

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 25 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUAN MARSHALL RAYFORD; DUPREE
ANTOINE GLASS,

Plaintiffs - Appellees,

v.

CHRISTOPHER KEELING,

Defendant - Appellant,

COUNTY OF LOS ANGELES, STEVEN
GROSS, GREGORY MAXWELL, DOES,
1 to 100,

Defendants.

No. 26-2279

D.C. No.

5:24-cv-00473-SSS-DTB

MEMORANDUM*

JUAN MARSHALL RAYFORD; DUPREE
ANTOINE GLASS,

Plaintiffs - Appellees,

v.

COUNTY OF LOS ANGELES,
CHRISTOPHER KEELING, GREGORY
MAXWELL, DOES,

Defendants,

No. 26-2280

D.C. No.

5:24-cv-00473-SSS-DTB

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

STEVEN GROSS,

Defendant - Appellant.

JUAN MARSHALL RAYFORD; DUPREE
ANTOINE GLASS,

Plaintiffs - Appellees,

v.

COUNTY OF LOS ANGELES,
CHRISTOPHER KEELING, STEVEN
GROSS, DOES,

Defendants,

GREGORY MAXWELL,

Defendant - Appellant.

No. 26-2283

D.C. No.

5:24-cv-00473-SSS-DTB

Appeal from the United States District Court
for the Central District of California
Sunshine Suzanne Sykes, District Judge, Presiding

Argued and Submitted August 3, 2026
Seattle, Washington

Before: HAWKINS, N.R. SMITH, and CHRISTEN, Circuit Judges.

Individual Defendants Christopher Keeling, Steven Gross, and Gregory Maxwell appeal the district court's order denying their motion for summary judgment on the basis of qualified immunity in this 42 U.S.C. § 1983 action filed by Plaintiffs Juan Rayford and Dupree Glass. Because the parties are familiar with the facts and arguments underlying the instant case, we do not detail them here

except as necessary for the disposition of this appeal. Having considered the parties' briefs and oral arguments, we reverse in part, vacate in part, and order a limited remand. We retain jurisdiction over any subsequent appeal of the district court's decision regarding Defendants' motion for summary judgment on qualified immunity.

On an interlocutory appeal from the denial of qualified immunity, we have jurisdiction "to resolv[e] a defendant's purely legal contention that his or her conduct did not violate the Constitution and, in any event, did not violate clearly established law," *Est. of Anderson v. Marsh*, 985 F.3d 726, 731 (9th Cir. 2021) (citation modified), and to resolve whether the district court's rulings are unsupported by *any* evidence, *Id.* at 731 n.3. We lack jurisdiction to review the district court's findings regarding the sufficiency of the evidence, *Johnson v. Jones*, 515 U.S. 304, 313 (1995); *accord Foster v. City of Indio*, 908 F.3d 1204, 1210 (9th Cir. 2018), or to resolve factual disputes, *Rodriguez v. County of Los Angeles*, 891 F.3d 776, 791 (9th Cir. 2018). With these jurisdictional limits in mind, we turn to each of the respective Appellees' claims.

1. **Fabrication of Evidence:** "To prevail on a § 1983 claim of deliberate fabrication, a plaintiff must prove that (1) the defendant official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff's deprivation of liberty." *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017). "To

establish the second element of causation, the plaintiff must show that (a) the act was the cause in fact of the deprivation of liberty, meaning that the injury would not have occurred in the absence of the conduct; and (b) the act was the ‘proximate cause’ or ‘legal cause’ of the injury, meaning that the injury is of a type that a reasonable person would see as a likely result of the conduct in question.” *Id.* (citation omitted).

We reverse the district court’s denial of summary judgment based on qualified immunity to Deputy Maxwell on both Plaintiffs’ fabrication of evidence claims. There is no evidence which would support a finding that the mention of the gang “Pueblo Bishops” in his investigative report was the cause in fact of either Glass’s or Rayford’s convictions. Maxwell’s investigative report was not admitted at the preliminary hearing or trial nor was the “Pueblo Bishops” gang affiliation incorporated into the prosecutor’s theory of the case, and Maxwell did not testify. *See Richards v. County of San Bernardino*, 39 F.4th 562, 574 (9th Cir. 2022) (describing the second element of a fabrication claim as a materiality inquiry in which the plaintiff must “show a reasonable likelihood that the allegedly fabricated . . . evidence could have affected the judgment of the jury”).

We remand for the district court to conduct an analysis of Deputy Gross’s and Deputy Keeling’s entitlement to qualified immunity. Viewing the facts in the light most favorable to the Plaintiffs, the district court found a genuine dispute of

material fact that Deputy Gross falsely documented in field identification cards that Rayford and Glass were affiliated with specific gangs. The district court also found a genuine dispute of material fact about whether Deputy Keeling falsely documented in investigatory materials that Rayford and Glass were affiliated with specific gangs, as well as eyewitness reports to the shooting. “[P]olice investigative materials have evidentiary value,” *Lisker v. City of Los Angeles*, 780 F.3d 1237, 1242 (9th Cir. 2015), and as the district court recognized, Plaintiffs’ theory is that fabricated gang-affiliations “colored” the entire case, from investigation through trial. *See Newman v. County of Orange*, 457 F.3d 991, 995 (9th Cir. 2006) (explaining that “false information” in officers’ reports may demonstrate that “officers interfered with the prosecutor’s judgment in some way”). Indeed, the government argued in closing that “gang motive” for the shooting could be considered when evaluating the evidence to establish guilt.

That said, the district court did not separately assess the materiality of the evidence each Defendant allegedly deliberately fabricated, or whether the allegedly fabricated evidence proximately caused each Plaintiff’s injuries. *See Spencer*, 857 F.3d at 798 (“To prevail on a § 1983 claim of deliberate fabrication, a plaintiff must prove that (1) the defendant official deliberately fabricated evidence *and* (2) *the deliberate fabrication caused the plaintiff’s deprivation of liberty.*” (emphasis added)). Rather, it blended Defendant-and-claim-specific evidence together and

analyzed causation as a whole. Without the district court’s detailed review of each Plaintiff’s specific allegations against each Defendant, and whether the record evidence raises material disputes of fact going to the elements of each cause of action, our ability to meaningfully review the merits of Defendants’ appeal is curtailed. *See Cunningham v. Gates*, 229 F.3d 1271, 1287 (9th Cir. 2000) (providing that a court must “carefully examine the specific factual allegations against each individual defendant” in deciding whether to grant qualified immunity).

We remand to the district court with direction to articulate: (1) the factual and legal basis for each Plaintiff’s fabrication-of-evidence claim against Defendants Gross and Keeling, taking care to distinguish between claims premised on fabrication of eyewitness testimony and fabrication of gang-affiliation evidence; and (2) whether the evidence supports each element of each claim if the disputed facts are viewed in the light most favorable to the non-moving parties. In doing so, the district court shall separately address claims asserted pursuant to the Fourth and Fourteenth Amendments.

2. **Brady Claim:** Even construing the facts in the light most favorable to Plaintiffs as non-moving parties, we conclude Plaintiffs have failed to make out a colorable *Brady* claim against any of the Defendants. *See Strickler v. Greene*, 527 U.S. 263, 281–82 (1999) (holding that to establish a *Brady v. Maryland*, 373 U.S.

83 (1963) violation, “[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued”).¹

Plaintiffs have not shown that exculpatory evidence was withheld or that they were denied opportunities to impeach the State’s witnesses. *See Cunningham v. Wong*, 704 F.3d 1143, 1154 (9th Cir. 2013) (“[I]f ‘the defendant is aware of the essential facts enabling him to take advantage of any exculpatory evidence,’ the government’s failure to bring the evidence to the direct attention of the defense does not constitute ‘suppression.’” (quoting *Raley v. Ylst*, 470 F.3d 792, 804 (9th Cir. 2006))). The district court interpreted the *Brady* claim as the suppression of the fact that evidence was fabricated. In doing so, the district court relied on an unpublished decision, *Atkins v. County of Riverside*, 151 F. App’x 501, 504 (9th Cir. 2005), that has not since been followed. The district court’s formulation of Plaintiffs’ *Brady* claim is not supported by clearly established law. *See Devereaux*

¹ Plaintiffs alleged a variety of *Brady* violations premised on the failure to collect evidence, to correct allegedly false testimony presented at trial, to disclose a conversation that one individual had with either Maxwell or Keeling, or to disclose fabrications. These allegations do not support a *Brady* claim. The district court considered the failure to disclose fabrications as equivalent to *Brady* suppression. On appeal, Plaintiffs adopted the district court’s formulation of their *Brady* claims. Plaintiffs did not raise a claim under *Napue v. Illinois*, 360 U.S. 264 (1959). *See Dickey v. Davis*, 69 F.4th 624, 637 (9th Cir. 2023) (discussing and distinguishing *Brady* and *Napue*).

v. Abbey, 263 F.3d 1070, 1079 (9th Cir. 2001) (en banc) (suggesting that fabrication and suppression are two separate causes of action under the Fourteenth Amendment). We reverse the order denying summary judgment on both Plaintiffs' *Brady* claims.

3. **Malicious Prosecution:** We reverse the district court's denial of qualified immunity to each of the Defendants on Plaintiff Glass's malicious prosecution claims brought under the Fourth Amendment. "[P]robable cause is an absolute defense to malicious prosecution." *See Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054–55 (9th Cir.2009); *see also Smith v. Almada*, 640 F.3d 931, 938 (9th Cir. 2011). At the preliminary hearing, Donisha Williams testified that she saw Glass shoot at the house. Williams later testified consistently at trial. Williams' testimony provides probable cause independent from the allegedly fabricated evidence, and, thus, defeats Glass's malicious prosecution claims brought under the Fourth Amendment. *See Lassiter*, 556 F.3d at 1054–55; *see also Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995) (holding that a malicious prosecution claim failed as a matter of law when the plaintiff was "unable to show that she was prosecuted without probable cause").

We remand for the district court to conduct an analysis of Deputy Gross's and Deputy Keeling's entitlement to qualified immunity on Plaintiff Rayford's malicious prosecution claims brought under the Fourth Amendment. Unlike Glass, no witness

testified at the preliminary hearing that Rayford shot at the house, or at any person. Accordingly, there is no testimony in the record to provide probable cause independent from the allegedly fabricated evidence.² But as with Plaintiffs' fabrication-of-evidence claims, the district court must do a detailed review of Rayford's specific allegations against each Defendant and consider whether the record evidence raises material disputes of fact going to the elements of this cause of action. *See Cunningham*, 229 F.3d at 1287. Because Rayford's fabrication-of-evidence claim against Defendant Maxwell fails for lack of causation, we reverse the district court's denial of qualified immunity to Maxwell on Rayford's malicious prosecution claim under the Fourth Amendment.

To the extent Plaintiffs bring standalone malicious prosecution claims under the Fourteenth Amendment, we reverse the denial of summary judgment. We have held that "no substantive due process right exists under the Fourteenth Amendment to be free from prosecution without probable cause." *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1069 (9th Cir. 2004) (citing plurality and concurring opinions in

² Defendants raise several arguments to this court in an attempt to challenge the malicious prosecution claims, including the presumption of prosecutorial independence and preclusion from relitigating probable cause. We find it premature to rule on these defenses before the district court details its analysis of Rayford's fabrication claims. *See Caldwell v. City & Cnty. of San Francisco*, 889 F.3d 1105, 1115 (9th Cir. 2018) ("Deliberately fabricated evidence in a prosecutor's file can rebut any presumption of prosecutorial independence"); *Wige v. City of Los Angeles*, 713 F.3d 1183, 1186 (9th Cir. 2013) (issue preclusion does not apply when an arresting officer fabricates evidence at the preliminary hearing).

Albright v. Oliver, 510 U.S. 266 (1994)). We “have held, post-*Albright*, that a § 1983 malicious prosecution plaintiff must prove that the defendants acted for the purpose of depriving him of a specific constitutional right, but have not limited that right to one protected by the Fourth Amendment.” *Id.* (internal quotation marks and citation omitted). Unlike *Awabdy*, the Plaintiffs do not allege that the Defendants conspired to deprive them of any specific constitutional right under the Fourteenth Amendment, such as a right to equal protection or free speech, other than the right to be free from malicious prosecution under the Fourth Amendment. Therefore, the Fourteenth Amendment does not provide a standalone basis for the Plaintiffs’ malicious prosecution claims. *Id.*

4. **Conspiracy and Failure to Intervene:** To state a claim for a conspiracy to violate one’s constitutional rights under § 1983, Plaintiffs must “show an agreement or ‘meeting of the minds’ to violate constitutional rights.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540–41 (9th Cir. 1989) (citing *Fonda v. Gray*, 707 F.2 435, 438 (9th Cir. 1983)). There must be a “possibility that the jury can infer from the circumstances that the alleged conspirators had a meeting of the minds.” *Mendocino Env’t Ctr. v. Mendocino County*, 192 F.3d 1283, 1301–02 (9th Cir. 1999) (internal quotation marks and citation omitted). Further, “police officers have a duty to intercede when their fellow officers violate the constitutional rights of a suspect or other citizen.” *Cunningham*, 229 F.3d at 1289 (citation omitted). But

they can be liable only where they had the “opportunity to intercede,” *id.*, and were aware of the constitutional violation as it occurred, *see Ramirez v. Butte-Silver Bow County*, 298 F.3d 1022, 1029–30 (9th Cir. 2002).

Defendants’ arguments regarding the district court’s denial of summary judgment on the conspiracy and the failure to intervene claims largely exceed the scope of our review at this interlocutory stage. *Marsh*, 985 F.3d at 731 n.3. The district court concluded that a reasonable juror could find a “tacit agreement” among Defendants to prosecute Plaintiffs on the basis of false evidence, pointing to evidence in the record that Gross discussed the allegedly falsified FI cards with Keeling *after the shooting*, that Maxwell and Keeling spoke about the case *after* Maxwell handed it off, the failure to pursue other leads despite evidence to the contrary, inconsistencies in investigatory reports, and a defaced wanted post of Glass at the police station with devil horns drawn over the photo. *Id.* The district court ruled that a reasonable juror could find that a conspiracy existed between the Defendants—all of whom worked at the same police station. And if a conspiracy existed between them, a reasonable juror could conclude that each of the Defendants failed to intervene. We may not “review that evidence-sufficiency determination on appeal.” *Id.* at 731.

That said, we remand for the district court to conduct an analysis of the Defendants’ separate entitlement to qualified immunity as to both the conspiracy and

failure to intervene claim. In its qualified immunity analysis, the district court failed to cite any relevant precedent as clearly establishing either claim. We remand to the district court with direction to articulate whether the constitutional violation underlying each claim, when viewing the facts in the light most favorable, was clearly established for purposes of qualified immunity.

5. **Motion for Summary Affirmance:** Plaintiffs' motion for summary affirmance is denied as moot.

The panel remands to the district court on a limited basis to reconsider its summary judgment ruling consistent with this order, and retains jurisdiction of any appeal. On remand, the district court shall articulate: (1) the factual and legal basis for each Plaintiff's fabrication of evidence claim against Deputy Gross and Deputy Keeling, distinguishing between claims premised on fabrication of eyewitness testimony and fabrication of gang-affiliation evidence; (2) the factual and legal basis for Plaintiff Rayford's malicious prosecution claim against Deputy Gross and Deputy Keeling under the Fourth Amendment; (3) whether the evidence supports each element of each claim if the disputed facts are viewed in the light most favorable to the non-moving parties; and (4) whether the alleged constitutional violations, when viewing the facts in the light most favorable, were clearly established for purposes of qualified immunity. Our review of the district court's order was significantly hindered by ubiquitous assertions of fact within the briefs

that are unsupported by citations to the record. As we remand for the district court to conduct a more fulsome analysis, the court's order should include record cites identifying the factual theories the parties rely upon to support their claims and defenses.

REVERSED IN PART, VACATED IN PART, and REMANDED. The panel retains jurisdiction over any further appeal of this matter.