

In the
United States Court of Appeals
For the Seventh Circuit

No. 24-2682

JEVARREO KELLEY-LOMAX,

Plaintiff-Appellant,

v.

CITY OF CHICAGO, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:20-cv-04595 — **Manish S. Shah**, *Judge*.

ARGUED OCTOBER 28, 2025 — DECIDED AUGUST 13, 2026

Before BRENNAN, *Chief Judge*, and JACKSON-AKIWUMI and
LEE, *Circuit Judges*.

JACKSON-AKIWUMI, *Circuit Judge*. Officers Robert Garduno and Anthony Spicuzza arrested Jevarreo Kelley-Lomax for possession of a gun. The officers attributed the gun to him after conducting an unchallenged search of a car and finding it under the seat he had most recently occupied. At trial, the state failed to offer sufficient evidence of Kelley-Lomax's guilt, so the state court judge granted him a directed verdict

on the charge. Kelley-Lomax later sued the officers for false arrest and malicious prosecution pursuant to 42 U.S.C. § 1983. The district court found that the existence of probable cause was fatal to both claims and granted summary judgment to the officers. Because we agree that the undisputed facts establish both probable cause to arrest and probable cause to prosecute, we affirm.

I

In February 2019, a 911 caller reported that a group of African American males were pointing guns at his car at a gas station. Officers Garduno and Spicuzza responded to the dispatch report that “males were standing at pump #6 and pointed two guns at the caller’s vehicle.” The dispatcher also stated that one of the armed men “was an African American male wearing a black coat with stripes.”

The officers did not see anyone at pump #6 when they arrived. However, they did see a blue SUV with four African American males inside parked at an immediately adjacent pump. Kelley-Lomax sat in the SUV’s front passenger seat wearing a black hooded sweatshirt that was open, revealing a white shirt underneath. The officers’ body camera footage shows that another occupant wore a blue jacket with a red and white ring around each sleeve, and the remaining two occupants wore black hooded sweatshirts.

The officers ordered the men out of the SUV, frisked them, and handcuffed them at the back of the vehicle. After the men were secured, Officer Garduno radioed to dispatch for additional descriptive details of the suspects. Dispatch reconnected with the 911 caller who described his assailants’ vehicle as “brown or orange”; and described one of the allegedly

armed men as “wearing a black coat with a ring around the coat.” The caller further described the coat as “a black puffy coat with like a colored ring around, maybe red or something like that.”

At some point during the encounter, the officers searched the SUV. Another officer who assisted with the search found a loaded handgun under the front passenger seat. The gun was near a soda bottle and chip bag and not visible until the officer looked under the seat. When asked, Kelley-Lomax admitted that he did not have a Firearm Owner’s Identification Card or a Concealed Carry License authorizing him to carry a gun. Officer Garduno arrested Kelley-Lomax for aggravated unlawful use of a weapon which prohibits an unlicensed person from possessing a gun on or about his person or in any vehicle. 720 ILCS 5/24-1.6(a)(1) (2018).¹ Sometime at the scene, the officers also learned that Kelley-Lomax’s brother, who was in another car at the gas station, had rented the SUV and had authorization to carry a gun. The officers attempted but were unable to review the gas station surveillance video from that evening to confirm the caller’s report.

Officers Garduno and Spicuzza jointly prepared the arrest report and the incident report. In the arrest report, they said that they responded to a report of a “person with a gun” and noted “CALLER RELATED DESCRIPTION OF OFFENDERS ARE ONE MALE BALCK (sic) WEARING A BLACK JACKET, THE SECOND OFFENDER WAS A MALE BALCK

¹ We cite the version of the statute in effect at the time of Kelley-Lomax’s arrest. The statute has since been amended, and its title has changed from “aggravated unlawful use of a weapon” to “aggravated unlawful possession of a weapon.”

(sic) AND HAD A BLACK JACKET WITH A STRIPE.” In the incident report, the officers indicated that they requested a call back to the victim “with negative results” and spoke to a clerk at the gas station who stated that she “D[ID] NOT HAVE ACCESS TO SECURITY CAMERA.” (The officers returned to the gas station another day to view the security camera footage.)

The Cook County State Attorney’s Office approved felony charges and presented the case to a grand jury. Officer Garduno was the only witness to testify at the grand jury hearing. He testified that two of the SUV’s occupants “fit the physical and clothing description given by the 911 caller,” the vehicle matched the caller’s description, and video footage from the gas station showed individuals exiting a vehicle with handguns and pointing them in the direction of another vehicle that was driving by. The grand jury indicted Kelley-Lomax and the case proceeded to trial.

At trial, Officer Garduno was again the only witness. He repeated his testimony that he observed “two occupants” who “matched the description provided to us by the caller.” He also testified that he retrieved the gun from underneath Kelley-Lomax’s seat. After the state rested its case, the defense moved for a directed verdict on the grounds that the state had not proven beyond a reasonable doubt that Kelley-Lomax knew the gun was under his seat. The court granted the defense’s motion.

Kelley-Lomax subsequently brought this action pursuant to 42 U.S.C. § 1983 for false arrest and malicious prosecution under the Fourth Amendment. The officers moved for summary judgment and the district court granted the motion. The court held that the gun’s proximity and accessibility to Kelley-

Lomax provided probable cause for the officers to arrest him for “aggravated unlawful use of a weapon.” In the court’s view, any facts that supported Kelley-Lomax’s innocence did not rise to a level that required the officers to abandon their assumption that he had at least joint possession of the gun. With respect to malicious prosecution, the court acknowledged that there was a question of fact about whether the officers fabricated or omitted material evidence. Nevertheless, the court granted summary judgment to the officers because Kelley-Lomax did not provide any evidence that his prosecution was based solely on fabricated evidence.

II

We review the district court’s grant of summary judgment de novo. *Beauchamp v. City of Noblesville*, 320 F.3d 733, 742 (7th Cir. 2003). In doing so, we view the facts and draw all reasonable inferences from them in Kelley-Lomax’s favor. *Id.* Summary judgment for the officers is appropriate only if “there is no genuine issue of material fact for trial” or Kelley-Lomax “cannot establish an element essential to his claim on which he will bear the burden of proof at trial.” *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

Probable cause is a complete defense for the officers against Kelley-Lomax’s false arrest and malicious prosecution claims. *Martin v. Martinez*, 934 F.3d 594, 598–99 (7th Cir. 2019) (false arrest); *Lee v. Harris*, 127 F.4th 666, 672 (7th Cir. 2025) (malicious prosecution). Thus, to defeat the officers’ summary judgment motion, he must show that the officers lacked probable cause to arrest him and he must overcome the presumption of probable cause for his prosecution. *Washington v. City of Chicago*, 98 F.4th 860, 870 (7th Cir. 2024). Although probable cause can be fatal to both claims, the standard differs for each

claim. *Kee v. City of New York*, 12 F.4th 150, 166 (2d Cir. 2021) (“[P]robable cause to prosecute should not be conflated with probable cause to arrest”); *see also Williams v. City of Chicago*, 733 F.3d 749, 756–58, 759–61 (7th Cir. 2013) (analyzing probable cause to arrest and probable cause to charge separately). Probable cause to arrest exists where the facts and circumstances support an officer’s reasonable belief that a person is involved in criminal activity. *Williams*, 733 F.3d at 756. By contrast, probable cause to prosecute exists where the facts “would lead a person of ordinary care and prudence to believe or to entertain an honest and sound suspicion that the accused committed the offense charged.” *Id.* at 759 (citation modified). Consequently, in some cases probable cause may support an arrest but be insufficient to justify a later prosecution. That is not the case here, however, because the facts that justified Kelley-Lomax’s arrest also justified his prosecution.

A. False Arrest

Officers Garduno and Spicuzza arrested Kelley-Lomax for aggravated unlawful use of a weapon under Illinois law. 720 ILCS 5/24-1.6(a)(1). A person violates that statute by carrying a gun on his person (actual possession) or “about” his person (constructive possession) without a license. *Id.* §§ 5/24-1.6(a)(1), (a)(3). A person has constructive possession of a firearm when he “exercises immediate and exclusive control over the area where the firearm is found” and has knowledge of its presence. *People v. Brown*, 164 N.E.3d 1187, 1191 (Ill. 2020).

It is the latter requirement that Kelley-Lomax takes issue with here. He contends that the officers lacked probable cause to arrest him because they had no reason to believe he knew there was a gun under his seat. According to Kelley-Lomax, the officers should be held liable because the Fourth

Amendment required them to have a reason to believe that all elements of the state law offense—including the knowledge element—were satisfied before they arrested him.

To support his position, Kelley-Lomax directs us to two Illinois state court decisions, *People v. Bailey*, 776 N.E.2d 824 (Ill. App. Ct. 2002), and *People v. Crumpton*, 263 N.E.3d 606 (Ill. App. Ct. 2024), and to our decision in *United States v. Chairez*, 33 F.3d 823 (7th Cir. 1994). But those cases involved criminal prosecutions and offer us only the unremarkable principle that evidence of proximity to a gun is insufficient to obtain a conviction. *See also United States v. Windom*, 19 F.3d 1190, 1200 (7th Cir.) (mere proximity, mere presence, or mere association is insufficient to support a finding of possession), *cert. denied*, 513 U.S. 862 (1994). Although true, that principle is unhelpful to Kelley-Lomax because the standard to establish probable cause to arrest someone for possession is lower than the standard to prove guilt on the charge. Whereas convictions require proof beyond a reasonable doubt, probable cause “deals not with hard certainties” and requires only a “substantial chance of criminal activity, not an actual showing of such activity.” *Abbott v. Sangamon County*, 705 F.3d 706, 714 (7th Cir. 2013); *Washington*, 98 F.4th at 875 (citation modified).

Probable cause to arrest exists when the facts and circumstances within an officer’s knowledge are sufficient to support a reasonable belief that a “suspect has committed, is committing, or is about to commit an offense.” *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979). “Probable cause is a fluid concept” determined on “common-sense interpretations” of the totality of the circumstances the officer confronted at the time of the arrest. *United States v. Brown*, 973 F.3d 667, 706 (7th Cir. 2020); *United States v. Breit*, 429 F.3d 725, 728 (7th Cir. 2005); *Abbott*,

705 F.3d at 714. The officer's interpretations and belief of the suspect's criminal involvement need not be correct but must be reasonable. *Muhammad v. Pearson*, 900 F.3d 898, 909 (7th Cir. 2018). In determining whether probable cause existed at the time of the arrest, we view the facts from the position of "a reasonable person in the position of the arresting officer—seeing what he saw, hearing what he heard." *Abbott*, 705 F.3d at 714 (emphasis omitted) (citation modified).

Kelley-Lomax does not challenge the search of the car during which the officers discovered the gun. Nor does he challenge as an unlawful arrest the officers' decision upon arrival to detain him by handcuffing him (and the other passengers). Accordingly, the only question for us to decide is whether, at the time of Kelley-Lomax's arrest, the officers could have reasonably believed that Kelley-Lomax possessed the gun. *Brown*, 973 F.3d at 706 ("What matters, and all that matters, is whether the facts known to the arresting officers at the time they acted supported probable cause to arrest.") (citation modified).

The officers encountered Kelley-Lomax while responding to a report of African American males standing at a gas pump pointing guns. When they arrived, they saw an SUV, with four African American males inside, at an adjacent pump. They ordered the occupants, including front passenger Kelley-Lomax, to exit the car before they searched it. They discovered the gun hidden underneath Kelley-Lomax's seat, and he later confirmed that he did not have authorization to carry a gun. On these facts, Kelley-Lomax's proximity to the gun and the surrounding circumstances could have led the officers to reasonably believe that Kelley-Lomax possessed the gun. This is especially so considering that Illinois

recognizes a theory of joint possession under which more than one person could constructively possess the same gun. Under that theory, the “exclusive dominion and control required to establish constructive possession is not diminished by evidence of others’ access to the contraband.” *Young v. City of Chicago*, 987 F.3d 641, 645 (7th Cir. 2021) (quoting *People v. Hill*, 589 N.E.2d 1087, 1089 (Ill. App. Ct. 1992)). Rather, “[w]hen the relationship of others to the contraband is sufficiently close to constitute possession, the result is not vindication of the defendant, but rather a situation of *joint* possession.” *Id.* (citation omitted).

Kelley-Lomax disagrees. He points to the facts that he did not own or operate the SUV; his brother, who was licensed to carry a gun, had rented the SUV; and the gun was surrounded by other items and not visible until the officers looked under the seat. But those facts create a reasonable doubt as to Kelley-Lomax’s guilt; they do not negate probable cause. *Lee*, 127 F.4th at 676 (explaining that evidence that created doubt but did not conclusively exclude plaintiff from the crime suspects did not negate probable cause). Because the circumstances at the time of Kelley-Lomax’s arrest supported the officers’ commonsense belief that he illegally possessed a gun, probable cause bars the claim for false arrest.

B. Malicious Prosecution

Probable cause is an absolute bar to malicious prosecution claims too. *Young*, 987 F.3d at 646. Our system assumes that judicial determinations are based on a “truthful showing of probable cause.” *Washington*, 98 F.4th at 870 (emphasis omitted) (citation modified). As such, “[j]udicial determinations of probable cause are ordinarily entitled to a presumption of validity, and ‘an indictment is prima facie evidence of probable

cause.’” *Id.* at 869 (quoting *Coleman v. City of Peoria*, 925 F.3d 336, 351 (7th Cir. 2019)) (citation omitted). Thus, to press his claim for malicious prosecution, Kelley-Lomax must overcome the presumptively valid probable cause determinations by the judge at his bail hearing and by the grand jury. *Id.* at 870. To do so, he must satisfy the two-prong test this court adopted in *Beauchamp*. 320 F.3d at 742–43. He must show that (1) the officers fabricated or omitted information (2) that was or would have been material to the judge’s and grand jury’s probable cause determinations. *Washington*, 98 F.4th at 870 (outlining the *Beauchamp* test). Step one requires showing that the officer “knowingly or intentionally or with a reckless disregard for the truth, made false statements to the judicial officer.” *Id.* at 863 (citation modified).

There is a dispute of fact about whether the officers fabricated material information. First, in the arrest and incident reports, the officers represented that dispatch was unable to reconnect with the caller after the officers arrived on the scene. Contrary to the reports, however, dispatch was able to reconnect with the caller. Second, the officers wrote in their reports that the 911 caller provided descriptions of two suspects. But the caller described only one suspect. Third, Officer Garduno told the grand jury and the trial jury that two men in the SUV fit the caller’s description of the suspects’ physical appearance and clothing. But, again, the caller described only one assailant who wore a “black puffy coat.” Such a coat is distinguishable from the black hooded sweatshirts worn by three of the SUV occupants (and, arguably, the blue jacket worn by the fourth occupant). Fourth, Officer Garduno told the grand jury that the video footage confirmed the caller’s account of men pointing handguns at a passing vehicle. This testimony is nothing like Officer Spicuzza’s account of the video. When

Officer Spicuzza described the video at his deposition, he did not mention seeing any men exiting a vehicle with guns, any men pointing guns at a vehicle, or any guns at all.

Given these many inconsistencies, a reasonable jury might be able to conclude that, at minimum, the officers recklessly made false statements to the judge and grand jury. On this basis, we assume Kelley-Lomax can satisfy the first step of the *Beauchamp* test.

Kelley-Lomax stops there, insisting that a jury must decide this case because the officers' false statements could have influenced the judge and grand jury. But at the second step of the *Beauchamp* test we do not ask whether the fabricated information could have influenced the judicial determinations of probable cause. Rather, we ask whether probable cause remains when all the fabricated information is removed. *Id.* at 872; *see also Coleman*, 925 F.3d at 351 (overcoming presumption of probable cause requires "evidence that law enforcement obtained the indictment through improper or fraudulent means"). This is consistent with the Supreme Court's decision in *Manuel v. City of Joliet* which clarified that probable cause must support pre-trial detention before and after formal legal process to comply with the Fourth Amendment. 580 U.S. 357, 366 (2017).

Since *Manuel*, we have affirmed grants of summary judgment in several cases where the record supported probable cause despite evidence of material fabrication or omission. In *Beauchamp*, we held that the plaintiff could not succeed on his claim despite the defendant officers' omission of exculpatory evidence at the probable cause hearing because the remaining evidence supported the belief that the plaintiff committed the crime. 320 F.3d at 744. Later, in *Washington* we held that the

plaintiffs could not show but-for causation because “after eliminating the alleged misrepresentations and adding in the omissions, undisputed facts show[ed] that probable cause would have still existed to detain” the plaintiffs until trial. 98 F.4th at 878. More recently, in *Lee* we affirmed the district court’s grant of summary judgment to defendant officers because the plaintiff failed to identify, at any stage of the proceedings, new facts that would have eliminated the probable cause established at the time of his arrest. 127 F.4th at 676. In each of these cases, we reviewed the record to evaluate whether the evidence without the fabrications and omissions established probable cause to prosecute the plaintiff.

We follow suit and similarly conclude that the evidence against Kelley-Lomax, even without the fabrications, established probable cause to prosecute him. Even supposing the officers fabricated the information mentioned above—namely what the surveillance video showed and how Kelley-Lomax matched the caller’s description—Kelley-Lomax’s claim fails because the remaining evidence provided sufficient probable cause to prosecute him for unlawful possession of a gun. Indeed, although this is not true in every case, here the facts that established probable cause for the officers to arrest Kelley-Lomax also provided the basis for his prosecution. As we discussed earlier, the circumstances surrounding his arrest provided probable cause to believe Kelley-Lomax committed a crime. That is, a reasonable officer could have believed that Kelley-Lomax, who occupied the seat above the gun and admittedly did not have a gun license, illegally possessed the gun. This is so even though someone else could have placed the gun under the seat without his knowledge and he could have been unaware of its presence his entire time in the SUV. These possibilities would be

defenses at trial, not signs that Kelley-Lomax could not have been prosecuted. Further, fatal to the malicious prosecution claim, none of the facts that emerged later (fabricated or truthful) negated the officers' initial reasonable assumption. Most of the false statements concern the events the 911 caller observed. But the evidence related to those events did not undercut probable cause to prosecute Kelley-Lomax for possession of the gun discovered under his seat.

Our dissenting colleague is correct that "Illinois courts have long held that "proximity to the items at issue is not sufficient to show possession.'" *Post*, at 16. This likely explains Kelley-Lomax's acquittal on the gun charge. But neither our dissenting colleague nor Kelly-Lomax has identified a case stating that the prosecution lacked probable cause to initiate charges because the prosecution was unable to prove possession beyond a reasonable doubt at trial. The officers are entitled to summary judgment on the malicious prosecution claim.

III

Kelley-Lomax's false arrest claim fails because the officers' discovery of the gun under his seat and his admission that he did not have a license to carry established probable cause to arrest him for possession. His malicious prosecution claim fails because the same facts supported his prosecution. Although the gun's obscurity underneath the seat, his brother's carrying license, and the details about the SUV's ownership and operation could help prove Kelley-Lomax's innocence, they did not destroy probable cause. Probable cause existed at all stages of the criminal process in Kelley-Lomax's case, so the judgment of the district court is AFFIRMED.

LEE, *Circuit Judge*, concurring in part and dissenting in part. I join the majority's opinion as to Sections I and II.A.

As to Section II.B, I agree with the majority's conclusion as to step one in the analysis laid out in *Beauchamp v. City of Noblesville*, 320 F.3d 733, 742–43 (7th Cir. 2003); namely, that a reasonable jury could conclude that Officer Garduno recklessly misrepresented and omitted material facts to the judge and grand jury.

That said, I respectfully disagree with the majority's conclusion as to *Beauchamp's* second step. In my view, after stripping away the alleged false statements and considering the material omissions, the record does not support probable cause to prosecute Kelley-Lomax for aggravated unlawful use of a weapon. According to the majority opinion, "a reasonable officer could have believed that Kelley-Lomax, who occupied the seat above the gun and admittedly did not have a gun license, illegally possessed the gun." This is true, the majority writes, even if someone else placed the gun there without Kelly-Lomax's knowledge, even if he was unaware of its presence, and even if he had no ownership or control over the vehicle.

I disagree that these facts alone support probable cause to prosecute under Illinois's aggravated unlawful use of a weapon statute. Unlike probable cause to arrest, which does not require specific evidence as to each element, probable cause to prosecute does. Compare *Spiegel v. Cortese*, 196 F.3d 717, 725 n.1 (7th Cir. 1999) (as amended Jan. 7, 2000) ("[I]n our circuit, not every element need be supported by specific evidence to arrest in the heat of the moment."), with *United States v. Jones*, 418 F.3d 726, 730 (7th Cir. 2005) ("A grand jury that charged [the defendant] with 'using, carrying, brandishing,

cause that [the defendant] committed each of those four actions.”).

Thus, in determining whether there was probable cause to prosecute Kelley-Lomax, we should look to the elements of the offense with which he was charged as defined by state law. See *Hawkins v. Mitchell*, 756 F.3d 983, 994 (7th Cir. 2014) (“The existence of probable cause depends, in the first instance, on the elements of the predicate criminal offense(s) as defined by state law.”). Illinois’s statute for aggravated unlawful use of a weapon, 720 Ill. Comp. Stat. 5/24-1.6(a)(2) requires, among other things, that the person “knowingly” possess a weapon “on or about his ... person.” In interpreting a similar statute, the Illinois Supreme Court has explained that “on ... his person” refers to actual possession, while “about his ... person” refers to constructive possession. *People v. Wise*, 182 N.E.3d 656, 662 (Ill. 2021).

Here, it is undisputed that Kelly-Lomax did not actually possess the gun, so the defendants must rely on the theory of constructive possession. Under Illinois law, a person constructively possesses a firearm when the person “has knowledge of the presence of the weapon and exercises immediate and exclusive control over the area where the firearm is found.” *Id.* (citation omitted). And to make this determination, Illinois courts look to various factors such as: “(1) the visibility of the weapon from defendant’s position in the car, (2) the period of time in which the defendant had an opportunity to observe the weapon, (3) any gestures by the defendant indicating an effort to retrieve or hide the weapon, and (4) the size of the weapon.” *People v. Bailey*, 776 N.E.2d 824, 827–28 (Ill. App. Ct. 2002) (citation omitted).

Based on this record, I believe that a reasonable jury could

find that probable cause was lacking as to the knowledge element of the gun charge. First, it is undisputed that the gun was hidden under Kelley-Lomax's seat; the majority notes that the gun was "not visible until the officer looked under the seat." It is also undisputed that Kelley-Lomax did not make any gestures towards the area of the gun. Furthermore, at the time of the arrest, the officers knew that the car did not belong to Kelley-Lomax; it was rented by his brother. *See* Dkt. 132 ¶ 21 (defendants' admitting that while they were at the Shell gas station, they learned that Kelley-Lomax's brother, who was present at the scene, had rented the vehicle in which the gun was found). The officers also knew that, while Kelley-Lomax did not have a Firearm Owner's Identification Card (FOID card), his brother did. *Id.* ¶ 22.

Thus, once we put aside the officers' purported false statements and omissions, the only evidence connecting Kelley-Lomax to the gun is the fact that he was sitting on the seat below which the gun was hidden. But Illinois courts have long held that "proximity to the items at issue is not sufficient to show possession." *People v. McIntyre*, 962 N.E.2d 1108, 1112 (Ill. App. Ct. 2011) (citing *People v. Day*, 366 N.E.2d 895, 896 (Ill. App. Ct. 1977)); *Bailey*, 776 N.E.2d at 827 ("A defendant's mere presence in a car, without more, is not evidence that he knows a weapon is in the car.") (citing *People v. Davis*, 365 N.E.2d 1135, 1139 (Ill. App. Ct. 1977)); *United States v. Brown*, 724 F.3d 801, 804 (7th Cir. 2013) (holding that "mere proximity to the item at the time of seizure is not enough" to establish possession) (citation modified); *Lindsey v. Macias*, 907 F.3d 517, 520 & n.2 (7th Cir. 2018) (noting that the quoted language from *Brown* is "a correct statement of law, and one that has been well-established for quite some time" and that Illinois follows this rule); *United States v. Chairez*, 33 F.3d 823, 825 (7th

Cir. 1994) (finding the government's argument that "because the gun was found under [the defendant's] seat during a drug transaction, [he] must have known of the gun's existence" did not provide "even a shred of evidence that [the defendant] knew about the gun.").

Additionally, qualified immunity at this stage in the case would be premature. As the majority opinion notes, whether Officer Garduno knowingly or recklessly made false statements to the judge and grand jury is disputed, and it "is clearly established that it violates the Fourth Amendment 'to use deliberately falsified allegations to demonstrate probable cause.'" *Rainsberger v. Benner*, 913 F.3d 640, 643 (7th Cir. 2019) (quoting *Franks v. Delaware*, 438 U.S. 154, 168 (1978)). Thus, the issue of qualified immunity cannot be resolved before trial.

Accordingly, on this record, I would reverse the district court's grant of summary judgment as to the malicious prosecution claim and remand for further proceedings. Thus, I respectfully dissent as to Section II.B.