

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-3229

BRYANT OBEN ARREY

v.

JONATHAN ZEBLEY, in His Official and Individual Capacities,
Appellant

Appeal from U.S. District Court, E.D. Pa.
Judge Juan R. Sánchez, No. 2:24-cv-00589

Before: SHWARTZ, CHUNG, and FISHER, *Circuit Judges*
Submitted: Oct. 2, 2026; Filed: Oct. 22, 2026

NONPRECEDENTIAL OPINION*

CHUNG, *Circuit Judge*. Bryant Arrey sued Officer Jonathan Zebley under 42 U.S.C. § 1983, alleging false arrest and malicious abuse of process related to his arrest and prosecution for driving under the influence of alcohol or controlled substance (“DUI”). Zebley moved for summary judgment on both claims, and the District Court denied the motion because there were genuine disputes of material facts that precluded qualified immunity. Zebley contends on interlocutory appeal that the District Court erred. We will affirm.

I. BACKGROUND¹

* This is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

¹ Because we write for the parties, and given we are reviewing a qualified immunity ruling, we recite only the facts pertinent to our decision and rely on the facts as set forth in

A. Factual Background

On the rainy night of July 4, 2023,² Bryant Arrey fell asleep in his car while parked on a residential street in Brookhaven, Pennsylvania. *Arrey v. Zebley*, No. 24-589, 2025 WL 3143450, at *1 (E.D. Pa. Nov. 10, 2025). Officer Jonathan Zebley stated in his report that Arrey's car was parked in the middle of the street, obstructing the flow of traffic. *Id.* Zebley notified dispatch that he was performing a traffic stop, after which Officers Gregory Martin and Michael Strofe responded. *Id.* Upon stopping, Zebley saw Arrey reclined in the driver's seat, knocked on the window, and instructed him to exit the car. *Id.* Arrey followed his directions while explaining that he was an Uber driver who had pulled over because business was slow and he felt "a little dizzy." *Id.* Zebley told him that his eyes were red, and Arrey responded that his arm had been over his face and eyes. *Id.* None of the officers smelled any alcohol or marijuana on Arrey or in his car. *Id.*

Arrey consented to take a field sobriety test. *Id.* After six sobriety tests, Zebley arrested Arrey on suspicion of DUI. *Id.* He drove Arrey to a nearby hospital for a blood draw. *Id.* at *2. The two then went to the police station, and Arrey refused to answer questions about himself during processing and insisted the blood tests would exonerate him. *Id.* at *2, *5. Arrey's blood tested negative for alcohol and drugs on July 14, 2023, and, two weeks later, tested negative for synthetic marijuana. *Id.* An inventory search additionally found no drugs or paraphernalia in the car. *Id.* at *1.

the District Court's opinion. *Jacobs v. Cumberland County*, 8 F.4th 187, 193 (3d Cir. 2021).

² The record reflects that Arrey's arrest was on July 4, shortly after midnight, but Zebley's interactions with him began on July 3.

Still, Zebley submitted an affidavit of probable cause in support of a criminal complaint on September 4, 2023 for a DUI charge against Arrey. *Id.* at *2. The affidavit alleged that Arrey “parked ten feet from the curb and obstruct[ed] traffic,” had “reddened, glassy eyes,” had “[s]mall flakes of vegetable matter” on his pants and in his car, and was not able to recall “basic identifying information, such as his place of birth, height, weight, and social security number.” *Id.* Zebley noted “no positive findings of toxicological significance for the two tested panels for known intoxicants,” but stated he believed “Arrey was under the influence of a synthetic cannabinoid variation that would not show on current testing panels.” *Id.* at *5. Magisterial District Judge Georgia Stone signed the affidavit and the complaint on September 11, 2023. *Id.* at *2.

After two continuances, Judge Stone held the probable cause hearing four months later in January of 2024. *Id.* Assistant District Attorney Jack Meehan told Arrey that “the blood [test] results came back negative, and the charges would be dropped.” *Id.* Neither Meehan nor Zebley remembered whether or when Zebley provided the blood tests to the District Attorney’s Office. *Id.* at *6. Meehan left the courtroom, returned with Zebley, and allegedly said: “I don’t know why this guy wants to pursue this case.” *Id.* at *2. Meehan tried to continue with the hearing, but Judge Stone called counsel into chambers and recused herself from the case. *Id.* Two weeks later, the District Attorney’s Office withdrew the DUI charge against Arrey. *Id.*

B. Procedural History

Arrey sued Zebley in the Eastern District of Pennsylvania, alleging false arrest, malicious abuse of process, malicious prosecution, conspiracy, supervisory liability, and

intentional infliction of emotional distress. *Id.* Zebley moved to dismiss all claims, and the District Court granted the motion in part but allowed the false arrest and malicious abuse of process claims to proceed. *Arrey v. Zebley*, No. 25-0589, 2025 WL 409661, at *1 (E.D. Pa. Feb. 5, 2025). Zebley later moved for summary judgment on both claims, which the District Court denied based on “multiple genuine disputes of material facts for both claims and [that] those factual disputes preclude qualified immunity at this stage.” *Arrey*, 2025 WL 3143450, at *3. Specifically, the District Court concluded that a reasonable jury could find that Arrey had no marijuana “shake” or “vegetable matter” on his pants or in his car, did not have red or glassy eyes, parked less than ten feet from the curb, sufficiently demonstrated a lack of intoxication during the field sobriety tests, and refused to answer questions during processing for reasons unrelated to his memory. *Id.* at *4. The District Court also found there were genuine disputes as to whether Zebley delayed providing Arrey’s negative test results to prosecutors and pressured Meehan to continue prosecuting Arrey. *Id.* at *6. Viewing these facts in the light most favorable to Arrey, the District Court held that a reasonable jury could find that Zebley had violated Arrey’s Fourth Amendment right to be free from unreasonable seizure by falsely arresting him and Fourteenth Amendment right to procedural due process against malicious abuse of process. *Id.* at *5–6.

The District Court also determined those rights were clearly established. With respect to the false arrest claim, it concluded that “a clearly established Fourth Amendment violation occurs when an officer seizes a driver based on an unreasonable belief that ‘vegetable matter’ found on the floor of the vehicle was marijuana.” *Id.* at *7 (citing

Karnes v. Skrutski, 62 F.3d 485, 493–94, 496 (3d Cir. 1995)). As for his second claim, “[m]alicious abuse of process has ... been clearly established to be ‘by definition a denial of procedural due process’ rights.” *Id.* at *8 (quoting *Jennings v. Shuman*, 567 F.2d 1213, 1220 (3d Cir. 1977)). The District Court accordingly denied qualified immunity, and Zebley appealed under the collateral order doctrine.

II. DISCUSSION³

Qualified immunity shields law enforcement from liability “unless their conduct violates a clearly established right.” *Evans v. Newark City*, 152 F.4th 537, 544 (3d Cir. 2025). A defendant is not entitled to qualified immunity when: “(1) [] the plaintiff sufficiently alleged a right had been violated, and (2) [] that right was clearly established when it was allegedly violated to the extent ‘that it would have been clear to a reasonable person that his [or her] conduct was unlawful.’” *Id.* (quoting *Clark v. Coupe*, 55 F.4th 167, 178 (3d Cir. 2022)).

A. The District Court properly denied qualified immunity on the false arrest

³ “We have jurisdiction to review the District Court’s denial of qualified immunity under 28 U.S.C. § 1291 and the collateral-order doctrine.” *Jacobs*, 8 F.4th at 193. That doctrine allows us to “review whether the set of facts identified by the district court is sufficient to establish a violation of a clearly established constitutional right.” *Id.* (quoting *Dougherty v. Sch. Dist. of Phila.*, 772 F.3d 979, 986 (3d Cir. 2014)). We lack jurisdiction, however, to review the sufficiency of the evidence unless it is “blatantly contradicted” by the record. *Id.* (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)). We review the District Court’s order granting summary judgment *de novo*, *Jutrowski v. Township of Riverdale*, 904 F.3d 280, 288 (3d Cir. 2018), and will affirm if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law,” Fed. R. Civ. P. 56(a). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *SodexoMAGIC, LLC v. Drexel Univ.*, 24 F.4th 183, 203–04 (3d Cir. 2022) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

claim.⁴

1. A reasonable jury could find that Zebley violated Arrey's Fourth Amendment right against false arrest.

False arrest requires “(1) that there was an arrest; and (2) that the arrest was made without probable cause.” *Harvard v. Cesnalis*, 973 F.3d 190, 199 (3d Cir. 2020) (quoting *James v. City of Wilkes-Barre*, 700 F.3d 675, 680 (3d Cir. 2012)). Only the second element is in dispute here. “[T]he presence or absence of probable cause” is a question of law, *Evans*, 152 F.4th at 544, which we will review relying upon the facts as identified by the District Court, *Jacobs*, 8 F.4th at 193. “Probable cause exists if there is a ‘fair probability’ that the person committed the crime at issue.” *Harvard*, 973 F.3d at 199 (citation omitted). An arresting officer has probable cause to arrest a suspect “when the facts and circumstances within the arresting officer’s knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested.” *Id.* (quoting *Osratti v. N.J. State Police*, 71 F.3d 480, 483 (3d Cir. 1995)).

A reasonable jury could find that Zebley arrested Arrey without probable cause. Under Pennsylvania law, a person is guilty of DUI if he was “under the influence of a drug or combination of drugs to a degree which impairs the individual’s ability to safely drive, operate or be in actual physical control of the movement of the vehicle.” 75 Pa. Cons. Stat. § 3802(d)(2). Viewing the evidence in the light most favorable to Arrey, the District Court

⁴ Although the District Court held that a reasonable jury could find that Zebley made false statements or omissions in his affidavit of probable cause, Arrey has disavowed any contention that his false-arrest claim is predicated on this theory.

found a lack of probable cause given that Arrey parked reasonably close to the curb, did not have red or glassy eyes, had no marijuana “shake” on his pants or in his car, and showed no signs of intoxication during the six sobriety tests. *See Arrey*, 2025 WL 343450, at *4. He was in his car late at night while business was slow and rain was heavy. *Id.* at *1. He repeatedly denied smoking marijuana, and officers never smelled any drugs or alcohol on him or in his car. *Id.* at *1–2. We perceive no error in the District Court’s conclusion that these facts do not support probable cause to arrest Arrey for driving under the influence.⁵

2. *It would have been clear to a reasonable officer that he could not arrest a person for DUI based on the totality of the circumstances that Zebley confronted.*

A right is clearly established if “it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Urda v. Sokso*, 146 F.4th 311, 314 (3d Cir. 2025) (quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)). That typically requires controlling precedent or a “robust consensus of cases of persuasive authority.” *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). We must determine whether existing law “clearly establish[ed] that what *this* officer did in *these* circumstances violated the plaintiff’s rights.” *Id.* (citing *Anderson v. Creighton*, 483 U.S. 635, 639–41 (1987)).

The District Court defined the right as the right not to be arrested “based on an

⁵ Zebley cannot relitigate factual disputes on interlocutory appeal. He contends that Arrey parked his car in “a portion of the dark roadway without lights,” had “red, glassy eyes,” had marijuana “shake” on his pants and in his car, and “provide[d] indicators” of intoxication during the sobriety tests. *See Appellant’s Br.* at 12, 14–16. The District Court concluded that each of these material facts were in genuine dispute, and we do not have jurisdiction to review that portion of its decision absent a blatant contradiction in the record. *Jacobs*, 8 F.4th at 193. Upon review of the record, including video footage, we reject any argument that the record “blatantly contradict[s]” the District Court’s conclusions. *Scott*, 550 U.S. at 380.

unreasonable belief that ‘vegetable matter’ found on the floor of the vehicle was marijuana.” *Arrey*, 2025 WL 3143450, at *7 (quoting *Karnes*, 62 F.3d at 493–94, 496). Arrey’s false arrest claim asserted that Zebley lacked probable cause given the totality of circumstances, which included not just the absence of “vegetable matter,” but also factors such as where he parked, his appearance, the lack of the smell of marijuana or alcohol, his statements, and his performance on sobriety tests. *See Arrey*, 2025 WL 3143450, at *4. Because the totality of circumstances “is especially important for Fourth Amendment claims ... because probable cause depends heavily on each case’s facts[,]” we agree with Zebley that the right was not articulated at the right level of specificity. *Urda*, 146 F.4th at 314 (citing *District of Columbia v. Wesby*, 583 U.S. 48, 64 (2018)).⁶

Nonetheless, our precedent clearly establishes that a reasonable officer could not arrest a person for a DUI under the facts identified by the District Court: Zebley encountered a person who was asleep in their car late at night, felt dizzy, parked reasonably close to the curb, had no red or glassy eyes, had no drugs on their person or in their car, passed six sobriety tests, and did not smell of alcohol or drugs. In *Harvard v. Cesnalis*, 973 F.3d 190 (3d Cir. 2020), we held that a state trooper did not have probable cause to arrest the plaintiff for a DUI after he admitted to drinking two beers four hours earlier, moderately smelled of alcohol, spoke rapidly, appeared sweaty, and blew a blood alcohol content just below the legal limit. *Id.* at 196–97, 201–02. *Harvard* involved “closely analogous” facts providing Zebley with “fair warning” that, under the facts viewed in the light most favorable to Arrey,

⁶ We do not agree with Zebley’s articulation of the right, though, which resolves factual disputes against Arrey. *See Jacobs*, 8 F.4th at 193.

he did not have probable cause to arrest Arrey for a DUI. *Mack v. Yost*, 63 F.4th 211, 233 (3d Cir. 2023).

B. The District Court properly denied qualified immunity on the malicious abuse of process claim.

1. A reasonable jury could find for Arrey on his malicious abuse of process claim.

We have said that malicious abuse of process “is by definition a denial of procedural due process.” *Jennings*, 567 F.2d at 1220. Accordingly, at a minimum, a plaintiff must establish a violation of procedural due process, such as when a person is deprived of liberty without due process. *Id.* Continued prosecution implicates a liberty interest, even when a person is not detained and has been released on bail. *Id.* A deprivation of that liberty interest may arise when an officer “bring[s] a prosecution ... without probable cause.” *Id.*; *see also Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000).⁷ A malicious abuse of process

⁷ Arrey’s claim alleges a violation of his constitutional rights but does not specify whether he is bringing a Fourth or Fourteenth Amendment claim. Relying on the plain language in *Jennings*, the District Court construed it as a Fourteenth Amendment procedural due process claim. *Arrey*, 2025 WL 3143450, at *7–8. Neither party argues which amendment applies, nor does *Jennings* directly address that question. *See* 567 F.2d at 1220. Although the parties assume that Arrey’s claim is controlled by the Fourteenth Amendment, there is authority suggesting it may be controlled by the Fourth Amendment. *See, e.g., Thompson v. Clark*, 596 U.S. 36, 42 (2022); *Black v. Montgomery County*, 835 F.3d 358, 367–68 (3d Cir. 2016); *Gallo v. City of Philadelphia*, 161 F.3d 217, 222 (3d Cir. 1998); *see also Swartz v. Insogna*, 704 F.3d 105, 112 (2d Cir. 2013); *Smart v. Bd. of Trs. of Univ. of Ill.*, 34 F.3d 432, 434 (7th Cir. 1994); *Nieves v. McSweeney*, 241 F.3d 46, 53–54 (1st Cir. 2001). We have noted that claims that assert violations occurring postarrest but pretrial may implicate either amendment. *See Halsey v. Pfeiffer*, 750 F.3d 273, 291 (3d Cir. 2014). Because the parties do not raise the issue, and because the distinction between the Fourth and Fourteenth Amendments does not make a difference to Arrey’s claim, we assume without deciding that the Fourteenth Amendment controls. Under either amendment, Arrey’s claim is premised on a lack of probable cause and “[t]he applicable standard of what constitutes probable cause ... is the same under the Fourth and Fourteenth

claim also requires establishing that the prosecution “is used for a purpose other than that intended by the law.”⁸ *Rose v. Bartle*, 871 F.2d 331, 350 n.17 (3d Cir. 1989) (quoting *Jennings*, 567 F.2d at 1217).

Arrey alleges that Zebley used the legal process “for an improper purpose, as he lacked probable cause to arrest and prosecute [him],” JAppx35, and caused “the prosecution to proceed for more than a month after [he] knew Arrey’s blood test was negative” because he delayed giving those test results to ADA Meehan, *Arrey*, 2025 WL 3143450, at *6. Arrey also asserted that ADA Meehan “was going to drop the DUI charges after seeing the blood test results on January 18, 2024, but then reversed his decision” because Zebley “want[ed] to pursue this case.” *Id.* at *2, *6.⁹ Based upon these facts, the District Court did not err. As discussed above, a reasonable jury could find that Zebley’s observations at the scene did not establish probable cause. Accordingly, a continued viable prosecution depended upon test results establishing that Arrey was under the influence of synthetic marijuana.¹⁰ The test results did not do so. *Id.* at *2. A reasonable jury could thus find

Amendments.” *One 1958 Plymouth Sudan v. Pennsylvania*, 380 U.S. 693, 702 n.12 (1965) (citation omitted).

⁸ We note that, while a malicious abuse of process claim may require such an intent, subjective intent is not part of determining whether a lack of probable cause has resulted in a deprivation of liberty without procedural due process or an unreasonable seizure. *See Jennings*, 567 F.2d at 1220 (treating the question of whether a constitutional violation has been pled as a different question than whether a malicious abuse of process claim has been pled). It is well-established that “a probable cause inquiry is entirely objective.” *Halsey*, 750 F.3d at 299. Hence, intent to harass is not part of determining whether a prosecution is unconstitutional for lack of probable cause.

⁹ For the same reasons, the record does not “blatantly contradict[]” this evidence. *Scott*, 550 U.S. at 380.

¹⁰ To the extent Arrey asserts that, even if supported by probable cause, Zebley is still

that Arrey's continued DUI prosecution was not supported by probable cause. *See Jennings*, 567 F.2d at 1220; *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (recognizing a Fourth Amendment violation when police seized the defendant without probable cause). Moreover, a lack of probable cause may reflect malicious intent. *Lippay v. Christos*, 996 F.2d 1490, 1502 (3d Cir. 1993). Taken together, the statement that Zebley insisted on continuing the prosecution, the negative test results, and the initial lack of probable cause support the District Court's conclusion that Arrey raised a genuine dispute that Zebley also continued the prosecution "for a purpose other than that intended by the law." *Rose*, 871 F.2d at 350 n.17 (quoting *Jennings*, 567 F.2d at 1217).¹¹ The District Court therefore did not err at the first step of its qualified immunity analysis.

2. *It would have been clear to a reasonable officer that he could not continue a DUI prosecution based on the totality of the circumstances that Zebley confronted.*

liable for malicious abuse of process solely due to Zebley's delay in providing ADA Meehan with exculpatory evidence, that action cannot be brought under § 1983 because it does not state a constitutional violation. It is true that the failure to disclose exculpatory evidence "in time for its effective use at trial" may violate a defendant's right to a fair trial. *United States v. Higgs*, 713 F.2d 39, 44 (3d Cir. 1983) (relying on the right in *Brady v. Maryland*, 373 U.S. 83 (1963)). However, where the government has dismissed all criminal charges prior to trial, "courts have held universally that the right to a fair trial is not implicated and, therefore, no cause of action exists under § 1983." *Morgan v. Gertz*, 166 F.3d 1307, 1310 (10th Cir. 1999) (collecting cases); *see also Abbey v. Metro. Gov't of Nashville & Davidson Cnty.*, 182 F.4th 496, 504 (6th Cir. 2026) (collecting cases holding the same).

¹¹ Zebley's counterarguments again depend on resolving factual disputes. He believes that "any delay in the prosecution cannot be imputed to [him]," Appellant's Br. at 22, and that "Arrey has no personal knowledge of any statements made by [him]" during the probable cause hearing, *id.* at 25. The District Court concluded that there was a genuine dispute of material fact, and "[w]e cannot, in an interlocutory appeal of this nature, consider whose version of the facts is correct," *Walker v. Horn*, 286 F.3d 705, 710 (3d Cir. 2002).

In denying qualified immunity, the District Court held that “[m]alicious abuse of process has also been clearly established to be ‘by definition a denial of procedural due process’ rights.” *Arrey*, 2025 WL 3143450, at *8 (quoting *Jennings*, 567 F.2d at 1220; *Rose*, 871 F.2d at 350 n.17). Zebley argues that right was defined “at a high level of generality and abstractly, rather than with the required specificity.” Appellant’s Br. at 8. We agree. Qualified immunity is not “a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.” *Urda*, 146 F.4th at 314 (quoting *Anderson*, 483 U.S. at 639). Instead, “the right [Zebley] is alleged to have violated must have been ‘clearly established’ in a more particularized, and hence more relevant, sense.” *Anderson*, 483 U.S. at 640.

For reasons already stated, however, it would have been clear to a reasonable officer that he lacked probable cause to arrest someone for a DUI at the initial scene. *See supra* subsection III.A.2 (citing *Harvard*, 973 F.3d at 196–97, 201–02). A reasonable officer would continue to be on notice that he lacked probable cause for continued prosecution of the DUI charge in the absence of a positive drug test. *Harvard*, 973 F.3d at 201–02; *see also Jennings*, 567 F.2d at 1220 (determining that a prosecutor violates due process where he continues a prosecution “without probable cause and for an improper purpose”). We thus hold that existing law “clearly establish[ed] that what [Zebley] did in these circumstances violated [Arrey’s] rights.” *Urda*, 146 F.4th at 314.¹²

¹² Neither of Zebley’s counterarguments are persuasive. First, he says it was not clearly established that a delay in prosecution “constitute[s] proof that the Officer intended to continue the prosecution to harass instead of prosecute.” Opening Br. at 21. But subjective

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For the reasons stated above, we will AFFIRM the order of the District Court.

intentions “play no role” in the probable cause analysis, *Whren v. United States*, 517 U.S. 806, 813 (1996). As explained above, the intent to harass is an element of a malicious abuse of process claim, not an element of proving a Fourth or Fourteenth Amendment violation based on lack of probable cause.

Second, he argues that it was not clearly established that an officer could be subject to a malicious abuse of process claim “where the plaintiff claims to have been told by the prosecutor that he was pressured to continue on with a prosecution when the prosecutor denies any such statement.” Opening Br. at 23. Probable cause, however, “depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer *at the time of the arrest*.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (emphasis added). Meehan’s statement to Arrey occurred months after his arrest. *Arrey*, 2025 WL 3143450, at *2, *6.