

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of May, two thousand twenty-six.

PRESENT:

PIERRE N. LEVAL,
GERARD E. LYNCH,
RICHARD J. SULLIVAN,
Circuit Judges.

MICHAEL SMITH,

Plaintiff-Appellant,

v.

No. 24-2569-cv

COUNTY OF NASSAU, TIMOTHY SLEVIN,
in his official and individual capacity,
MARTIN HELMKE, in his official and
individual capacity,

*Defendants-Appellees.**

For Plaintiff-Appellant:

STEPHEN BERGSTEIN (Frederick K. Brewington, Law Offices of Frederick K. Brewington, Hempstead, NY, *on the brief*), Bergstein & Ullrich, New Paltz, NY.

For Defendants-Appellees:

MATTHEW A. CUOMO, Cuomo LLC, Mineola, NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Margo K. Brodie, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the September 10, 2024 judgment of the district court is **AFFIRMED**.

Michael Smith appeals from the district court's grant of judgment as a matter of law to the County of Nassau, Detective Timothy Slevin, and Detective Martin Helmke (together, "Defendants"), following a jury trial on Smith's claims for abuse-of-process under 42 U.S.C. § 1983. *See* Fed. R. Civ. P. 50(a), (b). On appeal, Smith argues that the district court erred in granting Defendants' Rule 50 motion based on qualified immunity and urges us to reinstate the jury verdict and

* The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

damages award in his favor. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

I. Background.

In October 2009, Detectives Slevin and Helmke arrested Smith for criminal trespass after he refused to leave a residence that he had been renting in Roosevelt, New York. *See* N.Y. Penal Law § 140.10. The charges against Smith were subsequently dismissed, whereupon Smith sued the County, Slevin, and Helmke, among others, asserting federal claims for denial of due process, false arrest, malicious prosecution, abuse of process, and municipal liability under section 1983, and state-law claims for false arrest, gross negligence, wrongful eviction, and assault and battery. The case ultimately went to trial on the federal false arrest and abuse-of-process claims, as well as the state false arrest, assault, and battery claims, and a jury returned verdicts for Defendants on all claims except one – abuse of process – for which it awarded Smith \$251,000 in compensatory and punitive damages. Nevertheless, because the jury returned a special-verdict form that expressly found that Slevin and Helmke “reasonably believe[d]” that “[Smith] knew he had no license to reside” at the residence at the time of his arrest, J. App’x

at 40–41, the district court granted Defendants’ motion for judgment as a matter of law under Federal Rule of Civil Procedure 50. Relying on our decision in *Mangino v. Inc. Vill. of Patchogue*, 808 F.3d 951 (2d Cir. 2015), the district court reasoned that “the existence of probable cause [to arrest Smith] require[d] the [c]ourt to conclude that Defendants are entitled to qualified immunity.” Sp. App’x at 13; *see also Mangino*, 808 F.3d at 958 (granting qualified immunity to the defendant officer because of “confusion within our Circuit regarding whether probable cause is a complete defense to a claim of abuse of process under New York law”).

II. Legal Standards.

“We review the district court’s grant of a motion for judgment as a matter of law *de novo*.” *Parrot v. Guardian Life Ins. Co. of Am.*, 338 F.3d 140, 142 (2d Cir. 2003). In reviewing a motion made under Federal Rule of Civil Procedure 50, we “consider the evidence in the light most favorable to the party against whom the motion was made” and afford “that party the benefit of all reasonable inferences that the jury might have drawn in its favor from the evidence.” *ING Glob. v. United Parcel Serv. Oasis Supply Corp.*, 757 F.3d 92, 97 (2d Cir. 2014) (alteration adopted and internal quotation marks omitted).

“When a plaintiff asserts an abuse-of-process claim under Section 1983,” *Mangino*, 808 F.3d at 958 n.5, “we turn to state law to find the elements,” *Cook v.*

Sheldon, 41 F.3d 73, 80 (2d Cir. 1994). In New York, an “abuse-of-process claim lies against a defendant who (1) employs regularly issued legal process to compel performance or forbearance of some act (2) with intent to do harm without excuse o[r] justification, and (3) in order to obtain a collateral objective that is outside the legitimate ends of the process.” *Savino v. City of New York*, 331 F.3d 63, 76 (2d Cir. 2003) (internal quotation marks omitted). Under this test, “a plaintiff must establish that the defendants had an improper purpose in instigating the action[,] and that they aimed to achieve a collateral purpose beyond or in addition to his criminal prosecution.” *Hernandez v. United States*, 939 F.3d 191, 204 (2d Cir. 2019) (internal quotation marks omitted).

Qualified immunity is a legal defense that “protects government officials from civil damages liability ‘insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Jones v. Treubig*, 963 F.3d 214, 224 (2d Cir. 2020) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). To determine whether a defendant is entitled to qualified immunity from suit, a court must “consider the specificity with which a right is defined, the existence of Supreme Court or Court of Appeals case law on the subject, and the understanding of a reasonable officer in light of

preexisting law.” *Chamberlain ex rel. Est. of Chamberlain v. City of White Plains*, 960 F.3d 100, 110 (2d Cir. 2020) (internal quotation marks omitted). “If officers of reasonable competence could disagree on the issue, immunity should be recognized.” *Mangino*, 808 F.3d at 959 (alterations adopted) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

III. The District Court Properly Granted Defendants’ Rule 50 Motion on Smith’s Abuse-of-Process Claim.

We have not determined whether the existence of probable cause categorically negates an abuse-of-process claim, and we have in fact acknowledged the uncertainty that exists in our caselaw about “whether probable cause is a complete defense to a claim of abuse of process under New York law.” *Id.* at 958. We have thus far declined to “resolve this confusion” because “its very existence” typically entitles a defendant to qualified immunity. *Id.* at 959; *see also Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (emphasizing that for purposes of qualified immunity, “existing precedent must have placed the statutory or constitutional question beyond debate”). Though *Mangino* involved events that occurred in 2005, subsequent non-precedential decisions from this Court have highlighted that the law remains unclear on the underlying question – which was certainly unclear as of October 2009, when the events of this case transpired. *See,*

e.g., *DuBois v. Cunningham*, No. 21-923, 2022 WL 2186956, at *3 (2d Cir. June 17, 2022); *Pulk v. Winter*, 722 F. App'x 36, 39 (2d Cir. 2018); *Tuccillo v. County of Nassau*, 723 F. App'x 81, 82 (2d Cir. 2018). Indeed, district courts have historically reached and continue to reach contrary results as to whether the existence of probable cause is a complete defense to an abuse-of-process claim.¹

The district court properly did not reach Defendants' defense of qualified immunity until after the jury resolved disputed issues of fact surrounding Smith's arrest. But the evidence at trial amply supported the jury's conclusion that Detectives Slevin and Helmke "reasonably believe[d]" that "[Smith] knew he had no license to reside at" the Williams Street residence, supplying probable cause for his arrest. J. App'x at 40–41; *see* N.Y. Penal Law § 140.10. To begin, Smith testified to learning that Harry Terezakis, not the person from whom Smith rented the property, owned the residence where Smith was residing. Four days later,

¹ Compare, *e.g.*, *Hoyos v. City of New York*, 999 F. Supp. 2d 375, 391 (E.D.N.Y. 2013) ("[T]here was probable cause for plaintiff's arrest and prosecution, which provides an excuse or justification for defendants' use of regularly issued legal process."); *Hurley v. Town of Southampton*, 17-CV-5543, 2018 WL 3941944, at *16 (E.D.N.Y. Aug. 13, 2018); *Irish v. City of New York*, No. 09 Civ. 5568, 2010 WL 5065896, at *6 (S.D.N.Y. Dec. 6, 2010); *Hickey v. City of New York*, No. 01-CV-6506, 2004 WL 2724079, at *7 (S.D.N.Y. Nov. 29, 2004), *aff'd*, 173 F. App'x 893 (2d Cir. 2006), *with Intorcia v. City of New York*, 811 F. Supp. 3d 372, 391 (E.D.N.Y. 2025) ("[T]his [c]ourt finds that probable cause is not a complete defense to abuse of process."); *Ying Li v. City of New York*, 246 F. Supp. 3d 578, 618 (E.D.N.Y. 2017); *Mangino v. Inc. Vill. of Patchogue*, 814 F. Supp. 2d 242, 248 (E.D.N.Y. 2011); *TADCO Const. Corp. v. Dormitory Auth. of N.Y.*, 700 F. Supp. 2d 253, 275 (E.D.N.Y. 2010).

Terezakis filed a criminal complaint with the Nassau County District Attorney's Office against Smith, explaining that Smith was "unknown to [Terezakis]" and "ha[d] no right to [be in] this house." Dist. Ct. Doc. No. 160, Ex. 2 at 1. The matter was referred to Slevin, who testified that he spoke with Anna Gaetano, the property manager for the residence, who informed him that "[Smith] was still in the house and could no longer be in the house." J. App'x at 367. Finally, upon arriving at the residence on October 23, Slevin discovered that Smith remained "in the house after the owners had changed the locks to keep [hi]m out," which provided "the basis for a criminal trespass charge." *Id.* at 373.

Under these circumstances, "officer[s] 'of reasonable competence' could have concluded that [Smith's] arrest was justified by probable cause." *Figueroa v. Mazza*, 825 F.3d 89, 99 (2d Cir. 2016) (quoting *Malley*, 475 U.S. at 341); *see also United States v. DiNapoli*, 8 F.3d 909, 915 (2d Cir. 1993) (en banc) (emphasizing "the low standard of probable cause"). And that, in turn, entitles Slevin and Helmke to qualified immunity.

* * *

We have considered Smith's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court