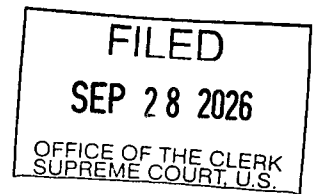


26-5742
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

WILLIE BRUCE BRYANT,
Petitioner,

v.

**ALEXANDRA D. LEONARDIS, Deputy Sheriff, individually;
DANIEL P. SANMIGUEL, Senior Assistant Solicitor General,
individually; LIEUTENANT DEREK A. BLEISATH, Supervising
Deputy Sheriff, individually,
Respondents.**

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

PETITION FOR A WRIT OF CERTIORARI

WILLIE BRUCE BRYANT
Petitioner, Pro Se
3870 Genoa Court
Duluth, GA 30096

QUESTIONS PRESENTED

The Eleventh Circuit held that law enforcement officers are shielded by qualified immunity for executing a facially deficient, single-sentence arrest warrant that remained inactive in the system for nearly a year, by relying entirely on extrinsic, unsworn knowledge completely absent from the four corners of the affidavit.

The questions presented are:

1. Whether a federal court adjudicating a civil rights claim under 42 U.S.C. § 1983 may grant qualified immunity by relying on an officer's extrinsic, unsworn knowledge to retroactively cure a facially deficient arrest warrant—a practice permitted by some circuits but expressly forbidden by others under *Malley v. Briggs*, 475 U.S. 335 (1986).
2. Whether facts known to an affiant showing that an accused used force defensively under Georgia law, O.C.G.A. § 16-3-21, may be excluded from a probable cause affidavit on the ground that they relate solely to a potential affirmative defense, where the governing state statute, O.C.G.A. § 16-3-24.2, explicitly confers absolute immunity from criminal prosecution — a question on which the Second, Sixth, Seventh, and Eighth Circuits are sharply divided from the Third and Eleventh Circuits and the Supreme Court of Washington.
3. Whether a supervisor who reviews a bare-bones warrant application, recognizes that it establishes no offense, and permits the warrant to stand unexecuted for 353 days is entitled to qualified immunity — an approach that conflicts with the Third and Ninth Circuits, which impose liability for a supervisor's knowledge of and acquiescence in a subordinate's constitutional violation.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page. Those parties are:

1. Willie Bruce Bryant, Plaintiff-Appellant below, Petitioner here, appearing pro se.
2. Alexandra D. Leonardis, Deputy Sheriff, sued individually, Defendant-Appellee below, Respondent here.
3. Daniel P. Sanmiguel, Senior Assistant Solicitor General, sued individually, Defendant-Appellee below, Respondent here.
4. Derek A. Bleisath, Lieutenant and Supervising Deputy Sheriff, sued individually, Defendant-Appellee below, Respondent here.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner Willie Bruce Bryant is an individual proceeding pro se. He is not a corporation, has no parent corporation, and no publicly held company owns stock in him.

RELATED CASES

The following proceedings are directly related to this case within the meaning of Rule 14.1(b) (iii):

1. *Bryant v. Leonardis, et al.*, No. 2:25-cv-00158-SCJ, United States District Court for the Northern District of Georgia. Order granting dismissal with prejudice and denying leave to amend as futile entered February 9, 2026.
2. *Bryant v. Leonardis, et al.*, No. 26-10469, United States Court of Appeals for the Eleventh Circuit. Opinion affirming entered July 27, 2026; rehearing and rehearing en banc denied September 1, 2026.

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The unpublished per curiam opinion of the United States Court of Appeals for the Eleventh Circuit affirming the judgment of the district court was entered on July 27, 2026, and is reproduced at Appendix A. The opinion is not reported in the Federal Reporter.

The order of the United States District Court for the Northern District of Georgia granting dismissal with prejudice and denying leave to amend as futile was entered on February 9, 2026, and is reproduced at Appendix B. That decision is unreported.

The order of the court of appeals denying the petition for panel rehearing and the petition for rehearing en banc was entered on September 1, 2026, and is reproduced at Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on July 27, 2026. A timely petition for panel rehearing and rehearing en banc was filed and was denied on September 1, 2026. No extension of time to file this petition has been requested or granted. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition is filed within ninety days of the denial of rehearing, as Rules 13.1 and 13.3 require.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42, United States Code, Section 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . 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.

Section 16-5-23.1(a) of the Official Code of Georgia Annotated provides:

A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.

Section 16-3-21(a) of the Official Code of Georgia Annotated provides in pertinent part:

A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force.

Section 16-3-24.2 of the Official Code of Georgia Annotated provides:

A person who uses threats or force in accordance with Code Section 16-3-20, 16-3-21, 16-3-23, 16-3-23.1, 16-3-24, or 17-4-20 shall be immune from criminal prosecution therefor unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person under Part 2 of Article 4 of Chapter 11 of this title.

Title 28, United States Code, Section 1254(1) provides in pertinent part:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATEMENT OF THE CASE

A. The Encounter

Petitioner Willie Bruce Bryant brought this action under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Georgia, which had jurisdiction under 28 U.S.C. §§ 1331 and 1343.

As the district court summarized the pleaded allegations, Petitioner was parked outside his former wife's workplace to retrieve a car key when Austin Rothenberger, a non-party, entered the parking lot at high speed. Rothenberger saw Petitioner's former wife, a white woman, hand a key to Petitioner, a Black man, and became, as the pleading alleges, incensed by the interaction. As Petitioner drove toward the exit the two made eye contact, and Rothenberger became animated, pointing and yelling. Rothenberger shouted obscenities and threats and ordered Petitioner to "get out of that jeep."

Fearing for his immediate safety, Petitioner left his vehicle, carrying a hammer he took from it, and approached Rothenberger. Petitioner alleged that Rothenberger lunged at him with his hands raised in a boxing stance and that Petitioner slapped him once in the face with an open hand. Petitioner never raised the hammer. He then withdrew to his vehicle. Rothenberger thereafter initiated a separate altercation with Petitioner's former wife, and Petitioner returned, drove her to safety, called the Forsyth County Sheriff's Office, and reported the sequence of events to the responding deputies.

B. The Investigation

Respondent Deputy Alexandra D. Leonardis investigated and prepared the incident report reproduced at Appendix E. That report matters here for two reasons. Every fact the courts below

later attributed to the warrant affidavit appears in it. And it documents what Deputy Leonardis knew before she swore the affidavit.

First, Deputy Leonardis recorded what physical evidence of injury existed. "I took pictures of Austin's visible marks for documentation," she wrote. "He had marks on his left wrist." That is the only documented injury in the entire investigation, and it is on the wrist. No mark, redness, swelling, or injury of any kind to the face is recorded anywhere in the report.

Second, Deputy Leonardis recorded Rothenberger's own account of how the encounter began. "Austin did state that he asked Willie what he was staring at and they exchanged words with each other." She also recorded that immediately beforehand, Rothenberger had been "flicking" off and "beeping at" another motorist in a roundabout.

Third, Deputy Leonardis recorded Petitioner's statement of justification. "Willie stated that he feared Austin because Austin was approaching him." Petitioner also completed a written statement form at the deputies' request, so his account was reduced to writing and retained. Petitioner's admission and his claim of justification were parts of one account, not two. He acknowledged the contact to the deputies at the scene, and in the same account he told them he feared Rothenberger because Rothenberger was approaching him. Both entries appear in the same report, recorded by the same officer, on the same day.

Fourth, Deputy Leonardis obtained and personally reviewed surveillance video the day before she swore the affidavit, and the video contradicted her complaining witness on the central allegation. Rothenberger had told her that Petitioner swung a hammer at him twice, though he "cannot remember if the hammer hit him or not." On viewing the video Deputy Leonardis wrote: "Willie did not raise the hammer towards Austin, but instead Willie used his left hand and

slapped Austin in the face and walked back to the Jeep." She thus knew before seeking the warrant that no hammer blow occurred and that the contact was an open-handed slap.

C. The Warrant Affidavit

On June 13, 2023, Respondent Deputy Alexandra D. Leonardis appeared before a magistrate of the Magistrate Court of Forsyth County and swore the affidavit reproduced at Appendix D. It charged Petitioner with battery causing substantial physical harm, a misdemeanor, in violation of O.C.G.A. § 16-5-23.1. Its entire factual showing was a single clause:

The facts this affidavit for arrest is based on are: said accused intentionally caused substantial physical harm to Austin Rothenberger, to wit: Willie Bryant did exit his vehicle and strike the victim on his face.

That is the whole of it. The first half recites the statutory element verbatim. The second half supplies one fact, a strike to the face, which does not establish that any substantial physical harm or visible bodily harm occurred. The affidavit describes no injury of any kind. It says nothing about who initiated the encounter, nothing about the threats Petitioner reported to the deputies, and nothing about Petitioner's statement that he feared for his safety. The magistrate issued the warrant, set bond at \$2,500, and signed the order the same minute the affidavit was sworn.

D. The 353-Day Dormancy

The warrant was not executed. It remained dormant for 353 days, until it was activated on May 31, 2024, and Petitioner turned himself in on June 2, 2024, and was arrested and detained. Petitioner alleged that during that period Respondent Lieutenant Derek A. Bleisath, the supervising deputy who reviewed Deputy Leonardis's report, knew the affidavit stated no facts

establishing the charged offense and neither corrected it nor withdrew the warrant. The prosecution terminated in Petitioner's favor on April 21, 2025, when the State of Georgia entered a nolle prosequi.

E. The District Court's Order

Petitioner, proceeding pro se, filed a First Amended Complaint and thereafter sought leave to amend four times, refining his theory to rest not on affirmative falsity under *Franks* but on the affidavit's constitutional insufficiency. The district court treated the First Amended Complaint as operative for docket purposes but conducted its immunity and futility analysis on the proposed Fourth Amended Complaint. It held Respondent Sanmiguel absolutely immune, and it granted qualified immunity to Deputy Leonardis and Lieutenant Bleisath on the ground that no constitutional violation had occurred at all.

The court reached that conclusion in a single passage. Relying, it said, on "a review of the affidavit at issue," it found "that the affidavit did provide sufficient factual basis to support the finding of probable cause for misdemeanor battery." It then identified what it understood the affidavit to contain. The affidavit, the court wrote, "accurately recounts Plaintiff's admission that he slapped Rothenberger," and recounts that Deputy Leonardis "took pictures of Rothenberger's visible marks." The court further wrote that "the affidavit does include that Rothenberger admitted to starting the interaction by 'ask[ing] [Plaintiff] what he was staring at and [exchanging] words with each other'" and that "'[Plaintiff] stated he feared [Rothenberger] because [Rothenberger] was approaching him.'" For each of these propositions the court cited not the warrant or its affidavit, but Doc. No. 23-1, the document Petitioner filed with his motion for leave to amend.

None of those four facts appears in the affidavit. The affidavit is reproduced in full at Appendix D. It contains no reference to any admission by Petitioner, no reference to photographs, no reference to visible marks, no account by Rothenberger of how the interaction began, and no statement that Petitioner feared him. All four appear instead, in substantially the words the district court used, in Deputy Leonardis's incident report at Appendix E. The comparison requires no inference. It requires only placing the two documents side by side.

The error was not incidental, and it was compounded in a way the courts below did not notice. The affidavit alleges no injury, and O.C.G.A. § 16-5-23.1 requires substantial physical harm or visible bodily harm. The photographs of "visible marks" were the only evidence of injury the court identified, and they came from the report. But the report records that those marks were "on his left wrist." The charged offense, and the affidavit's sole factual clause, allege a strike to the face. The district court therefore supplied the missing element of injury with photographic evidence of a mark in a different place on the body from the act charged, drawn from a document the magistrate never saw.

The court then addressed the omission of Petitioner's self-defense allegations and held them immaterial as a matter of law. The omitted facts, it reasoned, "do not relate to the elements of the offense but rather solely to a potential affirmative defense not yet raised," and officers "need not investigate affirmative defenses." For that proposition the court quoted an unpublished report and recommendation of a magistrate judge in a criminal case. The court concluded that Respondents "were not required to include Plaintiff's self-defense claim in the affidavit, and that even if they were, this inclusion would not have vitiated probable cause."

Having found no violation, the court did not reach whether any right was clearly established. It rejected the supervisory liability claim against Lieutenant Bleisath on the

derivative ground that "the arrest warrant was properly executed and there was probable cause to arrest Plaintiff for simple battery," an offense different from the one charged. It denied leave to amend as futile, dismissed the federal claims with prejudice, and declined supplemental jurisdiction over the state claims.

F. The Decision Below

The court of appeals affirmed in an unpublished per curiam opinion. It confined its review to the superseded First Amended Complaint rather than the proposed Fourth Amended Complaint on which the district court had actually ruled. It sustained qualified immunity on a rationale of "arguable probable cause" that the district court had not adopted, and it drew the facts supporting that rationale from the complaining witness's account as recorded in the investigative materials rather than from the affidavit or the pleading. It disposed of the claim against Lieutenant Bleisath as derivative, without addressing the 353 days during which the warrant lay dormant. Petitioner timely sought panel rehearing and rehearing en banc, and both were denied on September 1, 2026.

REASONS FOR GRANTING THE WRIT

This case presents an unusually clean violation of a rule this Court settled more than half a century ago. The Fourth Amendment commits the probable cause determination to a neutral magistrate, and it confines the reviewing court to the showing the magistrate actually received. Both courts below disregarded that limit. They sustained a warrant by crediting four facts that appear nowhere in it but appear in the affiant's incident report, one of which supplied the only evidence of injury in the case, and they did so at the pleading stage, against a pro se plaintiff whose allegations they were bound to accept as true. No inference is required to see the error. The affidavit is one clause long and is reproduced at Appendix D; the report is at Appendix E. This Court can verify the error by reading them.

I. THE COURTS BELOW SUSTAINED THE WARRANT ON FACTS FOUND NOWHERE IN THE AFFIDAVIT, IN DIRECT CONFLICT WITH AGUILAR AND WHITELEY.

A. The four-corners rule is settled and was disregarded.

The rule is not in doubt. "It is elementary that, in passing on the validity of a warrant, the reviewing court may consider only information brought to the magistrate's attention." *Aguilar v. Texas*, 378 U.S. 108, 109 n.1 (1964). Seven years later this Court restated it as a holding: "an otherwise insufficient affidavit cannot be rehabilitated by testimony concerning information possessed by the affiant when he sought the warrant but not disclosed to the issuing magistrate." *Whiteley v. Warden*, 401 U.S. 560, 565 n.8 (1971). *Illinois v. Gates*, 462 U.S. 213 (1983), left that limit untouched. The magistrate's task is to decide, "given all the circumstances set forth in the affidavit before him," whether probable cause exists, *id.* at 238, and "an inadequate showing

cannot be rescued by post-search testimony concerning information known to searching officers," *id.* at 293-94 n.4.

The reason for the rule is structural. The warrant requirement exists so that the inferences drawn from evidence are "drawn by a neutral and detached magistrate, instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14 (1948), quoted in *Gates*, 462 U.S. at 240. If a reviewing court may supplement a thin affidavit with whatever the officer happened to know or write down elsewhere, the magistrate's role becomes ornamental. "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." *Id.* at 239.

Judged by its own contents, this affidavit is the paradigm of the conclusory showing this Court has always rejected. Its factual recital is one clause: that Petitioner "intentionally caused substantial physical harm" to the complaining witness, "to wit: Willie Bryant did exit his vehicle and strike the victim on his face." The first half is the statutory element restated. The second half is a single fact that does not establish the element, because a strike to the face is not, without more, substantial physical harm or visible bodily harm. Compare *Nathanson v. United States*, 290 U.S. 41 (1933), where an affiant's statement that "he has cause to suspect and does believe" that contraband was present "will not do," *Gates*, 462 U.S. at 238-39, because it "gives the magistrate virtually no basis at all for making a judgment regarding probable cause," *id.* at 239.

B. The district court supplied the missing element from a document the magistrate never saw.

The district court did not hold that this one clause sufficed on its own. It held that the affidavit contained considerably more than it does. Purporting to describe "the affidavit at issue,"

the court found that the affidavit recounted Petitioner's admission that he slapped the complaining witness; that Deputy Leonardis "took pictures of Rothenberger's visible marks"; that Rothenberger "admitted to starting the interaction"; and that Petitioner "stated he feared" him. For none of these did the court cite the affidavit. It cited Doc. No. 23-1, the document accompanying Petitioner's motion for leave to amend.

The affidavit contains none of it. Appendix D is the complete document, front and back, and it makes no mention of an admission, a photograph, a visible mark, Rothenberger's account of how the encounter began, or Petitioner's expression of fear. Every one of the four appears instead in Deputy Leonardis's incident report, Appendix E, in substantially the words the court used. The court was describing the report while calling it the affidavit. Under *Aguilar* and *Whiteley* the contents of that report were unavailable to the reviewing court, and reliance on them was error at the threshold.

The materiality of that error is not a matter of speculation. Georgia's battery statute requires "substantial physical harm or visible bodily harm." O.C.G.A. § 16-5-23.1(a). The affidavit alleges no harm at all beyond the bare fact of a strike. The photographs of "visible marks" were the only evidence of injury anywhere in the court's analysis, and they exist only in the report. The extrinsic material therefore did not merely corroborate a sufficient showing; it furnished the element without which no offense was stated. Remove it and the affidavit fails on the district court's own reasoning.

The photographs will not bear even the weight the district court placed on them. The report states where the marks were: "He had marks on his left wrist." The affidavit's only factual allegation is that Petitioner "did exit his vehicle and strike the victim on his face." A mark on the wrist is not visible bodily harm from a blow to the face. So the court did not merely reach outside

the affidavit for the missing element; the material it reached for does not supply that element even on its own terms. And no injury to the face is documented anywhere in the investigation. This is precisely why the four-corners rule exists. A magistrate confined to the affidavit would have seen an allegation of substantial physical harm supported by nothing, and a reviewing court confined to the same document would have seen the same thing.

The same material did a second, contradictory job. The court invoked it to hold that Petitioner's self-defense facts had not been omitted at all, reasoning that "the affidavit does include" Rothenberger's admission and Petitioner's statement of fear, while simultaneously holding those same facts immaterial because they concerned only an affirmative defense. Both halves of that holding rest on material outside the affidavit, and they cannot both be true: a fact cannot be present in the affidavit and immaterial to it at the same time. The internal inconsistency is itself evidence that the court was reading a document other than the one the magistrate signed.

C. The error was compounded by the procedural posture.

All of this occurred on a motion to dismiss and on a futility review of a proposed pleading. At that stage a court accepts the complaint's well-pleaded allegations as true and draws reasonable inferences for the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The inquiry does not ask which of two competing accounts is more likely true. This Court has enforced that principle with particular force where immunity is at stake. In *Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam), it summarily reversed a grant of qualified immunity because the lower court had "failed to view the evidence at summary judgment in the light most favorable to" the plaintiff, *id.* at 657, and it emphasized that a court may not "weigh the evidence and determine

the truth of the matter" in resolving immunity, *id.* at 656-60. If that is forbidden on a developed record, it cannot be permitted on the pleadings, where no record exists.

The courts below justified consulting the extrinsic material through the Eleventh Circuit's rule that "when the exhibits to a plaintiff's complaint contradict the allegations of the same, the exhibits govern." *Griffin Indus., Inc. v. Irwin*, 496 F.3d 1189, 1205-06 (11th Cir. 2007). That rule cannot bear this weight. An attached document establishes what the document says; it does not establish that a third party's hearsay narrative inside it is true. An investigative report is authentic as a report. The complaining witness's version recorded within it remains an allegation, and it is the very allegation Petitioner's pleading contradicts. This Court drew the line in *Scott v. Harris*, 550 U.S. 372, 380-81 (2007), where a videotape "blatantly contradicted" the plaintiff's account and left nothing to try. An interested accuser's statement is not a videotape.

The Eleventh Circuit's own arguable probable cause standard confirms the difficulty. Arguable probable cause turns on what reasonable officers "in the same circumstances and possessing the same knowledge" could have believed. *Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007); *see also Butler v. Sheriff of Palm Beach Cnty.*, 685 F.3d 1261, 1265 (11th Cir. 2012). Circumstances and knowledge are facts. At the pleading stage they come from the complaint. The courts below took them from the investigative materials instead.

The question is recurring and consequential. A written report favorable to the officers accompanies nearly every arrest, and § 1983 arrest claims are routinely resolved on the pleadings. If such material may both supply the affidavit's missing elements and displace the plaintiff's allegations, the warrant's sufficiency will never be tested against what the magistrate actually read, and immunity will be resolved before a single document is produced. That is a rule of considerable practical reach, adopted here without published analysis.

D. The courts are divided over how far a reviewing court may look beyond the affidavit, and the decision below exceeds even the most permissive rule.

The question how far a reviewing court may look beyond the affidavit has produced a three-way division among the circuits and the state courts of last resort.

The Ninth Circuit and at least three state courts of last resort confine the inquiry to the affidavit itself. "All data necessary to show probable cause for the issuance of a search warrant must be contained within the four corners of a written affidavit given under oath." *United States v. Luong*, 470 F.3d 898, 904 (9th Cir. 2006). To permit "extrinsic indicia of probable cause" to rescue such an affidavit, that court explained, would mean that "the good faith exception would swallow the Fourth Amendment rule." *Id.* Colorado, Maryland, and South Carolina agree. *People v. Miller*, 75 P.3d 1108, 1116 (Colo. 2003); *Greenstreet v. State*, 898 A.2d 961, 978 (Md. 2006); *State v. Johnson*, 395 S.E.2d 167, 170 (S.C. 1990).

A second group permits a court to consider what the affiant told the issuing magistrate even if it never reached the affidavit, but no more. *United States v. Maggitt*, 778 F.2d 1029, 1036 (5th Cir. 1985); *United States v. Frazier*, 423 F.3d 526, 535-36 (6th Cir. 2005); *United States v. Koerth*, 312 F.3d 862, 871 (7th Cir. 2002); *United States v. Knox*, 883 F.3d 1262, 1272 (10th Cir. 2018).

A third group, including the Eleventh Circuit, permits consideration of facts the officer knew but never conveyed to anyone. "We agree with the majority of circuits that have examined this issue and find that a reviewing court may look outside the four corners of the affidavit in determining whether an officer acted in good faith when relying upon an invalid warrant." *United States v. Martin*, 297 F.3d 1308, 1318 (11th Cir. 2002); accord *United States v. McKenzie-Gude*, 671 F.3d 452, 460 (4th Cir. 2011); *United States v. Houston*, 665 F.3d 991, 995

(8th Cir. 2012). The disagreement is express: *Martin* declined to follow the Ninth Circuit's contrary rule, and *Luong* declined to follow the majority position, over a dissent that collected the cases on the other side. 470 F.3d at 905-08 (Bea, J., dissenting).

That division alone warrants review. But this case presents something worse, and it is what makes the decision below indefensible on any side of the split. Every one of those decisions concerns the *good faith* inquiry under *United States v. Leon*, 468 U.S. 897 (1984), which asks whether an officer may rely on a warrant a magistrate has already issued. None of them permits extrinsic material to establish probable cause in the first instance. *Martin* is explicit on the point: the court "looked at the face of the warrant to determine whether it lacked 'any indicia of probable cause' and did not consider" the officer's undisclosed knowledge at that step, turning to outside facts only after finding the affidavit adequate on its face. 297 F.3d at 1318-19.

The district court here did the opposite. It never held the affidavit sufficient on its face. It found probable cause by drawing four facts from the incident report and attributing them to the affidavit, and it did so as the merits holding, not as a good faith fallback. Doc. 31 at 18-19. Under the Ninth Circuit's rule that is error twice over. Under the Fifth, Sixth, Seventh, and Tenth Circuits' rule it is error, because the report was never presented to the magistrate. And under the Eleventh Circuit's own rule in *Martin* it is error, because the extrinsic look is permitted only after the affidavit clears the threshold on its own contents. A rule that no court has adopted decided this case.

II. THE DECISION BELOW EXCLUDES KNOWN EVIDENCE OF JUSTIFICATION FROM THE PROBABLE CAUSE INQUIRY.

The district court held, as a categorical matter, that facts showing Petitioner acted defensively "do not relate to the elements of the offense but rather solely to a potential affirmative defense not yet raised," and that officers "need not investigate affirmative defenses." The sole authority was an unpublished report and recommendation of a magistrate judge in an unrelated criminal case. That categorical rule warrants review.

It conflicts with the Eleventh Circuit's own published precedent. In *Kingsland v. City of Miami*, 382 F.3d 1220 (11th Cir. 2004), the court held that "in evaluating probable cause, an officer may not 'unreasonably disregard[] certain pieces of evidence' by 'choos[ing] to ignore information that has been offered to him or her' or 'elect[ing] not to obtain easily discoverable facts' that might tend to exculpate a suspect." *Id.* at 1229, 1233. The courts below kept Petitioner's acknowledgment of the contact and discarded his account of why it occurred, treating the first as probable cause and the second as a matter for some later trial. A rule that permits an officer, and then a court, to sever a single statement and rely on only its inculpatory half is not a totality inquiry. Petitioner did not merely fail to volunteer his account. He called the Sheriff's Office himself, reported the sequence of events to the responding deputies, and completed a written statement form at their request. The affiant wrote his justification into her own report: "Willie stated that he feared Austin because Austin was approaching him." The information was offered, received, reduced to writing, and then left out. The rule applied below permits an officer to do exactly that with no consequence.

This record presents the question in an unusually pointed form, because the affiant did not merely possess the accused's exculpatory account. She independently verified part of it. The day before swearing the affidavit she obtained and reviewed surveillance video, and she recorded what it showed: "Willie did not raise the hammer towards Austin, but instead Willie used his left

hand and slapped Austin in the face." That review disproved the complaining witness's claim of two hammer swings, a claim the witness himself could not confirm. An officer who has watched video contradicting her accuser on the central act, and who has written down the accused's statement that he acted out of fear, is not in the position of an officer confronted with an unraised legal defense. She is in possession of facts bearing directly on whether a crime occurred at all. The categorical rule applied below makes that distinction irrelevant.

The categorical rule is also in tension with the totality-of-the-circumstances inquiry this Court requires. *Gates*, 462 U.S. at 238. A totality inquiry that excludes an entire category of known facts is not a totality inquiry. And the exclusion is especially difficult to justify in a State whose legislature has made justification an immunity from prosecution rather than a trial defense. O.C.G.A. § 16-3-24.2. That statute declares a person who uses force in accordance with Section 16-3-21 "immune from criminal prosecution therefor," and the General Assembly captioned it "Immunity from prosecution." The label is not ornamental. An affirmative defense is something an accused raises at trial; an immunity is a bar to the proceeding itself. Other legislatures have made the consequence explicit. Florida grants the same immunity and defines "criminal prosecution" to "includ[e] arresting, detaining in custody, and charging or prosecuting the defendant," and forbids an agency to arrest at all unless it determines there is probable cause that the force was unlawful. Fla. Stat. § 776.032(1)-(2). Where a legislature has declared that justified force is not to be prosecuted, an officer's knowledge that the force was defensive bears directly on whether there is probable cause to believe a crime occurred, and the rule applied below excuses the officer from ever telling the magistrate about it.

The lower courts are squarely and openly divided on this question, and the division is not confined to the federal courts of appeals.

Four circuits hold that known facts establishing justification bear on probable cause. The Second Circuit holds that "under some circumstances, a police officer's awareness of the facts supporting a defense can eliminate probable cause," and that an officer may not "deliberately disregard facts known to him which establish justification." *Jocks v. Tavernier*, 316 F.3d 128, 135 (2d Cir. 2003). The Sixth Circuit holds that an officer "may not ignore information known to him which proves that the suspect is protected by an affirmative legal justification for his suspected criminal actions." *Painter v. Robertson*, 185 F.3d 557, 571 (6th Cir. 1999); accord *Fridley v. Horrigs*, 291 F.3d 867, 874 (6th Cir. 2002). The Eighth Circuit holds that "[a]n officer contemplating an arrest is not free to disregard plainly exculpatory evidence," and that "evidence that tends to negate the possibility that a suspect has committed a crime is relevant to whether the officer has probable cause." *Kuehl v. Burtis*, 173 F.3d 646, 650 (8th Cir. 1999). The Seventh Circuit has likewise said that an officer "may not ignore conclusively established evidence of the existence of an affirmative defense." *Hodgkins ex rel. Hodgkins v. Peterson*, 355 F.3d 1048, 1061 (7th Cir. 2004).

Against those decisions stand the Third and Eleventh Circuits and the Supreme Court of Washington. The Third Circuit holds that justification is an affirmative defense and "not a relevant consideration" in an officer's probable cause determination. *Holman v. City of York*, 564 F.3d 225, 229-31 (3d Cir. 2009). The Supreme Court of Washington holds that an affirmative defense "does not negate probable cause that a crime has been committed." *State v. Fry*, 228 P.3d 1, 6 (Wash. 2010).

The Eleventh Circuit has taken the same position in a case materially identical to this one. In *Morris v. Town of Lexington*, 748 F.3d 1316 (11th Cir. 2014), the plaintiff struck another man during a confrontation and was acquitted of assault on a theory of defensive force. The court

acknowledged that state law "permits a citizen to use reasonable force in defense of self or property," but held that "this is an affirmative defense," and that "the fact remains that once Morris punched Bradford, the officers had probable cause, or at the very least arguable probable cause." *Id.* at 1325. That is this case: a single blow, a claim of defensive force, a favorable termination, and immunity nonetheless.

Two features of that alignment bear on the need for review. First, the rule is now outcome-determinative by geography. The same facts that would state a claim in the Second, Sixth, or Eighth Circuits defeat one in the Third and Eleventh. Second, the courts below were not free to decide otherwise. Because *Morris* is published and binding, the panel could not have applied *Kingsland's* command that an officer not "choose to ignore information that has been offered to him or her" even had it wished to, and the Eleventh Circuit's unpublished decisions point the other way. *See Williams v. Sirmons*, 307 F. App'x 354, 358-59 (11th Cir. 2009) (an officer must consider "facts and circumstances conclusively establishing an affirmative defense"). Only this Court can resolve the conflict.

The question is of growing importance because many States, Georgia among them, have converted justification from a trial defense into an immunity from prosecution. Under the rule below, an officer in any of those States may take a complaining witness's account, decline to record the accused's account of defensive force, and obtain a warrant that no court will later examine for that omission. *Franks v. Delaware*, 438 U.S. 154, 165 (1978), recognizes that the warrant process depends on the integrity of the showing made to the magistrate. A doctrine that treats an entire category of exculpatory facts as beyond the officer's duty to disclose is difficult to reconcile with that premise.

III. THE DECISION BELOW IMMUNIZES BOTH THE AFFIANT AND HER SUPERVISOR FOR AN AFFIDAVIT LEFT STANDING FOR 353 DAYS.

In *Malley v. Briggs*, 475 U.S. 335 (1986), this Court held that an officer who seeks a warrant on an affidavit so lacking in probable cause that "no reasonably competent officer would have concluded that a warrant should issue" enjoys no immunity. *Id.* at 341. The magistrate's signature does not cure the defect, because it "is plainly unreasonable" to seek a warrant on a showing no reasonable officer would think sufficient. *Id.* at 345-46. This Court has described such a document as a "bare bones" affidavit, reliance on which is objectively unreasonable. *United States v. Leon*, 468 U.S. 897, 915, 923 (1984).

That rule reaches the affiant before it reaches anyone else. Deputy Leonardis composed the single clause, swore to it, and presented it to the magistrate. She had written the report that is Appendix E, and she had obtained and reviewed the surveillance video the day before. *Malley* asks whether a reasonably competent officer in her position would have concluded that this showing sufficed to authorize an arrest for causing substantial physical harm, when the only injury her own file documents is a mark on a wrist and the charged act is a blow to the face.

The affidavit here recites an element and one fact that does not establish it. Petitioner alleged that Lieutenant Bleisath reviewed Deputy Leonardis's report in his supervisory capacity, understood that the affidavit stated no facts establishing the charged offense, and did nothing for 353 days while the warrant sat unexecuted and then ripened into an arrest. The report he reviewed is Appendix E. It names him: the report identifies Deputy Leonardis as the reporting deputy and Lieutenant Bleisath as the supervisor of record. App. 43a. It further records that the only photographed injury was a mark on the wrist, that the affiant's video review showed an open-handed slap and no hammer blow, and that Petitioner had stated he acted in fear. A

supervisor reading that report alongside the one-clause affidavit would see the gap between them. Under *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003), supervisory liability attaches where a causal connection exists between the supervisor's conduct and the violation, including where the supervisor knew the subordinate would act unlawfully and failed to stop it.

On that question the circuits are divided, and the decision below deepens the division. The Third Circuit holds that a supervisor's "personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). The Ninth Circuit agrees, holding that "a plaintiff may state a claim for supervisory liability based upon the supervisor's knowledge of and acquiescence in unconstitutional conduct by others," including where the supervisor "knowingly refus[ed] to terminate a series of acts by others" that he knew or reasonably should have known would inflict a constitutional injury. *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011). The Second Circuit has taken the opposite course, holding that there is "no special rule for supervisory liability" and that a plaintiff must prove the elements of the underlying violation "directly against the supervisory official." *Tangreti v. Bachmann*, 983 F.3d 609, 620 (2d Cir. 2020). Under *Rode* and *Starr*, a supervisor who read the report, saw that the affidavit charged an offense the report did not support, and let the warrant stand for 353 days would face liability. Under the rule applied below, he is immune without inquiry. The same facts yield opposite results depending on the circuit in which the arrest occurs.

Neither court engaged the allegation. The district court disposed of it in two sentences resting on its probable cause holding, and referred to probable cause "to arrest Plaintiff for simple battery," a different offense from the aggravated-harm misdemeanor actually charged.

The panel treated the claim as derivative. The 353-day period went unmentioned in both opinions.

That period is not a detail. An officer deciding in the field has minutes; a supervisor holding an unexecuted warrant for nearly a year has no exigency, no time pressure, and every opportunity to read the one clause on which the seizure would rest. If the deliberate maintenance of a facially empty affidavit over that span does not establish the causal connection *Cottone* describes, it is unclear what would. This Court has confirmed that the Fourth Amendment governs detention following the initiation of legal process where that process rests on an insufficient showing. *Manuel v. City of Joliet*, 580 U.S. 357, 367-69 (2017). And favorable termination is not in question: the prosecution ended without a conviction when the State entered a nolle prosequi. *Thompson v. Clark*, No. 20-659, 596 U.S. ____ (2022); *Laskar v. Hurd*, 972 F.3d 1278, 1287 (11th Cir. 2020).

IV. THE COURT OF APPEALS REVIEWED A PLEADING THE DISTRICT COURT DID NOT ADJUDICATE.

A. The futility ruling was measured against one pleading and reviewed against another.

Leave to amend must be freely given when justice so requires, Fed. R. Civ. P. 15(a)(2), and a court denying leave must give a valid reason. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Where the reason is futility, futility is measured against the proposed pleading, and appellate review of that determination must be measured against the same pleading. The district court expressly rested its immunity and futility analysis on the proposed Fourth Amended Complaint. The panel reviewed the superseded First Amended Complaint. The refined allegations, that the

affidavit was fatally conclusory and recited no basis for the evidence against Petitioner, were the allegations the district court construed and rejected, and no appellate court has examined them.

The gap is not cured by the observation that the pleadings were similar. Whether a proposed amendment would be futile is a question about that amendment. A plaintiff who is told his amendment is futile, and who then receives an affirmance addressed to a document he sought to replace, has been given the form of appellate review without its substance.

The pro se posture sharpens the concern. Pro se pleadings are held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Liberal construction is a floor for the plaintiff, not a license to build the defendants' defense for them. Here Petitioner's allegations were read narrowly and confined to a superseded document, while the immunity rationale was constructed on facts drawn from outside the pleadings and outside the affidavit. The combination describes a departure from the neutral posture Rule 12(b)(6) and this Court's cases require.

B. The finding of futility rests on a misdescription of the affidavit itself.

A finding of futility is a legal nullity if it rests on a misdescription of the very document the proposed pleading challenges. At the pleading stage a court must accept the plaintiff's factual allegations as true. *Erickson*, 551 U.S. at 94; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Petitioner alleged that the affidavit was bare bones and conclusory and recited no evidentiary basis for the charge against him. That allegation was not merely plausible. It was demonstrable from the document itself, which is reproduced at Appendix D and consists of a single factual clause.

The district court neither accepted that allegation nor rejected it. It bypassed the allegation by describing the affidavit as containing four facts the affidavit does not contain, and it then located probable cause in that description rather than in the document. Doc. 31 at 18-19. A futility ruling constructed on a misdescription of the operative document tests nothing the plaintiff actually pleaded.

The consequence was the loss of a claim. *Franks v. Delaware* entitles a claimant to attack a warrant affidavit where a false statement was made knowingly and intentionally, or with reckless disregard for the truth, and the statement was necessary to the finding of probable cause. 438 U.S. at 156. Petitioner's claim was of that character. The affidavit swore to a strike to the face, and the affiant's own file recorded the only documented injury as a mark on the wrist. By crediting the affidavit with facts the affiant never put in it, the court supplied a factual basis the sworn document does not contain, and the *Franks* question was disposed of without testing what the affiant actually swore. The court of appeals did not reach the problem, because it reviewed the superseded pleading rather than the proposed Fourth Amended Complaint the district court had construed. The misdescription escaped review at both levels.

CONCLUSION

The affidavit that authorized Petitioner's arrest is one clause long and is reproduced at Appendix D. The courts below sustained it by crediting four facts it does not contain, all four of which appear in the affiant's incident report at Appendix E, and one of which supplied the element of injury the affidavit omitted entirely. That evidence was a photograph of a mark on the wrist, offered to establish harm from a blow to the face. This Court has held since *Aguilar* that a reviewing court may consider only what the magistrate was told. On how far a court may depart from that limit the circuits and the state courts of last resort are divided three ways, and on whether known facts of justification enter the probable cause inquiry they are divided again. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Willie Bruce Bryant
WILLIE BRUCE BRYANT
Petitioner, Pro Se
3870 Genoa Court
Duluth, GA 30096

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