

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

EMMA JANE PROSPERO,

Plaintiff,

-versus-

DEPUTY RYAN SULLIVAN et al.,

Defendants

Civil Action File No.
2:20-cv-110

ORAL ARGUMENT REQUESTED

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT ON PROBABLE CAUSE AND
MALICIOUS PROSECUTION**

COMES NOW Plaintiff Emma Jane Prospero (“Plaintiff” or “Mrs. Prospero”), who through her undersigned counsel, hereby submits this Motion for Summary Judgment on Probable Cause and Malicious Prosecution and accompanying Statement of Undisputed Material Facts (“SUMF”). On Thanksgiving Day 2018, Defendant Deputy Ryan Sullivan (“Sullivan”) obtained a warrant for Plaintiff’s arrest, charging her with calling 911 for the unlawful purpose of interfering with or disrupting an emergency telephone service. Based on the undisputed material facts in this case, no reasonable officer in Sullivan’s position could have believed there was probable cause to charge Plaintiff, who called 911 only one time, for only 2½ minutes, and repeatedly stated that her purpose for calling was to stop gunshots near her home. Sullivan’s affidavit filed in support of Plaintiff’s arrest warrant contained numerous reckless, if not intentional, misstatements and omissions of fact that, if corrected, would defeat probable cause. Plaintiff is therefore entitled to summary judgment on her malicious prosecution claim based on a constitutionally defective warrant affidavit in the absence of arguable probable cause for the charged offense.

FACTUAL BACKGROUND

On the afternoon of Thanksgiving Day 2018, at 2:42 PM, Plaintiff Emma Jane Prospero - a resident of Woodbine, Georgia -- called the Camden County Sheriff's Office ("CCSO" or "Sheriff's Office") to report a barrage of gunshots near her home. SUMF ¶¶ 1-6. Plaintiff called the CCSO's general administrative number (912-510-5100) and was transferred to the Camden County Dispatch Center ("Dispatch"), which fields both non-emergency and 911 calls. *Id.* ¶¶ 6-7. Plaintiff spoke with Officer John Archibald ("Archibald"), but declined to give her name. *Id.* ¶¶ 8, 11-15. Plaintiff reported, "There's a ton of shots behind the Chevron station over here. They've been shooting for about ten minutes and they're not stopping." She asked, "Can you get somebody over there to tell them to stop shooting? It's too close to neighbors here." *Id.* ¶¶ 9-10. Archibald responded, "I understand. We'll get somebody out there, okay?" Plaintiff thanked him, and they hung up. *Id.* ¶¶ 16-17.

At 2:44 PM, Dispatch informed Defendant Deputy Ryan Sullivan, who was in another part of the county, outside of his assigned patrol zone: "Caller is advising she's hearing shots coming from behind [the Chevron]. She wants it to stop so she can enjoy her dinner." *Id.* ¶¶ 22, 29, 65-67. Sullivan responded, "That's private property. I'm not going to go back there and make somebody stop shooting," and indicated "no action taken" on Plaintiff's call. *Id.* ¶ 25. From a location 10 minutes away from the reported shots, Sullivan assumed that the shots were on private property and were lawful and non-actionable. *Id.* ¶¶ 29-32. This was contrary to CCSO Standard Operating Procedure which discourages deputies against forming definite opinions about a call for service before arriving at the scene. *Id.* ¶ 32. There are multiple ways that gunshots on private property can be unlawful. *Id.* ¶ 34. If someone was shooting on private property in an unlawful manner, Sullivan had the authority to intervene. *Id.* ¶ 34. But Sullivan

never investigated or confirmed whether the gunshots reported by Plaintiff were actually originating on private property or whether they were safe and lawful. *Id.* ¶¶ 33-36, 103-104.

At 2:46 PM, Plaintiff's husband, Joseph Prospero, called the CCSO's general administrative number (912-510-5100) and was transferred to Dispatch, where he spoke with Archibald. *Id.* ¶¶ 37-38. Mr. Prospero reported there was shooting going on behind the Chevron, and asked that it be stopped. *Id.* ¶¶ 39-40, 43. Based on Sullivan's unconfirmed assumption communicated to Dispatch in response to Plaintiff's prior call that the shots were lawful, Sullivan told Mr. Prospero "the deputies are aware of it" and that the shooting was on private property. *Id.* ¶¶ 44-45, 47. Mr. Prospero provided additional information that, "It's too close to the neighbor," and "They always stopped it before," but to no avail. *Id.* ¶¶ 46, 48. Archibald ended the call by stating, "Okay, sir, you try and enjoy the rest of your day." *Id.* ¶¶ 49, 51.

At 2:48 PM, Sullivan called Dispatch and spoke to Sgt. Susan "Nikki" Flowers ("Flowers"). He referred to Plaintiff and her husband as "stupid motherfuckers" and stated:

- "What? Do -- people don't have anything better to do than to bitch about somebody shooting on private property?"
- "Yeah those motherfuckers. I ain't goin' out there to talk to Robert¹ about -- 'Hey man, you can't shoot on your private property 'cause you're disturbing people.'"
- "Yeah, let 'em leave their fuckin' address or somethin' or request contact. I'll let 'em know how stupid they are."

Id. ¶¶ 52-61.

Meanwhile, the shooting was still continuing with increasing intensity. Plaintiff described, "it sounded like a war over there," and she was concerned about shots coming too close to her and her neighbors' homes. *Id.* ¶¶ 68-69. At 2:58 PM, Plaintiff for the first and only time that day called 911. *Id.* ¶ 70. Her call lasted a mere 2½ minutes during which no other 911

¹ Sullivan assumed, but never confirmed, that the gunshots were coming from the property of Robert Paulk, who owns land that borders three sides of the small lake behind Plaintiff's home. *Id.* ¶¶ 31-33.

calls came into the Dispatch Center. *Id.* ¶ 92, 93. Plaintiff stated, “There’s tons of shots and they keep going and going and going around the Chevron station.” *Id.* ¶ 73 She explained her concern that “it’s too close to the neighborhood. The shots are coming too close.” *Id.* ¶ 75 (also ¶ 87). She also explained her concern about violation of noise ordinances. *Id.* ¶¶ 77, 85.

Moreover, she repeatedly stated that her purpose for calling was to get the gunshots stopped, asking why was the response different today than in the past. *Id.* ¶¶ 75, 77, 79, 81. Archibald and Flowers reiterated Sullivan’s unverified assumption that the shots were on private property and lawful. Flowers informed Plaintiff that a deputy was on his way to her house. *Id.* ¶¶ 76, 80, 84, 88, 90. Plaintiff objected to this noting, “[w]e’re not the ones doing anything wrong.” *Id.* ¶ 89. She explained, “I’m not answering the door. We’re leaving. Good-bye.” *Id.* ¶ 91.

From 3:15 PM to about 3:30 PM, Sullivan was present at Plaintiff’s address. No one answered the door and the phone rang to voicemail. *Id.* ¶¶ 96-101. Sullivan asked Dispatch for a criminal history on Plaintiff and for the two Computer Assisted Dispatch (CAD) reports for her calls that day. *Id.* ¶¶ 100, 161. At 4 PM, Sullivan spoke with Dispatch to prepare his narrative. Officer Heather Sievers told him, “She didn’t use offensive language or curse [Sullivan: Okay] is what Nikki [Flowers] said. She just was not a happy camper and she wanted y’all to get it taken care of,” referring to the gunshots. Sullivan replied, “Oh, it’s taken care of.” *Id.* ¶¶ 105-107, 109.

Sievers encouraged that Sullivan listen to the audio-recordings of the calls if he wanted to know what had happened. *Id.* ¶¶ 121-123. The recordings were readily available and could have been located and played for him over the phone in a matter of minutes. *Id.* ¶¶ 128-130. But Sullivan testified he “didn’t want to listen to the recordings,” choosing instead to rely on what Dispatch told him and the two related CAD reports. *Id.* ¶¶ 125-127.

Later that day, with the knowledge and approval of his supervisor Defendant Russell Prescott, Sullivan obtained a warrant for Plaintiff’s arrest on the false charge that she had

unlawfully called 9-1-1 “*for the purpose* of interfering or disrupting an emergency telephone service” in violation of O.C.G.A. § 16-11-39.2(b)(2). *Id.* ¶¶ 121-124, 171-179. Sullivan’s decision to charge Plaintiff and to seek a warrant was based only on the events of Thanksgiving Day 2018. *Id.* ¶¶ 166, 170.

Sullivan’s affidavit in support of the warrant contained numerous misrepresentations and omissions of facts relevant to probable cause that are discussed in greater detail in the “Analysis” section below. *Id.* ¶¶ 178-223. In brief, Sullivan represented that the gunshots reported by Plaintiff were lawful and non-actionable, yet Sullivan failed to disclose that he was only assuming this from afar and had never investigated or confirmed it. *Id.* ¶¶ 28-36, 182-185. Sullivan’s affidavit accused Plaintiff of intending to interfere with or disrupt 911 because she called for what he deemed a “not a true emergency.” But O.C.G.A. § 16-11-39.2 does not prohibit or make it unlawful to contact 911 for a non-emergency reason. *Id.* ¶¶ 178-181. Sullivan’s affidavit contained multiple misrepresentations about Plaintiff’s initial call to the non-emergency line. *Id.* ¶¶ 198-206. Sullivan’s affidavit misrepresented Plaintiff’s 911 call as lasting 32 minutes when the call was only 2½ minutes. *Id.* ¶¶ 186-193. Sullivan’s affidavit omitted exculpatory information relayed to him by Dispatch about Plaintiff’s purpose for calling 911. *Id.* ¶¶ 194-197. And Sullivan’s affidavit omitted further exculpatory information that was contained in the readily available audio-recordings that Sullivan “didn’t want to listen to.” *Id.* ¶¶ 198-206. Based on Sullivan’s affidavit, that contained these misrepresentations and omissions, a magistrate judge signed the warrant. *Id.* ¶ 177.

Pursuant to this warrant, Plaintiff was arrested two months later in the St. Mary’s Walmart parking lot and detained for two nights in the Camden County Jail before being released on bond. *Id.* ¶ 224. After nine months of facing a pending criminal charge, the District Attorney’s Office declined to prosecute on November 12, 2019. *Id.* ¶ 158.

SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate when ‘there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Hardigree v. Lofton*, 992 F.3d 1216, 1223 (11th Cir. 2021) (quoting Fed. R. Civ. P. 56(a)). A court deciding a motion for summary judgment views the evidence in the light most favorable to the non-moving party. *Id.*

ANALYSIS

I. As a Matter of Law, the Facts and Circumstances Known to Sullivan on Thanksgiving Day 2018 Did Not Give Rise to Arguable Probable Cause for Plaintiff’s Arrest.

Based on the undisputed facts and circumstances known to Sullivan on Thanksgiving Day 2018 when he filed his warrant affidavit that initiated Plaintiff’s prosecution, no arguable probable cause existed to believe that she called 911 for the purpose of interfering with or disrupting an emergency telephone service in violation of O.C.G.A. § 16-11-39.2. Sullivan deemed Plaintiff’s 2½ minute phone call to 911 to be purposefully disruptive because it was “in reference to” stopping gunshots -- a request for service that Sullivan classified as “not a true emergency.” SUMF ¶ 178. Sullivan’s classifying Plaintiff’s request as a non-emergency was based on his earlier blind assumption, made from miles away and never confirmed, that the gunshots Plaintiff was reporting were safe, lawful, and non-actionable. SUMF ¶¶ 25, 29-35, 103-104. Sullivan then extrapolated that if Plaintiff was calling for a non-emergency, she must therefore be calling “for the purpose of interfering with or disrupting” 911. SUMF ¶ 178. But this inference was contradicted by the facts both known and readily available to Sullivan at the time he filed his affidavit -- all of which indicated that Plaintiff was simply calling to get the gunshots stopped. Because no reasonable officer in Sullivan’s position could have believed that

Plaintiff's purpose in calling was to interfere with or disrupt the 911 phone service, rather than to get the gunshots stopped, summary judgement must be granted for Plaintiff as to probable cause.

A. Legal standard

“Arguable probable cause exists where reasonable officers in the same circumstances and possessing the same knowledge as the [d]efendant could have believed that probable cause existed to arrest.” *Rushing v. Parker*, 599 F.3d 1263, 1266 (11th Cir. 2010) (quotations omitted); *accord Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007). The factual basis for determining arguable probable cause is limited to what the defendant officer knew or should have known at the time of their alleged unconstitutional action. *Lee v. Ferraro*, 284 F.3d 1188, 1200 (11th Cir. 2002) (“The court does not use hindsight to judge the acts of police officers; the court looks at what they knew (or reasonably should have known) at the time of the act.”); *Jones v. Cannon*, 174 F.3d 1271, 1283 n.4 (11th Cir. 1999) (“what counts for qualified immunity purposes relating to probable cause to arrest is the information known to the defendant officers or officials at the time of their conduct”).

In evaluating probable cause, it is also well-established that “an officer may not unreasonably disregard certain pieces of evidence by choosing to ignore information that has been offered to him or her or electing not to obtain easily discoverable facts that might tend to exculpate the suspect.” *Cozzi v. Birmingham*, 892 F.3d 1288, 1294 (11th Cir. 2018); *see also Kingsland v. City of Miami*, 382 F.3d 1220, 1229 (11th Cir. 2004) (evaluating reasonableness of probable cause determination and holding that “an officer may not choose to ignore information that has been offered to him or her” or “elect not to obtain easily discoverable facts”).

Finally, for purposes of Plaintiff's malicious prosecution claim, arguable probable cause is restricted to only the offense with which Sullivan charged her – i.e., calling 911 “for the

purpose of interfering or disrupting an emergency telephone service.” O.C.G.A. § 16-11-39.2(b)(2). *See Williams v. Aguirre*, 965 F.3d 1147, 1162 (11th Cir. 2020) (“any-crime rule” for probable cause for a warrantless arrest does not apply to arrest made pursuant to legal process).

B. No arguable probable cause existed based on Sullivan’s unverified and reckless assumption that the gunshots were lawful

Sullivan’s theory of probable cause is built upon two fallacies:

- (1) his uninvestigated and reckless assumption -- made from miles away, from outside of his assigned zone, and never verified -- that the gunshots reported by Plaintiff were safely occurring on private property and were therefore lawful and non-actionable. *See* SUMF ¶¶ 29-35, 65-67, 182-185;² and
- (2) his illogical inference that if Plaintiff called 911 for a non-emergency reason, which O.C.G.A. § 16-11-39.2 does not prohibit, she must have been calling for the purpose of disrupting 911.³

Given the facts and circumstances known to Sullivan on Thanksgiving Day 2018, no reasonable officer could have indulged in either, let alone both, of these fallacies.

1. Reckless assumption that the gunshots were lawful

Dispatch notified Sullivan of Plaintiff’s initial call, stating: “2040 Ga Spur 25 by the Chevron. Caller is advising she’s hearing shots coming from behind there. She wants it to stop so she can enjoy her dinner.” SUMF ¶¶ 21-22. Sullivan, at the time, was about 10 minutes away

² *See* Ex. T (Affidavit) at 157 ¶ 4 (“Being from the immediate area, I knew the shots [initially reported by Plaintiff] were being fired from private property in which the individuals shooting were well in their rights to be shooting. . . I advised the Camden County Dispatch Center that the subjects allegedly shooting had every right to do so.”); *id.* at ¶ 5 (“Dispatchers relayed [to Ms. Prospero’s husband] the information given by me stating that the subjects shooting were within their rights to do so . . .”); *id.* (during 911 call, “[Plaintiff] was given the same information that was given to husband in reference to the subjects being within their rights to be shooting firearms on private property.”).

³ *See* Ex. T (Affidavit) at 157 ¶ 2 (stating that Plaintiff committed a violation of O.C.G.A. § 16-11-39.2 “when he/she unlawfully contacted 9-1-1, an emergency telephone service in reference to an incident that was not a true emergency for the purpose of interfering or disrupting an emergency telephone service.”); *id.* at 158 ¶ 1 (concluding that “Mrs. Prospero disrupted an emergency telephone service for service that was not an emergency,” but failing to allege that *her purpose was to disrupt* as required by the elements of O.C.G.A. § 16-11-39.2(b)).

from the Chevron -- so not in a position to assess the origin or safety of the gunshots for himself. *Id.* ¶¶ 29-30. Sullivan testified that “[g]unshots behind a busy truck stop would usually generate an emergency response.” *Id.* ¶ 24. Sullivan further testified that if someone was shooting on private property but in an unlawful manner, he had the authority to intervene. *Id.* ¶ 35.⁴ Despite these admitted indicators that some investigation of the reported gunshots was warranted, Sullivan dismissed Plaintiff’s call, telling Dispatch: “That’s private property. I’m not going to go back there and make somebody stop shooting.” *Id.* ¶ 25. This approach contravened the CCSO’s Patrol Function Standard Operating Procedure (SOP) which states: “Deputies should be discouraged from forming definite opinions about a call before arriving at the scene.” *Id.* ¶ 28.

Nonetheless, Sullivan assumed from miles away, and never confirmed, that the shots were coming from the private property of one Robert Paulk. *Id.* ¶¶ 31-33, 102-104. Sullivan also never investigated whether the shooter(s) had permission from the property owner to be doing so; whether the shots had been fired within 50 yards of a public road; or whether the shots had been fired in a manner that would endanger the bodily safety of others – all of which would be relevant to whether the shots were unlawful, even if they were originating on private property. *Id.* ¶ 34.

No reasonable officer could have believed that such a reckless assumption, made from miles away and never investigated or confirmed, created a legitimate basis for probable cause. *Compare to* Ex. E (Archibald Tr.) at 37:2 (stating that “[a]ny bullet fired is a safety concern.”) & Ex. M (Proctor Tr.) at 107:1-10 (Sheriff testifying that even if the gunshots were originating

⁴ Someone shooting on private property would still be in violation of the law if, for example, they did not have permission from the property owner to be doing so, or if shots were fired within 50 yards of a public road, or if shots were fired in a manner that would endanger the bodily safety of others. *Id.* ¶ 34.

from private property as Sullivan assumed, he “would want to go see” where the shots were coming from).

2. Illogical inference that calling for a non-emergency equals intent to disrupt

Moreover, even if the gunshots had been verified to be “lawful” and therefore “not a true emergency” (which they never were), this would not equate to Plaintiff’s having the intent to disrupt 911 by asking to have them stopped. Throughout Plaintiff’s brief 911 call, she provided multiple reasons for why she wanted the gunshots stopped, establishing that her request for service was not pretext for desire to disrupt – i.e., she thought the shots were too close to people’s homes, she believed the shots were in violation of noise ordinances, and the Sheriff’s Office had stopped gunshots in the past. *Id.* ¶¶ 75, 77, 81, 85, 87, 89. Dispatch relayed to Sullivan some of these reasons why Plaintiff asked that the shots be stopped, *id.* ¶ 150, and the rest could be heard stated by Plaintiff in the readily-available recording of her 911 call to which Sullivan “didn’t what to listen.” SUMF ¶ 126. As further unpacked below, no reasonable officer in these circumstances could have concluded that Plaintiff’s purpose in asking to have the gunshots stopped was to interfere with or disrupt 911.

C. The information known to Sullivan overwhelmingly evidenced that Plaintiff’s purpose for calling was to stop the gunshots, not disrupt

The information known to Sullivan when he filed for Plaintiff’s arrest warrant on Thanksgiving Day 2018, which came from his conversations with Dispatch and his review of the two CAD reports (SUMF ¶ 127), overwhelmingly evidenced that Plaintiff’s purpose for calling the non-emergency line and then 911 was to stop the gunshots. No reasonable officer could have concluded otherwise.

In Sullivan’s phone calls with Dispatch, the officers repeatedly told him that Plaintiff was calling to get the gunshots stopped (all emphasis added):

First call between Dispatch & Sullivan:

- “2040 Ga Spur 25 by the Chevron. Caller is advising she’s hearing shots coming from behind there. *She wants it to stop so she can enjoy her dinner.*” Ex. H (2:44 PM Tr.) at 2:5-9.

4 PM call between Dispatch & Sullivan:

- “She didn’t use offensive language or curse [Sullivan: Okay] is what Nikki [Flowers] said. *She just was not a happy camper and she wanted y’all to get it taken care of.*” Ex. P (4:00 PM Tr.) at 16:8-13.⁵

The CAD reports likewise repeatedly state that Plaintiff called to get the gunshots stopped:

CAD report for call to non-emergency line (2:42 PM):

- “Call Type Shots Fired” – “Shots from behind the Chevron” – “*She just wants it to stop so she can enjoy her dinner*” Ex. G (Non-emergency CAD) at 2:43:45 PM.

CAD report for 911 call (2:58 PM):

- “Calling *about the shooting* from hunt [sic] club.” Ex. A at 2:59:35 & 2:59:47 PM.
- “Doesn’t want the deputy at her house *just wants it stopped.*” *Id.* at 3:00:09 PM (emphasis added).
- Caller “stated repeatedly she did not want a deputy but that *these gunshots were in violation of noise ordinances.*” *Id.* at 3:01:59 PM (emphasis added).
- Caller advised that Sullivan (Officer 1179) “previously stated that the subjs firing are on private property and on a hunting club and well within their rights to use their firearms.” *Id.* at 3:03:13 PM.
- Caller “*not happy with this response* and nor was she happy with the fact that a deputy was dispatched to her residence[.]” *Id.* at 3:05:04 PM.
- Caller advised that “*she would contact the TV stations* and disconnected.” *Id.* at 3:05:30 PM.

The foregoing information, conveyed to and known by Sullivan, overwhelmingly establishes that Plaintiff’s purpose in calling was to get the gunshots stopped, not to interfere or disrupt. Indeed, once Plaintiff understood that the Sheriff’s Office was not going to act, she verbally identified a possible alternative path to achieving her goal of stopping the gunshots (i.e., calling the TV stations). This further evidenced that her purpose in calling was not to disrupt

⁵ Flowers confirmed that this statement to Sullivan accurately represented her understanding of Plaintiff’s purpose for calling and that “it” referred to gunshots. Ex. F (Flowers Tr.) at 127:7-21.

911, but simply to obtain the desired assistance. Thus, no reasonable officer possessing this same information that was known to Sullivan could have believed there was probable cause to arrest or charge Plaintiff with calling 911 for the purpose of interfering or disrupting the service. *See, e.g., Tuggle v. Clayton County Sheriff*, 1:06-CV-00272-ODE, 2007 WL 9672388, at *5 (N.D. Ga. July 16, 2007) (finding no probable cause to believe Tuggle, who had called the sheriff's office twice in a three-minute time period, was calling for the purpose of harassing the sheriff when Tuggle stated during each call that his purpose in calling was to speak or meet with the sheriff).

D. Information Sullivan reasonably *should have known* also overwhelmingly evidenced that Plaintiff's purpose was to stop the gunshots, not disrupt

In addition to the information that Sullivan undisputedly knew about Plaintiff's purpose for calling, he is also responsible for the information that *he reasonably should have known*. *See Ferraro*, 284 F.3d at 1200 (in judging officers' actions, "the court looks at what they knew (or reasonably should have known) at the time of the act"). In evaluating probable cause, it is well-established that "an officer may not unreasonably disregard certain pieces of evidence by choosing to ignore information that has been offered to him or her or electing not to obtain easily discoverable facts that might tend to exculpate the suspect." *Cozzi*, 892 F.3d at 1294; *see also Kingsland*, 382 F.3d at 1229 ("an officer may not choose to ignore information that has been offered to him or her" or "elect not to obtain easily discoverable facts"); *accord Sevigny v. Dicksey*, 846 F.2d 953, 957 n.5 (4th Cir. 1988) ("Objective inquiry into the reasonableness of an officer's perception of the critical facts leading to an arrest . . . must charge him with possession of all the information reasonably discoverable by an officer acting reasonably under the circumstances."); *BeVier v. Hucal*, 806 F.2d 123, 128 (7th Cir. 1986) ("A police officer may not close her or his eyes to facts that would help clarify the circumstances of an arrest.").

Here, the audio-recordings of Plaintiff and her husband's calls, particularly her 911 call, would have helped clarify the circumstances and basis of her arrest that Sullivan was contemplating, including (as explained below) providing exculpatory information regarding her purpose for calling. The audio-recordings had been offered to Sullivan and were easily accessed. SUMF ¶¶ 120, 123, 128. Dispatch could have played the recordings for him over the phone in a matter of minutes. *Id.* ¶¶ 129-130. Under the well-established law of *Cozzi* and *Kingsland*, Sullivan is therefore chargeable with knowing the information contained in the audio-recordings. He cannot ignore them simply because he "didn't want to listen." *See Cozzi*, 892 F.3d at 1297 ("officer may not turn a blind eye to evidence suggesting that a suspect is innocent by 'choos[ing] to ignore information that has been offered to him or her'").

The audio recordings contain the following information (all emphasis added) that even further removed any arguable probable cause to believe Plaintiff's purpose in calling 911 was to interfere with or disrupt the service as opposed to getting the gunshots stopped:

Plaintiff's call to non-emergency line (2:42 PM):

- "Yes, there's a ton of shots behind the Chevron station over here. They've been shooting for about ten minutes. And they're not stopping. *Can you get somebody over there to tell them to stop shooting. It's too close to the neighborhoods here.*" Ex. D (2:42 PM Tr.) at Tr. at 2:3-10.
- "*I just want the shooting to stop.* I'm trying to enjoy my Thanksgiving." *Id.* at 1:16-18.

Joseph Prospero's call to non-emergency line (2:46 PM):

- "they've been *shooting around here* now for the last 20, 25 minutes . . . it's right behind the Chevron, Exit 14." Ex. N (2:46 PM Tr.) at 3:3-8.
- "No, I don't want contact. *I want the shooting stopped.*" *Id.* at 3:18-19.
- Archibald states deputies are aware. It is a hunting club, private property [unconfirmed assumption]. *Id.* at 3: 20-22.
- "*It's too close to the neighbor. They need to tell them to stop.*" *Id.* at 4:1-3.
- Archibald restates it is private property, a hunting club [unconfirmed assumption]. *Id.* at 4:4-5.
- "*They stopped it before.*" *Id.* at 4:8.

Plaintiff's 911 call (2:58 PM):

- “There’s *tons of shots and they keep going and going and going* around the Chevron station over there in Woodbine.” Ex. O (911 Tr.) at 8:4-7.
- Archibald states there’s a hunting club back there. [But location of gunshots was unconfirmed.]
- “Okay, well, *it’s too close to the neighborhood. The shots are coming too close. They need to stop it.*” *Id.* at 8:10-12.
- Archibald restates it is private property, hunting club. [But location of gunshots was unconfirmed.]
- “I understand, but they’re not, *because of the noise ordinances, they’re not supposed to have that. We’ve already been through this before, and they’ve stopped it. So we want it stopped.*” *Id.* at 8:18-23.
- “*We just want it stopped.*” *Id.* at 9:1-2.
- Archibald states the deputy is not going out to the location of the gunshots.
- “*I just want it stopped. Can I get your name? I – I don’t understand why they’re not going to – stopping it. They always do in the past. Why is this different today?*” *Id.* at 9:7-11.
- Archibald passes the phone to Flowers.
- Flowers introduces herself and states deputy was given the location of the gunshots but advised it was private property, a hunting club and shooters were within their rights to shoot. [But location and lawfulness of gunshots unconfirmed.]
- “*Actually, that’s not what we’ve been told because of the noise ordinance.*” *Id.* at 10:9-10.
- Flowers states shooting is not inside the Woodbine city limits.
- “Right, I understand, but . . . *if the shots are coming to[o] close to people’s homes.*” *Id.* at 10:16-18
- Flowers states a deputy is on the way to Plaintiff’s home to speak to her.
- Plaintiff states they do not want anyone at their home because they are not doing anything wrong.
- “*People don’t want shots next to their houses.*” *Id.* at 11:2-6.
- Flowers reiterates that deputy is on the way to speak to Plaintiff.
- “Well, I’m not answering the door. We’re leaving . . . We will call the TV station.” *Id.* at 11:13-17.

Review of the foregoing calls, or even just the 911 call, fully evidences that Plaintiff called to stop the gunshots, which she believed were coming “too close” and violating noise ordinances. Plaintiff’s 911 call also reveals that she perceived a discrepancy in the law enforcement response that Thanksgiving Day compared to in the past (“Why is this different today?” she asks). This further explains why Plaintiff legitimately called 911 after her husband was told the deputy would not be going to the scene of the shots. No reasonable officer hearing

Plaintiff's calls -- which were readily available to Sullivan and to which Dispatch encouraged him to listen (SUMF ¶¶ 123, 128-30) -- could have believed her purpose for calling was to interfere or disrupt as opposed to her purpose being to get the gunshots stopped. *See, e.g., Tuggle*, 2007 WL 9672388, at *5 (no probable cause to believe Tuggle was calling for the purpose of harassing the sheriff when Tuggle stated during each of his two calls that he was calling to speak or arrange to meet with the sheriff).

E. Sullivan's testimony that Dispatch told him Plaintiff intended to disrupt in order to get the desired services does not create arguable probable cause

Sullivan testified that, in addition to his recorded phone calls with Dispatch on Thanksgiving Day 2018, he also spoke in-person with Archibald and/or Flowers. He claims one or both told him they thought "the purpose of [Plaintiff's] call was to disrupt *in order to have the results she wanted at a faster pace than what she was getting*." Ex. I (Sullivan Tr.) at 193:1-4 (emphasis added). Neither Archibald nor Flowers confirm this,⁶ and this information does not appear in Sullivan's affidavit. *See* Ex. T. But even if Sullivan's testimony were credited, it would not create arguable probable cause. The alleged in-person statement by Dispatch does not contradict what Dispatch also told Sullivan in their recorded phone calls and in the CAD reports -- *i.e.*, Plaintiff called for the purpose of getting "the results she wanted" which was to get the gunshots stopped. If Plaintiff called because she wanted this result "at a faster pace," this would still not change her purpose for calling. Her purpose would still be to get the gunshots stopped. Thus, the alleged in-person statement by Dispatch could not have led any reasonable officer

⁶ *See* Ex. E (Archibald Tr.) at 106:5-107:3 (after Plaintiff's 911 call, nobody asked Archibald about what happened during the calls; he was not part of any conversations with Sullivan or anyone else about whether to charge Plaintiff; and he does not recall overhearing Flowers having conversations with anyone about whether to charge Plaintiff); Ex. F (Flowers Tr.) at 145:7-21 (Flowers does not recall if Sullivan came in-person to the Dispatch Center).

possessing the same information as Sullivan to believe that Plaintiff's purpose for calling was to interfere or disrupt 911.⁷

Meanwhile, if Sullivan understood Dispatch to say that they thought Plaintiff's actual purpose was to disrupt 911 (rather than to get the results that she wanted quicker), that would have constituted a "shifting narrative" since in all of Dispatch's recorded calls with Sullivan and in their CAD reports they conveyed that Plaintiff called for the purpose of getting the gunshots stopped. *See* Section I.C, *supra*. Such a "shifting narrative" would have further triggered Sullivan's obligation to listen to the readily-accessible audio recordings of Plaintiff's calls to assess if they evidenced intent to interfere or disrupt (which they do not). *See Randazzo v. Fisher*, No. 1:20-CV-1917-CAP, 2022 WL 841757, at *20, *22 (N.D. Ga. Mar. 9, 2022) (finding no arguable probable cause where officer based his warrant application on a witness' "shifting narrative" but failed to review available records that would have helped resolve the witness' inconsistencies); *see also Daniels v. Bango*, 487 Fed. App'x 532, 538-39 (11th Cir. 2012) (holding that when time was "not of the essence" in making an arrest, and the information known to the officer preparing the warrant application included inconsistencies, the officer was reckless not to "have taken a few more simple steps" to further investigate). No reasonable officer hearing the 911 recording could have believed Plaintiff's purpose for calling was to interfere or disrupt as it is so overwhelmingly clear from her conversation with Dispatch that she just wants the gunshots stopped. *See* Section I.D, *supra*. Thus, had Sullivan done the bare minimum to

⁷ Any claim that Plaintiff's 2 ½ minute 911 call had the actual effect of disrupting 911 strains credibility. The Dispatch Center had 6 to 8 emergency lines for receiving 911 calls with 4 Dispatch Officers available each shift to answer incoming calls. The Call Log for that day did not show any other calls coming into the Dispatch Center during Plaintiff's 911 call. And Archibald, who primarily spoke with Plaintiff, could not recall anything that he was not able to get done that day because she had called. SUMF ¶¶ 92-95. In any event, O.C.G.A. § 16-11-39.2(b) only prohibits interfering with or disrupting 911 where the caller has the "purpose" or intent of doing so.

investigate by listening to the 2½-minute recording of Plaintiff's 911 call, any arguable notion of probable cause created by Dispatch's alleged "shifting narrative" about Plaintiff having a disruptive purpose would have been promptly dispelled.

To conclude, based on the undisputed material facts about what information Sullivan knew, or reasonably should have known, about Plaintiff's Thanksgiving Day 2018 calls -- and even crediting Sullivan's testimony about Dispatch's alleged in-person statement to him -- no arguable probable cause existed to believe Plaintiff had violated O.C.G.A. § 16-11-39.2.

Summary judgment on probable cause should therefore be granted for Plaintiff.

II. Based on the Undisputed Facts in This Case, Plaintiff is Entitled to Judgment as a Matter of Law on Her Malicious Prosecution Claim

Based on the information Sullivan knew and reasonably should have known at the time he filed his warrant affidavit, no arguable probable cause existed to charge Plaintiff with calling 911 for the purpose of interfering or disrupting an emergency telephone service. Despite this, Sullivan filed his affidavit, misrepresenting and omitting key facts that, if corrected, would have negated probable cause. For example, Sullivan's affidavit represents that the shots Plaintiff reported were "lawful" when in fact Sullivan had only recklessly assumed the shots were lawful. The affidavit falsely equates calling for a "non-emergency" reason with calling for the purpose of disrupting. The affidavit falsely states that Plaintiff's 911 call lasted 32 minutes, when in fact it only lasted 2 ½ minutes. The affidavit omits multiple pieces of exculpatory information that Sullivan knew, and should have known, regarding Plaintiff's purpose in calling. No reasonable trier of fact could fail to conclude that these misstatements and omissions were reckless, if not intentional, especially considering that prior to preparing his affidavit, Sullivan stated that he wanted to let "those motherfuckers" Plaintiff and her husband "know how stupid they are." SUMF ¶¶ 57, 61. Because Sullivan's affidavit contained reckless, if not intentional, material

misstatements and omissions that if corrected would negate probable cause, summary judgment must be granted to Plaintiff on her malicious prosecution claim.

A. Legal Standard

To prevail on a malicious-prosecution claim based on a warrant, a plaintiff must show that: (1) the criminal proceedings terminated in her favor, (2) “the legal process justifying [her] seizure was constitutionally infirm,” and (3) “[her] seizure would not otherwise be justified without legal process.” *Luke v. Gulley*, 975 F.3d 1140, 1144 (11th Cir. 2020). On the first prong, the criminal proceedings terminated in Plaintiff’s favor when the district attorney declined to prosecute. SUMF ¶ 217. On the third prong, Plaintiff establishes in Section I above that there was no arguable probable cause to believe she called 911 for the purpose of interfering or disrupting the phone service.⁸ On the second prong, a warrant is constitutionally infirm if it contains misstatements or omissions of fact necessary to support probable cause. *Franks v. Delaware*, 438 U.S. 154 (1978) (material misstatement in search warrant violates Fourth Amendment); *United States v. Martin*, 615 F.2d 318, 329 (5th Cir. 1980) (extending *Franks* to omissions in arrest warrant); *Madiwale v. Savaiko*, 117 F.3d 1321, 1326-27 (11th Cir. 1997) (noting “reasoning in *Franks* also applies to information omitted from warrant affidavits”).

To establish a *Franks* violation, the plaintiff must show that the misrepresentations were made “intentionally or recklessly,” *Williams*, 965 F.3d at 1165, and that “probable cause would be negated if the offending statement was removed or the omitted information included.” *Paez v. Mulvey*, 915 F.3d 1276, 1287 (11th Cir. 2019). Notably, under the *Franks* prong, the qualified

⁸ Additionally, as this Court previously noted, “even if there had been actual or arguable probable cause, Defendants never explain why this was an arrest that *could* have been made without a warrant. After all, the general rule under the Fourth Amendment is that ‘a warrant must *generally* be secured . . . subject to certain reasonable exceptions.’ Defendants have not advanced any reason why the mere presence of probable cause would justify a warrantless arrest here.” ECF 66 at 32, n.8 (alterations in original) (quoting *Kentucky v. King*, 563 U.S. 452, 459 (2011)).

immunity question is whether there was *actual* probable cause, not arguable probable cause. *See Williams*, 965 F.3d at 1168-70 (denying summary judgment for defendants on qualified immunity because “the law is clearly established that the Constitution prohibits a police officer from knowingly making false statements in an arrest affidavit *about the probable cause* for an arrest. . . This prohibition applies when an arrest affidavit is *insufficient to establish probable cause* without an officer’s false statement.” (cleaned up and emphasis added)).

Recklessness can be inferred where the officer omitted relevant, exculpatory information, or did not disclose known inconsistencies to the reviewing court. *See Madiwale*, 117 F.3d at 1327 (when an affidavit omits facts that “are clearly critical to a finding of probable cause[,] the fact of recklessness may be inferred from proof of the omission itself”); *Daniels*, 487 F. App’x at 539 (“We cannot quarrel with the district court’s finding that Bango recklessly omitted material information when he did not . . . include the inconsistencies in his arrest-warrant application to the judge.”). *Accord Smith v. Sheriff, Clay Cty.*, 506 F. App’x 894, 898 (11th Cir. 2013).

B. Sullivan’s affidavit contained reckless, if not intentional, misstatements and omissions of fact that if corrected would negate probable cause

Based on the undisputed material facts in this case, Sullivan’s arrest warrant affidavit contained the following reckless misstatements and omissions that if corrected would negate probable cause to believe Plaintiff called 911 for the purpose of interfering with or disrupting the emergency telephone service.

1. Reckless misrepresentation that the reported gunshots were “lawful”

Sullivan’s affidavit presents as bedrock fact that the gunshots reported by Plaintiff and her husband were lawful and therefore not actionable. SUMF ¶ 182; *see also* FN2, *supra*. The purported lawfulness of the gunshots was, however, an uninvestigated, unconfirmed, and reckless assumption on Sullivan’s part, which he failed to disclose to the court. *See* Section I.B.

supra; SUMF ¶¶ 29-35, 182-185; Ex. T (Affidavit) at 157, ¶¶ 4, 5. This knowing and reckless, if not intentional, omission is crucial because Sullivan’s entire probable-cause theory hinges on the premise that the gunshots Plaintiff called to report warranted no law enforcement response. Had Sullivan truthfully revealed to the court that he did not actually know if the gunshots were lawful (he was just blindly assuming from afar that they were), his refusal to respond to Plaintiff and her husband’s first two calls to the non-emergency line becomes unreasonable and indefensible. This, in turn, would preclude him from accusing Plaintiff of intending to interfere or disrupt when she took the logical next step of calling 911 to try to get assistance. In short, Sullivan’s probable-cause theory would crumble had he disclosed in his affidavit that he was assuming, but never confirmed, that the reported gunshots were lawful.

2. Falsely equating calling for a “non-emergency” reason to calling for the purpose of interfering with or disrupting 911

O.C.G.A. § 16-11-39.2 prohibits contacting 911 “for the purpose of interfering with or disrupting emergency telephone service,” but does not prohibit or make it unlawful to contact 911 for non-emergency service. O.C.G.A. § 16-11-39.2(b)(2). Yet, Sullivan recklessly deemed Plaintiff’s request to stop the gunshots to be a “non-emergency” and then falsely equated this to her having the intent to interfere with or disrupt 911. SUMF ¶¶ 178, 180; *see also* FN3, *supra*. This false equivalency was contradicted by plentiful information relayed to Sullivan by Dispatch and contained in the recording of Plaintiff’s 911 call about her purpose for calling being to get the gunshots stopped. *See* Sections I.C & I.D, *supra*. Probable cause would be negated by removing these statements of false equivalency from Sullivan’s affidavit.

3. Reckless misrepresentations about Plaintiff’s call to non-emergency line

Sullivan’s affidavit obfuscates that Plaintiff initially called the non-emergency line, instead making it sound like she contacted emergency services on her first call. SUMF ¶¶ 207-

208. In contrast, Sullivan’s affidavit plainly states that Plaintiff’s husband -- who Sullivan did not charge -- called the non-emergency line. *Id.* ¶ 209. This was knowing obfuscation as Sullivan was well aware that Plaintiff only called 911 one time. *Id.* ¶ 210. Sullivan’s affidavit also later attributes Plaintiff’s husband’s call to her, stating she contacted the non-emergency number “twice,” in order to exaggerate the number of her calls. *Id.*

Sullivan’s affidavit recklessly, if not intentionally, misrepresents that the first time Plaintiff called, she identified the gunshots as coming from “*the area of a hunting club*” and later states: “*the private property of a hunting club* which is the location Ms. Prospero stated the shots were coming from.” *Id.* ¶ 211. This framing suggests that Plaintiff knew when she called that the shots were coming from a hunting club, thereby adding to the affidavit’s theme of portraying Plaintiff’s calls as illegitimate. In point of fact, Plaintiff never mentioned a hunting club. She only identified the shots as coming from behind the Chevron truck stop, which is precisely what Dispatch relayed to Sullivan, both over the phone and in the related CAD report. *Id.* ¶ 212. Meanwhile, Sullivan testified that gunshots behind a busy truck stop, which is what Dispatch told him Plaintiff had reported, “would usually generate an emergency response.” *Id.* ¶ 24. In other words, he concedes that if his affidavit had described her call as it was reported to him by Dispatch, there would be nothing illegitimate about it.

Sullivan’s affidavit also misrepresents that Plaintiff rudely ended her first call to report gunshots, further contributing to the false theme about Plaintiff as disrupter. *See* Ex. T (Affidavit) at 157 ¶ 4 (“Ms. Prospero ended the phone call by hanging up after refusing to give any further information.”). This was a reckless misrepresentation as Dispatch never conveyed to Sullivan that Plaintiff’s first call ended in this manner. SUMF ¶ 214. As captured in the readily-available audio recording, the call ended politely with Dispatch Officer Archibald stating, “I

understand. We will get somebody out there, okay?” Mrs. Prospero responded, “Okay, thank you,” and Archibald said, “Bye-bye.” *Id.* ¶ 215. Probable cause to believe Plaintiff’s purpose in calling 911 was to interfere with or disrupt the service would be negated by correcting these multiple misrepresentations about what she said and how she behaved during her initial call.

4. Reckless misstatement about the duration of Plaintiff’s 911 call

Sullivan’s affidavit falsely states that Plaintiff made a “911 Call on November 22, 2018 at 2:58 PM to November 22, 2018 at 3:30 PM,” a span of 32 minutes. SUMF ¶¶ 186-188. Sullivan generated this statement using “onlinewarrants.com,” where he entered the “Offense Date” and “Offense Time” as November 22, 2018, 2:58 PM and entered the “Until Date” and “Until Time” as November 22, 2018, 3:30 PM. SUMF ¶ 189. The CAD report for Plaintiff’s 911 call, which Sullivan requested from Dispatch and testified he would have looked at, states that Plaintiff had disconnected from 911 by 3:05 PM -- 25 minutes sooner than Sullivan reported in his affidavit. *Id.* ¶ 191. Moreover, the readily-available audio recording of Plaintiff’s 911 call showed it lasted only 2 ½ minutes. *Id.* ¶ 193. These undisputed facts establish that, at a minimum, Sullivan recklessly, if not intentionally, misrepresented the length of Plaintiff’s 911 call as being 32 minutes. This was material to probable cause. A 2½-minute call (or 7-minute call going by the CAD) does not suggest intent to interfere with or disrupt the phone service, whereas a 32-minute call might.

5. Reckless omission of exculpatory information regarding Plaintiff’s purpose

Sullivan’s affidavit accuses Plaintiff of contacting 911 “for the purpose of interfering with or disrupting an emergency telephone service,” but omits crucial exculpatory information known to Sullivan at the time he filed his affidavit regarding Plaintiff’s purpose for calling 911. Specifically, during his 4:00 PM call with Dispatch, Sullivan was asking questions to prepare his

narrative and Officer Heather Sievers told him that “Nikki” Flowers, who had spoken to Plaintiff, said Plaintiff “just was not a happy camper and *she wanted y’all to get it taken care of.*” SUMF ¶¶ 195 (emphasis added). Sullivan had a duty to disclose to the reviewing court this exculpatory information about Plaintiff’s purpose for calling 911, regardless of whether he believed other evidence supported an intent to interfere or disrupt. *Daniels*, 487 F. App’x at 539 (“We cannot quarrel with the district court’s finding that [defendant officer] recklessly omitted material information when he did not . . . include the inconsistencies in his arrest-warrant application to the judge.”). Had Sullivan’s affidavit included Sievers’ statement that Plaintiff “just . . . *wanted y’all to get it taken care of,*” this would have significantly negated probable cause to believe Plaintiff’s purpose in calling was to interfere or disrupt.

6. Reckless omission of exculpatory information Sullivan *should have known*

As explained in Sections I.D & I.E above, Sullivan is responsible for knowing the readily-obtainable information contained in the audio recording of Plaintiff’s 911 call that was offered to him and to which Dispatch encouraged he listen. *See Ferraro*, 284 F.3d at 1200; *Cozzi*, 892 F.3d at 1294; *Kingsland*, 382 F.3d at 1229. In Plaintiff’s 911 call, she stated several times that she called to get the gunshots stopped because she believed they were coming “too close” to people’s homes, she believed they were violating noise ordinances (Sullivan’s affidavit mentions this because it appears in the 911 CAD), and that she did not understand why the law enforcement response was different than in the past. SUMF ¶¶ 75, 77, 81, 85, 87. This exculpatory information concerning Plaintiff’s reasons for calling 911, that is omitted from

Sullivan's affidavit, still further negates probable cause to believe Plaintiff's purpose in calling was to interfere with or disrupt 911.⁹

C. A corrected version of Sullivan's affidavit does not establish probable cause

Correcting the foregoing misrepresentations and omissions, Sullivan's affidavit reads:

AFFIDAVIT

Personally came Ryan Sullivan, who on oath says that, to the best of his/her knowledge and belief Emma Jane Prospero did, commit the offense of, 16-11-39.2 Misdemeanor, Unlawful Conduct during 911 Call on November 22, 2018 at 02:58 PM to November 22, 2018 at ~~03:30 PM~~ 03:00 PM, in Camden County, Georgia; the place of occurrence of said offense being 84 Magna Carta Drive; and against the laws of the State of Georgia.

Said offense being described as: 16-11-39.2 Misdemeanor. Unlawful Conduct during 911 Call For the said Emma Jane Prospero did violate O.C.G.A. 16-11-39.2 when he/she unlawfully contacted 9-1-1, an emergency telephone service ~~in reference to an incident that was not a true emergency~~ for the purpose of interfering or disrupting an emergency telephone service.

2018-00071231

November 22, 2018

84 Magna Carta Drive Misuse of Emergency Service

On November 22nd, 2018 at approximately 1442 hours, the Camden County Public Safety Complex received a call on the non-emergency line for ~~alleged emergency~~ service in reference to shots being fired behind the Chevron Truck Stop in the area of 84 Magna Carta Drive. The call was taken by correctional staff and forwarded the call to the Camden County Emergency Dispatch Center. The caller, later identified as Ms. Emma J. Prospero, advised the Camden County Emergency Dispatch Center that she heard shots being fired from behind her residence ~~in the area of the hunting club~~ behind the Chevron Truck Stop. Ms. Prospero advised dispatcher that she did not want contact from law enforcement but she wanted the shooting to be stopped. She stated the shooting needed to be stopped so she could enjoy her Thanksgiving dinner.

~~Ms. Prospero ended the phone call by hanging up after refusing to give any further information.~~ Being from the immediate area, I ~~knew assumed, but did not confirm, that~~ the shots were being fired from private property ~~in which and I assumed, but did not confirm, that~~ the individuals shooting were well in their rights to be shooting. After receiving the call for service, I advised the Camden County Dispatch Center of my assumption that the subjects allegedly shooting had every right to do so on the private property of a hunting club which I know to be in the area behind the Chevron Truck Stop is the location ~~Ms. Prospero stated the shots were coming from.~~ Ms. Prospero's husband contacted the Camden County Emergency Dispatch Center by using the non-emergency phone number at approximately 1452 hours and stated the same information that was given to dispatcher before by Ms. Prospero stating there are shots behind the Chevron, it's too close to the neighbor, and they stopped it before, and still refused to speak to law enforcement.

⁹ Had Sullivan listened to the recording of Mr. Prospero's call, he would have heard similar explanations for why they wanted the gunshots stopped. SUMF ¶¶ 46, 48. This exculpatory information from Mr. Prospero's call was also not included in Sullivan's affidavit. See Ex. T (Affidavit) at 157, ¶ 4.

Dispatchers relayed the information given by me that I assumed that the subjects shooting were within their rights to do so but Ms. Prospero's husband did not agree with the answer and hung up the phone. At 1458 hours, Ms. Prospero contacted 9-1-1, stating that she wanted the shooting from the hunting club to stop. She stated that the shots were coming "too close" and asked why the response today was different than in the past. She was given the same information that was given to husband in reference to my assumption that the subjects being within their rights to be shooting firearms on private property. Ms. Prospero began arguing with Emergency Dispatcher by stating the gun shots were in violation of noise ordinances and that it needed to be stopped so she could enjoy her dinner. After being advised that a Deputy would be en route to her residence to speak with her, Ms. Prospero repeatedly stated that she would not answer her door or she would leave the residence if law enforcement responded to speak with her. She then stated she would be contacting the local new stations if a deputy responded to her residence.

Due to Ms. Prospero calling 9-1-1 which is an emergency telephone service used for emergency phone calls and for individuals needing emergency service, deputies with the Camden County Sheriff's Office are required to respond to the residence or location the call in made from if that information is known. I arrived at 84 Magna Carta Drive at approximately 1515 hours and stood in the driveway for several moments without hearing any gunshots in the area. I knocked on the front door of the residence in an attempt to make contact with Ms. Prospero but met negative results two separate times. I asked the Camden County Emergency Dispatch Center to contact Ms. Prospero's phone number that was used to call 9-1-1 but they stated the phone went to voicemail both times they attempted calling. Contact was never made with Ms. Prospero while on scene at her residence. I did not hear any gun shots in the area while on scene at Ms. Prospero's residence. When I spoke with the Dispatch Center about Ms. Prospero's call, they said she was not a happy camper and wanted the gunshots taken care of.¹⁰ Ms. Prospero contacted 9-1-1 (an emergency telephone service) after first contacting the non-emergency number ~~twice~~ and refused to make contact with law enforcement. Ms. Prospero's purpose in calling was to disrupted an emergency telephone service for service that was not an emergency.

Nothing further at this time

With the foregoing corrections, Sullivan's affidavit does not provide probable cause to believe Plaintiff called 911 for the purpose of interfering with or disrupting the emergency phone service as opposed to calling for the purpose of getting the gunshots stopped.

D. No Reasonable Jury Could Fail to Find That Sullivan's Misstatements and Omissions in his Warrant Affidavit were Reckless, if Not Intentional

No reasonable trier of fact could fail to find that the knowing defects in Sullivan's affidavit were reckless -- if not intentional -- given that recklessness can be inferred from

¹⁰ Sullivan's claim that Dispatch told him, in-person, that they thought Plaintiff's purpose was to disrupt to get the result that she wanted faster is not added into this corrected affidavit because Sullivan testified this information was known to him when he prepared his affidavit, yet he did not include it. *See Whiteley v. Warden*, 401 U.S. 560, 565 n.8 (1971) ("an otherwise insufficient affidavit cannot be rehabilitated [with] information possessed by the affiant when he sought the warrant but not disclosed to the issuing magistrate"); *Williams*, 965 F.3d at 1162 (same).

omitting key facts from the warrant and failing to disclose inconsistencies both of which Sullivan did. *See Madiwale*, 117 F.3d at 1327 (when an affidavit omits facts that “are clearly critical to a finding of probable cause[,] the fact of recklessness may be inferred from proof of the omission itself”); *see, e.g., Daniels*, 487 F. App’x at 539 (“We cannot quarrel with the district court’s finding that [defendant officer] recklessly omitted material information when he did not . . . include the inconsistencies in his arrest-warrant application to the judge.”); *Randazzo*, 2022 WL 841757, at *20 (“Because the defendant did . . . [not] even acknowledge the inconsistencies in the evidence, the court finds that he did not act as a reasonable officer would in this situation. Consequently, the court finds that his statements in the warrant application were made in reckless disregard of the truth.”). Additionally, no reasonable trier of fact could fail to find recklessness, if not intentionality, given Sullivan’s statements prior to preparing his affidavit where he referred to Plaintiff and her husband as “stupid motherfuckers” and stated that he would “let them know how stupid they are.” SUMF ¶¶ 57, 61. Plaintiff is therefore entitled to summary judgement on her malicious prosecution claim.

CONCLUSION

Based on the undisputed material facts in this case, there was no arguable probable cause to believe Plaintiff intended to interfere with or disrupt the 911 emergency telephone service when she called to ask that gunshots be stopped. Additionally, Sullivan’s affidavit filed in support of Plaintiff’s arrest warrant contained reckless, if not intentional, misstatements and omissions of fact that, if corrected, would defeat probable cause. Plaintiff is therefore entitled to summary judgment as to both lack of probable cause and malicious prosecution.

Respectfully submitted this 6th day of July, 2023.

[signature on next page]

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*Thank you to Clinic Fellow Allyson Veile
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Ananaba for their contributions.

CERTIFICATE OF SERVICE

I certify that on July 6, 2023, I filed the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON PROBABLE CAUSE AND MALICIOUS PROSECUTION** by filing it on ECF in the U.S. Federal District Court for the Southern District of Georgia which caused electronic copies to be served on:

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