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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

MARVIN D. COTTON; ANTHONY LEGION,
Plaintiffs-Appellees,

v.

DONALD HUGHES; WALTER BATES,
Defendants-Appellants.

No. 25-1201

Appeal from the United States District Court for the Eastern District of Michigan at Ann Arbor.
No. 5:22-cv-10037—Judith E. Levy, District Judge.

Argued: December 10, 2025

Decided and Filed: May 22, 2026

Before: GIBBONS, STRANCH, and DAVIS, Circuit Judges.

COUNSEL

ARGUED: Kevin J. Campbell, CUMMINGS, MCCLOREY, DAVIS & ACHO, PLC, Livonia, Michigan, for Appellants. Beth A. Wittmann, GRANZOTTO & WITTMANN, P.C., Berkley, Michigan, for Appellees. **ON BRIEF:** Kevin J. Campbell, Brandon L. Wykoff, CUMMINGS, MCCLOREY, DAVIS & ACHO, PLC, Livonia, Michigan, for Appellants. Wolfgang Mueller, WOLFGANG MUELLER LAW, Novi, Michigan, for Appellees.

OPINION

JANE B. STRANCH, Circuit Judge. Plaintiffs Marvin Cotton and Anthony Legion spent nearly twenty years in prison for murder convictions and sentences that were vacated in 2020. In the years following their convictions, evidence came to light suggesting that key witness

testimony was fabricated, other material evidence was withheld that would have undermined this testimony, and that Defendants, Detroit Police Department Investigator Donald Hughes and Sergeant Walter Bates, were involved in such misconduct.

Cotton and Legion brought suit, contending that their constitutional and statutory rights were violated in three ways: *first*, by Bates's and Hughes's withholding of favorable evidence that would have undermined the testimony of the State's two key witnesses at trial, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); *second*, by Hughes's fabrication of evidence and testimony that led to the initiation of charges against Cotton and Legion and their continued detention, giving rise to federal and state malicious prosecution claims; and *third*, by Bates's fabrication of key witness testimony, giving rise to a federal fabrication of evidence claim. Bates and Hughes moved for summary judgment on all claims, arguing primarily that they are entitled to qualified or state statutory immunity. The district court denied their motion in part and granted it in part, and they appealed.

Because we do not have interlocutory jurisdiction over several aspects of this appeal, we **DISMISS** some claims. For those claims that we may review on the merits, we **AFFIRM**.

I. FACTUAL AND PROCEDURAL BACKGROUND

We recount the facts as found by the district court.

A. The Underlying Events of January 24, 2001

In the early morning hours of January 24, 2001, Jamond McIntyre let his sister and three men into his home. McIntyre gave his sister some money and she left. No more than five minutes later, a gun battle broke out, and McIntyre was later found dead by the Detroit Police Department (DPD) in a nearby alley.

During these events, McIntyre's cousin, Santonion Adams, an off-duty DPD officer, was waiting outside McIntyre's house in a vehicle. Adams saw two men standing on the porch, one of whom was wearing a red, multi-colored coat, and then heard gunshots. Taking cover on the floor of the car, Adams grabbed a gun he found there and fired it at one of the men on the porch

before eventually exiting the vehicle, running away from the scene, and finding a security guard who let Adams use his phone to call the police.

Upstairs in McIntyre's house that night was his roommate, Kenneth Lockhart, who was asleep in his room with a woman named Renay Tate. At Cotton and Legion's trial, Lockhart gave the following description of that night: he woke up to the sound of gunfire from outside the front of the home; immediately called 911, secured Tate in the closet, and then heard McIntyre yell for help; Lockhart ran to the master bedroom, grabbed a pistol, and immediately returned. Lockhart testified that when peering from his bedroom door, he saw three individuals, one of whom he immediately recognized as Cotton. Lockhart said he asked the men where McIntyre was, and, in response, Cotton pointed at him and told the other two men to kill him; Lockhart then raised his gun, firing once at them. On the night of the incident, however, Lockhart gave a witness statement that did not identify the three men by name or indicate that he recognized any of them. An officer on the scene noted that Lockhart's story changed "several times" and that there was "no evidence of any shots being fired in" the home. R. 102-2, Scene Report, PageID 4920.

B. Investigation, Trial, and Conviction

Less than a month after the incident, on February 15, Lockhart participated in a photo line-up with Investigator Hughes and identified the three men inside the home as Marvin Cotton, Anthony Legion, and Devonte Parks. In a statement taken later that day, Lockhart claimed that he saw the same individuals the day before the shooting at McIntyre's house playing pool.

About one month later, on March 12, Cotton and Legion had their Preliminary Examinations in Michigan state court.[1] Lockhart and Adams testified at the proceeding. Lockhart testified that Cotton and Legion were the men who approached him outside his bedroom and that Cotton was wearing a multi-colored jacket. The state trial judge concluded that because the identification was connected to certain clothing and aligned with the time frame during which witnesses estimated the perpetrators were in the house, the state satisfied the

[1] *See People v. Yost*, 659 N.W.2d 604, 606 (Mich. 2003) (explaining that a preliminary examination is a statutory right that has a "dual function" of "determin[ing] whether a felony was committed and whether there is probable cause to believe the defendant committed it").

requisite probable cause showing that Cotton and Legion had committed the felony. At a separate Preliminary Examination, Lockhart testified that he had "no doubt" Parks was the other individual present the night of the shooting. R. 102-11, Prelim. Tr., PageID 5016. But the prosecution eventually severed the case against Parks and later dismissed it. The identity of the third individual at the house that night was never determined.

Ten days before trial, on October 5, 2001, a jailhouse informant named Ellis Frazier Jr. provided a statement to Sergeant Bates claiming that, while incarcerated with Frazier, Cotton confessed to murdering McIntyre, made references to Lockhart, and implicated Legion. At trial, Frazier detailed this confession, stating that he never received a benefit from police or prosecutors for his testimony, and that he was in a separate but adjoining cell from Cotton, unable to see him, when Cotton confessed. Lockhart subsequently testified consistently with his Preliminary Examination statements, identifying both Cotton and Legion. No physical evidence was presented at trial; rather, the prosecutor's closing argument relied on the testimony of Lockhart and Frazier.

On October 19, Cotton and Legion were found guilty of first-degree murder and possessing a firearm during the commission of a felony. Both received sentences of life without parole. On October 22, Legion pled nolo contendere to second degree homicide in a second, unrelated case, for which he received a sentence of 8 and a half to 20 years.

C. The Vacation of the Convictions of Cotton and Legion

The Wayne County Conviction Integrity Unit (CIU) investigates claims of innocence to determine whether there is new clear and convincing evidence that the convicted defendant was not the person who committed the offense. In 2018, the CIU reviewed Cotton's and Legion's cases. Because evidence was discovered that had been withheld from the defense and the prosecution, the CIU found that Cotton and Legion's trials were "fundamentally unfair" in a manner that "undermined the integrity of the verdict" and therefore determined that their convictions should be vacated. R. 102-24, Press Release, PageID 5478, 5479. After nearly twenty years of imprisonment, Cotton's and Legion's sentences and convictions were vacated in October 2020.

Cotton and Legion rely on three pieces of evidence that are particularly relevant to their vacated convictions and to this appeal:

1. The Hughes Tape

Cotton and Legion produced a conversation taped in 2010 between a now-deceased private investigator and Hughes, who was unaware that he was being recorded. Hughes stated that McIntyre's house was owned by McIntyre's uncle, Keith Johnson, a drug dealer who used the house to sell drugs. Hughes explained that Cotton and Legion were involved in robbing drug houses around the time of the shooting, and Adams was probably working as security that night for the movement of drugs. Hughes further admitted that Lockhart did not have a gun at the time of the incident and that he had "never seen" Cotton and "doesn't know him" but that Lockhart did see the people who actually killed McIntyre. R.102-22, Interview Transcript, PageID 4877, 5348–49, 5354. Hughes said that it was an off-the-record interview with a drug dealer named Zachary Hearns that put him onto Cotton.

2. The Frazier Affidavit

In March 2014, Frazier, the jailhouse informant, signed a notarized affidavit recanting his trial testimony, in which he admitted that he never talked to or met Cotton in the lock-up facility, and that his "testimony was completely fabricated and untrue." R. 102-20, Frazier Affidavit, PageID 5339. Frazier stated that while incarcerated in 2001, he had contacted the Wayne County Prosecutor to offer services as an informant to get out of jail early; in response, a detective visited him in jail and requested his assistance in a murder case. Frazier asserted that this detective told him a story to which he was to testify and gave him the names of Cotton and Legion and the location of the crime. Frazier was told to memorize the contents of pre-written statements and was tested by the detective to make sure he remembered the information. At trial, a detective brought Frazier to the courthouse to testify and to identify Cotton; because Frazier had never met Cotton, the detective showed him Cotton's picture and pointed out where Cotton was sitting in the courtroom. In exchange for his testimony, Frazier was released from custody early on the condition that he not tell anyone about the deal. Frazier was ultimately released

from prison shortly after testifying at Cotton's and Legion's trial, having served less than half of his sentence.

3. The Nard Affidavit

The third piece of evidence is a notarized affidavit signed by Kurt Nard in October 2014. There, Nard details his friendship with Lockhart and recounts a conversation from early 2001 in which Lockhart told him that on the night of the incident he was awakened by gunshots, but he waited until they were over to call the police. Lockhart admitted to Nard that he never saw anyone on the night of the shooting because he was asleep, but that after being released from questioning, he was approached by McIntyre's uncle, Keith Johnson, who offered him "ten thousand dollars to say [that] he saw a man named Marvin Cotton and two other men that were not involved in the murder [] rush[] in the house after the gunshots stopped." R. 102-18, Nard Affidavit, PageID 5284. Johnson, according to Lockhart, wanted to get rid of these three men because of a previous altercation, and pressured Lockhart to lie. Lockhart believed that Johnson was dangerous and feared he would kill him. Nard stated that Lockhart told him in a later conversation that he was being pressured by other family members, so he took Johnson's money and gave the police a statement; Lockhart also showed Nard a bag full of thousands of dollars. Nard swore that the day after this conversation, in February 2001, he contacted DPD about what Lockhart said, that Bates then interviewed him, wrote down his statement, and took two napkins with notes that Nard had written about his conversations with Lockhart. Nard was never contacted by Lockhart or DPD again.

Bates gave deposition testimony that he could not remember the McIntyre murder or the subsequent investigation and prosecution, but he denied fabricating Frazier's testimony or ever speaking with Nard.

D. The Present Litigation

In January 2022, Cotton and Legion filed their complaint asserting state and federal claims against Bates and Hughes. Over the course of the district court proceedings, Cotton and Legion narrowed their claims to (1) *Brady* claims against both Bates and Hughes concerning the information shared by Nard, as well as the Frazier testimony; (2) a *Brady* claim against Hughes

concerning the information in the Hughes tape about the Lockhart evidence; (3) federal and state malicious prosecution claims against Hughes concerning the Lockhart evidence; (4) federal fabrication of evidence claims against Bates concerning Frazier's testimony; and (5) a federal fabrication of evidence claim against Hughes concerning the Lockhart evidence. Bates and Hughes moved for summary judgment, asserting qualified immunity for the federal claims, and contending that collateral estoppel and the *Heck* doctrine bar Cotton's and Legion's claims.

The district court granted in part and denied in part the motion of the Officers for summary judgment. Rejecting Plaintiffs' collateral estoppel and *Heck* arguments, it granted Hughes qualified immunity as to fabrication of evidence and the *Brady* claim concerning the Lockhart evidence. The court denied qualified immunity, however, as to the following claims, finding that genuine disputes of material fact precluded summary judgment: (1) *Brady* claims against Bates and Hughes for failing to disclose the information shared by Nard; (2) *Brady* claims against Bates and Hughes for failing to disclose Frazier's fabricated testimony; (3) federal and state malicious prosecution claims against Hughes regarding the Lockhart identification evidence and testimony; and (4) fabrication of evidence claim against Bates regarding the Frazier affidavit. Bates and Hughes timely appealed.

II. LAW AND ANALYSIS

We begin with the law governing the limitations of our interlocutory jurisdiction. Because our jurisdiction extends only to "final decisions of the district courts," orders denying summary judgment generally are not immediately appealable. 28 U.S.C. § 1291; *Salter v. City of Detroit*, 133 F.4th 527, 534 (6th Cir. 2025). Two exceptions, however, permit interlocutory appeals from the denial of summary judgment: (1) the collateral order doctrine, and (2) pendent appellate jurisdiction. *Salter*, 133 F.4th at 534.

Under the collateral order doctrine, we can review an issue if it would be "effectively unreviewable" at the end of the case. *Id.* (quoting *Chaney-Snell v. Young*, 98 F.4th 699, 708 (6th Cir. 2024)). An order denying qualified immunity satisfies that requirement because qualified immunity provides immunity from suit, not just a defense against a damages award, and requiring officers to stand trial before appealing a denial of immunity would effectively deprive

them of that right. *Chaney-Snell*, 98 F.4th at 708. A defendant may immediately appeal the denial of qualified immunity under this exception because summary judgment is the last opportunity to assert immunity from trial. *Id*.

Under pendent appellate jurisdiction, we can review an issue if it is "inextricably intertwined with an appealable issue," such that the "unappealable issue [is] coterminous with, or subsumed in, the appealable issue." *Id.* at 709 (citation modified).

Bates and Hughes argue on appeal that we should reverse the district court's denial of qualified immunity because Cotton and Legion are (1) barred by the *Heck* doctrine; (2) collaterally estopped from pursuing their claims; and (3) Bates and Hughes are entitled to qualified immunity on the federal claims.[2] Because only some issues are reviewable on interlocutory appeal, our analysis of each issue below first asks whether we have jurisdiction and, if so, then addresses the merits.

A. The *Heck* Doctrine

Under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), a criminal defendant who has been convicted of a crime cannot bring a suit for damages under 42 U.S.C. § 1983 that would imply his underlying conviction or sentence was invalid—such as by claiming that public officials violated the Constitution while investigating or prosecuting that crime—unless he can prove that his conviction or sentence was already favorably terminated. *See Chaney-Snell*, 98 F.4th at 707. To avoid a § 1983 suit that necessarily implies the invalidity of the criminal conviction, *Heck* requires the plaintiff to prove that the conviction or sentence "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486–87.

We begin with whether our interlocutory jurisdiction extends to *Heck* claims. Bates and Hughes argue that Cotton's and Legion's claims are barred by *Heck* because they were not

[2]Although the Reply brief includes language challenging the denial of statutory immunity as to the malicious prosecution claim under state law, the opening brief does not raise this issue. Hughes has therefore forfeited it, and we address it accordingly below. *See Grand v. City of Univ. Heights*, 159 F.4th 507, 515 (6th Cir. 2025).

properly invalidated under Michigan law. But *Chaney-Snell* explained, and *Salter* reiterated, that a *Heck* claim does not fall under either the collateral order doctrine or pendent appellate jurisdiction. 98 F.4th at 711; *Salter*, 133 F.4th at 535.

As to the collateral order doctrine, the purpose of *Heck* is to ensure that "§ 1983's broad cause of action does not swallow up the habeas laws by covering claims that prisoners traditionally litigated in habeas." *Chaney-Snell*, 98 F.4th at 708. But there is nothing precluding "those sued under § 1983 [from] vindicat[ing] this interest after a final judgment." *Id.* The denial of a *Heck* claim is thus reviewable after final judgment and falls outside the scope of the collateral order exception. *Id.*

Regarding pendent appellate jurisdiction, the question is whether a *Heck* challenge is "inextricably intertwined" with the other issue here, qualified immunity. *Id.* at 709. *Heck* asks whether the plaintiff's § 1983 claim necessarily implies the invalidity of his criminal conviction under *state law*, while qualified immunity asks whether the defendant's challenged conduct violates clearly established *constitutional rights*. So, the answer is no: these "issues do not rise or fall together," and are therefore "not adequately intertwined." *Id.*

Because neither exception applies, we lack jurisdiction to review the Officers' *Heck* claim, dismiss that part of their appeal, and express no view on its merits.

B. Qualified Immunity

Bates and Hughes contend that the district court improperly denied qualified immunity on Cotton's and Legion's *Brady* claims. Hughes makes the same argument as to the federal malicious prosecution claim, and Bates does so as to the fabrication of evidence claim.

De novo review applies to a district court's denial of a defendant's motion for summary judgment on qualified immunity grounds. *Stoudemire v. Mich. Dep't of Corr.*, 705 F.3d 560, 565 (6th Cir. 2013). "[An] official is entitled to summary judgment unless 'a genuine dispute of material fact' precludes the defense." *Salter*, 133 F.4th at 536 (quoting Fed. R. Civ. P. 56(a)). And a public official is entitled to qualified immunity "'when, viewing the facts in the light most favorable to the plaintiff, the challenged conduct did not violate clearly established'

constitutional rights 'of which a reasonable person would have known.'" *Id*. at 535 (quoting *Jackson v. City of Cleveland*, 64 F.4th 736, 745 (6th Cir. 2023)). The plaintiff therefore overcomes a qualified immunity defense by showing (1) the official violated a constitutional right, and (2) the right was clearly established at the time of the alleged violation. *Id.*

As noted, we review the denial of qualified immunity under the collateral order doctrine, but our jurisdiction is limited on interlocutory review: "We can generally review 'purely legal' questions but cannot resolve quarrels with a plaintiff's record-supported facts." *Id*. (quoting *Heeter v. Bowers*, 99 F.4th 900, 908 (6th Cir. 2024)). As the Supreme Court explained, a defendant entitled to qualified immunity "may not appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial." *Johnson v. Jones*, 515 U.S. 304, 319–20 (1995). This limitation ensures that appellate courts' review of such decisions "remains confined to the denials of qualified immunity and does not bleed over into a review of district courts' evaluation of genuine disputes of material fact." *Brown v. Chapman*, 814 F.3d 436, 444 (6th Cir. 2016).

Our circuit has "recognized two narrow exceptions to the rule prohibiting fact-based interlocutory appeals." *Barry v. O'Grady*, 895 F.3d 440, 443 (6th Cir. 2018). One—"in exceptional circumstances" we may overrule a district court's determination that a factual dispute exists where evidence in the record establishes that the determination is "blatantly and demonstrably false." *Austin v. Redford Twp. Police Dep't*, 690 F.3d 490, 496 (6th Cir. 2012) (citation modified). Two—we may overlook factual disagreements if the defendant is "willing to concede the most favorable view of the facts to the plaintiff for purposes of the appeal." *Phelps v. Coy*, 286 F.3d 295, 298 (6th Cir. 2002) (citation modified). But, to reiterate, "to the extent that the defendant's argument 'relies on his own disputed version of the facts,' we have no jurisdiction to hear the appeal." *Barry*, 895 F.3d at 443 (citation modified).

Because the scope of this limited review depends on the context of the disputes raised, we analyze jurisdiction separately for each issue, addressing the merits to the extent permitted.

1. *Brady* Claims against Bates and Hughes

"The Fourteenth Amendment requires prosecutors, police officers, and forensic scientists to disclose favorable evidence to a criminal defendant that is material to their defense." *Salter*, 133 F.4th at 535 (citing *Brady*, 373 U.S. at 87). In *Moldowan v. City of Warren*, we aligned with "virtually every other circuit" in holding that the police share in the state's *Brady* obligations and have a responsibility to turn over evidence with "apparent" exculpatory value to the prosecutor, who then must disclose that evidence to the defendant. 578 F.3d 351, 381–82 (6th Cir. 2009). To sustain a *Brady* claim based on withheld evidence, Cotton and Legion must show that: (1) the evidence favored them "either because it is exculpatory, or because it is impeaching"; (2) the government withheld the evidence, "either willfully or inadvertently"; and (3) the evidence was material, such that its nondisclosure prejudiced them. *Jackson*, 925 F.3d at 814 (quoting *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)). The *Brady* claims at issue here revolve around two pieces of evidence: the 2014 affidavits of Nard and Frazier.

Cotton and Legion assert that Bates and Hughes committed *Brady* violations by failing to disclose information about Lockhart's actions in 2001. Nard swore in his affidavit that Lockhart, who provided key testimony at trial, told him that he was induced by threats and bribery to make false identifications of Cotton and two other unnamed men for the murder of McIntyre. Nard averred that he relayed this information to Bates in 2001, and provided Bates with notes he wrote on napkins during his conversation with Lockhart. In his deposition, Bates admitted that the DPD's strict reporting structure would have required him to inform Hughes, his officer in charge, of Nard's statements. The district court held that this evidence created a genuine dispute of fact as to whether both Officers violated Cotton's and Legion's *Brady* rights.

With respect to the 2014 affidavit of Frazier, the jailhouse informant, Cotton and Legion contend that *Brady* obligated Bates and Hughes to disclose that Frazier's testimony was fabricated. In October 2001, Frazier provided a witness statement detailing Cotton's alleged confession to murder; in this litigation, Bates admitted that this statement was in Bates's handwriting. In his 2014 affidavit, Frazier averred that this statement was fabricated—he never met Cotton in jail, let alone heard a confession; instead, the content of his testimony and his identification of Cotton during trial were fabricated by a detective who provided a reduced

sentence to him in exchange. Cotton avers that Frazier had become involved in the murder case because of Bates, and that on the day of Frazier's trial testimony, Hughes was one of the officers who brought Frazier from the county jail to the trial. The district court held that this evidence sets forth genuine disputes of fact regarding whether Bates induced Frazier to sign a false statement Bates had written; Bates coached his trial testimony; and Hughes suppressed evidence that would have revealed Fraizer's testimony to be fabricated.

Hughes and Bates advance several arguments as to why they are entitled to qualified immunity. We address them in turn, mindful of the jurisdictional limits on our review.

a. Whether the Constitutional Rights of Cotton and Legion were Clearly Established

On appeal, the Officers contest, for the first time, whether it was clearly established in 2001 that a police officer is required to disclose exculpatory evidence under *Brady*. Cotton and Legion contend that this argument is waived because the Officers conceded this prong of qualified immunity before the district court. The record confirms that Bates and Hughes did not raise this argument in their summary judgment briefing or at the hearing below, focusing instead on whether Cotton and Legion had shown a constitutional violation. Defense counsel conceded the clearly established prong before the district court:

> THE COURT: So on this issue of qualified immunity, you are not arguing, are you, that *Brady* violation -- that *Brady* was not clearly established at the time of this case so --
>
> MR. ACHO: No, Judge.
>
> THE COURT: --plaintiffs can make out a *Brady* violation, then you are not arguing that it wasn't clearly established.
>
> MR. ACHO: No, your Honor, and of the two prongs for qualified immunity, the first that it being clearly established the officers knew that so we are not arguing that. We're arguing that these officers did not do that and if they did, it would be within the scope of their employment and not as the law has stated, an individual willful act to undermine the plaintiffs' constitutional rights so qualified immunity would stand for them. . . .

> THE COURT: And so what I understand the plaintiffs to be arguing is that with respect to -- and that *Brady* applies to police officers. Do you agree with that?
>
> MR. ACHO: I do, Judge.

R. 112, Hearing Tr., PageID 5928–29. Although the mere failure to raise an argument before the district court constitutes forfeiture, the Defendants did more here—twice explicitly stating that they conceded the issue. As we have recognized, a defendant "stating that a proposition is not disputed, or stating that they are not pressing an argument" constitutes waiver. *Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019) (citation modified). We need not consider arguments that are waived. *Id*. We therefore decline to consider the newly minted argument challenging the clearly established prong.

b. Whether Plaintiffs' Brady Claims Rely on Inadmissible Hearsay

Bates and Hughes next contend that the *Brady* claims are meritless because the Nard and Frazier affidavits are inadmissible hearsay. This issue turns entirely on jurisdiction. "When an officer's appeal rests crucially on a dispute over the admissibility of evidence, we lack jurisdiction to review the appeal." *Clark v. Abdallah*, 131 F.4th 432, 446 (6th Cir. 2025). Even factual disputes arising from the "rankest type of inadmissible hearsay" fall outside our review. *Ellis v. Washington County & Johnson City*, 198 F.3d 225, 229 (6th Cir. 1999). We therefore cannot reach the merits of this issue.[3]

c. Whether Sufficient Evidence shows that Hughes and Bates Acted in Bad Faith

Hughes and Bates now argue that they are entitled to qualified immunity because there is insufficient evidence to prove they acted in bad faith. This argument was not raised before the district court; the court's opinion did not address the issue; and the Officers did not mention it in their summary judgment briefing or at the hearing on the motion for summary judgment. Unlike their deliberate relinquishment of the clearly established prong, their "failure to present [this] issue to the district court forfeits the right to have [it] addressed on appeal." *Armstrong v. City of*

[3]Bates and Hughes advance this same admissibility argument as to the malicious prosecution and fabrication of evidence claims. Because our analysis here is dispositive, we need not address this argument again as to those claims and reject those claims for the same reason as here.

Melvindale, 432 F.3d 695, 700 (6th Cir. 2006). And "[a]lthough we have discretion to consider a forfeited argument when not doing so would produce a plain miscarriage of justice, we have rarely exercised such discretion." *Cockrun v. Berrien County*, 101 F.4th 416, 420 (6th Cir. 2024). Because Hughes and Bates have shown no reason for their failure to develop this argument, it is unsuitable for discretionary review. *See id.*

d. Defense Arguments First Raised in the Reply Brief

Bates and Hughes present two arguments for the first time in their Reply brief: (1) that Cotton's and Legion's evidence, even when accepted as true, does not sufficiently establish that Hughes had knowledge of the Nard information or of Frazier's fabricated testimony; and (2) that a claim based on Frazier's fabricated testimony cannot be construed as a *Brady* claim. "To start . . . , arguments made for the first time in a reply brief are forfeited." *Grand v. City of Univ. Heights*, 159 F.4th 507, 516 (6th Cir. 2025). In any event, even if these arguments had been properly preserved, they would fail.

As to the insufficient evidence argument, our interlocutory review is limited to legal issues. *Heeter*, 99 F.4th at 908. Even if the Officers dispute Cotton's and Legion's version of the events here, they "must nonetheless be willing to concede the most favorable view of the facts to the plaintiff[s]" to permit review of whether the evidence viewed in the light most favorable to Cotton and Legion establishes a prima facie constitutional violation. *Berryman v. Rieger*, 150 F.3d 561, 563 (6th Cir. 1998). No such concession was made in Bates and Hughes's opening brief, but their Reply brief professes to accept the Nard and Frazier affidavits as true. The Reply brief, however, recites a version of the facts that is different than Cotton and Legion's, including the claims that "there is no record evidence that Defendant Bates shared this information with Defendant Hughes," and that "no evidence specifically ties Defendant Hughes to Mr. Frazier's alleged fabrication of evidence." Reply at 2–3. These are the very disputes of material fact on which "the district court relied . . . in denying the motion for summary judgment." *Anderson-Santos v. Kent County*, 94 F.4th 550, 554 (6th Cir. 2024). "Because a concession in name only is no concession at all," this issue does not invoke our jurisdiction. *Id.*

Regarding the Frazier evidence, Hughes and Bates argue that the district court erred by accepting Cotton and Legion's "characterization of this claim as a violation of the *Brady* rule," instead of solely as a fabrication of evidence claim. Reply at 3. The sufficiency of these claims is beyond our jurisdiction; but, to the extent this argument challenges the legality of pursuing both claims, the Officers provide no support for their contention that the claims cannot proceed simultaneously. To the contrary, in *Gregory v. City of Louisville*, we held that just because two § 1983 claims share a "factual premise" does not mean that "this similarity restricts Plaintiff[s] to one theory of recovery over the other." 444 F.3d 725, 750 (6th Cir. 2006). *Gregory* permitted the plaintiffs to pursue both a *Brady* and a continued detention claim, emphasizing that "[i]t is not the role of this Court to restrict Plaintiff's choice of viable legal theories." *Id.* *Gregory* also relied on decisions from other courts permitting simultaneous pursuit of multiple theories under § 1983, *id.* at 750–51, including *Atkins v. County of Riverside*, where the plaintiff asserted both a fabrication of evidence claim and a *Brady* claim, as in this case, 151 F. App'x 501, 505–06 (9th Cir. 2005). Defendants' argument therefore lacks merit.

Having found all the issues raised by Bates and Hughes as to the *Brady* claim either not properly preserved or outside our jurisdiction, we do not reach their merits and dismiss them from this appeal.

2. Malicious Prosecution Claims against Hughes

Our circuit recognizes a constitutionally cognizable claim of malicious prosecution under the Fourth Amendment that "encompasses wrongful investigation, prosecution, conviction, and incarceration." *Sykes v. Anderson*, 625 F.3d 294, 308 (6th Cir. 2010) (citation modified). This tort "remedies detention accompanied not by absence of legal process, but by wrongful institution of legal process." *Id*. (quoting *Wallace v. Kato*, 549 U.S. 384, 390 (2007)) (emphasis omitted). In *Sykes*, we listed the requisite elements of such a claim: (1) that the "criminal prosecution was initiated against the plaintiff and that the defendant made, influenced, or participated in the decision to prosecute"; (2) "that there was a lack of probable cause for the criminal prosecution"; (3) "that as a consequence of a legal proceeding, the plaintiff suffered a deprivation of liberty as understood in [this court's] Fourth Amendment jurisprudence, apart from the initial seizure"; and (4) that the proceeding terminated in the plaintiff's favor. *Id*. at

308–09 (citation modified). Michigan's version of malicious prosecution "contains largely the same elements, but also requires [Cotton and Legion] to show that the officers acted with 'malice.'" *Saltmarshall v. Prime Healthcare Servs.-Garden City LLC,* 831 F. App'x 764, 771 (6th Cir. 2020) (quoting *Matthews v. Blue Cross & Blue Shield of Mich.*, 572 N.W.2d 603, 609–110 (Mich. 1998)).

Here, Cotton and Legion raise both federal and state malicious prosecution claims against Hughes, alleging that he is liable for the initiation of charges against them and for their continued detention based on fabrication of the Lockhart identification evidence and Lockhart's testimony at the Preliminary Examination. At summary judgment, the district court held that Hughes was not entitled to qualified immunity on the federal claim or statutory immunity on the state claim. Hughes appeals the denial of qualified immunity, advancing collateral estoppel arguments in the opening brief and, separately, presenting additional arguments raised for the first time in the Reply brief.

a. Collateral Estoppel

Michigan recognizes two preclusion doctrines: collateral estoppel, also referred to as issue preclusion, and res judicata, also known as claim preclusion. *Abbott v. Michigan*, 474 F.3d 324, 330–31 (6th Cir. 2007). Hughes advances two collateral estoppel arguments against the malicious prosecution claims: (1) that the state court's probable cause determination at the Preliminary Examinations precludes Cotton and Legion from establishing the absence of probable cause;[4] and (2) specifically as to Legion, that he cannot establish the deprivation of liberty element because a state court has already held that his independent conviction for an unrelated offense accounted for the entirety of his imprisonment.

We first address our jurisdiction. As Cotton and Legion concede, our pendent appellate jurisdiction permits review of Defendants' collateral estoppel arguments because resolution of this issue "is necessary to ensure 'meaningful review' of the district court's denial of qualified immunity." *Salter*, 133 F.4th at 537 (quoting *Chaney-Snell*, 98 F.4th at 709, 712). This makes

[4]Although Bates and Hughes purport to raise collateral estoppel arguments as to all claims, they develop the argument only as to the issue of probable cause, which is not relevant under *Brady*. We therefore address this argument as to the malicious prosecution and fabrication of evidence claims only.

sense because collateral estoppel determines which issues have been conclusively established and cannot be relitigated, thereby defining the universe of facts we may consider in resolving qualified immunity. *Chaney-Snell*, 98 F.4th at 711–12. Because we have jurisdiction, we address the merits of the claims.[5]

We begin with whether collateral estoppel bars the malicious prosecution claims. Under the Full Faith and Credit Act, 28 U.S.C. § 1738, federal courts must "give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so." *Peterson v Heymes*, 931 F.3d 546, 554 (6th Cir. 2019) (quoting *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984)). We therefore must look to Michigan law to determine the preclusive effect of the state court's rulings in Cotton's and Legion's criminal cases. *See id.* Michigan law applies collateral estoppel "when (1) an issue has been actually litigated and determined by a valid and final judgment; (2) the same parties have had a full and fair opportunity to litigate the issue; and (3) there is mutuality of estoppel." *Id.* (citing *Monat v. State Farm Ins. Co.*, 677 N.W.2d 843, 845–46 (2004)). Although "Michigan law allows criminal decisions to bind litigants in subsequent civil cases . . . under Michigan law, a vacated criminal conviction and the interlocutory rulings supporting it have no preclusive effect." *Salter*, 133 F.4th at 537 (citing *Peterson*, 931 F.3d at 554–55). "That is true even if the conviction was vacated by stipulation." *Id.* (citing *Sanford v. Russell*, 381 F. Supp. 3d 905, 924 (E.D. Mich. 2019), *aff'd*, 815 F. App'x 856 (6th Cir. 2020)).

Here, Cotton's and Legion's convictions were vacated by stipulated orders, but despite our precedent cited above, Hughes argues that those orders were ineffective because they did not comply with the mandatory procedures of Michigan Court Rule 6.502. Rule 6.502 establishes the procedures governing a defendant's Motion for Relief from Judgment in criminal cases, including how such motion must be filed. *See* Mich. Ct. R. 6.502. The 1989 Staff Comment to M.C.R. 6.501 explains that subchapter 6.500 "provides the exclusive means to challenge

[5]Although Hughes did not raise the district court's denial of statutory immunity in his opening brief, our reasoning as to the federal claim controls the state claim as well because we treat denials of statutory immunity, like federal claims, as reviewable under the collateral order doctrine, provided "the state immunity in question would provide complete immunity from suit." *Frenchko v. Monroe*, 160 F.4th 784, 804 (6th Cir. 2025) (citing *Range v. Douglas*, 763 F.3d 573, 581 (6th Cir. 2014)).

convictions in Michigan courts for a defendant who has had an appeal by right or by leave, who has unsuccessfully sought leave to appeal, or who is unable to file an application for leave to appeal to the Court of Appeals." But these provisions regulate the procedural mechanisms available to litigants, not the court's authority over its own judgments or its power to vacate a conviction. Hughes, therefore, is bound by our cases holding that stipulated orders have no preclusive effect. *See Salter*, 133 F.4th at 537.

With respect to Hughes's second argument—that Legion's concurrent sentence for an unrelated conviction precludes a showing of a deprivation of liberty—the relevant question is whether that issue was "actually litigated" in state court. *Peterson*, 931 F.3d at 554. Hughes points to Legion's prior litigation in the Michigan Court of Claims seeking compensation under Michigan's Wrongful Imprisonment Compensation Act (WICA), Mich. Comp. Laws § 691.1751 *et seq.*, for his wrongful imprisonment arising from the criminal convictions at issue here. WICA waives Michigan's sovereign immunity and allows individuals who were wrongfully convicted to seek compensation in the Court of Claims. *See Ricks v. State*, 968 N.W.2d 428, 431 (Mich. 2021). The Court of Claims, however, denied Legion's WICA claim pursuant to the Act's specification that "[c]ompensation may not be awarded . . . for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction." R. 96-28, Opn. and Order, PageID 4570 (quoting Mich. Comp. Laws § 691.1755(4)). Relying on this provision, the court held that Legion's concurrent sentence "was independent of his wrongful convictions and covered the entirety of his imprisonment for his wrongful convictions" thereby barring his WICA claim under the Act's plain language. R. 96-28, Order, PageID 4750.

Critically, the state court declined to address Legion's argument that it "fail[ed] to consider the possibility that he may have been released from prison earlier if his wrongful convictions never occurred." R. 96-28, PageID 4750. The court acknowledged that Legion "may well be correct," but reasoned that the statute does not permit such an inquiry, given the Legislature's intent in drafting WICA to avoid disputes involving conflicting evidence about hypothetical release dates and compensation. R. 96-28, PageID 4750. This state court interpretation of Michigan's statute, however, has no bearing on Legion's federal and state claims against Hughes in his individual capacity. Indeed, the Act itself specifies that "the

acceptance by the plaintiff of an award under this act . . . does not operate as a waiver of, or bar to, any action in federal court against an individual alleged to have been involved in the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment." Mich. Comp. Laws § 691.1755(8). Whether Legion suffered a deprivation of liberty for purposes of a malicious prosecution claim was not "actually litigated" by the state court, and its order thus has no preclusive effect here. *Peterson*, 931 F.3d at 554.

Hughes's argument raises the legal question of how multiple convictions with concurrent sentences impact summary judgment analysis of a deprivation of liberty. We have recognized that when someone is prosecuted for two different charges, if the additional charge "were to change the length of detention," that would "change the nature of the seizure." *Howse v. Hodous*, 953 F.3d 402, 409 n.3 (6th Cir. 2020). And other courts have found that where it is arguable whether the relevant conviction lengthened the defendant's overall prison sentence, it is not proper to resolve the deprivation of liberty issue at the summary judgment stage. *See, e.g.*, *Allen v. City of New York*, 480 F. Supp. 2d 689, 718 (S.D.N.Y. 2007). Similarly, here, the district court concluded that the state court's opinion acknowledged a genuine issue of material fact as to the length of Legion's detention had his wrongful conviction not occurred. "The Supreme Court has clearly held that a district court's determination that there exists a triable issue of fact cannot be appealed on an interlocutory basis." *Cockrun v. Berrien County*, 101 F.4th 416, 421 (6th Cir. 2024) (citation omitted).

Because Cotton's and Legion's convictions have been vacated, and the question whether Legion suffered a deprivation of liberty was not "actually litigated" in the state proceedings, collateral estoppel does not bar the claims of Cotton and Legion. *Peterson*, 931 F.3d at 554. We affirm the district court's ruling to that effect. And insofar as the district court determined that a genuine dispute of material fact remains as to Legion's deprivation of liberty, that determination lies beyond our jurisdiction and is dismissed.

b. Hughes's Arguments First Raised in the Reply Brief

Hughes raises two arguments for the first time in the Reply brief. We need not consider these arguments because they are forfeited, *see Grand*, 159 F.4th at 515, but even if we did, they fail on the merits.

As to the federal claim, Hughes argues that the first element—whether he made, influenced, or participated in the decision to prosecute—cannot be established even if Cotton's and Legion's evidence is accepted as true. That Hughes did not make the ultimate decision to prosecute is immaterial, as liability may still arise where Hughes made "knowing misstatements . . . to the prosecutor or [had] pressure or influence over an individual who either made the decision to prosecute or testified at the preliminary hearing." *Sykes*, 625 F.3d at 326 (citation modified). What Hughes raises as purported evidentiary gaps merely reflects disputed facts and his attempts to reweigh the record and resolve those disputes. That is beyond the scope of our jurisdiction. *See Johnson*, 515 U.S. at 319–20.

As to the state claim, Hughes argues that we have jurisdiction to review the denial of statutory immunity under Michigan law. But, again, he simply disputes the record facts rather than explain why, even if accepted as true, those facts defeat the claim as a matter of law. Because our interlocutory jurisdiction does not extend to state immunity arguments that "stray into the merits of [the] underlying state tort claims," and Hughes points to no applicable exceptions permitting review, we lack jurisdiction to consider the argument. *Frenchko v. Monroe*, 160 F.4th 784, 804 (6th Cir. 2025).

3. Fabrication of Evidence Claim Against Bates

A fabrication of evidence claim requires Cotton and Legion to show that Bates "knowingly fabricated evidence against [them], and [that] there is a reasonable likelihood that the false evidence could have affected the judgment of the jury." *Tanner v. Walters*, 98 F.4th 726, 732–33 (6th Cir. 2024) (citation modified). Cotton and Legion assert that Bates fabricated Frazier's signed statement and testimony about Cotton's jailhouse confession, which were pivotal pieces of evidence at the state criminal trial. Bates relies on *Robertson v. Lucas*, 753 F.3d 606 (6th Cir. 2014), arguing that where there was probable cause to prosecute Cotton and

Legion, they cannot prevail on a fabrication of evidence claim because they were not wrongfully seized.

We have recognized fabrication of evidence claims raised under both the Fourteenth and the Fourth Amendment. *Clark*, 131 F.4th at 447. While the Fourth Amendment prohibits detention without probable cause, the Fourteenth Amendment prohibits deprivation of liberty without due process of law. *Id.* A defendant's showing of probable cause supporting detention would therefore defeat a Fourth Amendment fabrication of evidence claim but it would not defeat a stand-alone Fourteenth Amendment claim. *See id.* Our decision in *Robertson*, which analyzed a fabrication of evidence claim in the Fourth Amendment context, held that a finding of probable cause undermines such claim. 753 F.3d at 619. But preceding cases decided in the Fourteenth Amendment context, such as *Stemler v. City of Florence*, have held that "[a] claim of fabrication of evidence does not require a conclusion that the state did not have probable cause to prosecute the claimant." 126 F.3d 856, 872 (6th Cir. 1997). We have repeatedly relied on *Stemler*'s ruling in holding that a fabrication of evidence claim is rooted in the Fourteenth Amendment, including in our recent decision in *Tanner*, 98 F.4th at 732–33. *See also Webb v. United States*, 789 F.3d 647, 670 (6th Cir. 2015); *France v. Lucas*, 836 F.3d 612, 629 (6th Cir. 2016).

Bates seeks to pin the fabrication of evidence claim to the Fourth Amendment probable cause requirement. But that argument can be construed in two ways: (1) that Cotton and Legion are collaterally estopped from asserting this claim because their Preliminary Examination probable cause finding is binding here; or (2) that the district court erred in finding that Cotton and Legion have sufficiently demonstrated a lack of probable cause to withstand summary judgment. There is no need to further address this issue, however, because both of Bates's arguments fail. As to the collateral estoppel issue, which is within our jurisdiction, we explained above that Cotton's and Legion's state criminal convictions were properly vacated under Michigan law. This means that the interlocutory rulings—that is, the probable cause determinations from their Preliminary Examinations—"have no preclusive effect." *Salter*, 133 F.4th at 537. And as to the sufficiency of the evidence issue, the district court held that a reasonable jury could conclude, based on record evidence, that there was a lack of probable

cause for the detention of Cotton and Legion. More importantly, the "determination that there exists a triable issue of fact cannot be appealed on an interlocutory basis." *Cockrun*, 101 F.4th at 421 (citation omitted). We therefore affirm the district court's ruling without expressing views on the sufficiency issue because it is outside our jurisdiction, and we dismiss it from this appeal.

III. CONCLUSION

For these reasons, we **AFFIRM** in part and **DISMISS** in part for lack of jurisdiction.