. § 1983 alleging violations of Aguirre’s rights 1) to a fair criminal trial under the Fourteenth Amendment and 2) for malicious prosecution under the Fourth Amendment. Birks timely moved for summary judgment in the district court on all claims.

The district court denied Birks’ motion on the § 1983 claims. As to the Fourteenth Amendment denial of a fair

2. The DNA evidence did not exonerate Aguirre.

trial claim, Birks argued that her reliance on McQuay to verify the palm print match was not a constitutional violation and not a violation of clearly established law. The district court did not find, and Aguirre offered no evidence, that Birks knowingly or intentionally created a false palm print match as between Aguirre and the latent print on the murder weapon.. The district court found, however, that there was a question of fact as to whether Birks subjectively considered McQuay to be in failing health and capabilities such that Birks' reliance on McQuay to verify her print match was the equivalent of fabrication of evidence. *Aguirre-Jarquin v. Hemmert*, 2023 WL 2558479, at *7-8 (M.D. Fla. Feb. 22, 2023); App. 89a-91a.

The district court denied Birks qualified immunity on this Fourteenth Amendment claim because “[i]t has long been clearly established that fabricating incriminating evidence violates the right to due process.” *Id.* at *6, citing *Riley v. City of Montgomery*, 104 F.3d 1247, 1253 (11th Cir. 1997). Thus, the district court created out of whole cloth a novel species of constitutional liability for print analysts who submit their work for review by a certified, qualified colleague if they subjectively harbor negative opinions of their competence.

Birks also argued in the district court that, even if errant, her palm print match result was not material to Aguirre's fair trial claim, the jury's decision to convict Aguirre, or his subsequent incarceration, because Aguirre testified at the criminal trial that he picked up the knife at issue, carried it in the house, and later dropped it.³

3. In his deposition in this civil case, Aguirre again testified to having handled the knife – picking it up after he discovered

The knife was found by investigators in Aguirre’s yard, next door to the Williams residence. Birks pointed out that the Florida Supreme Court in *Aguirre v. State, I*, considered the effect of Birks’ allegedly errant palm print identification and held that it did not invalidate Aguirre’s conviction given Aguirre’s own trial testimony that he handled the knife. *Aguirre v. State, I*, 9 So.3d at 603.

The district court did not directly address this materiality argument as to the effect of the palm print match on the trial or conviction, holding in a footnote that “the match was a crucial factor in Hemmert’s decision to arrest” and “[a] reasonable jury could logically conclude from this ... that the match was a crucial factor in Aguirre’s arrest and later conviction.” 2023 WL 2558479, at *7 n.11; App. 90a. The district court similarly denied Birks’ motion for summary judgment on the Fourth Amendment malicious prosecution claim, finding that “there is a genuine issue of material fact as to whether Birks fabricated the print match Hemmert relied on” in arresting Aguirre. *Id.* at 23.

Opinion of the Eleventh Circuit

Birks appealed the district court’s denial of qualified immunity on the two § 1983 claims against her – the Fourteenth Amendment claim for fabrication of evidence, and the Fourth Amendment claim for malicious prosecution. The Eleventh Circuit, *Aguirre*, 158 F.4th 1276 (11th Cir. 2025), reversed the district court’s denial

the second body, walking through the house with it, though he could not remember what he did with it after he left the Williams residence. District court doc. 187, pp. 88 – 97.

to Birks of qualified immunity on the Fourth Amendment malicious prosecution claim, but affirmed the district court's denial of qualified immunity to Birks on the Fourteenth Amendment fabrication of evidence claim. App. 69a-70a.

At the Eleventh Circuit, Birks argued that she was entitled to qualified immunity and summary judgment on the Fourteenth Amendment claim because, as found by the Florida Supreme Court in *Aguirre v. State, I*, the allegedly fabricated evidence she created in the form of the palm print match was, as a matter of law, immaterial to Aguirre's murder conviction given Aguirre's own testimony that he handled the murder weapon. The Eleventh Circuit treated the question of materiality as an issue akin to causation, finding both to be separate and distinct from the core qualified immunity question of whether Birks violated Aguirre's Fourteenth Amendment due process right to a fair trial.

The Eleventh Circuit declined to exercise discretionary pendent appellate jurisdiction over this issue, stating: "Whether Birks's conduct violated clearly established law does not necessarily entail a resolution of ... whether her conduct was material to Aguirre's arrest and conviction." The Eleventh Circuit determined that the question of materiality is a "legal question[]" but the answer is not required "as part of the qualified-immunity analysis." *Aguirre*, 158 F.4th at 1294-95; App. 28a-29a.

As to the state of the law on fabrication of evidence premised on Aguirre's contention that Birks erred in asking that McQuay, another certified analyst, verify her result, the Eleventh Circuit agreed with Birks that

there was no applicable caselaw decided under similar facts to the instant matter which would have set forth a clearly established constitutional standard applicable to these circumstances. Instead, the Eleventh Circuit cited to a number of cases for the broad proposition that “it is unlawful for a law enforcement officer to falsely create or falsely attest to the existence of incriminating evidence. Even assuming our case law is not ‘directly on point,’ the ‘principles’ evinced by and the ‘reasoning’ in these cases would have fairly apprised reasonable officers in Birks’s position that falsely presenting evidence confirming a suspect as the source of a latent print on a murder weapon—and then falsely testifying to the inculpatory nature of that evidence at trial—is unlawful.” *Aguirre*, 158 F.4th at 1298; App. 37a-41a.

But none of the cases the Eleventh Circuit cited dealt with the issue presented here, which is whether a defendant technician’s reliance on another technician within the same office to perform verification of a match, where the defendant is alleged to have reason to doubt the verifier’s technical abilities, was clearly established to be unconstitutional so as to deny qualified immunity. Instead, as discussed below, *all* of the cases relied upon by the Eleventh Circuit to “clearly establish” the law dealt with scenarios in which law enforcement officials *knowingly* and *intentionally* – as opposed to negligently or even recklessly – presented inaccurate evidence in a criminal case.

Birks timely filed a petition for rehearing and rehearing en banc at the Eleventh Circuit on November 25, 2025. The petition was denied on January 22, 2026. App. 118a.

REASONS FOR GRANTING THE PETITION**I. THE COURT SHOULD GRANT THE PETITION AND HOLD THAT IN EVALUATING A § 1983 DEPRIVATION OF LIBERTY CLAIM FOUNDED ON ALLEGEDLY FABRICATED EVIDENCE, A COURT MUST CONSIDER WHETHER THERE IS PROOF THAT USE OF THE EVIDENCE ACTUALLY CAUSED A DEPRIVATION OF THE PLAINTIFF'S LIBERTY. BECAUSE AGUIRRE ADMITTED AT HIS CRIMINAL TRIAL THAT HE HANDLED THE KNIFE, BIRKS' PALM PRINT IDENTIFICATION DID NOT RESULT IN A DEPRIVATION OF AGUIRRE'S LIBERTY.**

In Aguirre's Third Amended Complaint, the operative complaint in this case, Aguirre alleged that Birks' palm print match evidence "directly and proximately resulted in the unjust and wrongful criminal conviction of Plaintiff and his continuing wrongful imprisonment, thereby denying him his constitutional right to a fair trial, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution."⁴ But Aguirre testified at his criminal trial that he entered the murder scene and picked up and handled the knife used to murder Cheryl Williams and Carol Bareis, carrying the knife with him until he dropped it somewhere after he left the murder scene. The knife was found in Aguirre's yard.

The Florida Supreme Court in *Aguirre v. State, I*, held that Birks' mistaken palm print match was cumulative to Aguirre's own testimony that he picked up and handled the knife while in the murder scene. Although the Florida

4. District court doc. 111, ¶190.

Supreme Court later in *Aguirre, II*, granted Aguirre a new trial on the murder charges, that court did so on entirely different grounds, leaving undisturbed its earlier conclusion that Birks' evidence as to the palm print match was cumulative to Aguirre's own testimony. The fundamental question presented here is therefore whether Aguirre can recover from Birks, under § 1983 and the Fourteenth Amendment, for damages flowing from Aguirre's conviction and subsequent incarceration where Aguirre's own testimony established that he held the knife.

The district court dismissed this materiality issue as a jury issue on causation. The Eleventh Circuit held that these materiality and causation issues were not part of Birks' qualified immunity appeal because "whether [Birks'] conduct was material to Aguirre's arrest and conviction" did not address the question of whether she violated clearly established law. *Aguirre*, 158 F.4th at 1294-95; App. 29a. The Eleventh Circuit thus declined to address Birks' contention that her matching of Aguirre's palm print to the latent print on the knife was cumulative to Aguirre's own trial testimony and therefore did not result in the deprivation of Aguirre's liberty. The probative value of the palm print match was to establish that Aguirre possessed the knife after the murders while the victims' blood was on Aguirre's hand and/or on the knife handle. Aguirre's own testimony established these facts. Thus, the print match was, as the Florida Supreme Court held in *Aguirre, I*, entirely cumulative to Aguirre's more damning admissions at trial.

Both the district court and the Eleventh Circuit erred because causation is an essential element of Aguirre's

claim that his Fourteenth Amendment right to a fair trial was violated by fabricated evidence. This is not a stand-alone causation issue for the jury, as the district court held, and it is not properly the subject of pendent appellate jurisdiction analysis such that it can be ignored in a qualified immunity appeal, as the Eleventh Circuit held. An actual deprivation of liberty *caused by* fabricated evidence is an essential, necessary component of a claim that a plaintiff has been deprived of liberty without due process of law.

Liberty interests under the Fourteenth Amendment are defined broadly, *Stanley v. Illinois*, 405 U.S. 645, 647-49 (1954), and can encompass more than “freedom from bodily restraint.” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). But in this case Aguirre explicitly seeks damages for time he spent in prison as a result of what he contends was a constitutionally unfair trial. *Aguirre*, 158 F.4th at 1289; App. 17a (“Aguirre sued in the District Court for the Middle District of Florida seeking redress for his 14 years of incarceration.”).

That Aguirre seeks compensation for post-conviction time in prison is important because it defines the deprivation of liberty that must be causally tethered to the alleged fabrication of evidence by Birks. *Truman v. Orem City*, 1 F.4th 1227, 1236 (10th Cir. 2021) (“The constitutional right at issue in this case is [plaintiff’s] due process right not to be deprived of liberty as a result of the fabrication of evidence by a government officer. To rise to the level of a constitutional violation, a plaintiff must assert a causal connection between the fabrication of evidence and the deprivation of liberty.”).

As the Tenth Circuit very recently held in *Morphew v. Chaffee County*, Colo., 172 F.4th 802, 821 (10th Cir. 2026):

To state a Fourteenth Amendment claim based on fabrication of evidence, a plaintiff must plausibly allege “(1) the defendant knowingly fabricated evidence, (2) the fabricated evidence was used against the plaintiff, (3) *the use of the fabricated evidence deprived the plaintiff of liberty*, and (4) if the alleged unlawfulness would render a conviction or sentence invalid, the defendant’s conviction or sentence has been invalidated or called into doubt.”

Id., citing *Truman*, 1 F.4th at 1236.

The third element, the causation element, depends on a showing of “a causal connection between the fabrication of evidence and the deprivation of liberty.” *Morphew*, 172 F.4th at 821; *Warnick v. Colley*, 895 F.3d 746, 753 (10th Cir. 2018) (“We are ‘aware of no authority for the proposition that the mere preparation of false evidence, as opposed to its use in a fashion that deprives someone of a fair trial or otherwise harms him, violates the Constitution.’” (alteration omitted) (quoting *Buckley v. Fitzsimmons*, 509 U.S. 259, 281 (1993)) (Scalia, J., concurring); *Whitlock v. Brueggemann*, 682 F.3d 567, 537-38 (7th Cir. 2012) (a plaintiff claiming damages under § 1983 for fabrication of evidence must show that the fabricated evidence was both “cause-in-fact” and the proximate legal cause of injury). Such a violation has been found to have occurred where, for example, a police officer’s role in fabrication of evidence was “instrumental” in causing a deprivation of liberty. *Id.*, citing *Jones v. City of Chicago*, 856 F.2d 985, 994 (7th Cir. 1988).

This Court has held that a plaintiff can recover nominal damages upon a showing that he suffered a deprivation of due process even without proof of an actual injury. *Carey v. Phipps*, 435 U.S. 247 (1978). But that is not what Aguirre seeks in this case – he seeks compensation for his post-conviction time in prison. *Aguirre*, 158 F.4th at 1289; App. 17a. Given his claim that he was deprived of liberty, he must show that the alleged due process violation actually caused the deprivation.

“[A]n act of evidence fabrication doesn’t implicate due-process rights *unless* the fabricated evidence is later used to deprive the [criminal] defendant of her liberty in some way. A deprivation of liberty is a necessary element of a due-process claim premised on allegations of evidence fabrication.” *Bianchi v. McQueen*, 818 F.3d 309, 319 (7th Cir. 2016) (emphasis in original) (internal quotations and citations omitted). As this Court has held, albeit in the suppression of evidence context, “[S]uppression of evidence amounts to a constitutional violation only if it deprives the defendant of a fair trial.” *U.S. v. Bagley*, 473 U.S. 667, 678 (1985). There must be proof that plaintiff “suffer[red] a deprivation of life, liberty, or property *as a result*” of use of the fabricated evidence. *Ashley v. City of New York*, 992 F.3d 128, 139 (2d Cir. 2021) (emphasis added).

The Eleventh Circuit analyzed Aguirre’s claim of deprivation of liberty by introduction of the palm print evidence as though causation were not an integral part of the qualified immunity appeal. This was error because causation in this context *is* part of the claimed constitutional violation, itself. If Birks’ palm print match evidence did not cause Aguirre to be convicted and

imprisoned, then by definition there was no deprivation of Aguirre’s liberty caused by that evidence.

It is well settled that to overcome qualified immunity the plaintiff must show *both* that the individual defendant violated his constitutional rights and that the violation was of clearly established law. The reviewing court can consider these burdens of proof in either order and oftentimes will resolve the matter on the second prong by a finding that the law was not clearly established. But “to survive a qualified-immunity defense, [the plaintiff] must satisfy both showings.” *Jones v. Fransen*, 857 F.3d 843, 851 (11th Cir. 2017); *Manning v. City of Tulsa*, 170 F.4th 1287, 1294 (10th Cir. 2026); *Pearson v. Callahan*, 555 U.S. 223 (2009).

The materiality/causation issue is therefore not some ancillary, pendent jurisdiction issue as the Eleventh Circuit held; it is a necessary component of the underlying claim of a constitutional violation and clearly should have been considered by the district court and the Eleventh Circuit in their analysis of whether Birks was entitled to qualified immunity on the claim that she deprived Aguirre of liberty through the use of fabricated evidence.⁵

5. The Second Circuit requires some deprivation of liberty to have occurred as a result of the fabricated evidence and this can include pretrial detention. *Ashley*, 992 F.3d at 138. The Seventh Circuit holds that a claim of damages for pretrial detention based on fabrication of evidence is squarely a Fourth Amendment claim, “whereas a claim that fabricated evidence was later used at trial to obtain a conviction violates a defendant’s rights under the Due Process Clause of the Fifth and Fourteenth Amendments.” *Mack v. City of Chicago*, 151 F.4th 887, 889 (7th Cir. 2025), quoting *Zambrano v. City of Joliet*, 141 F.4th 828, 830 (7th Cir. 2025)

There is some disparity in the circuit courts of appeals' view as to the degree of causation that must be present. The Sixth Circuit holds that a constitutional violation occurs when "evidence is knowingly fabricated and a reasonable likelihood exists that the false evidence *would have* affected the decision of the jury." *Gregory v. City of Louisville*, 444 F.3d 725, 737 (6th Cir. 2006) (emphasis added). The Seventh Circuit has held that a § 1983 plaintiff must show that the allegedly fabricated "evidence was material—that is, ... there is a reasonable likelihood the evidence affected the judgment of the jury." *Patrick v. City of Chi.*, 974 F.3d 824, 835 (7th Cir. 2020).

The Ninth Circuit applies a less demanding "could have" standard derived from *Brady v. Maryland*, 373 U.S. 83 (1963), and does not require a but-for showing. *Richards v. County of San Bernardino*, 39 F.4th 562, 572-73 (9th Cir. 2022) ("[A] plaintiff's due process right to a fair trial should not be conditioned on his ability to demonstrate that he *would* or even *probably would* prevail at trial if the evidence had not been deliberately fabricated.") (emphasis in original) (quoting *Osborne v. Dist. Atty's Off. for Third Jud. Dist.*, 521 F.3d 1118, 1132 (9th Cir. 2008), *rev'd on other grounds by*, 557 U.S. 52 (2009)).

(citation omitted). A claim that fabricated evidence caused a pretrial detention should be governed by the Fourth Amendment and its probable cause standard, not the Fourteenth Amendment due process clause. *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 366-67 (2017). Here, the Eleventh Circuit held that there was probable cause to have arrested and detained Aguirre *even if* one removed the palm print match from the probable cause calculus. *Aguirre*, 158 F.4th at 1307. Thus, there was no Fourth Amendment violation in Aguirre's pretrial detention.

Regardless of whether a plaintiff must plead and prove that the fabricated evidence definitively affected the criminal court jury, “likely” affected the jury, or merely “could have” affected the jury, the result in this particular case is the same. Aguirre cannot show that Birks’ palm print match caused his conviction and subsequent imprisonment because the only inference to be drawn from that testimony is that Aguirre held the knife used to kill Cheryl Williams and Carol Bareis and Aguirre testified that he handled the knife.

The Court should grant the petition, reject the Eleventh Circuit’s treatment of deprivation of liberty as ancillary to the qualified immunity analysis in this due process case, and hold that, where a plaintiff seeks compensatory damages premised on a claim he suffered a deprivation of liberty in the form of conviction and subsequent incarceration by use of fabricated evidence against him, he must show that the fabricated evidence actually caused a deprivation of liberty. The Court should further hold that, given that Aguirre testified at his criminal trial that he picked up and handled the knife, Birks’ evidence that Aguirre’s palm print was on the knife was cumulative to Aguirre’s own evidence and did not cause a deprivation of Aguirre’s liberty in the form of conviction and incarceration. In the alternative, the Court should grant the petition and remand the case to the Eleventh Circuit Court of Appeals with directions that the court reexamine Birks’ entitlement to qualified immunity and to include the materiality/causation component in its analysis of whether there was a violation of Aguirre’s right to a fair trial under the Fourteenth Amendment.

**II. THE COURT SHOULD GRANT THE PETITION
AND HOLD THAT A FOURTEENTH
AMENDMENT FABRICATION OF EVIDENCE
CLAIM UNDER § 1983 REQUIRES EVIDENCE OF
A KNOWING AND INTENTIONAL SUBMISSION
OF FALSE EVIDENCE.**

Birks concluded that there was a match between Aguirre's exemplar palm print and a latent print from the murder weapon. She then submitted her results to McQuay for verification. The district court and the Eleventh Circuit held that there was evidence that Birks subjectively felt that McQuay was aging and was not able to effectively provide such verification such that asking him to review the result for that purpose amounted to fabrication of evidence. By asking McQuay to verify the print, the Eleventh Circuit held, a reasonable jury could find that Birks avoided using a competent examiner who might "impede her inculcation of Aguirre." *Aguirre*, 158 F.4th at 1300; App. 41a.

In doing so, the Eleventh Circuit manufactured a brand new species of due process liability and then improperly refused to grant qualified immunity to Birks even though this novel form of liability was not clearly established at the time of Birks' actions. McQuay was certified as a latent print examiner and was an employee of the SCSO. There is no case authority for the proposition that Birks asking McQuay to verify the print match result under these circumstances was a constitutional violation, much less a clearly established one. The Eleventh Circuit's opinion effectively admits as much, ultimately relying on cases of intentional and knowing fabrication of evidence to generally state that fabrication of evidence is unconstitutional, applying that to Birks' use of McQuay.

Neither the district court nor the Eleventh Circuit in this case determined that Birks produced her report of a match *with knowledge* that the latent print was of insufficient value to match it to Aguirre, much less that she intended that it be used to obtain a tainted conviction of Aguirre. In the complaint, Aguirre alleged that Birks “intentionally *or* recklessly” fabricated the palm print match. *Aguirre*, 158 F.4th at 1297; App. 41a (emphasis added). The two are not the same and the distinction matters in determining whether there was a violation of Aguirre’s rights. At the time of summary judgment, Aguirre produced no evidence that Birks presented or testified to a match, knowing her conclusion was inaccurate. Instead, all Aguirre established was that Birks’ finding of a print match later turned out to be erroneous and Aguirre therefore focused on Birks asking McQuay to verify her work as the basis for his fabrication claim.

The overwhelming weight of authority is that *actual knowledge of falsity* of the evidence is required in order to establish a due process violation in turn premised on a claim that a lab technician or police officer presented the false evidence to a jury. This Court should grant the petition to memorialize the elements of such a claim, including subjective knowledge of falsity of the evidence by the § 1983 defendant.

The Second Circuit has held that fabrication of evidence claims arise in the face of “knowing” creation of false evidence, designed to mislead. *Morse v. Fusto*, 804 F.3d 538 (2015). There, a special assistant attorney general and an investigator suspected a dentist of Medicaid fraud and created spreadsheets outlining the

dentist's services and Medicaid payments. Plaintiff was later cleared of fraud charges which were generated by the spreadsheets. The dentist sued, claiming the spreadsheets were "intentionally manipul[at]ed" to "give the false impression" that the dentist billed for services he did not provide. *Id.* at 541. The appellate court affirmed a judgment for the plaintiff, observing that the trial court had (correctly) held that "the actions of the defendants upon which [plaintiff] bases his claims were the *knowing* creation of false or misleading evidence by a government officer acting in an investigative capacity." *Id.*, (emphasis added).

The Sixth Circuit has also held that to succeed on a § 1983 fabrication of evidence claim the plaintiff must show that the defendant "knowingly fabricated evidence against [a plaintiff], and [that] there is a reasonable likelihood that the false evidence could have affected the judgment of the jury." *Tanner v. Walters*, 98 F.4th 726, 232-33 (6th Cir. 2024), citing *Mills v. Barnard*, 869 F.3d 473, 484 (6th Cir. 2017). There is no evidence in the instant case that Birks knew she had wrongfully matched Aguirre's palm print to the latent print on the knife when she sent the match to McQuay for review.

The Seventh Circuit similarly requires that the plaintiff show, not just that the evidence was inaccurate or wrong, but that it was used with knowledge of its falsity, so as to obtain a tainted conviction. *Coleman v. City of Peoria, Ill.*, 952 F.3d 336, 344 (7th Cir. 2019). "This is a high bar to clear. [Plaintiff] must prove not only that [a witness's] statement was false but that [the defendant police officer] 'manufactured' it. That requires proof that [the defendant police officer] caused [the witness] to provide him with a

statement that [the defendant police officer] knew—with certainty—was false.” *Id.* (internal citation omitted). See also *Mack v. City of Chicago*, 151 F.4th 887, 889 (7th Cir. 2025) (in order to establish a violation of the Fourteenth Amendment based on use of fabricated evidence, a plaintiff must show that “(1) the [defendant] officers *knowingly* fabricated evidence that was used against him at trial; (2) the evidence was material; and (3) [plaintiff] was damaged as a result.” (emphasis added)).⁶

In *Briscoe v. County of St. Louis, Mo.*, 690 F.3d 1004 (8th Cir. 2012), a plaintiff whose rape conviction was later overturned sued a police officer claiming that he used an “unduly suggestive identification procedure[s]” in a photo lineup that led to plaintiff being arrested and charged. The Eighth Circuit held that a due process violation resulting in a claim of denial of a right to a fair trial is a substantive due process claim that requires conscience-shocking behavior on the part of the defendant. *Id.* at 1011. The level of intent on the part of the defendant required to sustain such a claim is fact-specific and depends on the nature of the claim. “The Supreme Court and this court take a context-specific approach to determining what mens rea on the part of an officer shocks the conscience.” *Id.*, citing *Wilson v. Lawrence Cnty.*, 260 F.3d 946, 956

6. *Mack* is also highly supportive of Birks’ arguments as to the roles of causation and materiality in the underlying constitutional tort. The Seventh Circuit held in *Mack* that plaintiff’s Fourteenth Amendment due process claim for fabrication of evidence failed because he was acquitted. *Id.* “The essence of a due-process evidence-fabrication claim is that the accused was *convicted and imprisoned* based on knowingly falsified evidence[.]” *Mack*, quoting *Patrick v. City of Chicago*, 974 F.3d 824, 835 (7th Cir. 2020), 974 F.3d at 835 (emphasis added by the court in *Mack*).

(8th Cir.2001) and *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

The Eighth Circuit affirmed a grant of summary judgment to the defendant police officers on allegations they used an unduly suggestive line up and failed to preserve evidence, in part because there was no evidence that at the time they performed their investigation the officers acted in actual bad faith. *Id.* at 1013. (citations omitted); *Stockley v. Joyce*, 963 F.3d 809 (8th Cir. 2020) (applying shocks-the-conscience substantive due process standard to claim of denial of right to a fair trial). See also *Arizona v. Youngblood*, 488 U.S. 51, 56 (1988) (“The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on *the police’s knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.*” *Id.*, quoting *Arizona v. Youngblood*, 488 U.S. 51, 56 (1988)).

In the Tenth Circuit’s decision in *Truman*, a prosecutor and investigators were alleged to have “knowingly falsified” measurements of a crime scene in order to gain a conviction of plaintiff for the murder of his wife. *Truman*, 1 F.4th at 1232. The Tenth Circuit reversed a grant of summary judgment to the prosecutor on a § 1983 fabrication of evidence claim, which the Tenth Circuit characterized as a “due process right not to be deprived of liberty as a result of the fabrication of evidence by a government officer.” *Id.* at 1236.

To establish such a claim, the Tenth Circuit held, the plaintiff must plead and prove among other things that “the defendant *knowingly* fabricated evidence.” *Id.* (emphasis added). Actual knowledge of the falsity of the evidence is a critical component of the tort:

Although “[t]here is some disagreement ... over what degree of intent the officer must have,” he necessarily must possess knowledge of the evidence’s falsity. *See* Evidence, Black’s Law Dictionary (11th ed. 2019) (defining “fabricated evidence” as “[f]alse or deceitful evidence that is unlawfully created ... in an attempt to achieve or avoid liability or conviction”).

Id. (internal citation omitted).⁷

There is no such evidence here. There is no evidence that Birks knew her match of Aguirre’s palm print to the latent print was inaccurate when she testified to the match. The evidence in a light most favorable to Aguirre is instead that Birks knew that McQuay’s health was in decline and that she believed he was not up to the task of verifying her work. Even if that were true, asking a credentialed colleague believed to be past his prime to verify her work simply does not equate to Birks submitting evidence of a match between the latent print on the knife and Aguirre’s palm print *with knowledge* that the match result was actually wrong, much less that Birks did so with the intent to unjustly convict Aguirre on false evidence.

7. The citation is to *Pierce v. Gilchrist*, 359 F.3d 1279, 1293 (10th Cir. 2004), in which the Tenth Circuit summarized cases on such claims and stated: “There is some disagreement in these cases over what degree of intent the officer must have, but if it is true that [defendant] maliciously withheld exculpatory evidence and fabricated inculpatory evidence, as alleged, her actions would satisfy even the most demanding standards put forth by the courts.” This lack of consensus as to “degree of intent” serves only to emphasize Birks’ entitlement to qualified immunity.

The Eleventh Circuit in this case acknowledged that there was no prior caselaw, decided under similar circumstances which would have put Birks on notice that her request to have McQuay verify her work was unconstitutional, instead holding that the cases where defendants were alleged to have deliberately falsified evidence “would have fairly apprised reasonable officers in Birks’s position that falsely presenting evidence confirming a suspect as the source of a latent print on a murder weapon—and then falsely testifying to the inculpatory nature of that evidence at trial—is unlawful.” *Aguirre*, 158 F.4th at 1298; App. 37a.

The Eleventh Circuit overreacted when it held that Birks’ request to have McQuay verify her work was a “purposeful failure to properly verify the results of a positive comparison [and] is not mere error or overconfidence in expressing a forensic conclusion; it is the absence of a step required to report incriminating forensic evidence. Any intentional transmittal to investigators of a positive identification without this step would thus be a fabrication of a forensic result, akin to reporting that a drug test confirms the identity of a substance even though the testing did not result in a confirmation.” *Id.* at 1298; App. 38a.⁸

The district court and the Eleventh Circuit erred when they equated asking a credentialed, experienced

8. The Eleventh Circuit cited this Court’s decision in *Manuel* in support, but that case involved the *intentional* and *knowing* fabrication of a lab test result in which plaintiff alleged that an evidence technician tested pills found in the plaintiff’s car with negative results but then “lied in his report,” claiming the pills contained ecstasy. *Manuel*, 580 U.S. at 360.

older colleague who had health issues to verify Birks' result, with actual fabrication of evidence. Birks knowing that she should have asked a colleague other than McQuay to verify her result is not the same thing as Birks knowing that her result was incorrect. It falls far short of the standard that she "necessarily must possess knowledge of the evidence's falsity" in order to represent a due process violation. *Truman*. 1 F.4th at 1236. Like Birks, not every government employee will subjectively have confidence in every other employee with whom they work. A government employee in that situation does not commit a constitutional violation and should not risk § 1983 liability when they choose to work with a properly certified colleague, just because later it is argued they could have chosen a better one.

The Court should grant the petition and hold that, in the absence of evidence that Birks submitted errant evidence of the palm print match with subjective awareness that her result was incorrect, then there was no due process violation. The Court should therefore hold that there was no constitutional violation and that Birks is entitled to qualified immunity on the § 1983 claim for the alleged violation of Aguirre's right to a fair trial.

**III. THE COURT SHOULD GRANT THE PETITION
AND DECIDE THAT BIRKS IS ENTITLED TO
QUALIFIED IMMUNITY BASED ON LACK
OF CLEARLY ESTABLISHED LAW THAT
RELIANCE ON MCQUAY IN VERIFYING HER
PRINT MATCH WAS UNCONSTITUTIONAL.**

This Court frequently finds itself reminding the lower courts of the specificity which must be manifest in prior

case decisions in order for those cases to clearly establish a constitutional right for qualified immunity purposes. Most recently, the Court did so in *Zorn v. Linton*, 607 U.S. ___, 146 S.Ct. 926 (March 23, 2026) reversing denial of qualified immunity in an excessive force case.

To find that a right is clearly established, courts generally “need to identify a case where an officer acting under similar circumstances ... was held to have violated” the Constitution. *Escondido v. Emmons*, 586 U.S. 38, 43, 139 S.Ct. 500, 202 L.Ed.2d 455 (2019) (*per curiam*) (internal quotation marks omitted). The relevant precedent must define the right with a “high degree of specificity,” so that “every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.” *District of Columbia v. Wesby*, 583 U.S. 48, 63, 138 S.Ct. 577, 199 L.Ed.2d 453 (2018) (internal quotation marks omitted). Principles stated generally, such as that “an officer may not use unreasonable and excessive force,” do not suffice. *Kisela v. Hughes*, 584 U.S. 100, 105, 138 S.Ct. 1148, 200 L.Ed.2d 449 (2018) (*per curiam*). In short, officers receive qualified immunity unless they could have “read” the relevant precedent beforehand and “know[n]” that it proscribed their specific conduct. *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 616, 135 S.Ct. 1765, 191 L.Ed.2d 856 (2015).

Zorn, 146 S.Ct. at 930.

The Second Circuit in *Zorn* relied on *Amnesty America v. West Hartford*, 361 F.3d 113 (2004), for the proposition that it had clearly established that “gratuitous” use of a rear wristlock on a protester passively resisting arrest constitutes excessive force. *Zorn*, 146 S.Ct. at 929-30. But this Court rejected that comparison and held that “because the Second Circuit failed to identify a case where an officer taking similar actions in similar circumstances was held to have violated the Constitution, *Zorn* was entitled to qualified immunity.” *Zorn*, 146 S.Ct. at 931. (internal citation and quotation marks omitted).

There is no evidence that Birks subjectively knew that her palm print match result was incorrect. McQuay was an employee of the latent print unit and appropriately certified by the governing body at the time – the IAI – to perform the verification. The Eleventh Circuit cited cases involving egregious, knowing and intentional misconduct in the form of officers affirmatively planting evidence, or intentionally testifying falsely, so as to generally state that the Fourteenth Amendment precludes fabrication of evidence. *Aguirre*, 158 F.4th at 1297-98; App. 36a-37a. But none of the cases cited by the Eleventh Circuit dealt with a scenario even remotely close to the allegation here, that Birks’ choice of McQuay, a certified print examiner, to verify her result, was itself unconstitutional based on her alleged subjective doubts about his abilities.

The first case the Eleventh Circuit cited in its discussion of clearly established law on this issue was the Fifth Circuit’s decision in *Schneider v. Estelle*, 552 F.2d 593 (5th Cir. 1977). There, the court reversed a denial of habeas relief for an evidentiary hearing where a prisoner claimed that an officer testifying against him

intentionally lied when the officer testified that the prisoner used a firearm in robbing the officer. This cannot be said to stand for the proposition that Birks' reliance on McQuay, even if inadvisable or below the standard of care, was clearly unconstitutional. Ironically proving the qualified immunity point here, the Fifth Circuit in *Schneider* began its discussion of the case with this observation: "This case involves a question of law which turns on the facts of the individual case. The facts of this case are a bit different." *Id.*, 593.

The Eleventh Circuit next cited *Riley v. City of Montgomery, Ala.*, 104 F.3d 1247 (11th Cir. 1997), for the proposition that use of "fabricated" evidence is unconstitutional. But that case involved an allegation that the defendant police officer planted cocaine evidence in plaintiff's car, which is an affirmative and intentionally misleading act, far more egregious than the claimed misconduct by Birks.

The court next cited *Jones v. Cannon*, 174 F.3d 1271 (11th Cir. 1999) as clearly establishing the law that use of fabricated evidence violates the constitution. That case, however, involved a claim that the defendant police officer fabricated plaintiff's boot print at a crime scene and there is no discussion in that case distinguishing between knowingly and intentionally presenting false evidence, as opposed to negligently or recklessly doing so. *Id.* at 1289. Nor does *Jones* give notice that asking a credentialed colleague to verify a print identification, regardless of personal feelings about the colleague's abilities, gives rise to a constitutional violation.

The Eleventh Circuit then cited *Rowe v. City of Ft. Lauderdale*, 279 F.3d 1271 (11th Cir. 2002) and *Napue v. Illinois*, 360 U.S. 264 (1950) both involving allegations of knowing and intentional misconduct. Indeed, in *Rowe* the Eleventh Circuit held that an officer who, at most, knew that *others* had fabricated evidence, did not violate the constitutional rights of the arrestee. And *Napue* involved a case in which the prosecuting attorney allowed a state's witness to lie on the stand incriminating the criminal defendant, without correcting the false impression given to the jury by knowing use of false testimony. This Court emphasized in *Napue* that "a conviction obtained through use of false evidence, *known to be such* by representatives of the State, must fall under the Fourteenth Amendment." 360 U.S. at 269 (emphasis added) (collecting cases).

The scenarios in these cases stand in stark contrast to the facts involving Birks. There is no evidence that Birks subjectively believed that her palm print identification was actually wrong. This Court should once again step in and enforce the rule that, in order for prior caselaw to define the law, the "clearly established" prong of qualified immunity requires prior notice "with a high degree of specificity." *Wesby*, 583 U.S. at 63. ("We have repeatedly stressed that courts must not define clearly established law at a high level of generality ... [a] rule is too general if the unlawfulness of the officer's conduct does not follow immediately from the conclusion that [the rule] was firmly established.") (internal quotations and citations omitted.)

The Court should grant this petition and hold that the Eleventh Circuit's citation to "general principles" in cases involving knowing and intentional fabrication of evidence did not clearly establish the law in 2004-06 that Birks'

request that McQuay verify her result was a due process violation. The Court should therefore hold that Birks is entitled to qualified immunity on Aguirre's claim that Birks violated Aguirre's right to a fair trial by submission of the palm print match evidence.

CONCLUSION

Petitioner respectfully requests that the Court grant this Petition for Writ of Certiorari and determine that Birks' palm print match did not cause a deprivation of Aguirre's liberty in the form of his conviction and subsequent incarceration. In the alternative, the Court should grant the Petition and remand the case to the Eleventh Circuit for a renewed analysis of Birks' entitlement to qualified immunity, properly analyzing lack of materiality and causation as between the allegedly fabricated evidence and the claimed deprivation of liberty.

Finally, the Court should grant the Petition and hold that Birks is entitled to qualified immunity on the claim that her submission of the palm print match evidence violated Aguirre's rights. In the absence of subjective knowledge on Birks' part that the match was inaccurate, her submission of that evidence was not unconstitutional and at a minimum was not a violation of clearly established law.

Respectfully submitted,

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**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT, FILED NOVEMBER 4, 2025**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10811

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Plaintiff-Appellee-Cross-Appellant,

v.

SEMINOLE COUNTY, *et al.*,

Defendants,

ROBERT HEMMERT, IN HIS INDIVIDUAL
CAPACITY, DEPUTY SHERIFF, JACQUELINE
GROSSI, IN HER INDIVIDUAL CAPACITY,
CRIME SCENE ANALYST, DONNA BIRKS,
IN HER INDIVIDUAL CAPACITY,
LATENT PRINT EXAMINER,

Defendants-Appellants-Cross-Appellees,

SEMINOLE COUNTY SHERIFF,

Defendant-Appellee.

Filed November 4, 2025

Appendix A

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:20-cv-00025-RBD-DCI

Before JORDAN, LAGOA, and TJOFLAT, Circuit Judges.

TJOFLAT, Circuit Judge:

In 2006, a Florida court sentenced Clemente Javier Aguirre-Jarquin to death for the grievous murders of his neighbors, Cheryl Williams and Carol Bareis. But as Aguirre languished on death row over the course of the next decade, the foundation of his convictions buckled. A 2007 investigation into the Seminole County Sheriff's Office Latent Print Unit revealed a pattern of misconduct that substantially undermined the positive identification of Aguirre as the source of latent prints on the murder weapon. Samantha Williams, the daughter and granddaughter of the victims, also admitted to her involvement in the murders. Post-conviction testing of blood evidence from the murders, most of which had never been tested, corroborated Samantha's admissions and discredited Aguirre's convictions. The Supreme Court of Florida ultimately ordered a new trial. And the State dropped all charges in 2018.

Aguirre, freed from death row, sued Donna Birks, the latent print examiner who investigated the prints on the murder weapon, Robert Hemmert, the lead homicide investigator, and Jacqueline Grossi, the lead crime scene investigator. He also sued the Seminole County Sheriff in his official capacity. Aguirre brought multiple

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claims under 42 U.S.C. § 1983 relating to the latent print examination, the investigation, and his prosecution. He also claimed under Florida law that Birks, Hemmert, and Grossi were liable for intentional infliction of emotional distress (“IIED”). The defendants moved for summary judgment, asserting qualified immunity as to the federal claims and state-law immunity as to the state-law claim.

This interlocutory appeal and cross-appeal arises from the District Court’s denial of qualified and state-law immunity to Birks, Hemmert, and Grossi. Birks, Hemmert, and Grossi appeal these denials of immunity. Additionally, Aguirre and the appellants ask us to exercise pendent appellate jurisdiction over their appeals of various other determinations of the District Court. After careful review, and with the benefit of oral argument, we exercise our jurisdiction over the denials of immunity and over two evidentiary issues enmeshed with the denial of qualified immunity to Birks. We ultimately affirm in part and reverse in part.

Our opinion proceeds in six parts. In Part I, we recount the two-decade background of this appeal. In Part II, we assess the issues over which we may exercise interlocutory appellate jurisdiction. In Part III, we address two evidentiary issues which Birks appeals. In Part IV, we evaluate the appellants’ qualified-immunity appeals. In Part V, we consider Hemmert and Grossi’s state-law-immunity appeals. And in Part VI, we conclude.

*Appendix A***I. Background**

We begin with the background of this appeal. First, we describe the circumstances of Aguirre's arrest and prosecution. Then, we review Aguirre's post-conviction proceedings, concluding with the dismissal of all charges. Last, we examine the proceedings before the District Court and the basis of this appeal.

A. The Murder Investigation and Trial

Around 9:00 AM on June 17, 2004, Mark Van Sandt entered the home of his girlfriend, Samantha Williams, at 121 Vagabond Way in Altamonte Springs, Florida. Samantha lived there with her mother, Cheryl Williams, and her grandmother, Carol Bareis, but spent the night with Van Sandt at his parents' home.¹ When Van Sandt opened the door, he saw Cheryl lying on the ground. He called 911 and described Cheryl as covered in blood and cuts. Her pants were down, and she was cold, stiff, and not breathing.

The Seminole County Sheriff's Office (the "SCSO") dispatched deputies and EMS to the scene. Inside the home, the deputies observed Cheryl's body and noted bloody shoeprints on the floor. A paramedic pronounced Cheryl deceased. About an hour later, Van Sandt realized Bareis's whereabouts had not yet been discovered. Deputies then reentered the home and discovered Bareis

1. We refer to Cheryl and Samantha Williams by their first names hereinafter to avoid confusion.

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in a separate room lying deceased in a pool of blood near her wheelchair. She had been stabbed twice, and she had a blunt force injury to her face.

Robert Hemmert and Jacqueline Grossi arrived on scene at approximately 9:50 AM. The SCSO employed Hemmert as a Major Crimes Investigator and Grossi as a Crime Scene Analyst. Hemmert led the homicide investigation while Grossi led the crime scene investigation. At the scene, Hemmert coordinated the information-gathering and canvassing of the neighborhood. After obtaining a search warrant for the home, Grossi began processing the crime scene and collecting evidence.

Hemmert and another officer formally interviewed Van Sandt at approximately 11:30 AM. Van Sandt told them that he and Samantha were at the residence the previous night until about 11:30 PM, when an argument arose. According to Van Sandt, tensions were high between Samantha and Cheryl—the home lacked air conditioning, Samantha was on edge from quitting tobacco, and the two commonly engaged in mother-daughter arguments. But there was no physical fighting. Van Sandt stated that neither he nor Samantha left his home during the night—Samantha did not have a car or even a driver's license. Van Sandt also revealed that Samantha had intermittent explosive personality disorder and had “been Baker Acted a couple times” due to “a nervous breakdown.”²

2. The Baker Act refers to the Florida Mental Health Act, which allows for an involuntary healthcare evaluation of a person suffering from mental illness. *See* Fla. Stat. § 394.463.

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Hemmert and the other officer also formally interviewed Samantha at 1:35 PM. Samantha initially told the officers that she and Van Sandt spent the night at a friend's house. When confronted on this deception, Samantha admitted that she lied because Van Sandt's parents did not want her in their home.³ Samantha acknowledged that she and Cheryl quarreled the night before but claimed they only physically fought when Samantha was younger. Hemmert noticed scarring on Samantha's arm, which Samantha explained as burns from the ovens at her workplace.

During both their interviews, Van Sandt and Samantha reported previous run-ins between Samantha's household and a neighbor living next door at 117 Vagabond Way. Van Sandt said the neighbor, whom he called "Little Mexico," walked into Samantha's home uninvited in the early morning. Samantha called the neighbor "Shorty" and reported that on at least three occasions he entered the home uninvited. One time, she woke around 3 AM to the neighbor standing over her bed. She told Hemmert and the other officer that the neighbor was intoxicated from drugs when he was discovered in the home.

While canvassing the neighborhood, officers spoke with two residents of 117 Vagabond Way: Guillermo Espinosa and Aguirre. Guillermo and his cousin, Feliciano Sequeida, occupied the house while Aguirre slept in a shed out back. And Aguirre was identified as the neighbor

3. Van Sandt's mother confirmed in a formal interview that she did not know Samantha was at the house and that she and Van Sandt's father preferred her to not be there.

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whom Samantha called “Shorty.” Aguirre provided a written statement, in Spanish, indicating that the night before the discovery of the murders he was at Pretzel’s Billiards until 2:00 AM. He then went to the home of a friend, Amparo Salvador Prado Cisneros, with whom he was drinking until 5:45 or 6:00 AM when he returned home to sleep. Although he knew Samantha’s name, he denied talking often with the neighbors because he spoke little English. He denied seeing or hearing anything unusual the previous night.

Another officer was searching through the yards which neighbored 121 Vagabond Way. In the yard of 117 Vagabond Way, about three feet from the fence separating the two properties, the officer found “a SYSCO Brand kitchen knife (chef’s knife) with a 10 [inch] stainless steel blade and a white plastic handle.” The knife had suspected blood on its blade and handle. It was photographed, collected, and placed into evidence for further testing.

Aguirre returned to the area later that day. Thereupon two officers—with a third officer assisting as a translator—conducted a recorded interview with Aguirre. Aguirre stated that at 1:00 PM the prior day he visited Salvador’s home to drink beer. Then, after attending a cock fight, they went to Pretzel’s. Around 1:00 AM, Aguirre was involved in an altercation at the bar. The bar closed at 2:00 AM, so Aguirre went to Salvador’s home—about two or three streets from Aguirre’s residence—to continue drinking. Aguirre estimated they arrived at Salvador’s house at 2:30 to 2:45 AM. After that, he claimed, he did not remember anything until he arrived home and the sun had risen.

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The officers then inquired about Aguirre's relationship with Samantha, Cheryl, and Bareis. He admitted that three or four weeks prior he drunkenly entered their home—one of several times he went into the house, which he had a habit of doing both when intoxicated and sober. He was told to leave or the police would be called, so he left. According to Aguirre, he was just looking for beer. Nevertheless, Samantha told him that he was no longer welcome in the house.

When the investigators asked to see Aguirre's shoes, the interview changed course. Aguirre requested to speak alone with the Spanish-speaking officer. He admitted to the officer that he was in the country illegally and did not report what he knew to the police because he did not want to return to his home country, Honduras. Aguirre said that he actually entered the crime scene around 6:00 or 6:30 AM and found Cheryl and Bareis dead. The scene was extremely bloody, and his shoes and clothes were full of blood because he lifted up one of the women to check her pulse. He then went home to sleep. After Aguirre gave his written statement in the morning, he went back to Salvador's and talked about the crime scene. Aguirre told Salvador he did not remember anything from that night. But Salvador assured Aguirre that the murders were probably related to a Puerto Rican who had harassed Aguirre, was physically violent toward one of the victims, and possessed a knife or machete.

Hemmert and a Spanish-speaking officer from the Florida Department of Law Enforcement (the "FDLE") took over the interview of Aguirre. Aguirre was read his

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*Miranda*⁴ rights and answered a series of background questions, informing the officers that he was from Tegucigalpa, Honduras; was not involved in any gangs; had been in the United States illegally for about one year; and worked at Luigino's Pasta, a local restaurant. Aguirre repeated that he was drunk the night before and did not remember things very well. In fact, he was drinking all day, having started with Salvador at noon. He arrived at 121 Vagabond Way when the sun had risen, found Cheryl bloody with her shorts pulled down, and felt no pulse when he picked her up. When asked about his bloodied clothing, Aguirre said he went to bed wearing the bloody clothes and shoes, then bagged the clothes and placed them on the shed's roof after he woke up and showered. He was still wearing the shoes. He repeated Salvador's story about a Puerto Rican following Aguirre home, hitting him, being violent toward one of the victims, and having a knife or machete. And he said that in the past he revealed to Samantha his romantic interest in her but had no problem with her lack of reciprocation. Rather, he said they ingested cocaine together until about 6 months prior, when she stopped coming by his bedroom.

When Aguirre was asked to show his body for wounds, the FDLE officer noted scratches all over Aguirre's back and on his arm. But Aguirre blamed the scratches on the trash he took out to the garbage truck. The officers continued to press Aguirre, but he reiterated that he did not know what happened. He gave permission to search through his clothes and bedroom, collect his saliva,

4. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

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fingerprints, and shoes, and photograph his scratches. Aguirre said he did not see or take any murder weapon. Ultimately, Aguirre denied he did anything and ended the interview by asking to speak to an attorney. At 11:45 PM that night, Aguirre was arrested for tampering with evidence and transported to jail.

Grossi and another analyst photographed Aguirre and collected buccal swabs, fingernail scrapings, and his shoes. The shoes had suspected blood on them. A search warrant for 117 Vagabond Way was then executed. A white plastic bag containing a T-shirt, Nike socks, and Nike shorts were found on the roof of Aguirre's shed, just as he had reported. There were dark red and brown stains on the shorts and socks. Similar stains were observed on the steps leading into the shed and inside the shed's entryway. Inside the bathroom was a pair of underwear—matching the underwear in Aguirre's shed—with suspected blood stains.

Hemmert and the FDLE officer interviewed Salvador, who said Aguirre came back to his house that day—after the discovery of the murders—around 1:00 or 2:00 PM. Aguirre was nervous when Salvador teased him about committing the murders; Aguirre repeatedly asked whether the murderer was really him and whether Salvador really saw him. Aguirre told Salvador that his shoes were bloody and repeatedly asked whether he really committed the murder. Salvador claimed he never told Aguirre about any Puerto Rican. Although Aguirre was very drunk that night, according to Salvador, he had never been violent and never mentioned any problems with his neighbors.

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Officers also interviewed Guillermo and John Andrich, the chef of the restaurant where Aguirre and Guillermo worked. Guillermo said that Cheryl told him she did not want Aguirre at her house because he drank and caused trouble. Guillermo also spoke about a white chef's knife he took from the restaurant kitchen for use at home. Aguirre knew about the knife because it was kept in the house's kitchen for common use. Andrich confirmed that his kitchen had a set of Sysco knives with white handles, a few of which were missing. One missing Sysco knife was a 10-inch chef's knife.

In the following days, Hemmert also interviewed two individuals who were with Aguirre at Pretzel's the night of the murders: David Shupe and Charles Brown. Shupe and Brown met Aguirre's group at Pretzel's and claimed that Aguirre was aggravated and almost hit other patrons with a pool ball during an altercation that night. Shupe, Brown, and Aguirre's group all returned to Salvador's house in the early morning when the bar closed. Aguirre seemingly left Salvador's house when Shupe, Brown, and one of the men left to purchase cocaine. The group failed to buy any drugs, and a fight broke out when they returned to Salvador's, ending with an object thrown through the windshield of Shupe's car. So Shupe and Brown drove away, parked, and returned on-foot for revenge, armed with a samurai-style sword, steak knife, and club. Shupe then stole a car from Salvador's house and crashed it.⁵ Shupe and Brown denied any involvement with

5. Although Salvador denied discussing with Aguirre anything about a Puerto Rican, Brown's mother was Puerto Rican and he spoke some Spanish. Shupe's stepfather, who was

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the murders. But Brown did tell Hemmert that Samantha “wasn’t right in her head” and “was really loopy, always talking about killing herself.”

After the SCSO collected latent print exemplars from Guillermo, Feliciano, Shupe, and Brown, Hemmert requested a latent print comparison with the prints on the Sysco knife discovered at 117 Vagabond Way. Certified Latent Print Examiner Donna Birks conducted that investigation after collecting print exemplars from Aguirre in jail. Birks analyzed a photograph of the latent print on the handle of the Sysco knife. From her comparison of the photographed latent print to Aguirre’s exemplar, she concluded there was a positive identification with Aguirre’s left palm. William McQuay, another print examiner who had retired from the SCSO Latent Print Unit, verified Birks’s identification. Birks then communicated her identification to the SCSO on June 24, 2004.

The footwear impressions in suspected blood from the murder scene were also examined. Crime Scene Analyst Christine Craig determined that the footwear impressions were similar in both tread design and size to the shoes collected from Aguirre. There were no other footwear impressions in suspected blood at the scene.

at Pretzel’s with the group, was also Puerto Rican. Salvador was involved in an altercation with Brown and Shupe in the period between Aguirre’s departure in the early morning and return around noon, so Aguirre’s comment that Salvador spoke about a Puerto Rican with a knife or machete could have related to this altercation.

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Once he received the result of Birks's print analysis, Hemmert, in consultation with the state prosecutor, charged Aguirre with two counts of first-degree premeditated murder on June 25, 2004. At Aguirre's arraignment the next day, probable cause was found for the arrest. And on July 13, 2004, a grand jury indicted Aguirre on two counts of first-degree premeditated murder for the unlawful killings of Cheryl Williams and Carol Bareis by use of a knife.

* * *

Aguirre's trial took place from February 20 to 28, 2006. Grossi testified during the State's case in chief, recounting the state of the crime scene and the processing into evidence of various items and blood swabs from both 121 and 117 Vagabond Way. Birks also testified to her examination of the Sysco knife, stating that she concluded it had a print of sufficient quality to make a comparison and that the print positively matched Aguirre's left palmprint.

Aguirre, with the assistance of a translator, testified in his own defense. He testified to entering 121 Vagabond Way in the early morning and touching Cheryl to see if she was alive. But he then added new details. He said he saw the Sysco knife near Cheryl. He also said he went into Bareis's room and checked her body. He picked up the knife and went into Samantha's room, looking for somebody. Discovering no one, he left the house while holding the knife. He eventually discarded the weapon in the yard.

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The jury found Aguirre guilty of two counts of first-degree murder and of one count of burglary with an assault or battery. Aguirre was sentenced to death.

B. Post-Conviction Proceedings**1.**

About a year after his conviction and sentencing, Aguirre moved for a new trial. The bases of his motion were the results of an investigation into Donna Birks for her conduct at the SCSO. Tara Williamson, a Latent Print Examiner who trained under Birks, alleged in a memorandum that Birks engaged in improper latent print procedures, identifications, and verifications. This spawned an administrative investigation of the SCSO's Latent Print Unit.

As part of the administrative investigation, the FDLE investigated each case that Williamson raised in her memorandum. Because Williamson alleged that Birks's testimony on the stand during Aguirre's trial "was a complete mockery," Birks's latent print analysis was reviewed. Christina Barber, an analyst in the FDLE's Latent Print Section, reviewed the latent print taken from the Sysco knife found at 117 Vagabond Way. Unlike Birks, who positively identified the print as matching Aguirre's left palm, Barber concluded that the print was of no value for identification purposes. The SCSO also contracted with Ron Smith & Associates, Inc., a private consultant specializing in forensic analysis and training, to determine the accuracy of Birks's identifications in

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five cases, including Aguirre's. Ron Smith found that the positive identification in Aguirre's case was erroneous.

The Seminole Circuit Court denied Aguirre's motion for a new trial. It determined that even if the testimony at trial had shown the latent print on the knife to be of no value, the evidence against Aguirre was so damning that the jury would not have acquitted him. There was no evidence that Aguirre would not have testified but for Birks's testimony that introduced the positive identification, but even so he would have had to respond if there were any hope of acquittal. And the Court found that the positive identification had no bearing on the penalty phase.

Aguirre appealed the denial of his motion, among other purported issues with his trial and sentencing, to the Supreme Court of Florida. *See generally Aguirre-Jarquin v. State*, 9 So. 3d 593 (Fla. 2009) (per curiam). The Supreme Court of Florida affirmed. *Id.* at 602-03.

2.

In 2012, James Carter, the Assistant State Attorney who prosecuted Aguirre, checked Florida's internal law enforcement records for mental health assessment entries relating to Samantha Williams. He was aware of a 2001 report of Samantha being detained under the Baker Act before Aguirre's conviction, but did not consider Samantha an alternative suspect in the murders of her mother and grandmother. The 2001 report, however, showed that Samantha engaged in substance abuse, had explosive

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bouts of rage in which she harmed herself, was dangerous to others, and had expressed homicidal intentions. And Carter's 2012 search revealed inculpatory post-conviction police entries related to Baker Act proceedings against Samantha. Indeed, on one occasion in August 2010, Samantha attempted to self-immolate at 121 Vagabond Way after telling a neighbor that demons were in her head and that demons caused her to kill her family. These documents were ultimately disclosed to Aguirre's post-conviction counsel.

Also in 2012, Aguirre's counsel moved for additional post-conviction DNA testing of evidence collected from the crime scene. Though the tests did not show the presence of Aguirre's DNA, they did show that two blood drops belonged to an unknown female related to the victims. Further testing revealed it was Samantha's blood near the victims and in the bathroom at 121 Vagabond Way. Aguirre's DNA was not discovered.

Consequently, Aguirre moved to vacate his convictions and sought collateral relief from his death sentence. The Supreme Court of Florida vacated his convictions and sentences, remanding the case for a new trial. *See generally Aguirre-Jarquin v. State*, 202 So. 3d 785 (Fla. 2016) (per curiam). The Supreme Court of Florida spotlighted Samantha's post-conviction statements, which included five confessions to four people. *Id.* at 792-94. This newly discovered evidence, in combination with the newly tested DNA evidence from the crime scene, compelled a new trial. *Id.* at 794-95.

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On November 5, 2018, the State dropped all charges against Aguirre.

C. District Court Proceedings

In January 2020, Aguirre sued in the District Court for the Middle District of Florida seeking redress for his 14 years of incarceration—10 of which he served on death row. After multiple rounds of amendments, the operative third amended complaint named as defendants Dennis Lemma in his official capacity as Seminole County Sheriff, Robert Hemmert in his individual capacity, Jacqueline Grossi in her individual capacity, and Donna Birks in her individual capacity.

The complaint contains seven counts:

- Count I alleges under 42 U.S.C. § 1983 that Birks violated Aguirre’s Fourteenth Amendment right to a fair trial by intentionally or recklessly fabricating inculpatory evidence—the positive identification of Aguirre as the source of the latent print on the murder weapon.
- Count II alleges under § 1983 that Hemmert violated Aguirre’s Fourteenth Amendment right to a fair trial by withholding exculpatory, inculpatory, and impeachment evidence from the SCSO and Aguirre.
- Count III alleges under § 1983 that Hemmert and Birks maliciously prosecuted Aguirre in violation

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of the Fourth Amendment by arresting and prosecuting Aguirre without probable cause for the two murders.

- Count IV alleges under § 1983 that Hemmert and Grossi violated Aguirre's Fourteenth Amendment rights to due process and a fair criminal proceeding by conducting a defective and biased investigation into the murders.
- Count V alleges under § 1983 that the Seminole County Sheriff is liable under *Monell*⁶ for failing to enact policies and failing to adequately train or supervise officers as to the evaluation of witnesses or suspects with histories of mental health crises and related inculpatory conduct.
- Count VI alleges under § 1983 that the Seminole County Sheriff is liable under *Monell* for failing to enact policies and failing to adequately train or supervise officers as to the documentation of exculpatory and impeachment evidence.
- Count VII alleges under Florida law that Hemmert, Grossi, and Birks intentionally inflicted Aguirre with emotional distress.

Birks, Grossi, Hemmert, and Sheriff Lemma moved for summary judgment. Birks argued that she is entitled

6. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018 (1978).

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to qualified immunity as to Counts I and III. Hemmert and Grossi also argued that they are entitled to qualified immunity as to Counts II, III, and IV, and state-law immunity under Fla. Stat. § 768.28(9)(a) as to Count VII.

The District Court denied Birks qualified immunity and summary judgment on Count I. For Count II, it granted summary judgment for Hemmert on the merits. For Count III, the Court denied qualified immunity to both Birks and Hemmert. For Count IV, the Court denied qualified immunity to both Hemmert and Grossi. For Counts V and VI, it granted summary judgment for Sheriff Lemma. And for Count VII, it denied state-law immunity to and summary judgment for Hemmert and Grossi.

Birks, Hemmert and Grossi, and Aguirre separately pursue interlocutory appeals—and raise a bevy of arguments.

Birks argues the District Court erred by denying her qualified immunity as to Counts I and III. She contends that the District Court erred by considering inadmissible evidence at summary judgment and by improperly considering character evidence for propensity purposes. And she asserts that she is entitled to summary judgment on the merits on Counts I and VII.

Hemmert and Grossi argue the District Court erred by denying Hemmert qualified immunity as to Count III. They also claim that the Court erred by denying Hemmert and Grossi qualified immunity as to Count IV.

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They contend the District Court erred by denying them state-law immunity as to Count VII⁷ and that they are entitled to summary judgment on Count VII anyway.

Aguirre argues that the District Court erred by granting summary judgment for Hemmert on Count II. He also asserts that the District Court erred in granting summary judgment for Sheriff Lemma on Count V. And he contends that the Court erred by excluding one of his expert witnesses.

II. Appellate Jurisdiction

As an initial matter, we must determine the portions of these appeals, if any, over which we have jurisdiction. *See Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868) (“Without jurisdiction the court cannot proceed at all in any cause.”). Generally, we may only hear appeals from a district court’s final order. 28 U.S.C. § 1291. “A final order is one that ends the litigation on the merits and leaves nothing for the court to do but execute its judgment.” *Freyre v. Chronister*, 910 F.3d 1371, 1377 (11th Cir. 2018) (internal quotation marks omitted). If an order disposes of fewer than all the claims of all the parties or contemplates further substantive proceedings, it is not final. *Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1245-46 (11th Cir. 2012) (per curiam); *Broussard v. Lippman*, 643

7. Birks referenced this same contention in her response to the jurisdictional questions we issued but did not assert in her merits briefing or when she moved the District Court for summary judgment that she is entitled to state-law immunity under Fla. Stat. § 768.28(9)(a) as to Count VII.

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F.2d 1131, 1133 (5th Cir. 1981).⁸ “We refer to this as the final judgment rule.” *Freyre*, 910 F.3d at 1377. Still, we may immediately review orders that “fall into a specific class of interlocutory orders that are made appealable by statute or jurisprudential exception.” *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000); *see* 28 U.S.C. § 1292.

One exception to the final judgment rule arises in qualified-immunity cases. *Hudson v. Hall*, 231 F.3d 1289, 1293 (11th Cir. 2000). “[A] district court’s denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable ‘final decision’ within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment.” *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S. Ct. 2806, 2817 (1985). But if the only issues appealed relate to the sufficiency of the evidence, then we lack jurisdiction to review the denial of qualified immunity. *English v. City of Gainesville*, 75 F.4th 1151, 1155-56 (11th Cir. 2023). Our jurisdiction is not precluded when the appeal implicates both an issue of fact and an issue of law. *See Koch v. Rugg*, 221 F.3d 1283, 1296 (11th Cir. 2000).

Another exception to the final judgment rule arises in sovereign immunity cases where state law immunizes a state official from suit. *See Butler v. Gualtieri*, 41 F.4th 1329, 1335 (11th Cir. 2022). “We are . . . obliged to consider

8. This Court adopted as binding precedent all decisions of the former Fifth Circuit handed down before close of business on September 30, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

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the denial of sovereign immunity on an interlocutory basis” when the claim of immunity is based on Fla. Stat. § 768.28(9)(a). *Id.* at 1335-36. As in the qualified-immunity context, we lack jurisdiction “where the appeal turns on issues of evidentiary sufficiency.” *English*, 75 F.4th at 1157 (citing *Ortiz v. Jordan*, 562 U.S. 180, 188, 131 S. Ct. 884, 891 (2011)).

Finally, “under the doctrine of pendent appellate jurisdiction, we may address nonappealable orders if they are inextricably intertwined with an appealable decision or if review of the former decision is necessary to ensure meaningful review of the latter.” *Tillis ex rel. Wuenschel v. Brown*, 12 F.4th 1291, 1297 (11th Cir. 2021) (internal quotation marks omitted); *see also Swint v. Chambers Cnty. Comm’n*, 514 U.S. 35, 50-51, 115 S. Ct. 1203, 1212 (1995). “Matters may be sufficiently intertwined where they implicate the same facts and the same law.” *Smith v. LePage*, 834 F.3d 1285, 1292 (11th Cir. 2016) (internal quotation marks omitted) (alteration adopted). But “the Supreme Court has signaled that pendent appellate jurisdiction should be present only under rare circumstances.” *King v. Cessna Aircraft Co.*, 562 F.3d 1374, 1379 (11th Cir. 2009) (per curiam) (first citing *Johnson v. Jones*, 515 U.S. 304, 318, 115 S. Ct. 2151, 2159 (1995); and then citing *Swint v. Chambers Cnty. Comm’n*, 514 U.S. at 49-50, 115 S. Ct. at 1211).

In determining our appellate jurisdiction, we engage in *de novo* review. *See Butler v. Gualtieri*, 41 F.4th at 1334 (citing *Thomas v. Phoebe Putney Health Sys., Inc.*, 972 F.3d 1195, 1200 (11th Cir. 2020)).

*Appendix A***A. Qualified Immunity**

The interlocutory appeals of the District Court’s denial of qualified immunity to Birks, Hemmert, and Grossi squarely fit into our qualified-immunity exception to the final judgment rule.

Birks asks us to exercise jurisdiction over her appeal of the Court’s denial to her of qualified immunity as to Count I. She argues, in part, that it was not clearly established that her conduct was unlawful. To be sure, the District Court focused its assessment of Birks’s qualified-immunity claim on factual issues—whether she fabricated the positive palmprint identification and her intent or lack thereof in so doing. But Birks disputes on appeal the District Court’s determination that preexisting law clearly established that her conduct as a latent print examiner was unlawful. This is not a case where Birks only raises issues as to the District Court’s determination of what happened in Birks’s print lab in the lead-up to Aguirre’s arrest. *Cf. English*, 75 F.4th at 1156. Rather, Birks’s appeal raises an issue of law, supplying us with jurisdiction over her appeal of the District Court’s denial of qualified immunity to her as to Count I, notwithstanding any alleged issues of fact. *See Hall v. Flournoy*, 975 F.3d 1269, 1276 (11th Cir. 2020) (“[J]urisdictional issues arise when the only question before an appellate court is one of pure fact.” (emphasis in original)).

Hemmert and Birks also ask us to exercise appellate jurisdiction over their appeal of the District Court’s denial of qualified immunity to them as to Count III. They argue,

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in part, that the existence of arguable probable cause to seize Aguirre entitles them to qualified immunity. The District Court assessed their arguable-probable-cause arguments by considering the totality of the circumstances. It tallied the facts known to the arresting officers about Aguirre and Samantha to conclude no warrant would have issued if the positive print identification were removed and omitted facts were included. Hemmert and Birks attack this conclusion, contesting the District Court's framing of the probable cause analysis—and thus its determination of whether they violated Aguirre's constitutional rights at all—as misapplying legal standards. The argument they raise on appeal concerns the existence of arguable probable cause at the time of Aguirre's arrest, “a pure question of law,” *Swint v. City of Wadley*, 51 F.3d 988, 996 (11th Cir. 1995), rather than an underlying factual dispute as to the events giving rise to Aguirre's arrest, *cf. English*, 75 F.4th at 1156. We therefore have jurisdiction over the appeal of the Court's denial of qualified immunity to Birks and Hemmert as to Count III.

Finally, Hemmert and Grossi ask us to exercise jurisdiction over their appeal of the Court's denial to them of qualified immunity as to Count IV. They argue that no clearly established law proscribed their failure to investigate beyond the evidence pointing to Aguirre. They contest the legal basis of the District Court's conclusion that it was clearly established that they were required to pursue additional evidence and testing to ensure a constitutionally adequate investigation. Again, this is a question of law concerning “whether the legal norms allegedly violated by the defendant were clearly

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established at the time of the challenged actions.” *Jackson v. City of Atlanta*, 97 F.4th 1343, 1351 (11th Cir. 2024) (internal quotation marks omitted). Accordingly, we have jurisdiction over the appeal of the Court’s denial of qualified immunity to Hemmert and Grossi as to Count IV.

B. State-Law Immunity

We also conclude that Hemmert and Grossi’s interlocutory appeal of the District Court’s denial to them of immunity under Fla. Stat. § 768.28(9)(a) falls within an exception to the final judgment rule.

Hemmert and Grossi contend that the District Court erred by denying them immunity under § 768.28(9)(a) as to Count VII. That statute immunizes officers from liability in tort “unless such officer . . . 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). In a footnote, the District Court denied Hemmert and Grossi immunity because there are factual disputes as to whether they acted in “bad faith.” On appeal, they contest the District Court’s application of the “bad faith” standard in § 768.28(9)(a), claiming that the Court offered no substantiation for its conclusion and that all factual disputes should be resolved at summary judgment regardless.

Hemmert and Grossi raise a question of law sufficient to sustain our jurisdiction over this appeal. They challenge the District Court’s understanding of the legal standard of “bad faith” in Fla. Stat. § 768.28(9)(a). Whether the District

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Court applied the proper legal standard is unclear because the Court offered no rationale for its denial of immunity other than the summary statement that “there are factual disputes over whether they acted in bad faith.” Hemmert and Grossi do not contend that they did not perform certain conduct or that there is insufficient evidence of them engaging in certain conduct—purely factual questions—but that the District Court’s understanding of the standard applied to that conduct was wrong. This is a legal question, even if the absence of rationale for the Court’s denial of immunity requires us “to undertake a cumbersome review of the record to determine what facts the district court, in the light most favorable to the non-moving party, likely assumed.” *Behrens v. Pelletier*, 516 U.S. 299, 313, 116 S. Ct. 834, 842 (1996) (internal quotation marks omitted). We therefore have jurisdiction over this portion of the interlocutory appeal. *See English*, 75 F.4th at 1157.

C. Pendent Appellate Jurisdiction

We now turn to our jurisdiction over the remaining issues on appeal. Because these are neither denials of qualified immunity nor of state-law immunity, we evaluate whether we can exercise pendent appellate jurisdiction over these issues.

1.

Birks asks us to exercise jurisdiction over her appeal of the District Court’s consideration of certain evidence at summary judgment. She contends that the District

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Court erred when considering various statements from the SCSO's 2007 investigative report (the "2007 Report") concerning Birks's conduct in operating the SCSO Latent Print Unit, most of which are summaries of statements made to investigators. And she contends that the District Court improperly used the contents of the 2007 Report as evidence of her character to infer that Birks fabricated her positive identification of Aguirre in accordance with that character.

The exercise of pendent jurisdiction "is only proper in *rare and unique circumstances* where a final appealable order is inextricably intertwined with an unappealable order or where review of the unappealable order is necessary to ensure meaningful review of the appealable order." *Wallace v. Cnty. of Comal*, 400 F.3d 284, 292 (5th Cir. 2005) (citing *Thornton v. Gen. Motors Corp.*, 136 F.3d 450, 453 (5th Cir.1998)) (emphasis added). Exercising pendent jurisdiction is discretionary but can be appropriate when refusing to exercise jurisdiction would "defeat the principal purpose of allowing an appeal of immunity issues before a government employee is forced to go to trial." *Morin v. Caire*, 77 F.3d 116, 119 (5th Cir. 1996).

Here, despite the District Court citing the 2007 Report in its reasoning for denying qualified immunity to Birks as to Count I for allegedly fabricating the palmprint immunity, the report is but one of many factors considered. The Court cites the 2007 Report only once by itself in the section weighing whether to grant qualified immunity to Birks—to show that Birks erroneously identified a

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positive match in Aguirre's case. Otherwise, the Court either references uncontested evidence, or cites the 2007 Report in conjunction with uncontested evidence. The District Court cites sufficient additional evidence to determine that Birks is not entitled to qualified immunity, such as her sending print match verifications to McQuay, multiple instances of failing to verify prints at all, and at least one instance of discussing a potential suspect before making her identification. The contested statement is not outcome determinative and therefore is not "inextricably intertwined" with the qualified immunity determination. Thus, we decline to extend pendent jurisdiction to Birk's appeal of the District Court's decision to consider the 2007 Report.

Birks also asks us to exercise jurisdiction over the appeal of the District Court's denial of summary judgment to her on Counts I and VII on the merits. For Count I, Birks argues that the District Court erred because it denied her argument that any factual issue concerning her conduct was not material to Aguirre's arrest and conviction. She also argues that there is no issue of fact as to whether her conduct as a print examiner amounted to fabrication of evidence. For Count VII, Birks incorporates her previous argument that insufficient evidence of fabrication results in an absence of any issue of fact, entitling her to summary judgment.

We decline to exercise jurisdiction over these claims. Certainly, we will consider the factual assertions underlying the two claims when addressing her appeal of the District Court's denial of qualified immunity to her

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as to Counts I and III. Count VII, after all, expressly incorporates the factual assertions underlying the § 1983 claims against Birks in Counts I and III. But this is not enough to implicate our discretionary pendent appellate jurisdiction. Rather, the claims may be sufficiently intertwined for purposes of pendent appellate jurisdiction when they “implicate[] the same facts *and the same law*.” *LePage*, 834 F.3d at 1292 (alteration in original) (emphasis added) (internal quotation marks omitted).

Whether Birks’s conduct violated clearly established law does not necessarily entail a resolution of whether her conduct constituted IIED under Florida law, or whether her conduct was material to Aguirre’s arrest and conviction. We can resolve the qualified-immunity issue, for example, without having to consider whether her conduct was “so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Lopez v. Target Corp.*, 676 F.3d 1230, 1236 (11th Cir. 2012) (quoting *Restatement (Second) of Torts* § 46 cmt. d (Am. L. Inst. 1965)). The same holds true for whether the factual allegations about Birks’s conduct are material such that they “might affect the outcome of the suit under the governing law.” See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). These are legal questions that we will not necessarily answer as part of the qualified-immunity analysis. Because “resolution of the nonappealable issue[s] [is] not necessary to resolve the appealable one,” *Thomas v. Blue Cross & Blue Shield Ass’n*, 594 F.3d 814, 820 (11th Cir. 2010) (internal quotation marks omitted), we decline to exercise pendent appellate

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jurisdiction over Birks's appeals of these denials of summary judgment to her on Counts I and VII.

2.

Hemmert and Grossi ask us to exercise jurisdiction over their appeal of the District Court's denial to them of summary judgment on Count VII on the merits. They argue that their conduct does not constitute IIED because their conduct was not outrageous. For the reasons we explained when considering Birks's appeal of the denial of summary judgment to her on Count VII, we decline to exercise pendent appellate jurisdiction over Hemmert and Grossi's appeal. Although the factual allegations concerning their conduct are properly within our ambit for purposes of assessing their immunity claims, that assessment does not require us to resolve the wholly separate legal question of whether their conduct fails to satisfy the elements of a Florida-law IIED claim.

3.

Finally, Aguirre asks us to exercise jurisdiction over three issues in his cross-appeal. We find no basis to exercise our pendent appellate jurisdiction.

He first seeks to appeal the District Court's grant of summary judgment on the merits for Hemmert on Count II. He argues that the Court erred by failing to analyze his *Brady*⁹ claim in its entirety, instead mischaracterizing

9. *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963).

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the *Brady* evidence at issue and erroneously assessing Hemmert's failure to disclose evidence as part of Aguirre's separate spoliation claim. He also argues that there is a genuine issue of material fact as to whether Hemmert suppressed evidence, precluding summary judgment. There is some factual overlap between Count II and Counts III and IV, but Count II also involves distinct factual allegations about Hemmert's disclosure of information to Aguirre's prosecutors and defense counsel. And the District Court's legal conclusions regarding the *Brady* claim are extrinsic to the immunity frameworks through which we will address Hemmert's conduct. These *Brady* matters are therefore not inextricably intertwined with the appealable immunity decisions, nor is review necessary to ensure meaningful review of the denials of immunity. *See LePage*, 834 F.3d at 1292.

Aguirre also seeks to appeal the grant of summary judgment for Sherriff Lemma on Count V. Count V is a *Monell* claim centered on the SCSO's alleged policy, custom, or practice of deliberate indifference and inadequate training of its officers regarding witnesses or suspects with histories of mental health crises and related inculpatory conduct. While this claim stems from Hemmert and Grossi's investigation, it does not "seem to us that the issue is inextricably intertwined" with their immunity claims because this liability claim "raises [a] wholly separate issue" of departmental conduct which "is not an issue that must be determined—or even considered—in resolving the immunity claims." *Jones v. Fransen*, 857 F.3d 843, 850 (11th Cir. 2017).

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Finally, Aguirre seeks to appeal the District Court's exclusion of one of his expert witnesses. That expert witness's proposed testimony related to the conditions of Aguirre's imprisonment, not the conduct of any of the defendants during their investigation and prosecution of Aguirre. The exclusion does not implicate the same law or the same facts as any of the claims over which we are exercising appellate jurisdiction, so we cannot say they are inextricably intertwined. *See LePage*, 834 F.3d at 1292. And it is unnecessary to resolve the issue to ensure meaningful review of the immunity claims in this appeal. *Hudson*, 231 F.3d at 1294.

* * *

In summary, we have appellate jurisdiction over the appeals of the denials of immunity to Birks as to Counts I and III, to Hemmert as to Counts III, IV, and VII, and to Grossi as to Counts IV and VII. We now turn to the merits.

IV. Qualified Immunity

Lawsuits levied against public officials in their personal capacity impose costs both on the defendant officials and on society as a whole, including litigation expenses, diversion of official energy from pressing public issues, deterrence of able citizens from accepting public office, and dampening of officials' ardor in performing their duties. *Harlow v. Fitzgerald*, 457 U.S. 800, 814, 102 S. Ct. 2727, 2736 (1982). The defense of qualified immunity "is the public servant's (and society's) strong shield against these dangerous costs." *Foy v. Holston*, 94 F.3d 1528,

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1532 (11th Cir. 1996). It protects government officials performing discretionary functions from civil litigation and liability if their conduct does not violate clearly established constitutional or statutory rights of which a reasonable person would have known. *Id.* (citing *Harlow*, 457 U.S. at 817-19, 192 S. Ct. at 2738). It accomplishes this protection by granting officials “immunity from suit,” meaning “an entitlement not to stand trial or face the other burdens of litigation.” *Mitchell*, 472 U.S. at 526, 105 S. Ct. at 2815.

Each official who asserts qualified immunity is entitled to “an independent qualified-immunity analysis as it relates to his or her actions and omissions.” *Alcocer v. Mills*, 906 F.3d 944, 951 (11th Cir. 2018). The official “must first prove that he was acting within his discretionary authority” when he performed the acts of which the plaintiff complains. *Bowen v. Warden*, 826 F.3d 1312, 1319 (11th Cir. 2016) (internal quotation marks omitted). Once this is established, “the burden shifts to the plaintiff to show that the defendant is *not* entitled to qualified immunity.” *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004) (citing *Cottone v. Jenne*, 326 F.3d 1352, 1358 (11th Cir. 2003)). The plaintiff must establish that “(1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation.” *Id.* Judges may decide which of the two prongs of this analysis to address first in light of the circumstances in the case at hand. *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 818 (2009).

To be clearly established, the contours of a right must be sufficiently clear such that every reasonable officer

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would have understood his conduct to violate that right. *Fuqua v. Turner*, 996 F.3d 1140, 1150 (11th Cir. 2021) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 2083 (2011)). A plaintiff may show this through: “(1) 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*, 561 F.3d 1288, 1291-92 (11th Cir. 2009) (citations omitted). The law must not be defined at a high level of generality, but rather be particularized to the facts of the case. *Fuqua*, 996 F.3d at 1150.

When an officer moves for summary judgment on the basis of qualified immunity, “[t]he court shall 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). Even though, at this posture, the facts are construed in the light most favorable to the plaintiff, *Jones v. Cannon*, 174 F.3d 1271, 1281 (11th Cir. 1999), the evidence may create a fact question about whether the officer engaged in violative conduct, *id.* at 1290. “[A] genuine fact issue as to what conduct the defendant engaged in would preclude a grant of summary judgment based upon qualified immunity.” *Rich v. Dollar*, 841 F.2d 1558, 1565 (11th Cir. 1988).

The District Court denied qualified immunity to Birks as to Counts I and III, to Hemmert as to Counts

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III and IV, and to Grossi as to Count IV. Each appeals each denial, and Aguirre does not contest that each was acting in a discretionary function. We therefore divide our discussion by Count, addressing the appellants' contentions separately. And in considering whether each officer is entitled to summary judgment based on qualified immunity, we review *de novo*. See *English*, 75 F.4th at 1155 (citing *Townsend v. Jefferson Cnty.*, 601 F.3d 1152, 1157 (11th Cir. 2010)).

A. Count I

Count I of Aguirre's complaint alleges that Birks deprived Aguirre of his right to a fair trial by intentionally or recklessly fabricating inculpatory evidence of Aguirre's palmprint matching the latent print on the murder weapon. The District Court determined that it was clearly established that fabricating incriminating evidence violates the right to due process. It then concluded that a genuine factual dispute exists as to Birks's conduct in the Aguirre investigation, precluding qualified immunity. On appeal, Birks argues that the District Court erred because no law clearly established that her conduct in providing a faulty forensic expert conclusion was unlawful. We disagree with Birks.

"For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right" such that "in the light of pre-existing law the unlawfulness [is] apparent." *Hope v. Pelzer*, 536 U.S. 730, 739, 122 S. Ct. 2508, 2515 (2002) (internal quotation

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marks and citations omitted). Sometimes, “a very high degree of prior factual particularity may be necessary” to provide fair warning. *United States v. Lanier*, 520 U.S. 259, 271, 117 S. Ct. 1219, 1227 (1997) (citation omitted). “But general statements of the law are not inherently incapable of giving fair and clear warning,” with general constitutional rules expressed in decisional law able to apply with “obvious clarity” to the conduct in question. *Id.* Aguirre claims that Birks fabricated her identification of the latent print on the knife used in the murders as belonging to Aguirre, so we must look to whether “every reasonable government official” would have “fair and clear notice” that such conduct violated Aguirre’s rights. *See Marsh v. Butler Cnty.*, 268 F.3d 1014, 1031 (11th Cir. 2001) (en banc), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561-63, 127 S. Ct. 1955, 1968-69 (2007).

Our decisional law provided such notice. In *Schneider v. Estelle*, 552 F.2d 593 (5th Cir. 1977), our predecessor Circuit determined that constitutional due process is implicated when a state law enforcement officer offers false inculpatory evidence that the State uses to incriminate a suspect.¹⁰ 552 F.2d at 595. We have reiterated *Schneider*’s holding multiple times in varying circumstances. *See Riley v. City of Montgomery*, 104 F.3d 1247, 1253 (11th Cir. 1997) (planting cocaine in a suspect’s car); *Jones*, 174 F.3d at 1289-90 (fabricating a boot print at a murder scene); *Rowe*

10. In *Schneider*, the fabricated evidence consisted of an officer’s testimony that a suspect committed armed robbery against him, when it was later alleged that the officer was only the victim of theft. 552 F.2d at 594-95.

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v. City of Fort Lauderdale, 279 F.3d 1271, 1281 (11th Cir. 2002) (switching exculpatory evidence with inculpatory evidence during a search). Our statements in all these cases are manifestations of the bedrock principle that “a conviction obtained through use of false evidence, known to be such by representatives of the State,” is tainted so as to violate the mandate of the Fourteenth Amendment. *See Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 1177 (1959) (citations omitted).

Together, these cases at least set forth a principle that it is unlawful for a law enforcement officer to falsely create or falsely attest to the existence of incriminating evidence. Even assuming our case law is not “directly on point,” the “principles” evinced by and the “reasoning” in these cases would have fairly apprised reasonable officers in Birks’s position that falsely presenting evidence confirming a suspect as the source of a latent print on a murder weapon—and then falsely testifying to the inculpatory nature of that evidence at trial—is unlawful. *See Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005) (internal quotation marks omitted).

Birks resists this conclusion. She argues that our case law is far too removed from her circumstances to provide her fair notice. That is because, according to Birks, the allegedly unlawful conduct was merely “being overly confident or wrong in expressing [her] opinion” that Aguirre was the source of the latent prints on the murder weapon, not fabricating inculpatory evidence out of whole cloth. But that mischaracterizes Aguirre’s allegations and the forensic process required to confirm

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inculpatory evidence that a suspect is the source of latent prints. Positively identifying a suspect as the source of latent prints involves two steps: (1) comparison by a print examiner of a latent print of sufficient investigatory value to known prints to conclude a positive match; and (2) verification by an independent, competent examiner of the results of the comparison. Only after the second step can a positive identification be confirmed.

Aguirre’s complaint specifically targets Birks’s verification, alleging that Birks failed to have her latent print examinations properly verified and that the positive identification was fabricated. Aguirre’s brief in opposition to summary judgment stresses this requirement of verification as antecedent to an inculpatory positive identification. And it highlights Birks’s potential use of William McQuay to verify results despite (or because of) McQuay’s known infirmities that vitiated his competence as a verifier. The purposeful failure to properly verify the results of a positive comparison is not mere error or overconfidence in expressing a forensic conclusion; it is the absence of a step required to report incriminating forensic evidence. Any intentional transmittal to investigators of a positive identification without this step would thus be a fabrication of a forensic result, akin to reporting that a drug test confirms the identity of a substance even though the testing did not result in a confirmation. *Cf. Manuel v. City of Joliet*, 580 U.S. 357, 368, 137 S. Ct. 911, 919 (2017).¹¹

11. In *Manuel*, the Supreme Court acknowledged in passing that the creation and transmittal of a positive drug test was a “police fabrication[]” of incriminating evidence when the substance did not actually test positive. 580 U.S. at 368, 137 S. Ct. at 919.

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This is not so far removed from the clearly established principle that it is unlawful to knowingly incriminate a suspect by falsely creating or falsely attesting to the existence of inculpatory evidence so as to entitle Birks to qualified immunity. Our cases provided fair notice of such unlawfulness.

* * *

Having determined that the law was clearly established, we now address whether Birks engaged in conduct that violated the law. Because the evidence at summary judgment creates a genuine factual question about Birks's verification of her positive identification of Aguirre as the source of latent prints on the murder weapon, Birks is not entitled at this stage to qualified immunity.

The evidence creates a factual dispute about whether Birks selected McQuay as a verifier to avoid a proper verification by a competent print examiner, thereby fabricating the ultimate forensic result. At the time of the Aguirre investigation, only Birks and one trainee worked in Birks's forensic unit. But Birks reportedly requested verification of her identification from McQuay. McQuay had officially retired at this time and was in questionable health.

Birks alleges she did not know his health status at the time, but by the 2007 Report she claimed that McQuay told

Manuel post-dates Birks's conduct during Aguirre's investigation, so we do not rely on it as clearly establishing any law for purposes of this appeal. We cite *Manuel* only to corroborate our reasoning.

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her that he was sick and that she knew his health led to his retirement. According to Tara Williamson—the trainee—McQuay was noticeably sick and was taking medication when she joined the Latent Print Unit. He would fall asleep mid-conversation and err when performing verifications, which Birks knew.

According to Williamson, Birks also called McQuay “incompetent” on previous occasions. Indeed, Williamson claimed that Birks bullied McQuay with an intent to force him out of the unit due to his incompetence. Yet when Birks disagreed with other analysts’ verification conclusions, she would have McQuay verify them instead. One examiner in the Latent Print Unit was shocked when Birks sent an identification to McQuay for verification after two separate examiners would not verify it. Other times, Birks declined to obtain any verification of her results at all, relied on unqualified examiners to approve her results, or pressured examiners to verify her results. In her own words, she “had exceptions” to the normal verification process. Nevertheless, Birks claimed in the 2007 Report that she did not consider it proper to have a verification performed by an analyst in poor health or who was not able to properly verify identifications.

None of this evidence directly relates misconduct during Aguirre’s investigation specifically. But when we draw inferences from this evidence in the light most favorable to Aguirre, reasonable jurors could conclude that Birks, by intentionally selecting a person whom she considered incompetent or incapable as a verifier, fabricated an ultimate forensic result incongruent with

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what she could actually determine from her examination of the murder weapon. Reasonable jurors could conclude that she intentionally selected McQuay as a verifier to avoid a competent examination that would impede her inculcation of Aguirre.

So the evidence creates a genuine factual dispute about Birks's conduct as to the verification of Aguirre's positive identification. A jury must resolve this question of fact, precluding qualified immunity. *See Jones*, 174 F.3d at 1290.

B. Count III

In Count III, Aguirre claims that Hemmert and Birks maliciously prosecuted him in violation of the Fourth Amendment. The District Court denied Hemmert and Birks qualified immunity, concluding that it was clearly established that reckless material misstatements or omissions in an arrest affidavit negate probable cause in violation of the Fourth Amendment. It then determined that there is a factual dispute about the materiality and recklessness of omissions in the affidavit, whether Birks fabricated the latent print identification, and whether Hemmert intentionally or recklessly included selective information in the arrest affidavit to implicate Aguirre. Finally, it held that there was not arguable probable cause to arrest Aguirre.

On appeal, Hemmert disputes the Court's acceptance of a Fourth Amendment basis for a malicious-prosecution claim and asserts that Aguirre's grand jury indictment

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is an intervening act that terminates his liability.¹² He also argues that it was not unlawful to detain and charge Aguirre because there was arguable probable cause that Aguirre murdered Cheryl and Bareis. Birks adopts this argument, asserting that there was arguable probable cause for Aguirre’s detention even when her latent print identification is excised from the probable-cause affidavit.

“Our precedent has long separated malicious-prosecution claims from false-arrest or imprisonment

12. We can quickly dispose of these arguments. Although Hemmert disputes the legal basis in the Fourth Amendment for a malicious-prosecution claim, we are not at liberty to deny the contrary conclusion of a majority of the Supreme Court in *Thompson v. Clark*, 596 U.S. 36, 142 S. Ct. 1332 (2022). See *Muscogee (Creek) Nation v. Rollin*, 119 F.4th 881, 889 (11th Cir. 2024) (“The Supreme Court has explained that inferior courts must follow its precedent that has direct application in a case.” (internal quotation marks omitted)). “[W]e must leave to the Supreme Court the prerogative of overruling its own decisions.” *Id.* (internal quotation marks omitted).

As to Hemmert’s second argument, the Supreme Court has also explained that an intervening indictment does not necessarily “expunge such a Fourth Amendment claim.” *Manuel*, 580 U.S. at 369, 137 S. Ct. at 920 n.8. Hemmert’s reliance on *Jones v. Cannon* to the contrary is misplaced. There, we cabined our statements to claims concerning “detention from [an] alleged *false arrest*,” *Jones*, 174 F.3d at 1287 (emphasis added), not to claims of malicious prosecution. And as we have said elsewhere, “[a] subsequent indictment does not retroactively provide probable cause for an arrest that has already taken place.” *Garmon v. Lumpkin Cnty.*, 878 F.2d 1406, 1409 (11th Cir. 1989). Finally, as Hemmert acknowledges in his brief on appeal, any consideration of an indictment would go to the extent of Aguirre’s damages, not to the validity of his malicious-prosecution claim.

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claims. . . .” *Gervin v. Florence*, 139 F.4th 1236, 1253 (11th Cir. 2025) (citations omitted). While both claims involve seizures, a malicious-prosecution claim focuses on “seizure[s] pursuant to legal process.” *Williams v. Aguirre*, 965 F.3d 1147, 1158 (11th Cir. 2020) (internal quotation marks omitted). The gravamen of a malicious-prosecution claim is that a Fourth Amendment violation occurs “when legal process itself goes wrong—when, for example, a judge’s probable-cause determination is predicated solely on a police officer’s false statements.” *Manuel*, 580 U.S. at 367, 137 S. Ct. at 918. Malicious prosecution therefore extends to seizures based on warrants or seizures following an arraignment, indictment, or probable-cause hearing. *See Williams*, 965 F.3d at 1158. To succeed on a malicious-prosecution claim, then, a plaintiff must show that the legal process justifying the seizure was defective due to constitutional infirmities. *See Butler v. Smith*, 85 F.4th 1102, 1112 (11th Cir. 2023) (en banc). When, as here, there was a warrantless arrest followed by a finding of probable cause, we focus on the probable-cause affidavit.¹³

13. The record is somewhat confused as to the precise document and proceeding that established probable cause for Aguirre’s seizure. Aguirre’s first appearance was on June 26, 2004, during which probable cause was found for charges of homicide. A grand jury returned an indictment on July 13, 2004, but no recordings, transcription, or minutes of that proceeding are included in the record. Although Hemmert acknowledged in his civil deposition that he provided the grand jury with a supporting affidavit and testimony, he also referred to a shorter and less-detailed arrest report as “basically” his probable-cause affidavit. That arrest report, written immediately after Aguirre’s warrantless arrest, is included in the record, and the District Court appears to have treated the report as Hemmert’s probable-cause

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See Kelly v. Curtis, 21 F.3d 1544, 1553-55 (11th Cir. 1994) (determining qualified immunity where the plaintiff claimed malicious prosecution based, in part, on the defendant officer's statements to the District Court at a probable-cause hearing); *Williams*, 965 F.3d at 1163 (“[S]eizures pursuant to legal process concern whether the judicial officer who approved the seizure had sufficient information to find probable cause.”).

The affidavit may be constitutionally defective when an officer has intentionally or recklessly made misstatements or omissions necessary to support the probable-cause finding. *See Butler v. Smith*, 85 F.4th at 1112. The unlawfulness of such conduct was clearly established at the time of Aguirre's investigation. *See Kelly*, 21 F.3d at 1554. Our analysis of an affidavit's integrity proceeds in two steps. We first evaluate an allegedly defective affidavit by assessing whether there were any intentional or reckless misstatements or omissions. *Paez v. Mulvey*, 915 F.3d 1276, 1287 (11th Cir. 2019). We then ask whether probable cause would be negated if such statements were removed or omissions included. *Id.* More precisely, in the qualified-immunity context we review for “arguable” probable cause. *See Butler v. Smith*, 85 F.4th at 1116. This “arguable-probable-cause standard asks whether a ‘reasonable officer[] in the same circumstances and

affidavit. The parties in their briefs also treat the arrest report as the pertinent affidavit for their probable-cause arguments, despite sometimes referring to it as a warrant application.

We follow the District Court and treat the arrest report as the probable-cause affidavit supporting Aguirre's seizure for the homicide offenses.

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possessing the same knowledge as the Defendant[] could have believed that probable cause existed.” *Id.* (alterations in original) (quoting *Kingsland v. City of Miami*, 382 F.3d 1220, 1232 (11th Cir. 2004)). And in applying this standard, we consider only the information before the magistrate, minus any material misstatements, plus any material, omitted information. *See id.*

We begin by listing the misstatements and omissions that form the basis of our arguable-probable-cause analysis. Then we assess whether the affidavit, cured of the alleged misstatements and omissions, provided arguable probable cause for Aguirre’s seizure for the murders of Cheryl and Bareis. We conclude that it does still provide arguable probable cause, thereby entitling Birks and Hemmert to qualified immunity as to Count III.

1.

First, we review the alleged omissions. The District Court pointed to twelve items that, if included, would have vitiated arguable probable cause to arrest Aguirre:

- [Samantha] lied at first about her alibi
- [Samantha] had been drinking the night of the murders
- [Samantha] had anger and mental health issues
- [Samantha] was diagnosed with intermittent explosive disorder

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- [Samantha] had been Baker Acted before
- [Samantha] fought with her mother the night of the murders
- [Samantha] had a historically bad relationship with her mother
- [Samantha] had gotten into physical fights with her mother
- [Samantha's] mother had been stabbed over 125 times
- [Samantha's] boyfriend had serious ongoing trouble with the law
- [Samantha] and her boyfriend had various inconsistencies in their stories
- [Samantha] and her boyfriend both had wounds on their bodies

We assume, for purposes of this appeal, that each omission was intentionally or recklessly made.

As to the misstatements, the analysis becomes more complicated. The District Court assumed that the statement in Hemmert's affidavit reporting Birks's positive latent print identification was a misstatement because the identification was allegedly fabricated. Because Birks—as the transmitter of the positive

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identification—had reason to doubt the veracity of this statement, we, too, will assume this was an intentional or reckless misstatement despite Hemmert as the affiant having no reason to doubt its veracity. *See United States v. Kirk*, 781 F.2d 1498, 1503 & n.5 (11th Cir. 1986); *see also Franks v. Delaware*, 438 U.S. 154, 163, 98 S. Ct. 2674, 2680 & n.6 (1978) (contrasting a reporting officer’s misstatements with a private informer’s misstatements because “police [may] not insulate one officer’s deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity”).

To this, Aguirre adds on appeal three additional “false allegations” in Hemmert’s affidavit:

- First, he claims that the murder weapon was different from the Sysco knife that was allegedly missing from Aguirre’s workplace.
- Second, he claims that the murder weapon was characteristically different from the knives that Aguirre’s cotenants told the police were available in their shared kitchen.
- Third, he claims that Aguirre’s shoes did not match the footwear impressions found at the crime scene because one of his shoes had a twig lodged in its tread, which was not reflected in the impressions found at the victims’ residence.

Although Aguirre is unclear in appellate briefing as to whether these are to be considered as misstatements

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or omissions, he clearly characterized them before the District Court as misstatements that must be excised from Hemmert's affidavit. Therefore, we must first determine whether we credit these as misstatements in our arguable-probable-cause analysis. *See Butler v. Smith*, 85 F.4th at 1114 (rejecting excision of an alleged misstatement because the affiant reasonably believed in the veracity of the statement).

We do not credit Aguirre's first two assertions about the Sysco knife found in Aguirre's yard. For a statement in an affidavit to be considered a misstatement violative of the Fourth Amendment, the affiant must not have had "a reasonable belief in [the] veracity' of the information that she provides, regardless of whether it ultimately turns out to be true." *Butler v. Smith*, 85 F.4th at 1114 (alteration in original) (quoting *Paez*, 915 F.3d at 1286-87)). Where undisputed facts support that the affiant "had 'reason [to] belie[ve] in [the] veracity' of her statement," then we will not excise the alleged misstatement. *See id.* (alterations in original) (quoting *Paez*, 915 F.3d at 1286). This analysis extends to "any officer who provided information material to the probable cause determination," not only to the affiant. *Williams*, 965 F.3d at 1169 (citations and internal quotation marks omitted). Still, when considering information proffered by another officer to the affiant, the transmitting officer must have had some "reason to suspect that the information upon which they were relying was incorrect." *See Kirk*, 781 F.2d at 1503 & n.5.

Aguirre does not sufficiently show that Hemmert or the transmitting officers did not reasonably believe in

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the veracity of the information in the affidavit linking the murder weapon to the Sysco knife missing from Aguirre's workplace. The only piece of evidence Aguirre points to is a police interview with John Andrich, the head chef at Aguirre's workplace, in which Andrich describes the Sysco knives in the restaurant's possession.¹⁴ The transcription of that interview produced in 2022 reports Andrich's description of the Sysco knives as:

They're different shaped, all white-handled, and there's a serrated, a chef's knife, a cook's knife, and a boning knife, and a steel that's in there. . . .

But the 2004 transcription of that interview differs slightly:

They're different shaped, all white handled and there's a serrated chef's knife, a cook's knife and a bonding knife and that's steel that's in there.

The parties dispute whether Andrich in the interview referred to both a chef's knife *and* a serrated knife, or whether "serrated" adjectivally modified "chef's knife." Because the Sysco knife found in Aguirre's yard was not serrated, Aguirre claims Hemmert's statements in the affidavit about the restaurant's knife were seriously misrepresentative.

14. Neither the record nor the parties specify whether this information in the affidavit was construed by Hemmert from the transcript or recording of Andrich's interview, or reported to Hemmert by Andrich's two interviewers, Investigator Jeffrey Bean and Sergeant John Negri.

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However, Aguirre does not forward evidence that Hemmert or the other officers were aware of this distinction or did not reasonably believe that the murder weapon was similar to the restaurant’s missing chef’s knife. Rather, Hemmert in his 2021 civil deposition stated that, based on statements given by Aguirre’s cotenants and coworkers to investigating officers, he believed the knife that was found in Aguirre’s yard was similar to the knife missing from Andrich’s restaurant. And Investigator Bean in his 2004 criminal deposition stated that he learned from his interview of Andrich that the knife recovered from Aguirre’s yard was similar to the set of knives used at the restaurant. Aguirre does not argue, nor is there any evidence in the voluminous record indicating, that Hemmert erred despite relying on the 2004 transcript of Andrich’s interview in drafting his affidavit—especially as the transcription was only completed on June 25, 2004, the same day Hemmert arrested Aguirre and completed the probable-cause affidavit. Hemmert could reasonably rely “on facts communicated to him by” Investigator Bean as to the similarity of the recovered knife to the knife missing from Andrich’s kitchen. *See Carroll v. United States*, 267 U.S. 132, 161, 45 S. Ct. 280, 288 (1925) (internal quotation marks omitted). And Hemmert—if he relied on the recorded interview—had reason to believe that Andrich said “a chef’s knife” because “chef’s knife” in the 2004 audio recording is preceded by a disputed vocalization that is equally susceptible to interpretation as either an indefinite article (“a”) or as a filled pause (“ah”).¹⁵ We therefore will

15. “A filled pause is a hesitation, between speaker turns, or within a turn, during which the speaker makes an utterance that is not subject-specific and is not responsive to or encouraging

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not excise this information in the affidavit as a misstatement violative of the Fourth Amendment.

As to Aguirre's second assertion, Hemmert and the reporting officer, Investigator Bean, had reason to believe in the veracity of Hemmert's statement in the probable-cause affidavit linking the murder weapon to the knife missing from Aguirre's shared residence. Feliciano Sequeida in his police interview with Investigator Bean indicated that Aguirre had access to a knife in their shared residence with a white handle. Feliciano equivocates as to the characteristics of this blade, saying it looks "more or less" like a black-handled blade taken from the restaurant, which itself was "more or less" small and used for cutting vegetables. But Guillermo Espinosa, the cotenant who actually took the knife, explicitly called it a chef's knife in his police interview. And both cotenants claimed the knife was missing for about a week. We can find no support for the proposition that Investigator Bean should have had reason to suspect the veracity of this information. And the search of the residence by Investigator Bean corroborated that the knife was missing.

Between Feliciano's equivocation as to the knife's characteristics, Guillermo's express statement that the knife was a chef's knife, the statements of both that the knife was missing, and Investigator Bean's fruitless

of another's speech. Filled pauses are sometimes words (you know, well, like) and sometimes not (ur, uhm, uh)." Peggy C. Davis, *Contextual Legal Criticism: A Demonstration Exploring Hierarchy and "Feminine" Style*, 66 N.Y.U. L. Rev. 1635, 1665 n.148 (1991).

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search of the residence, both Hemmert and Investigator Bean could reasonably have believed in the veracity of the statement linking the murder weapon to the white-handled knife missing from Aguirre's residence.

In contrast, we do credit as a misstatement the statement in the affidavit about the similarity of the footwear impressions at the crime scene to Aguirre's shoes. That is because the investigating officer who reported this information to Hemmert should reasonably have doubted its veracity. Crime Scene Analyst Christine Craig conducted the analysis of the footwear impressions by comparing them to the impressions of Aguirre's Reebok shoes. During her investigation, she inspected and photographed Aguirre's shoes. She noted that a stick or piece of vegetation was lodged in the tread of Aguirre's shoe and testified at trial that it was an individual characteristic that could be replicated in footwear impressions left by the shoe. But the footwear impressions at the crime scene did not reflect such an individual characteristic. Analyst Craig explained that the absence of replicated individual characteristics foreclosed a conclusion of a positive identification, instead requiring a conclusion of similarity in tread design, size, and shape.

While we have no doubt Analyst Craig believed her conclusion was "true" in a technical sense, we explained in *Paetz* that the requirement of "reasonable belief in [the] veracity" of information in an affidavit derives from the Supreme Court's explanation in *Franks v. Delaware* that statements be "'truthful' in the sense that the information put forth is . . . appropriately accepted" as

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true. *See Paez*, 915 F.3d at 1286-87 (internal quotation marks omitted) (quoting *Franks*, 438 U.S. at 165, 98 S. Ct. at 2681). When the source of that information may carry some inherent unreliability, such as an informant's tip, the Court stated that the affidavit must recite the circumstances contextualizing the credibility or reliability of that information. *See Franks*, 438 U.S. at 165, 98 S. Ct. at 2681. That principle applies here. The footwear impression analysis could only result in a conclusion of similarity—not positive identification—because of the lack of individual characteristics reliably matching the impressions to Aguirre's shoe. The failure to recite any of the particular facts and circumstances adding to or detracting from the reliability of this conclusion, such as the presence of the twig in Aguirre's shoe, deprived the magistrate of his ability "to make an independent evaluation of the matter." *Id.* In that sense, we conclude that Analyst Craig's statement was made with reckless disregard of whether it rendered the affidavit misleading. Accordingly, we agree with Aguirre that the statement in Hemmert's affidavit about the similarity of the footwear impressions to Aguirre's shoes must be excised from our arguable-probable-cause analysis as a misstatement.

2.

We now evaluate Birks and Hemmert's qualified-immunity arguments by curing Hemmert's affidavit of the alleged misstatements and omissions and determining whether arguable probable cause nonetheless existed for Aguirre's seizure for the murders of Cheryl and Bareis. We conclude it does.

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First, there is the knife. The affidavit establishes on the basis of multiple officers' observations and the medical examiner's autopsies that Cheryl and Bareis were viciously killed with a sharp instrument that left cuts and sharp force wounds on their bodies. A large Sysco knife with suspected blood was then found in Aguirre's yard, near the fence separating his property from the victims' residence. Aguirre and a cotenant had been employed at a restaurant that used such a knife, though the restaurant's knife was missing because the cotenant had borrowed it for use in their shared kitchen. And the borrowed Sysco knife was missing from the shared kitchen. So a potential murder weapon was discovered bloodied in Aguirre's yard, with a potential provenance that tightly linked it to Aguirre's workplace and home.

Then, there is the blood evidence. A large amount of blood surrounded the bodies, having spattered even the walls and the doors near each victim. Footwear impressions in suspected blood trailed through the residence. Aguirre admitted to officers that he had the victims' blood on his clothes, which he placed in a plastic bag and tossed onto the roof of his shed (an incriminating act). A search of the bag confirmed that all of Aguirre's clothes—his shorts, T-shirt, and socks—were bloodied. Even underwear located inside Aguirre's residence had blood on it. Aguirre's shoes also had blood on them. Aguirre's clothes and shoes indicated not only his presence at the murder scene, but also that his actions at the scene resulted in blood soaking through his clothes and into his underwear. Such a quantity of blood in his clothing would accord with the events that caused the victims' blood to spatter and pool throughout their residence.

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And there is the timing of the murders and Aguirre's conduct that night. At 9:00 AM Van Sandt discovered Cheryl's body, which was cold and stiff to the touch. Because he and Samantha left the residence around 11:30 PM the previous night when both victims were alive, Cheryl and Bareis must have died at some point during the night or early morning. Aguirre had been drinking that night, returning to the home of his friend, Salvador, around 2:00 AM. Salvador stated that Aguirre left between 3:00 and 4:00 AM, but Aguirre placed himself at the murder scene around 6:00 AM. And when Aguirre spoke to Salvador after the victims were discovered, Aguirre said he did not remember what he had done after leaving Salvador's house in the early morning. So Aguirre was intoxicated enough that night to not remember if he killed Cheryl and Bareis, and their deaths could have occurred during the early morning hours for which Aguirre could not account and in which he was heavily intoxicated.

Aguirre also had a history of being an unwanted presence in the victims' home. Both Van Sandt and Samantha reported that Aguirre had entered the residence in the early morning hours uninvited. Samantha said it had occurred two or three times within the previous two months, and on one occasion Aguirre was discovered standing over Samantha as she slept. This evidently worried the residents, because Aguirre had to be escorted out of the home and told to not return. Aguirre fully confirmed Samantha's claims about his nighttime invasions. Aguirre therefore had a history of consistently accessing the victims' residence during the night even though he was uninvited, acting strangely enough during

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his entries to warrant being escorted out and told that he was not welcome there.

Finally, the affidavit revealed how Aguirre lied and acted furtively to insulate him from the events at the murder scene. When officers initially spoke with Aguirre, he provided a written statement reporting that he was with Salvador until approximately 6 AM, after which he immediately went home to sleep. But it was when the officers asked for his shoes—which had the victims’ blood on them—that he admitted that this story was partially fabricated because he feared deportation. He confessed to entering the victims’ residence and then hiding most of the evidence of his entry. And immediately after reporting that he knew nothing about the murders, he went to Salvador’s home to discuss whether he had any role in the murders. Further, although Aguirre denied walking beyond the front door area of the murder scene, police found footwear impressions leading to Bareis’s body, the kitchen, and another bedroom. So Aguirre hid most of the evidence tying him to the crime scene and then knowingly lied to officers, only revealing the truth when he feared being linked to the crimes via his bloody shoes. Although we do not consider any statement directly linking Aguirre’s shoes to the footwear impressions, his lies, furtive behavior, bloody shoes, and confessed narrative would imply that Aguirre could be the source of those impressions, but was continuing to lie to avoid prosecution.

Even after removing Birks’s positive latent print identification and Analyst Craig’s footwear impression

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conclusion, the affidavit establishes arguable probable cause that Aguirre committed the murders. Arguable probable cause requires only that a reasonable officer in Hemmert's position could have believed that probable cause existed to arrest Aguirre. *See Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007). And probable cause exists when the totality of circumstances within an officer's knowledge is sufficient to warrant a reasonable belief that the suspect committed a crime. *United States v. Gonzalez*, 969 F.2d 999, 1002 (11th Cir. 1992) (citing *Beck v. Ohio*, 379 U.S. 89, 91, 85 S. Ct. 223, 225 (1964)). Probable cause requires "less than evidence which would justify condemnation," *Locke v. United States*, 11 U.S. (7 Cranch) 339, 348 (1813), and "is not a high bar," *Kaley v. United States*, 571 U.S. 320, 338, 134 S. Ct. 1090, 1103 (2014).

When we consider everything Hemmert properly reported in the affidavit, this bar was easily met. Aguirre was linked in multiple ways to the bloody murder weapon. Aguirre was heavily intoxicated that night and could not account for his location at the time when the murders may have happened. When talking with Salvador, Aguirre said he could not even remember whether he had committed the murders. Aguirre had entered the victims' home at night multiple times before, during which he acted in a way that worried the residents. He had blood on his clothes and shoes, with blood even reaching his underwear. He acted furtively after the murders, hiding his bloody clothing, and his shoes were bloody. He immediately lied to officers about his conduct the night of the murders, only admitting that he was at the scene when the officers asked to inspect

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his shoes. Altogether, Hemmert's affidavit shows he had ample evidence indicating Aguirre's involvement in the murders of Cheryl and Bareis. Hemmert could have reasonably believed that he had probable cause that Aguirre committed the murders.

Even when we add in the allegedly omitted statements, this conclusion does not change. All twelve omissions to which the District Court pointed suggest the possibility of an alternative suspect, Samantha, either acting alone or in conjunction with Van Sandt. But not all the omitted information suggests Samantha or Van Sandt's culpability as strongly as the District Court or Aguirre implied. Samantha's initial lie about her alibi, for example, was immediately and reasonably explained as related to Van Sandt's parents' dislike of her. And while Van Sandt did have serious ongoing trouble with the law, his criminal history consisted not of violence but of sexual offenses involving children and drug possession.

But it is unnecessary to discredit the force of each omission because the suggestion of an alternative suspect does not, on its own, vitiate probable cause. A probable cause determination "does not require the fine resolution of conflicting evidence." *Gerstein v. Pugh*, 420 U.S. 103, 121, 95 S. Ct. 854, 867 (1975) (citation omitted). Nor does a law enforcement officer have an unflagging duty to "investigate independently every claim of innocence" or defense. *See Baker v. McCollan*, 443 U.S. 137, 146, 99 S. Ct. 2689, 2695 (1979). And "the availability of alternative inferences does not prevent a finding of probable cause so long as the inference upon which the officer relies is

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reasonable.” *Cox v. Hainey*, 391 F.3d 25, 32 (1st Cir. 2004). Indeed, probable cause can exist for multiple suspects simultaneously.¹⁶ *See, e.g., Maryland v. Pringle*, 540 U.S. 366, 371-72, 124 S. Ct. 795, 800-01 (2003); *accord Lester v. Roberts*, 986 F.3d 599, 611 (6th Cir. 2021) (“Yet just because the police have more than one potential suspect does not mean that they lack probable cause for all of the suspects.”). On its own, “the presence of contradictory evidence does not bar a finding of probable cause.” *Scott v. City of Miami*, 139 F.4th 1267, 1274 (11th Cir. 2025) (citation omitted). Thus, even accounting for the twelve omissions which suggest Samantha’s culpability for the murders, arguable probable cause still existed for Aguirre’s arrest for the murders of Cheryl and Bareis.

* * *

Hemmert’s probable-cause affidavit, cured of the alleged misstatements and omissions, nevertheless shows that there was arguable probable cause to detain Aguirre for the murders of Cheryl and Bareis. Because there

16. We do not suggest that the existence of evidence that an alternative person committed an offense can never vitiate probable cause. Probable cause “turn[s] on the assessment of probabilities in particular factual contexts.” *Illinois v. Gates*, 462 U.S. 213, 232, 103 S. Ct. 2317, 2329 (1983). Conflicting evidence may so diminish the probability that a suspect committed the offense so as to vitiate probable cause for the suspect’s arrest. *See Scott v. City of Miami*, 139 F.4th 1267, 1274 (11th Cir. 2025) (“Ultimately, probable cause will only be vitiated if the exculpatory evidence did not merely make it less likely probable cause existed but *obviously and irrefutably* established that it didn’t exist.” (internal quotation marks omitted)). But that is not the case here.

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was arguable probable cause for Aguirre's arrest, Birks and Hemmert are entitled to qualified immunity as to Aguirre's malicious-prosecution claim.

C. Count IV

In Count IV, Aguirre claims that Hemmert and Grossi violated his Fourteenth Amendment right to a constitutionally adequate criminal investigation by ignoring exculpatory information, failing to uncover discoverable facts, and investigating in a biased manner. The District Court denied Hemmert and Grossi qualified immunity, determining that the law clearly established that officers must take steps to eliminate doubts about a suspect before arrest and that there are genuine factual questions about whether Hemmert and Grossi acted with deliberate indifference in conducting an insufficient investigation. Hemmert and Grossi dispute the District Court's determination that it was clearly established at a proper level of generality that due process requires an investigation that eliminates doubts and inconsistencies. They also argue that Grossi is entitled to qualified immunity because she engaged in no violative conduct and because there was no clearly established law requiring her to test all evidence found at a crime scene.

We agree with Hemmert and Grossi that no law clearly established Aguirre's right to an investigation that eliminates doubts and inconsistencies in these circumstances. Clearly established law "must not be defined at a high level of generality, but must instead be particularized to the facts of the case." *Fuqua*, 996 F.3d at

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1150 (internal quotation marks and citations omitted). The “relevant ‘legal rule’” must be sufficiently particularized to the official’s action such that “a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 639-40, 107 S. Ct. 3034, 3038-39 (1987). The District Court elided this requirement to draw up a generalized legal principle ostensibly from *Tillman v. Coley*, 886 F.2d 317 (11th Cir. 1989), that due process requires investigating officers to eliminate any doubts about a suspect before arrest.

But that is not a proper reading of *Tillman*. *Tillman* established that it was unlawful for an officer to not eliminate doubts about a suspect’s identity before obtaining a warrant and arrest, in circumstances where the officer knew facts about the suspect that *actually caused* the officer to harbor significant doubts about the propriety of an arrest. 886 F.2d at 320-21. Indeed, the Court in *Tillman* contrasted the instant circumstances with those of *Baker v. McCollan* to explain that its holding turned on the officer’s “own serious doubts regarding the suspect’s identity” based on the officer’s prior knowledge and not on a general requirement “to investigate every claim of innocence.” *Id.* at 321. *Tillman* “is fairly distinguishable from the circumstances” of Aguirre’s investigation because Aguirre does not claim that Hemmert and Grossi actually harbored serious doubts about his innocence. *See Vinyard v. Wilson*, 311 F.3d 1340, 1352 (11th Cir. 2002). Instead, Aguirre’s complaint alleges that Hemmert and Grossi uncovered threads of evidence that, if pursued to their ends, would have inculpated Samantha despite evidence pointing to Aguirre. We thus must assess

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whether it was clearly established that Aguirre had a right to an investigation that pursued all potentially exculpatory leads in the face of contrasting inculpatory evidence.

That right was not clearly established at the time of Hemmert and Grossi's investigation in 2004. We cannot locate any decisional law declaring otherwise. Rather, controlling case law declared that "[d]ue process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." *Patterson v. New York*, 432 U.S. 197, 208, 97 S. Ct. 2139, 2326 (1977). Suspects had no right to "an errorfree investigation" of exculpatory leads. *See Baker*, 443 U.S. at 146, 99 S. Ct. at 2695. Certainly, an "arresting officer [was] required to conduct a reasonable investigation to establish probable cause." *Rankin v. Evans*, 133 F.3d 1425, 1435 (11th Cir. 1998) (citations omitted). But we delimited the contours of a "reasonable investigation" according to the apparentness of exculpatory information, the ease of obtaining such information, and the accused's pointing-out of such information. *See id.* at 1435-36 (citing *Harris v. Lewis State Bank*, 482 So. 2d 1378, 1382 (Fla. Dist. Ct. App. 1986) ("Where it would appear to a 'cautious man' that further investigation is justified before instituting a proceeding, liability may attach for failure to do so, especially where the information is readily obtainable, or where the accused points out the sources of the information.")). We therefore did not fault an officer for not pursuing multiple lines of evidence to their ultimate exonerative ends when the configuration of apparent evidence yielded an inculpatory character adequate for probable cause for arrest. *See id.* at 1437-43. *See*

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also Mitchell v. McNeil, 487 F.3d 374, 378 (6th Cir. 2007) (“There is no statutory or common law right, much less a constitutional right, to an investigation.”); *Devereaux v. Abbey*, 263 F.3d 1070, 1095 (9th Cir. 2001) (“[T]here is no constitutional due process right . . . to have the investigation carried out in a particular way.”); *Brown v. Frey*, 889 F.2d 159, 171 (8th Cir. 1989) (“Brown fails to identify any clearly established constitutional right to an adequate investigation.”); *Harris v. Hixon*, 102 F.4th 1120 (11th Cir. 2024) (Tjoflat, J., concurring) (“Whether the officers’ investigation was inadequate is irrelevant and has no bearing on either of Harris’s Fourth Amendment claims.”).

In contrast, we did find constitutional inadequacy in circumstances where the available evidence, uncorroborated by additional evidence or information, on its face actually introduced significant doubts about a suspect’s culpability such that resolution of those doubts via further investigation was required. *See Tillman*, 886 F.2d at 320-21; *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir. 1996) (determining an officer erred in relying on an informant’s tip that was constitutionally inadequate to support probable cause for an arrest without further investigation, additional inculpatory evidence, or corroborating information). And we concluded that officers have no duty to seek out exculpatory evidence when they are not aware that the evidence exists *and* that it is exculpatory. *See Kelly*, 21 F.3d at 1551 (concluding detectives were not required to seek out exculpatory lab report when they had no actual awareness of its existence). Reviewing the pertinent case law as a whole,

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we cannot conclude that it was clearly established that Aguirre had a right to an investigation that pursued all potentially exculpatory leads in the face of contrasting evidence that inculpated Aguirre, when the investigators did not actually harbor significant doubts about Aguirre's culpability.

Because such a duty was not clearly established at the time of Aguirre's investigation, Hemmert and Grossi are entitled to qualified immunity as to Count IV.

V. State-Law Immunity

Finally, Hemmert and Grossi appeal the District Court's denial to them of state-law immunity under Fla. Stat. § 768.28(9)(a) as to Count VII. Aguirre in Count VII alleges under Florida law that Hemmert and Grossi intentionally inflicted him with emotional distress. The District Court denied them immunity because it determined there are factual disputes over whether they acted in bad faith, which is one exception to the immunity statute. On appeal, Hemmert and Grossi contest the Court's understanding and application of the exceptions to sovereign immunity in § 768.28(9)(a). "We review *de novo* a district court's summary judgment denial of official immunity." *Hoyt v. Cooks*, 672 F.3d 972, 981 (11th Cir. 2012) (citations omitted).

Fla. Stat. § 768.28(9)(a) provides:

An officer, employee, or agent of the state or of any of its subdivisions may not be held

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personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

No party to this appeal disputes whether Hemmert and Grossi were acting within the scope of their employment. Instead, the parties contest whether Hemmert and Grossi acted: (1) “in bad faith”; (2) “with malicious purpose”; or (3) “in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” Fla. Stat. § 768.28(9)(a).

When a federal court sits in diversity or pendent jurisdiction, we apply state substantive law. *See Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245, 1259 (11th Cir. 2015). We therefore look to the Florida courts for the definitions of these three statutory phrases. *See Silverberg v. Paine, Webber, Jackson & Curtis, Inc.*, 710 F.2d 678, 690 (11th Cir. 1983). The Third District Court of Appeal has provided such definitions:

The phrase “bad faith,” as used in section 768.28(9)(a), has been “equated with the actual malice standard.” *Parker v. State of Fla. Bd. of Regents ex rel. Fla. State Univ.*, 724 So. 2d 163, 167 (Fla. 1st DCA 1998) (citation omitted).

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The phrase “malicious purpose,” as used in section 768.28(9)(a), has been interpreted as meaning the conduct was committed with “ill will, hatred, spite, [or] an evil intent.” *Eiras v. Florida*, 239 F. Supp. 3d 1331, 1343 (M.D. Fla. 2017) (citation and internal quotation marks omitted). Or perhaps stated more simply, “the subjective intent to do wrong.” *Id.* at 1345 (citation omitted).

The phrase “wanton and willful disregard of human rights [or] safety,” as used in section 768.28(9)(a), has been interpreted as “conduct much more reprehensible and unacceptable than mere intentional conduct,” *Richardson v. City of Pompano Beach*, 511 So. 2d 1121, 1123 (Fla. 4th DCA 1987), and “conduct that is worse than gross negligence,” *Sierra v. Associated Marine Insts., Inc.*, 850 So. 2d 582, 593 (Fla. 2d DCA 2003) (citation and internal quotation marks omitted).

Peterson v. Pollack, 290 So. 3d 102, 109 (Fla. Dist. Ct. App. 2020) (footnote omitted).

In cases where the facts create a genuine dispute as to whether a defendant acted in bad faith, with a malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, summary judgment on the basis of § 768.28(9)(a) is unavailable. *See, e.g., McGhee v. Volusia County*, 679 So. 2d 729, 733 (Fla. 1996); *Dist. Bd. of Trs. v. Martin*, 642 So. 2d 816, 817 (Fla.

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Dist. Ct. App. 1994) (per curiam); *Ondrey v. Patterson*, 884 So. 2d 50, 54 (Fla. Dist. Ct. App. 2004).

Neither the bad-faith exception nor the malicious-purpose exception applies to Hemmert and Grossi. Aguirre does not forward or point to any evidence on which a “reasonable trier of fact could possibly conclude that” Hemmert and Grossi acted in bad faith or with a malicious purpose. *See Willingham v. City of Orlando*, 929 So. 2d 43, 48 (Fla. Dist. Ct. App. 2006) (citing *Lemay v. Kondrk*, 923 So. 2d 1188, 1191 (Fla. Dist. Ct. App. 2006)). Rather, Aguirre conclusorily states in his complaint that the defendants were “motivated consciously or unconsciously by their bias against undocumented immigrants from countries in Central America” and that Hemmert and Grossi acted “based on their ethnic bias” when investigating the murders of Cheryl and Bareis. But there is no evidence in the record of such bias or a subjective intent to wrong Aguirre, much less sufficient evidence to create a genuine dispute requiring resolution by the trier of fact.

In contrast, there is sufficient evidence to create a factual dispute over whether Hemmert and Grossi acted with wanton and willful disregard of human rights, property, or safety. Hemmert, the lead investigator, was aware of evidence that pointed to Samantha as a potential suspect: her diagnosis of intermittent explosive disorder, her previous encounters with law enforcement, her historically poor relationship with her mother, her wounded arm, and the fight she had with her mother the night of the murders. But he did not collect her shoes or

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clothing, question her about her mental health issues, or otherwise investigate her as a serious suspect in the crimes. A trier of fact could reasonably determine that these deficiencies were not just “negligent or foolish,” given what Hemmert knew and what he failed to do despite his knowledge.¹⁷ See *Castellano v. Raynor*, 725 So. 2d 1197, 1199 (Fla. Dist. Ct. App. 1999).

The same reasoning applies to Grossi, the lead crime scene analyst. Grossi did not submit any of the 150 samples of blood evidence from the crime scene for testing, even though she knew it was possible that Cheryl’s assailant could wound herself during the course of Cheryl’s murder. And Grossi either missed or did not catalogue in her crime scene report the Sysco boxes at the crime scene and their contents, even after locating a bloody Sysco knife in Aguirre’s yard. Further, a clump of hair was found on Cheryl’s body, but no analysis was conducted on any collected hair or fiber. Nor did Grossi record in her crime scene report whether she or another investigator opened the washing machine at 121 Vagabond Way in search of wet clothes that would corroborate Van Sandt’s story for being at the crime scene that morning, even though her

17. Our denial of qualified immunity here does not implicate our reasoning for granting qualified immunity to Hemmert and Grossi in Count III. For a malicious prosecution claim, the existence of other credible suspects does not erase probable cause to investigate or arrest another suspect. And as we noted, there was sufficient probable cause to arrest Aguirre. Here, however, Hemmert and Grossi’s failure to investigate the other credible suspect, Sarah, could possibly constitute acting with wanton and willful disregard of human rights, property, or safety—and therefore granting qualified immunity would be inappropriate.

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notes would have recorded discoveries of value in her search. A trier of fact could reasonably find that such failures constituted “conduct that is worse than gross negligence” so as to fall within the third exception to sovereign immunity in Fla. Stat. § 768.28(9)(a). *Peterson*, 290 So. 3d at 109 (internal quotation marks omitted).

In coming to this conclusion, we do not determine that Hemmert and Grossi acted wrongly. We only conclude that, in light of the “difficulty in dividing negligence into degrees,” *Ingram v. Pettit*, 340 So. 2d 922, 924 (Fla. 1976) (citations omitted), “a reasonable trier of fact *could possibly* conclude that the conduct was willful and wanton,” *Willingham*, 929 So. 2d at 48 (emphasis added) (citing *Lemay*, 923 So. 2d at 1191). Given the alleged deficiencies in Hemmert and Grossi’s investigation and competing claims as to the permissibility of those deficiencies, “there is clearly a factual determination to be made as to whether the [officers’] conduct should be characterized as willful and wanton.” *See Martin*, 642 So. 2d at 817. For this reason, we cannot conclude as a matter of law that Fla. Stat. § 768.28(9)(a) entitles Hemmert and Grossi to state-law immunity as to Count VII of Aguirre’s complaint.

VI. Conclusion

In summary, we **DISMISS** Aguirre’s cross-appeal and **DISMISS IN PART** the cross-appeals of Birks, Hemmert, and Grossi. We **AFFIRM** the District Court’s denial to Birks of qualified immunity as to Count I and its denial to Hemmert and Grossi of state-law immunity

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as to Count VII. But we **REVERSE** the District Court's denial of qualified immunity to Hemmert and Birks as to Count III, and its denial of qualified immunity to Hemmert and Grossi as to Count IV. We **REMAND** for further proceedings.

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**APPENDIX B — JUDGMENT OF THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT, FILED FEBRUARY 2, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10811

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Plaintiff-Appellee-Cross Appellant,

v.

SEMINOLE COUNTY, *et al.*,

Defendants,

ROBERT HEMMERT, IN HIS INDIVIDUAL
CAPACITY, DEPUTY SHERIFF, JACQUELINE
GROSSI, IN HER INDIVIDUAL CAPACITY,
CRIME SCENE ANALYST, DONNA BIRKS,
IN HER INDIVIDUAL CAPACITY,
LATENT PRINT EXAMINER,

Defendants-Appellants-Cross Appellees,

SEMINOLE COUNTY SHERIFF,

Defendant-Appellee.

Filed February 2, 2026

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Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:20-cv-00025-RBD-DCI

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: November 4, 2025

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: FEBRUARY 2, 2026

**APPENDIX C — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE MIDDLE DISTRICT
OF FLORIDA, ORLANDO DIVISION,
FILED FEBRUARY 22, 2023**

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA,
ORLANDO DIVISION

Case No. 6:20-cv-25-RBD-DCI

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Plaintiff,

v.

ROBERT HEMMERT; JACQUELINE GROSSI;
DONNA BIRKS; AND DENNIS LEMMA,

Defendants.

Signed February 22, 2023

ORDER

ROY B. DALTON JR., United States District Judge

Before the Court are Defendant Donna Birks' motion for summary judgment (Doc. 185); Defendants Robert Hemmert, Jacqueline Grossi, and Dennis Lemma's joint motion for summary judgment (Doc. 236); all parties' *Daubert* motions (Docs. 181–84); and Plaintiff's motion to amend (Doc. 263).

*Appendix C***INTRODUCTION**

Nearly two decades ago, Clemente Javier Aguirre-Jarquin was arrested for the murders of his neighbors, Cheryl Williams and her elderly mother Carol Bareis. From a certain viewpoint, it seemed like an open-and-shut case. Cheryl's daughter, Samantha Williams, pointed the finger at Aguirre, an undocumented immigrant who had previously entered their house in the middle of the night. They found bloody clothes in his house and his palm print on the murder weapon. He was tried, convicted, and sentenced to death.

But that open-and-shut case unraveled during the decade Aguirre spent on death row. The examiner who matched Aguirre's print to the murder weapon resigned in disgrace after an investigation concluded she was incompetent. Blood from the crime scene that had never been tested implicated Samantha, not Aguirre. And Samantha, who had anger and mental health issues, confessed that she was the one who killed her mother and grandmother. After all this, the Florida Supreme Court vacated Aguirre's conviction.

With some perspective, the case that once looked open-and-shut now looks more like a predetermined destination searching for a route. From the viewpoint of Aguirre's best facts, this case appears to be less about what did happen and more about what did not: a detective who did not see the many red flags pointing to Samantha, an inexperienced crime scene analyst who did not test any blood from the house where the murders took place, and a print examiner who reported a match when the science

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did not support one. This is a case about leads dropped, inconsistencies ignored, doubts glossed over—and a man who spent ten years waiting to be executed because the legal process went wrong.

BACKGROUND¹

In the early 2000s, Plaintiff Clemente Javier Aguirre-Jarquin (“Aguirre”) was a young undocumented immigrant who fled Honduras to escape gang violence. He came to Altamonte Springs to be near his sister and got a job at a restaurant. Two of his coworkers lived in a nearby trailer park; he moved into a shed on their property about a year before the murders. (Doc. 187, pp. 21:1–2, 21:21–22, 22:8–15, 23:20–24:2, 27:12–17, 29:9–10, 29:25–30:2, 98:22–24, 99:2–5, 108:23–24.)

Three women lived in the trailer opposite Aguirre and his roommates: Samantha Williams (“Williams”), her mother Cheryl Williams (“Cheryl”), and her grandmother Carol Bareis (“Carol”). Aguirre quickly became friendly with them and visited their trailer many times in the year since he moved in; he often drank with the Williamses and they always had beer for him. A few times, Aguirre got drunk and entered their trailer during the night without knocking. Williams and her mother discouraged this because of Williams’ aggressive dog. (*Id.* at 64:9–16, 65:1–25, 67:4–7.)

1. The facts recited here may not be the actual facts but reflect Aguirre’s best case as the nonmovant. *See Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006).

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At the time of the murders, Williams and Aguirre were around the same age, their early twenties. Williams had a history of anger and mental health problems. She was diagnosed with intermittent explosive disorder, an anger and aggression-based disorder, and prone to violence. Her mother had her committed under the Baker Act, and they had a history of arguing. Williams worked at a restaurant. Her boyfriend, Mark Van Sandt, was a sex offender on probation. (Doc. 187, p. 142:14–18; Doc. 193, pp. 149:4–19, 225:14–15, 238:17–18, 319:18–320:21, 324:9–22, 335:2–5; Doc. 236-14, pp. 2, 20.)

The evening of June 16, 2004, Van Sandt visited Williams at the trailer. The couple made drinks and spilled ice on the floor. Williams and her mother argued over the ice. Williams was trying to quit smoking and was on edge. Around 10:00 p.m., after the argument, Cheryl dropped in on her neighbors Diane Schroyer and Mike Weaver. Cheryl told Schroyer about the argument and complained about Williams for a while, then went back to her own trailer around 11:00 p.m. Van Sandt and Williams supposedly left soon after and went to Van Sandt's parents' house to spend the night. (Doc. 193, pp. 144:2–146:20, 276:18–22; Doc. 236-12, p. 2; Doc. 236-14, pp. 3, 6, 11, 13.)

Meanwhile, Aguirre had the night off work. He drank, hung out with friends, and went to a bar to play pool, staying until around 2:00 or 3:00 a.m. He then went to a friend's house before returning home sometime between 4:00 and 6:00 a.m. (Doc. 187, pp. 32:2–5, 50:1–6, 56:1–7, 58:12–15, 60:13–20; Doc. 236-12, pp. 2–3.)

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When Aguirre got back from his friend's house early that morning of June 17, he went over to the Williams trailer to see if they had any beer, as he often did. He knocked as he had been told. The door, which was habitually unlocked, opened partially—but it was stuck. Shoving it ajar, he saw Cheryl's dead body blocking the door. She had been stabbed many times and blood was everywhere. He pushed inside to see if she was alive so he could help. But he did not call 911 because he feared being deported. (Doc. 187, pp. 69:11–70:11, 71:10–23, 72:3–14.)

Once inside, Aguirre felt Cheryl's body for a pulse but could not find one, getting her blood on his clothes in the process. By this time, Cheryl's body was cold and stiff. He saw a knife lying nearby. After calling out, he walked further into the house and found Carol's dead body in the next room. He thought he heard a noise, so he grabbed the knife with his right hand to defend himself.² He checked the rest of the trailer but, finding no one, ran back home and threw the knife down along the way. Too frightened to call the police, he took off his bloody clothes, put them in a bag, hid them on the roof, and showered. (*Id.* at 74:15–21, 77:10–24–78:6, 83:20–25, 87:21–25, 88:21–93:17, 95:3–6, 96:3–4, 97:1–3, 99:8–100:5, 102:10.)

A few hours later, around 9:00 a.m., Van Sandt arrived back at the Williams trailer to pick up Williams' work clothes. But Williams was not with him; she was still at his parents' house sleeping. The front door was unlocked as usual. The door seemed blocked, but he pushed it open—

2. Aguirre is right-handed.

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hitting Cheryl's dead body. He then called 911. While on the call, he touched Cheryl's body, finding it cold and stiff. He stepped in Cheryl's blood with his bare feet³ and found it sticky, on its way to drying. (Doc. 193, p. 99:24–25; Doc. 193-1; Doc. 236-12, p. 3; Doc. 236-14, p. 16.)

Police were already nearby and arrived a few minutes after Van Sandt called 911. Not wanting to disturb Cheryl's body further, they went into the trailer through the back door. Paramedics arrived and declared Cheryl dead. Van Sandt then asked about Carol, saying she was in the room where Williams' dog—which was barking loudly—was secured. Officers looked through the outside window and saw Carol lying on the floor next to her wheelchair. The officers then called animal control to deal with the dog; once it was removed, paramedics went back in and declared Carol dead. (Docs. 193-1, 193-5, 193-6.)

Robert Hemmert, the lead investigator, and Jacqueline Grossi, the lead crime scene analyst, arrived on the scene less than an hour later, just before 10:00 a.m. Grossi was fairly new; this was her first case as lead analyst. They searched the crime scene. Because Cheryl had been stabbed so many times—the medical examiner later found over 125 stab wounds—there was blood everywhere. There were also bloody shoeprints throughout the trailer. There were signs of a struggle, as furniture was knocked over. (Doc. 193, pp. 82:25–83:4, 117:24–118:4, 121:17–124:8; Doc. 193-3, p. 1; Doc. 193-5; Doc. 194, p. 71:4–6; Doc. 236-14, p. 7.)

3. Van Sandt came to the trailer barefoot.

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Around 11:30 a.m., Hemmert interviewed Van Sandt. He told Hemmert he came back to the trailer that morning to pick up Williams' work clothes, which had been left in the washing machine when she and her mother were fighting the night before. (No one ever checked the machine to see if the work clothes were there.) He told Hemmert that Williams had intermittent explosive disorder and had been Baker Acted multiple times.⁴ He also admitted he was a sex offender on probation. He volunteered that Aguirre (whom he called "Little Mexico") had come into the trailer without permission on prior occasions. He also volunteered that his father worked for the Orange County Sheriff's Office. He had several cuts on his body, but no one questioned him about them. (Doc. 193, pp. 222:18–24, 223:10–20, 238:17–18, 238:25–239:2; Doc. 198, p. 62:7–19; Doc. 236-14, pp. 7, 17.)

Officers then questioned the neighbors. They interviewed Aguirre, who initially denied any knowledge of the murders. He then left the scene and returned to his friend's house where he had been the night before. (Doc. 187, pp. 104:9–106:21, 113:10–15.)

Officers also interviewed Weaver, who confirmed that Cheryl told his girlfriend Schroyer about the argument with Williams the night before. Schroyer walked in before

4. Hemmert did not request the underlying hospital records. They would have told him that Williams had a drug problem since the age of twelve, had blackouts and hallucinations, threatened to kill her mother while she was in the hospital, and was isolated because of her potential for endangering others. (Doc. 193, pp. 282:16–24, 326:8–330:17.)

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the end of the interview with Weaver, but it does not appear that she was interviewed. (Doc. 193, pp. 144:2–5, 146:21–10.)

The canvas widened throughout the neighborhood. In the alley behind the Williams trailer was a dumpster, in which officers found a left-handed glove⁵ and a Reebok shoe. No one followed up on whether these clothes belonged to anyone on the scene. (Doc. 187, pp. 137:6–138:5, 138:24–139:11; Doc. 198, pp. 187:24–188:5.)

Meanwhile, Williams was still at the Van Sandts' house. She claimed that she tried to reach Van Sandt's cell phone that morning to see why he had not returned, but she could not reach him because he left his phone with her at his parents' house. (Hemmert did not later follow up with Williams about this inconsistency, as Van Sandt used his cell phone to call 911 and had it on him.) Van Sandt's father told Williams about what happened to her mother and grandmother. He then drove Williams to the crime scene. (Doc. 193, pp. 233:22–234:5, 273:17–274:9.)

Hemmert interviewed Williams around 1:30 p.m. Williams admitted that she and her mother had gotten into an argument the night before. She said she used to get physically violent with her mother but did not do that anymore. When Hemmert asked Williams where she stayed that night, she paused before answering; she ultimately said that she and Van Sandt had stayed at her

5. No one asked about Williams' or Van Sandt's dominant hand.

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friend Phil's house—not Van Sandt's parents. Hemmert picked up on her hesitation and called her out for lying. Williams then changed her answer, saying she had lied because Van Sandt's parents did not like her. Williams volunteered, as had Van Sandt, that Aguirre had entered the trailer during the night without permission on prior occasions. (Doc. 193, pp. 242:22–25, 268:5–11, 268:17–269:11; Doc. 236-16, pp. 10–13, 17, 19–20.)

Despite Van Sandt's disclosures about her intermittent explosive disorder and Baker Act hospitalizations, Hemmert did not ask Williams about her mental health during her one and only interview. No one collected DNA swabs from Williams, photographed her, examined her for wounds, collected her shoes, or took her prints. (Hemmert says he directed this be done, but Grossi denies it.) Hemmert saw a wound on Williams' arm during the interview, but she said it was a burn mark from her work at the restaurant, which Hemmert accepted at face value. (Doc. 193, pp. 280:19–281:22, 365:22–366:22; Doc. 194, pp. 61:21–62:8, 140:21–141:5, 221:5–7, 223:18–19; Doc. 194-13, p. 75; Doc. 236-16, p. 30.)

Officers later spoke to Van Sandt's mother, who said she had no idea if Williams actually stayed the night at her house. No one checked the Van Sandt residence for evidence, and no one interviewed Van Sandt's father, though Hemmert says he directed these things be done. (Doc. 193, pp. 245:17–247:15, 254:2–20, 364:21–365:7; Doc. 204, pp. 113:25–114:4, 121:7–15; Doc. 204-7, pp. 11–12; Doc. 236-14, pp. 14, 35.)

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Later that afternoon, officers searched the yard, where a fence separated the Williams home from Aguirre's. They found a bloody ten-inch chef's knife, Sysco brand, just over the fence on Aguirre's side. (Doc. 193, pp. 135:3–136:25; Doc. 193-3, p. 2; Doc. 236-12, p. 2.)

Around 7:30 p.m., nearly twelve hours after Cheryl's and Carol's bodies were discovered, the medical examiner arrived and retrieved them. No one until then had touched the bodies to gauge rigor mortis (other than Van Sandt and Aguirre, who both claimed Cheryl was stiff and cold by early morning). By that point, with rigor retreated, it was impossible to estimate the time of death, and Hemmert did not ask the medical examiner to attempt to do so. (Doc. 193, pp. 110:10–114:20, 305:25–7.)

Meanwhile, after talking to his friend about what to do, Aguirre returned to his house voluntarily that evening, determined to tell the police the truth about discovering the bodies. Officers then questioned him again; he was not taken into custody. During this interview (unlike the first), a Spanish-speaking officer, Diane Toranzo, was present to translate. Aguirre was friendly with Toranzo as she and her husband often went to the same bar where Aguirre played pool. Several minutes into the interview, the officers asked to see Aguirre's shoes. Aguirre then asked Toranzo if he could speak with her alone. He admitted to Toranzo he had lied during his first interview because he was scared about his immigration status, but he wanted to tell the truth. She encouraged him to tell the truth to the other officers. Frightened and back in the presence of the others, he stopped at telling them he had found

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Cheryl's body that morning—not recounting that he had gone further into the trailer, found Carol, and picked up the knife. But he maintained his innocence of the murders. (Doc. 187, pp. 52:11–19, 117:10–22, 119:3–9, 120:10–121:12, 121:15–19, 122:8–25; Doc. 236-12, pp. 2–3.)

That night, Aguirre was arrested for tampering with evidence. Analysts collected his clothes and shoes, photographed him, took DNA swabs, and took his prints. He had no cuts on him. He was wearing Reeboks—the same brand as the abandoned shoe from the dumpster—in size 7.5, small for a man because of his short stature. He was transported to jail. He was not eligible for bond because he was undocumented. (Doc. 193, pp. 292:22–293:20; Doc. 194, pp. 164:21–165:5; Doc. 236-12, pp. 2–3.)

The next day, June 18, officers interviewed Aguirre's roommates. At some point, one of them had taken a knife home from the restaurant where all three worked, but they could not locate the knife in the house. Analysts then took DNA swabs from the roommates (both of whom are Hispanic).⁶ Later that day, officers interviewed Aguirre's boss. He said the restaurant had bought a set of Sysco knives—the same restaurant brand as the murder weapon—a while ago, and a ten-inch chef's knife (along with others) was now missing. Officers also located a box marked Sysco in the Williams trailer, but no one ever opened it, nor did anyone check the restaurant where Williams worked. (Doc. 193, pp. 296:15–20, 314:11–17,

6. They did not take DNA swabs from Van Sandt or Williams, who are white. (Doc. 193-3, pp. 1–2; Doc. 198, p. 68:8–19.)

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335:2–17; Doc. 193-3, pp. 1–2; Doc. 204-9, pp. 11–12; Doc. 204-11; Doc. 236-12, pp. 2–3.)

The following days focused on evidence collection. Analysts found a latent print from the handle of the murder weapon and sent a photograph of it for examination. They also found a clump of hair on Cheryl's body, but no one ever checked the hair for DNA. The most painstaking job was collecting all the blood from the Williams trailer. Grossi collected 150 blood samples from the trailer, including blood that came from the outside of Williams' open bedroom window. But Grossi, in consultation with Hemmert, did not test a single one of these blood samples. Only evidence from Aguirre's house, along with evidence from the murder weapon and victims, was sent for testing. (Doc. 193, pp. 159:12–160:2, 160:7–13; Doc. 193-3, pp. 3, 6; Doc. 194, pp. 124:12–125:5, 127:11–13, 173:17–21, 178:5–182:6, 213:22–214:9; Doc. 194-13, p. 75; Doc. 199-1; Doc. 236-5, p. 61; Doc. 236-12, p. 3.)

On June 24, one week after the murders, Donna Birks, the print examiner, examined the photograph of the print on the murder weapon. She quickly concluded that the print matched Aguirre's left palm. William McQuay, an older examiner, verified Birks' identification. (Doc. 185-1, ¶¶ 13, 16; Doc. 209, pp. 228:21–229:9; Doc. 236-12, p. 3.)

On June 25, the morning after receiving Birks' identification, Hemmert arrested Aguirre for the murders. Hemmert swore out an arrest report and affidavit, based on which a judge found probable cause. A few weeks later, a grand jury indicted Aguirre for the murders. (Docs. 236-12, 236-27, 236-28.)

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In October, months after Aguirre had been arrested, the results came back on the evidence that was sent for testing. (None of the blood samples from the Williams trailer was sent for testing.) The tests confirmed Cheryl's blood on Aguirre's clothes and Cheryl's and Carol's blood on the knife. None of Aguirre's blood was found on anything. Analysts concluded that the bloody shoeprints at the scene could have been made by Aguirre's Reebok shoes—though no one checked whether the Reebok shoe from the dumpster could have made the footprints. (Doc. 194, p. 165:6–8; Doc. 198, p. 159:7–16; Doc. 199-1; Doc. 236-12, p. 3.)

Aguirre was tried two years later, in 2006. At trial, Williams was the star witness, testifying that her family did not have a knife like the murder weapon and that Aguirre had come into the trailer without permission on prior occasions. Aguirre was convicted and sentenced to death after a split recommendation from the jury. *See Aguirre-Jarquin v. Fla.*, 202 So. 3d 785, 786–88, 794 (Fla. 2016).

In 2007, a year after Aguirre was convicted, a junior print examiner raised concerns to the Sheriff about Birks' competency. The Sheriff then launched an investigation. The Florida Department of Law Enforcement ("FDLE") re-examined every single identification made by Birks that resulted in arrest. An outside print expert also reviewed the prints. The FDLE's report (Doc. 209-1 ("Report")) concluded, based on multiple analysts' findings, that Birks had incorrectly identified at least half a dozen print matches—including Aguirre's. Birks was forced to resign,

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and the Sheriff publicly stated that she had no credibility as a print examiner. (Doc. 209, pp. 234:18–236:5; Doc. 209-1, pp. 33–35, 55, 57–60, 63; Doc. 236-31.)

In the ensuing years, Aguirre’s appellate attorneys got permission to test the previously unexamined blood samples from the murder scene. Several came back matching Williams; none matched Aguirre. And Williams confessed to several people several times that she had killed her mother and grandmother. Based on the newly tested blood samples and Williams’ confessions, the Florida Supreme Court vacated Aguirre’s conviction in 2016, after he spent a decade on death row. Aguirre remained in prison for two more years while the state prepared to re-try him. In 2018, the state dropped the charges and he was released. *See Aguirre-Jarquin*, 202 So. 3d at 791–95; (Doc. 236, p. 32).

So Aguirre sued lead investigator Hemmert, lead analyst Grossi, print examiner Birks, and the Sheriff. He brings these claims: (1) a 42 U.S.C. § 1983 claim against Birks for violating the Fourteenth Amendment right to a fair trial via fabrication of evidence; (2) a § 1983 claim against Hemmert for violating the right to a fair trial via failure to disclose *Brady* material; (3) a § 1983 claim against Birks and Hemmert for malicious prosecution in violation of the Fourth Amendment; (4) a § 1983 claim against Hemmert and Grossi for violating the due process right to a fair trial via a constitutionally inadequate investigation; (5) a § 1983 municipal liability claim against the Sheriff for failure to enact adequate policies or training for investigations; (6) a similar municipal liability claim for

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exculpatory evidence; and (7) a Florida law claim against Hemmert, Grossi, and Birks for intentional infliction of emotional distress (“IIED”). (Doc. 111.)

Birks, Hemmert, Grossi, and the Sheriff filed summary judgment motions. (Docs. 185, 234, 236, 251, 255, 258.) All parties also filed *Daubert* motions. (Docs. 181–84, 220, 230–32.) Post-summary judgment briefing, Aguirre moved to drop his malicious prosecution claim. (Docs. 263, 264.) These matters are ripe.

STANDARDS

Summary judgment is appropriate only “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The Court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the nonmovant. *Battle v. Bd. of Regents for Ga.*, 468 F.3d 755, 759 (11th Cir. 2006). Then the Court must decide whether there is “sufficient disagreement to require submission to a jury.” *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004) (cleaned up).

ANALYSIS**I. Fabrication of Evidence**

Count I is a § 1983 claim against Birks for violating Aguirre’s due process right by fabricating evidence. (Doc. 111.) Birks asserts qualified immunity, arguing there is

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no evidence she fabricated the print match. (Doc. 185.) The Court disagrees.

Government officials sued for violating constitutional rights under § 1983 may invoke qualified immunity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The inquiry has two steps: first, the government official must show she was engaged in a discretionary function.⁷ *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004). Second, the plaintiff must show: (1) the official violated his constitutional right; and (2) the right was clearly established at the time of the violation.⁸ *Id.* To be “clearly established,” the “contours of the right must be sufficiently clear that a reasonable official would understand that what [s]he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

It has long been clearly established that fabricating incriminating evidence violates the right to due process.⁹

7. Aguirre does not contest that Hemmert, Grossi, and Birks were engaged in discretionary functions. (See Doc. 185, p. 21 n.16; Doc. 234, pp. 22–23.)

8. Courts may consider these two questions in either order. *See Pearson v. Callahan*, 555 U.S. 223, 232–42 (2009).

9. An earlier iteration of the Complaint framed this claim as a *Brady* violation, lumping it together with similar concealment allegations against the other Defendants. (See Doc. 45, ¶ 182.) The operative Complaint separated out this claim against Birks and focused it on the fabrication of evidence, limiting explicit *Brady* allegations to Hemmert. (See Doc. 111, ¶¶ 143, 188, 189, 214.) Aguirre now urges the Court to recognize a *Brady* violation founded on fabrication of evidence, but provides no case law from

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See Riley v. City of Montgomery, 104 F.3d 1247, 1253 (11th Cir. 1997). So the Court turns to whether Birks violated that right.

Here, there is a genuine dispute over whether Birks fabricated the print match. To this day, Birks insists she made no mistakes and her identification was correct. (Doc. 209, p. 58:9–25.) But Birks’ own print expert does not even agree with her, opining that the print lacked sufficient reliable characteristics to make a positive identification. (Doc. 202, pp. 44:16–45:3.) And Birks was ousted from her job because the FDLE’s Report concluded (based on multiple analysts’ and an outside expert’s findings) that Birks erroneously identified a positive match in Aguirre’s case.¹⁰ (Doc. 209-1, pp. 58–59.)

the U.S. Court of Appeals for the Eleventh Circuit acknowledging such a claim. (Doc. 251, p. 17 n.17); *cf. Diaz-Martinez v. Mia.-Dade Cnty.*, No. 07-20914, 2009 WL 2970471, at *12 (S.D. Fla. June 9, 2009), *adopted in part*, 2009 WL 2970468 (S.D. Fla. Sept. 10, 2009). Because the allegations as repled focus on the fabrication of evidence as an independent due process violation—which is recognized under black-letter law—the Court considers this claim in that context and not *Brady*. (See Doc. 111, ¶ 190.)

10. Birks argues the Report is inadmissible hearsay. (Doc. 255, p. 2.) But the factual findings in the Report are likely admissible as business records. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1278 (11th Cir. 2009); *see also Roxbury-Smellie v. Fla. Dep’t of Corr.*, 324 F. App’x 783, 785 (11th Cir. 2009). And the analysts who made the statements may be called to give testimony at trial. *Cf. Offshore Aviation v. Transcon Lines, Inc.*, 831 F.2d 1013, 1015–16 (11th Cir. 1987). Because the statements in the Report could be reduced to admissible evidence at trial, the Court may consider them at summary judgment and need not rule on

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Further, construing inferences in the light most favorable to Aguirre, Aguirre submits evidence indicating that Birks did not just negligently make a positive identification when she should not have but intentionally or recklessly fabricated the match.¹¹ *Cf. Porter v. White*, 483 F.3d 1294, 1308 (11th Cir. 2007). Aguirre points to several times Birks sent a difficult print match verification to McQuay—a soon-to-be-retired older analyst with medical issues whom Birks considered incompetent.¹² More than once, Birks even sent a match to McQuay for verification after other examiners in the office disagreed with her identification—a serious policy violation. (Doc. 209, pp. 68:21–69:10, 162:24–163:5, 165:15–166:2; Doc. 209-1, pp. 29–35, 84.) Birks also showed a carelessness about the required verification process, failing to get certain prints verified by anyone else at all. (Doc. 209, pp. 83:10–20, 121:19–22, 145:5–9; Doc. 209-1, pp. 40–41, 60.) And on at least one occasion, Hemmert had gone to Birks to discuss

admissibility at this stage. *See Macuba v. Deboer*, 193 F.3d 1316, 1323–24 (11th Cir. 1999); *cf. Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514, 1530 (11th Cir. 1993).

11. Birks also argues the match was not material to the jury’s decision. (Doc. 185, p. 21.) But the match was a crucial factor in Hemmert’s decision to arrest Aguirre for the murders. (Doc. 193, pp. 306:21–307:17.) A reasonable jury could logically conclude from this and other evidence that the match was a crucial factor in Aguirre’s arrest and later conviction.

12. There is conflicting evidence about whether and when Birks had concerns about McQuay’s health, but the evidence suggests McQuay was ill in early 2004, a year before he eventually retired. (*Compare* Doc. 209-1, pp. 31, 47, 50, 84, *with* Doc. 201, pp. 70:24–71:2.)

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a potential suspect before she made an identification, which she acknowledges could cause bias. (Doc. 209, pp. 255:10–260:18.) Drawing inferences from this evidence in the light most favorable to Aguirre, reasonable jurors could conclude that Birks intentionally sent the print in Aguirre’s case to McQuay for an unquestioned verification—indicating Birks knew the match was false or harbored serious doubts about the veracity of her findings.¹³ *Cf. Daniels v. Bango*, 487 F. App’x 532, 537 (11th Cir. 2012).

Ultimately, this issue boils down to the disputed question of Birks’ intent. *See Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1476 (11th Cir. 1991). Because this question is one for the jury, summary judgment on Count I is inappropriate. *See Jones v. Cannon*, 174 F.3d 1271, 1290 (11th Cir. 1999). On the current record, qualified immunity for Birks is denied. *See Herren v. Bowyer*, 850 F.2d 1543, 1546 (11th Cir. 1988); *e.g. Riley*, 104 F.3d at 1253.

II. *Brady* Violation

Count II is a § 1983 claim against Hemmert for violating Aguirre’s Fourteenth Amendment right to a fair trial by failing to disclose exculpatory *Brady* material. (Doc. 111.) Aguirre argues that, because Hemmert was

13. Birks obliquely argues that this evidence would be inadmissible under Federal Rule of Evidence 404(b). (Doc. 255, p. 5.) But evidence falls outside Rule 404(b) where it is used to show intent, knowledge, or the absence of mistake. Fed. R. Evid. 404(b)(2).

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in possession of Williams’ Baker Act commitment, he should have obtained and disclosed the underlying medical records from her hospitalization.¹⁴ (Doc. 234, pp. 24–25); *see supra* note 4. But *Brady* is a disclosure rule, not a requirement to obtain evidence. *See Brady v. Maryland*, 373 U.S. 83, 87–91 (1963); *McMillian v. Johnson*, 88 F.3d 1554, 1567 (11th Cir.), *amended on reh’g on other grounds*, 101 F.3d 1363 (11th Cir. 1996). While Hemmert’s failure to obtain certain evidence is relevant to the adequacy of the investigation, *Brady* by definition applies only to evidence in Hemmert’s possession. *See United States v. Meros*, 866 F.2d 1304, 1309 (11th Cir. 1989). Because Hemmert never requested or possessed Williams’ hospital records, he could not have concealed them from Aguirre in violation of *Brady*. (See Doc. 234, p. 29.) So Hemmert is entitled to summary judgment on Count II.

14. Aguirre also raises a spoliation issue for the first time. (Doc. 234, pp. 26–27.) But this case is past the point where Aguirre could have pled a spoliation claim or moved for a discovery sanction for spoliation, so this aside is inapposite. Even assuming this issue were properly raised, it is a nonstarter. Aguirre argues that, although Williams and Van Sandt were interviewed, there were “various facts” not contained in the recordings that were purportedly in handwritten notes—but there is no indication in the record that interviews other than the ones recorded ever took place or what facts Aguirre is referencing. Aguirre further asserts that, based on one of the officers’ depositions, Diane Schroyer “would have” been interviewed, but no record of her interview was disclosed, yet that officer testified that he did not interview Schroyer, nor does it appear that anyone else did. (See Doc. 204, pp. 99:16–100:17.) With no indication these documents exist, let alone were concealed, this argument does not save the *Brady* claim.

*Appendix C***III. Malicious Prosecution**

Count III is a § 1983 claim against Birks and Hemmert for malicious prosecution. (Doc. 111.)

As a threshold matter, after the summary judgment motions ripened, Aguirre moved to drop this claim; Defendants opposed. (Docs. 263, 264.) The proper vehicle for dropping a claim at this stage is amendment of the complaint under Federal Rule of Civil Procedure 15. *See Perry v. Schumacher Grp. of La.*, 891 F.3d 954, 958 (11th Cir. 2018). When the deadline to amend has passed, the plaintiff must also show good cause under Rule 16. *See Gov't Emps. Ins. Co. v. Glassco Inc.*, No. 8:19-cv-1950, 2022 WL 705154, at *1 (M.D. Fla. Mar. 9, 2022). The Court agrees with Defendants that Aguirre has not shown good cause for dropping this claim so late, after the summary judgment briefing closed. *See Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1367 (11th Cir. 2007). So Aguirre's motion to amend is due to be denied.

Turning then to the substance of the malicious prosecution claim, Defendants assert there was arguable probable cause for Aguirre's arrest, entitling them to qualified immunity. (Doc. 236, pp. 44–50.) The Court disagrees.

The U.S. Court of Appeals for the Eleventh Circuit recently sharpened the contours of claims founded on unlawful seizures in violation of the Fourth Amendment under the moniker of malicious prosecution. *See generally*

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Williams v. Aguirre,¹⁵ 965 F.3d 1147 (11th Cir. 2020). Under the most recent simplified articulation, to establish malicious prosecution, a plaintiff must show: “(1) that the defendant violated his Fourth Amendment right to be free from seizures pursuant to legal process and (2) that the criminal proceedings against him terminated in his favor.” *Luke v. Gulley*, 975 F.3d 1140, 1144 (11th Cir. 2020).¹⁶ There can be no serious question that the proceedings against Aguirre terminated in his favor when the Florida Supreme Court vacated his conviction and prosecutors dropped all charges. (Doc. 236, p. 32); *Aguirre-Jarquín*, 202 So. 3d at 794–95; see *Laskar v. Hurd*, 972 F.3d 1278, 1295 (11th Cir. 2020). So the Court turns its focus to the Fourth Amendment prong.

For the purposes of qualified immunity, Aguirre must show both the underlying Fourth Amendment violation and that the right violated was clearly established. See *Holloman*, 370 F.3d at 1264. It has long been clearly established that officers must conduct a “reasonable

15. Different Williams and different Aguirre.

16. In full, the elements of a Fourth Amendment malicious prosecution claim are a Fourth Amendment violation plus the elements of common law malicious prosecution. See *Luke*, 975 F.3d at 1143. The common law elements are that officials instituted criminal process against the plaintiff with malice and without probable cause and the prosecution terminated in his favor. *Id.* at 1143–44. Because the elements overlap (such that a Fourth Amendment violation establishes criminal process with malice and without probable cause as well as causation), the Eleventh Circuit simplified the recitation of the standard as articulated above. *Id.* at 1144.

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investigation” to establish probable cause and that an arrest made without probable cause violates the Fourth Amendment. *Rankin v. Evans*, 133 F.3d 1425, 1435 (11th Cir. 1998). It has also long been clearly established that reckless material misstatements or omissions in an arrest affidavit negating probable cause similarly violate the Fourth Amendment. *See Franks v. Delaware*, 438 U.S. 154, 155–66 (1978); *Jones v. Cannon*, 174 F.3d 1271, 1285 (11th Cir. 1999); *Madiwale v. Savaiko*, 117 F.3d 1321, 1327 (11th Cir. 1997).

With the clearly established prong met, the Court must determine whether the Fourth Amendment was violated. “[A] warrant affidavit violates the Fourth Amendment when it contains omissions made intentionally or with a reckless disregard for the accuracy of the affidavit.” *Madiwale*, 117 F.3d at 1327 (cleaned up). So in this context, the Court must consider: “(1) whether the alleged misstatements in the affidavit were made either intentionally or in reckless disregard for the truth and, if so, (2) whether, after deleting the misstatements, the affidavit is insufficient to establish probable cause.” *United States v. Kirk*, 781 F.2d 1498, 1502 (11th Cir. 1986).

Aguirre’s best case raises a substantial question about both the reasonableness of the investigation and the materiality and recklessness of omissions in the arrest affidavit, precluding summary judgment. As to the arrest affidavit, there is a genuine issue of material fact as to whether Birks fabricated the print match

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Hemmert relied on.¹⁷ (Doc. 193, pp. 306:21–307:17.) And a reasonable jury considering the way Hemmert conducted his investigation could infer that Hemmert intentionally or recklessly settled on Aguirre—an undocumented Hispanic immigrant—as the only suspect, selectively including information in the affidavit to point to Aguirre and excluding doubts and inconsistencies implicating Williams (as discussed below).¹⁸ (See Doc. 193-3, pp. 1–2); *Williams*, 965 F.3d at 1166, 1169–70. As Birks’ and Hemmert’s intent is a question for the jury, summary judgment is inappropriate on this ground.

Just probable cause remains, then. “Probable cause to arrest exists where the facts and circumstances within the officers’ knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Marx v. Gumbinner*, 905 F.2d 1503, 1506 (11th Cir. 1990) (cleaned up). Probable cause turns on the “totality of the circumstances.” *Cozzi v. City of Birmingham*, 892 F.3d 1288, 1294 (11th Cir. 2018). In evaluating probable cause, an officer may not be willfully blind and choose

17. Though Hemmert, not Birks, signed the affidavit, Birks can still be held liable if she intentionally or recklessly made false statements on which the affidavit relied. See *Laskar*, 972 F.3d at 1296–97; *Williams*, 965 F.3d at 1169.

18. Defendants briefly assert that the later grand jury proceeding severed liability for any investigative misconduct, but the U.S. Supreme Court has permitted similar claims to proceed even after an indictment. See *Manuel v. City of Joliet*, 580 U.S. 357, 369 n.8 (2017).

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not to obtain readily discoverable information that may exculpate a suspect, nor may he ignore discrepancies giving rise to doubts about the guilt of a suspect. *See Kingsland v. City of Mia.*, 382 F.3d 1220, 1229, 1233 (11th Cir. 2004);¹⁹ *Tillman v. Coley*, 886 F.2d 317, 321 (11th Cir. 1989).

For qualified immunity purposes, there need be only arguable probable cause. *See Fox v. Graff*, 276 F. App'x 936, 938 (11th Cir. 2008). “Arguable probable cause exists when an officer reasonably could have believed that probable cause existed, in light of the information the officer possessed.” *Storck v. City of Coral Springs*, 354 F.3d 1307, 1315 (11th Cir. 2003). When an arrest was made based on an affidavit, the question is “whether the affidavit[] still would have established probable cause . . . if the[] [officers] had included the omitted information that they knew about.” *Paez v. Mulvey*, 915 F.3d 1276, 1287–88 (11th Cir. 2019).

We begin by looking at the totality of the circumstances and the information in the officers’ knowledge. Here is

19. *Kingsland* was abrogated in part by *Nieves v. Bartlett*, 139 S. Ct. 1715, 1726 (2019), which held that courts must look common law principles from the time § 1983 was enacted (rather than modern law as *Kingsland* had done) to determine the scope of malicious prosecution. But the Eleventh Circuit later re-examined that scope given *Nieves* and concluded that the probable cause element of malicious prosecution, even considered from the time § 1983 was enacted, continues to apply. *See Williams*, 965 F.3d at 1159–61. So *Kingsland*’s holding and analysis of probable cause and the sufficiency of investigations remain intact.

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what Hemmert knew about Aguirre before receiving Birks' purportedly fabricated print match:

- Aguirre lied at first about his alibi
- Aguirre had been drinking the night of the murders
- Aguirre had previously entered the trailer unannounced and uninvited
- Aguirre had blood on his clothes and shoes
- Aguirre hid his bloody clothes
- The murder weapon was found on Aguirre's property
- A knife similar to the murder weapon could have been missing from Aguirre's work²⁰

If that were all the evidence Hemmert had, arguable probable cause would have been clear. But this is only half the story—because here is what Hemmert also knew:

- Williams lied at first about her alibi
- Williams had been drinking the night of the murders

20. (Doc. 187, pp. 50:1–6, 56:1–7, 58:12–15, 65:1–16, 67:4–7, 77:25–78:2, 104:9–106:21; Doc. 193, p. 296:15–20; Doc. 193-3, p. 2; Doc. 204-9, pp. 11–12; Doc. 236-12, pp. 2–3.)

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- Williams had anger and mental health issues
- Williams was diagnosed with intermittent explosive disorder
- Williams had been Baker Acted before
- Williams fought with her mother the night of the murders
- Williams had a historically bad relationship with her mother
- Williams had gotten into physical fights with her mother
- Williams' mother had been stabbed over 125 times
- Williams' boyfriend had serious ongoing trouble with the law
- Williams and her boyfriend had various inconsistencies in their stories
- Williams and her boyfriend both had wounds on their bodies²¹

21. (Doc. 187, p. 142:14–18; Doc. 193, pp. 125:14–133:5, 149:4–19, 224:25–225:17, 238:17–18, 238:25–239:2, 268:5–11, 273:17–274:9, 276:18–22, 319:18–320:21, 324:9–22, 366:12–22; Doc. 198, p. 62:7–19; Doc. 236-14, pp. 2–3; Doc. 236-16, pp. 10, 12–13, 17, 30.)

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So Hemmert had two potential suspects side-by-side, both of whom had been drinking the night of the murders and both of whom had lied about their whereabouts. But Hemmert laser-focused on Aguirre, rationalizing away questions and inconsistencies about Williams that should have raised doubts in the mind of any objectively reasonable officer. (Doc. 193, pp. 218:5–16, 287:8–219:20.) And this willful blindness caused Hemmert to fail to investigate many pieces of readily available information that could have clarified the true facts. For instance, Hemmert and his team failed to:

- Test a single piece of blood evidence from the murder scene
- Question Williams about her mental health and anger issues
- Collect Williams' shoes, clothes, DNA, or prints
- Collect Van Sandt's DNA
- Confirm Williams' alibi
- Check Van Sandt's parents' house for evidence
- Confirm whether Williams' work clothes were in the washing machine (thereby failing to confirm Van Sandt's reason for being on the murder scene and potentially missing key blood evidence)

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- Account for “overkill,” or the many wounds on Cheryl, potentially indicating motive or a close relationship with the victim
- Confirm degree of rigor mortis and likely time of death
- Follow up on inconsistencies in Williams’ and her boyfriend’s stories
- Follow up on wounds on Williams and her boyfriend despite indications that Cheryl fought with her killer
- Test the clump of hair found on Cheryl’s body, again ignoring indications Cheryl fought with her killer
- Follow up on clothing dumped near the house—including a Reebok shoe that could have made the bloody footprints
- Interview one of the last people to see Cheryl alive, Diane Schroyer
- Investigate a box on the murder scene containing restaurant equipment the same brand as the murder weapon²²

22. (Doc. 193, pp. 110:10–114:20, 125:14–133:5, 137:20–138:5, 138:24–139:11, 146:21–147:10, 159:12–160:2, 160:7–13, 222:18–24, 223:10–20, 224:25–225:17, 245:17–247:15, 254:2–20, 273:17–274:9,

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Perhaps missing one or two of these red flags might be negligent rather than unconstitutionally defective. But with this many holes and inconsistencies, no reasonable officer would plow ahead with an arrest without further investigation. And the fabricated print match put the nail in the coffin. If the fabricated print match were removed from the arrest affidavit and all of the omissions pointing to Williams included, no warrant would have issued.²³ See *Franks*, 438 U.S. at 156. So on Aguirre's best facts, there is no arguable probable cause. See *Tillman*, 886 F.2d at 321; *Cozzi*, 892 F.2d at 1297–98; *Daniels*, 487 F. App'x at 537–39. Because there are genuine disputes over whether intentional or reckless misstatements or omissions in the arrest affidavit existed such that the rest of the affidavit did not establish arguable probable cause, qualified immunity is denied at this stage. See *Kingsland*, 382 F.3d at 1233–34. Summary judgment on Count III is due to be denied.

280:19–281:22, 305:25–7, 335:2–17, 364:21–365:7, 365:22–366:22; Doc. 193-1; Doc. 193-3, pp. 1–3; Doc. 194, pp. 61:21–62:8, 127:11–13, 140:21–141:5, 164:21–165:5, 221:5–7, 223:18–19; Doc. 194-13, p. 75; Doc. 198, pp. 62:7–19, 68:8–19, 159:7–16, 187:24–188:5; Doc. 204, pp. 113:25–4, 121:7–15; Doc. 204-11; Doc. 236-12, p. 3; Doc. 236-14, pp. 14, 16, 35; Doc. 236-16, p. 28.)

23. There is no evidence that Hemmert knew Birks' print match may have been fabricated. Even with him assuming the match was valid, though, Hemmert was aware of so much troubling information about Williams that every reasonable officer in his shoes would have followed up before swearing out an arrest affidavit. But by that time, even before sending out any physical evidence for testing, Hemmert was already convinced of Aguirre's guilt. (Doc. 193, pp. 218:5–16.)

*Appendix C***IV. Inadequate Investigation**

Count IV is a § 1983 claim against Hemmert and Grossi for violating Aguirre’s due process right to a fair trial by conducting a constitutionally inadequate investigation. (Doc. 111.) Defendants argue that their various missteps and failures sound in negligence and were not constitutionally deficient, entitling them to qualified immunity. (Doc. 236, p. 54.) Again, the Court disagrees.

It has long been clearly established that due process requires that officers take steps to eliminate doubts about a suspect before arrest.²⁴ *See Tillman*, 886 F.2d at 321.²⁵ With the right to due process in the form of an

24. At the motion to dismiss stage, the Court concluded that it is so obviously clear as to be clearly established, even without prior case law, that conducting a deficient investigation lacking in even arguable probable cause violates due process just as it violates the Fourth Amendment. (Doc. 108, pp. 21–23); *see Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005). And that remains true, as the U.S. Supreme Court has concluded that due process takes over and governs probable cause violations once the Fourth Amendment drops off at trial. *See Manuel*, 580 U.S. at 364–70 & n.8. That said, as the case record developed and the facts surrounding the investigation were established, it became clear that the broader principles of *Tillman* control here.

25. *Cf. Napue v. Illinois*, 360 U.S. 264, 269 (1959) (holding that obtaining a conviction through false evidence violates due process); *United States v. Agurs*, 427 U.S. 97, 103 (1976), *clarified by United States v. Bagley*, 473 U.S. 667, 682 (1985) (noting that misconduct corrupts the “truth-seeking function of the trial” and examining constitutional violation in light of the “overriding concern with the justice of the finding of guilt”).

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adequate investigation clearly established under these circumstances, the Court turns to the other half of the qualified immunity analysis: whether Hemmert and Grossi violated Aguirre's due process right to a fair trial by conducting a constitutionally infirm investigation that failed to eliminate major doubts and inconsistencies.

"[T]o establish a due process violation, a plaintiff must show that the officer acted with deliberate indifference, [that is], demonstrating that the officer had subjective knowledge of a risk of serious harm and disregarded that risk by actions beyond mere negligence." *Helm v. Rainbow City*, 989 F.3d 1265, 1278–79 (11th Cir. 2021). An officer recklessly disregards the truth when doubts and inconsistencies give him cause to investigate further. *Daniels*, 487 F. App'x at 537.

Here, for the reasons discussed above and on Aguirre's best version of the facts, there were so many red flags that no reasonable officer would have arrested Aguirre for murder without further investigation. A reasonable jury could conclude that the investigation, viewed in its totality and construed in the light most favorable to Aguirre, was designed to support a predetermined end: Aguirre's guilt. Hemmert and Grossi were aware of serious questions and inconsistencies about Williams' behavior that should have given rise to doubts as to whether Aguirre committed the murders, yet they disregarded the risk of arresting (and later convicting) a potentially innocent man. Why did Hemmert choose not to follow up on Williams as a

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suspect,²⁶ even though he knew she had a motive, a history of anger and mental health issues, and lied about her alibi?²⁷ Why did Grossi choose to test only evidence from Aguirre's house but not one drop of blood from the murder scene?²⁸ The answers rest in the hands of the jury.

Because there are genuine questions about whether Hemmert and Grossi acted with deliberate indifference in conducting an insufficient investigation that violated

26. There is a genuine factual dispute on this point, as Hemmert testified that he told multiple people, including Grossi and another officer, to follow up on certain things that they did not do—such as photographing Williams for wounds and checking for evidence at the Van Sandt house. But they deny Hemmert ever instructed them to do those things. (Doc. 193, pp. 232:10–233:19, 366:22–367:11; Doc. 194, pp. 140:21–141:5, 211:2–11; Doc. 204, p. 121:7–15.) A jury will need to make credibility findings on whether Hemmert actually did order follow-ups concerning Williams—and if not, why.

27. The failure to further investigate the true circumstances surrounding Williams also undermines the fundamental fairness of the trial, given that Williams was a key witness. *See supra* note 25; *Aguirre-Jarquin*, 202 So. 3d at 794–95; *cf. Schneider v. Estelle*, 552 F.2d 593, 595 (5th Cir. 1977) (holding that due process claim would lie where officers suborn perjury at trial).

28. Grossi is not named in the malicious prosecution claim, but based on the same evidence discussed above, a reasonable jury could infer from the undisputed facts of Grossi's failure to test the 150 blood samples from the scene and failure to take any samples from Williams that she intentionally or recklessly disregarded the potential consequences to Aguirre. (*See* Doc. 194, pp. 37:5–11, 125:2–5, 127:11–13, 153:6–154:4, 161:23–162:14, 213:22–214:9, 218:12–13.)

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Aguirre's right to due process, they are not entitled to qualified immunity at this stage. *Cf. Daniels*, 487 F. App'x at 537. So summary judgment on Count IV is due to be denied.

V. Failure to Train

Counts V and VI are § 1983 municipal liability claims against the Sheriff for failure to enact adequate training policies related to investigations and exculpatory evidence. (Doc. 111.) The Sheriff argues that there were no underlying constitutional violations to anchor municipal liability and that Aguirre fails to identify any deliberate indifference to the need for training in these areas. (Doc. 236, pp. 55–58.) The Court agrees these claims are insufficient.

An official is only subject to municipal liability where the government's policy or custom was the moving force of the constitutional violation. *See Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 694 (1978). An official's failure to train employees about a certain topic rises to the level of a *Monell* policy or custom only where it amounts to "deliberate indifference" to constitutional rights. *See Connick v. Thompson*, 563 U.S. 51, 61 (2011) (cleaned up). Failure to train is actionable "in only a very narrow range of circumstances." *Mingo v. City of Mobile*, 592 F. App'x 793, 800 (11th Cir. 2014). Deliberate indifference is typically shown by a pattern of similar constitutional violations, but it can also be established if the need to train on that topic is "so obvious" that the single alleged violation is actionable. *See Weiland v. Palm Beach Cnty. Sheriff's*

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Off., 792 F.3d 1313, 1328–29 (11th Cir. 2015). Deliberate indifference is a “stringent” standard. *Connick*, 563 U.S. at 61.

As to training on investigations, Aguirre argues narrowly that the Sheriff’s policy manual improperly fails to instruct officers to research “mental health backgrounds of the victims of crimes and their family members” as part of investigations, unlike the manual’s requirement to research criminal histories. (Doc. 234, pp. 43–44.) Aguirre did not point to a pattern of similar instances caused by constitutionally inadequate investigations, arguing only that the need to train on this issue was obvious because of the high number of Baker Act commitments. (*Id.* at 41–43.) But the high number of people involuntarily hospitalized for mental illness does not necessarily suggest that law enforcement officers should be made to investigate the mental health backgrounds of the families of victims of crimes, as Aguirre urges; this would in some cases be unnecessary and even inappropriate. Law enforcement may have conducted a constitutionally inadequate investigation here, but it does not automatically follow that the Sheriff is constitutionally obligated to enact a written policy requiring the investigation of mental health backgrounds of all family members of crime victims, as such investigation may not be warranted under the facts of a particular case and would not remedy the constitutional problem in many circumstances. *Cf. Keith v. DeKalb Cnty.*, 749 F.3d 1034, 1053 (11th Cir. 2014). Because Aguirre has not pointed to any facts in the record showing that the need for the policy he suggests is “so obvious” that this single incident confers liability on the Sheriff, there is no

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genuine dispute as to deliberate indifference and thus no *Monell* claim. *Cf. Johnson v. Dixon*, 666 F. App'x 828, 831 (11th Cir. 2016); *Denham v. Corizon Health, Inc.*, 675 F. App'x 935, 942 (11th Cir. 2017). So the Sheriff is entitled to summary judgment on Count V.

As to training on disclosure of exculpatory evidence, there can be no *Monell* claim where there is no underlying constitutional violation. *Knight ex rel. Kerr v. Mia.-Dade Cnty.*, 856 F.3d 795, 821 (11th Cir. 2017). Because the Court finds no *Brady* violation, as discussed above, there is no actionable claim against the Sheriff for failure to train on *Brady* obligations. So the Sheriff is also entitled to summary judgment on Count VI.

VI. IIED

Finally, Count VII alleges an IIED claim against Birks, Hemmert, and Grossi. (Doc. 111.) Defendants make no substantive argument on this claim, arguing only that it fails to establish outrageousness because they supposedly did not commit the misconduct of which they are accused.²⁹ (See Doc. 185, p. 13; Doc. 236, pp. 59–60.) But because there are factual disputes about this misconduct—which, if true, resulted in the lengthy imprisonment and impending execution of a potentially innocent man—summary

29. Hemmert and Grossi briefly assert they are entitled to statutory immunity under Florida Statutes § 768.28(9)(a), which provides officers immunity within the scope of their employment unless they acted in bad faith. (Doc. 236, p. 60.) But there are factual disputes over whether they acted in bad faith, so the claim must proceed to trial.

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judgment is precluded on this claim. *See Spadaro v. City of Miramar*, No. 11-61607, 2013 WL 495780, at *11 (S.D. Fla. Feb. 7, 2013), *aff'd*, 591 F. App'x 906 (11th Cir. 2015); *see also Tillman v. Orange Cnty.*, 519 F. App'x 632, 637 (11th Cir. 2013); *Diaz-Martinez v. Mia.-Dade Cnty.*, No. 07-20914, 2009 WL 2970468, at *14 (S.D. Fla. Sept. 10, 2009).

In sum, the fabrication of evidence, malicious prosecution, inadequate investigation, and IIED claims will proceed to trial.

VII. *Daubert* Motions

With the summary judgment motions resolved, the Court turns to the pending *Daubert* motions to exclude various experts (Docs. 181–84). Expert testimony may be admitted only if: (1) the expert is qualified; (2) their methodology is sufficiently reliable; and (3) the testimony will be helpful to the jury. *See Hendrix ex rel. G.P. v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010); *see also Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

A. Bradford Fisher, Esq.

First, Aguirre moves to exclude Defendants' purported expert Bradford Fisher, Esq., an attorney who has not previously testified as an expert, because he offers only legal conclusions as opinions. (Doc. 181.) Questions of law are not subject to expert testimony, and experts offering only legal conclusions should be excluded. *See Commodores Ent. Corp. v. McClary*, 879 F.3d 1114,

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1128 (11th Cir. 2018). Here, Fisher opines about whether there was probable cause and what was required of law enforcement. (Doc. 181-1, pp. 17, 19, 21, 24.) But “the court must be the jury’s only source of law.” *Montgomery v. Aetna Cas. & Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir. 1990). As Fisher’s opinions would invade the province of the Court and not help the jury determine any facts at issue, he must be excluded as an expert witness.³⁰ See Fed. R. Evid. 702; see also *Wash. v. City of Waldo*, No. 1:15CV73, 2016 WL 3545909, at *4 (N.D. Fla. Mar. 1, 2016). Aguirre’s *Daubert* motion is due to be granted.

B. Dr. Heather Holmes

The remaining *Daubert* motions were jointly filed by Defendants. (Docs. 182–84.) They first move to exclude Aguirre’s psychology expert, Dr. Heather Holmes. (Doc. 182.) Holmes opines that Aguirre suffers from post-traumatic stress disorder (“PTSD”), depression, and alcohol abuse because of his death row incarceration. (Doc. 182-1, p. 9.) Defendants argue that Holmes’ opinion is not based on sufficient facts because she failed to “adequately account” for Aguirre’s earlier diagnoses; specifically, they complain that Holmes did not review files created by doctors retained by Aguirre in connection with his earlier criminal trial, as they had diagnosed him with having PTSD, alcohol dependence, and a mood disorder before his incarceration. (Doc. 182, pp. 4–5.)

30. Fisher also appears to have no methodology to speak of other than reviewing legal authority—of which the Court itself is more than capable. (Doc. 181-1); see *Bratt v. Genovese*, No. 8:13-cv-3210, 2017 WL 6344449, at *6 (M.D. Fla. Dec. 12, 2017).

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Quibbles about the bases for an expert’s opinion go to weight, not admissibility, so long as the expert is minimally qualified. *See In re Disposable Contact Lens Antitrust*, 329 F.R.D. 336, 372 (M.D. Fla. 2018); *Garcia v. Scottsdale Ins. Co.*, No. CV 18-20509, 2019 WL 1318090, at *2 (S.D. Fla. Mar. 22, 2019); *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19MD2885, 2021 WL 2028682, at *6 (N.D. Fla. May 11, 2021).

Defendants do not challenge Holmes’ qualifications or her methodology; those would be difficult to question, as Holmes has multiple psychology degrees and twenty years of experience, she has testified as an expert dozens of times, and she administered standard psychological tests on Aguirre and took a lengthy medical history before coming to her diagnoses. (Doc. 182-1, pp. 1–2, 8–9, 12–20; Doc. 182-2.) If Defendants want to cross-examine Holmes about whether Aguirre’s prior diagnoses change any of her opinions, they are welcome to do so—though she already testified that they would not, and she clarified that her current diagnoses focus on Aguirre’s condition post-death row. (Doc. 182-4, pp. 8:19–10:10, 54:7–55:21, 101:4–103:8); *see Daubert*, 509 U.S. at 596 (noting the role of “[v]igorous cross-examination [and] presentation of contrary evidence” in challenging experts at trial).

Because Defendants’ challenge goes to weight, not admissibility, Holmes may testify. *See In re 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19MD2885, 2021 WL 948839, at *7 (N.D. Fla. Mar. 13, 2021); *Castro v. Carnival Corp.*, No. 21-20373, 2022 WL 3048255, at *3–6 (S.D. Fla. July 11, 2022).

*Appendix C***C. Ron McAndrew**

Next, Defendants move to exclude Aguirre's prison conditions expert, Ron McAndrew, a former warden who oversaw death row. Defendants do not contest McAndrew's qualifications or methodology, but contend that his testimony will not help the jury because it simply repeats what Aguirre told him. (Doc. 183.)

For expert testimony to be helpful, it must "concern[] matters that are beyond the understanding of the average lay person." *United States v. Frazier*, 387 F.3d 1244, 1262 (11th Cir. 2004). An expert simply parroting a party's narrative account of events does not help the jury. *See 3M Combat Arms*, 2021 WL 948839, at *10; *Rebotix Repair, LLC v. Intuitive Surgical, Inc.*, No. 8:20-cv-2274, 2022 WL 3226794, at *4 (M.D. Fla. Aug. 10, 2022); *In re Trasylol Prods. Liab. Litig.*, 709 F. Supp. 2d 1323, 1347 (S.D. Fla. 2010).

McAndrew's opinions focus on the conditions Aguirre experienced on death row and are largely (though not exclusively) based on McAndrew's interview with Aguirre; while McAndrew knows what it is like on death row based on his time as a prison warden, his opinions offer only facts, to which Aguirre himself can testify firsthand. (Doc. 183-1, pp. 2–4; Doc. 232-1, pp. 4–6); *see Hibiscus Assocs. Ltd. v. Bd. of Trustees of Policemen & Firemen Ret. Sys. of Detroit*, 50 F.3d 908, 917 (11th Cir. 1995). Permitting McAndrew to parrot Aguirre's version of death row conditions would risk using expert testimony to bolster Aguirre's credibility and narrative. *See Ohio*

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State Troopers Ass'n v. Point Blank Enters., Inc., No. 18-CV-63130, 2020 WL 1666763, at *15–16 (S.D. Fla. Apr. 3, 2020). McAndrew's opinions will not help the jury, so he may not testify.

D. Robert Pusins

Finally, Defendants move to exclude Aguirre's police practices expert, Robert Pusins. (Doc. 184.) Pusins opines that: (1) Hemmert and Grossi did not conduct a reasonable investigation; (2) Birks intentionally failed to accurately analyze the print; and (3) the Sheriff failed to provide reasonable oversight of Hemmert, Grossi, and Birks. (Doc. 184-1, pp. 10, 21, 25, 30.) The Court takes each opinion in turn.

First, Defendants do not challenge Pusins' opinions about the reasonableness of Hemmert and Grossi's investigation other than his opinion about Hemmert's state of mind—that is, that Hemmert acted intentionally and believed there was probable cause. (Doc. 184, p. 19; Doc. 184-1, pp. 11, 29, 30.) Defendants are correct that intent and state of mind are not proper areas for expert testimony. *See Tillman v. C.R. Bard, Inc.*, 96 F. Supp. 3d 1307, 1326 (M.D. Fla. 2015); *In re Seroquel Prods. Liab. Litig.*, No. 6:06-md-1769, 2009 WL 3806436, at *5 (M.D. Fla. July 20, 2009). And probable cause is determined from an objective standpoint, so whether Hemmert subjectively believed there was probable cause is irrelevant; moreover, the determination of probable cause is for the Court, not the jury. *See Whren v. United States*, 517 U.S. 806, 813 (1996); *City of Waldo*, 2016 WL 3545909, at *4.

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These opinions are improper and will be excluded. Even so, Pusins may give the rest of his opinions about the reasonableness of Hemmert and Grossi's investigation, as he is well-qualified to give them, Defendants did not directly challenge them, and such opinions are commonly admissible. (*See* Doc. 184, p. 19); *Shew v. Horvath*, No. 8:16-cv-766, 2017 WL 632515, at *8 (M.D. Fla. Feb. 16, 2017) (permitting police practices expert to opine on whether standard procedures were followed during investigation even though legal conclusions on existence of probable cause were inadmissible).

Next, Defendants argue that Pusins is not qualified to give various opinions about Birks and her investigative techniques. (Doc. 184, pp. 5, 12, 17.) Aguirre counters that Pusins is qualified to testify about police investigations, so he can rely on the FDLE's Report to conclude that Birks failed to follow required print identification procedures. (Doc. 231, pp. 8–9.) Aguirre's argument here is unpersuasive. Pusins' CV makes clear that he is highly qualified on police practices but not on print examination. (Doc. 184-1, pp. 2–4, 35–38); *see Pleasant Valley Biofuels, LLC v. Sanchez-Medina*, No. 13-23046, 2014 WL 2855062, at *3 (S.D. Fla. June 23, 2014). And though an expert may rely on hearsay and investigative reports to establish facts, he must still perform the function of an expert in forming opinions based on those facts. *See Knight*, 856 F.3d at 809; *Williams v. Illinois*, 567 U.S. 50, 80 (2012). Pusins' opinions that Birks made an erroneous identification and did not follow print examiner procedures simply parrot the conclusions of the Birks Report—and necessarily so, as he has no expertise to draw those conclusions independently

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or verify the reliability of the findings.³¹ (See Doc. 231, p. 19); *Hendrix v. Evenflo Co.*, 255 F.R.D. 568, 607 n.75 (N.D. Fla. 2009), *aff'd*, 609 F.3d 1183 (11th Cir. 2010); *Williams v. Consol. City of Jacksonville*, No. 3:00-cv-469, 2006 WL 305916, at *8 (M.D. Fla. Feb. 8, 2006); *Little v. Ford Motor Co.*, No. 1:16-CV-931, 2017 WL 6994586, at *10 (N.D. Ga. Dec. 21, 2017). Because Pusins is not qualified as a print expert, his opinions about Birks and the adequacy of her techniques are due to be excluded.

Last, as to Pusins' opinions about the Sheriff, the Court is granting summary judgment in the Sheriff's favor on all claims against him, so these opinions are irrelevant.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED**:

1. Aguirre's motion to drop the malicious prosecution claim (Doc. 263) is **DENIED**.
2. Birks' summary judgment motion (Doc. 185) is **DENIED**.

31. Aguirre's response suggests he is hoping to admit the entire Birks Report through Pusins. (See Doc. 231, pp. 11, 18–19.) But just because an expert may rely on hearsay does not necessarily mean that the underlying hearsay document is itself admissible. See Fed. R. Evid. 703; *Indus. Eng'g & Dev., Inc. v. Static Control Components, Inc.*, No. 8:12-cv-691, 2014 WL 4986482, at *2–3 (M.D. Fla. Oct. 6, 2014). As discussed above, Aguirre has additional hurdles to clear to get pieces of the Report into evidence. See *supra* note 10.

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3. Hemmert, Grossi, and the Sheriff's summary judgment motion (Doc. 236) is **GRANTED IN PART AND DENIED IN PART**:
 - a. The Motion is **GRANTED** as to Counts II, V, and VI. Summary judgment on those counts will be entered when the remaining claims are resolved.
 - b. The Motion is **DENIED** as to Counts III, IV, and VII.
4. Counts I (fabrication of evidence), III (malicious prosecution), IV (inadequate investigation), and VII (IIED) will proceed to trial.
5. Aguirre's *Daubert* motion as to Fisher (Doc. 181) is **GRANTED**. Fisher will not be permitted to testify.
6. Defendants' *Daubert* motion as to Holmes (Doc. 182) is **DENIED**. Holmes will be permitted to testify.
7. Defendants' *Daubert* motion as to McAndrew (Doc. 183) is **GRANTED**. McAndrew will not be permitted to testify.
8. Defendants' *Daubert* motion as to Pusins (Doc. 184) is **GRANTED**. Pusins will not be permitted to testify about Hemmert's

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state of mind, Birks, or the Sheriff. He will be permitted to testify about the reasonableness of Hemmert and Grossi's investigation.

DONE AND ORDERED in Chambers in Orlando, Florida, on February 22, 2023.

**APPENDIX D — ORDER DENYING REHEARING
OF THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT,
FILED JANUARY 22, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10811

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Plaintiff-Appellee-Cross Appellant,

v.

SEMINOLE COUNTY, *et al.*,

Defendants,

ROBERT HEMMERT, IN HIS INDIVIDUAL
CAPACITY, DEPUTY SHERIFF, JACQUELINE
GROSSI, IN HER INDIVIDUAL CAPACITY,
CRIME SCENE ANALYST, DONNA BIRKS,
IN HER INDIVIDUAL CAPACITY,
LATENT PRINT EXAMINER,

Defendants-Appellants-Cross Appellees,

SEMINOLE COUNTY SHERIFF,

Defendant-Appellee.

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Appendix D

Filed January 22, 2026

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:20-cv-00025-RBD-DCI

ON PETITION FOR REHEARING AND PETITION
FOR REHEARING EN BANC

Before JORDAN, LAGOA, and TJOFLAT, 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 40. The Petitions for Panel Rehearing also are DENIED. FRAP 40.

The request to certify questions to the Florida Supreme Court, filed by Robert Hemmert and Jacqueline Grossi, is DENIED.