

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

KEVIN LACKEY,

Plaintiff-Appellant,

v.

L.T. HURLEY; ROSLYN BEARD; WILLIE SMITH; JOSEPH
BURTON,

Defendants-Appellees,

ESTATE OF WILLIAM PENN, deceased,

Defendant.

No. 25-1410

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:21-cv-11968—Denise Page Hood, District Judge.

Argued: July 23, 2026

Decided and Filed: September 9, 2026

Before: DAVIS, MATHIS, and RITZ, Circuit Judges.

COUNSEL

ARGUED: Beth A. Wittmann, GRANZOTTO & WITTMANN, P.C., Berkley, Michigan, for Appellant. Christopher J. Raiti, NATHAN & KAMIONSKI, LLP, Detroit, Michigan, for Appellees. **ON BRIEF:** Beth A. Wittmann, GRANZOTTO & WITTMANN, P.C., Berkley, Michigan, for Appellant. Christopher J. Raiti, Shneur Nathan, Kristine A. Baker, NATHAN & KAMIONSKI, LLP, Detroit, Michigan, for Appellees.

OPINION

MATHIS, Circuit Judge. In 1993, a Michigan jury convicted Kevin Lackey of criminal sexual conduct and breaking and entering after he allegedly sexually assaulted an eleven-year-old girl at her home. Decades later, his convictions were vacated because of defects in the evidence used against him. Lackey filed suit against the investigating officers under 42 U.S.C. § 1983, alleging that they fabricated inculpatory evidence, maliciously prosecuted him, and suppressed exculpatory evidence, in violation of his constitutional rights. The district court concluded that Officers L.T. Hurley, Roslyn Beard, Willie Smith, and Joseph Burton were entitled to qualified immunity and entered summary judgment in their favor. We affirm.

I.

On July 4, 1992, S.S. and her two sisters fell asleep in their shared bed.¹ Early the next morning, while the girls were still sleeping, a man allegedly entered their bedroom through the window. He picked S.S. up under her arms, carried her out of the room, and hauled her through the house to the back porch, where he sexually assaulted her. He then escaped through the back door.

After the assailant fled, S.S. woke her mother, Cynthia, who was asleep in the living room. Cynthia noticed that the back door and back gate were both open. She also discovered that the window into S.S.'s bedroom was open, and the screen was torn back. She called the police.

Officers Burton and Smith responded. Within minutes of their arrival, they interviewed S.S. about the assault. Both officers reported that S.S. told them that the assailant was black. S.S. also described the assailant as a slim young man with facial hair who was wearing yellow pants and black gym shoes and who claimed to have a gun.

¹As the parties have done, we identify S.S. by her initials and S.S.'s mother by her first name only.

Officer Smith promptly broadcast S.S.'s description of the assailant over the police radio. At some point, Officers Hurley and Beard, members of the Sex Crimes Unit, arrived to assist in the investigation. Officer Hurley interviewed Cynthia, and Officer Beard interviewed S.S. Cynthia's signed statement reflects that S.S. told her that the assailant was black. S.S.'s signed statement also describes the assailant as black.

Officer William Penn with the K-9 Unit responded to the incident with his canine Midas. As soon as they arrived, Officers Burton and Smith shared S.S.'s description of the assailant with Officer Penn. Officer Penn then scouted the area around the house, found crushed vegetation, and instructed Midas to track from there. Midas tracked from that spot in S.S.'s backyard to Lackey standing on his front porch. Lackey's house was close behind S.S.'s house. Officer Penn radioed to confirm the assailant's description. The description substantially matched Lackey, so Officer Penn called for backup, and the officers arrested him.

Officer Hurley led the investigation. She compiled all the evidence, including the other officers' reports and the witness statements, and submitted it to the Wayne County Prosecutor's Office. Based on the evidence presented at the preliminary hearing, the state court bound Lackey over for trial on two counts of first-degree criminal sexual conduct, one count of second-degree criminal sexual conduct, and one count of breaking and entering with intent to commit criminal sexual conduct.

Lackey proceeded to trial. Relevant here, Cynthia testified that S.S. told her the assailant was black and that Cynthia gave that description to the officers. S.S., however, testified that she never told anyone her assailant's skin color. Officers Burton, Smith, Beard, and Penn testified at trial about their investigation. Lackey testified in his defense. Ultimately, the jury convicted Lackey as charged. He served 22 years in prison.

After Lackey was released, the Wayne County Prosecutor's Office agreed that his convictions should be vacated because of "profound defects" in the dog-tracking evidence. R. 81-2, PageID 604. The prosecuting attorney chose not to retry the case.

Lackey sued Officers Hurley, Beard, Smith, and Burton, as well as Officer Penn's estate, under 42 U.S.C. § 1983. He alleged that the officers violated: (1) his Fourth and Fourteenth

Amendment rights by fabricating evidence, (2) his Fourth Amendment rights by maliciously prosecuting him based on fabricated evidence, and (3) his Fourteenth Amendment rights by withholding exculpatory evidence.

Officers Hurley, Beard, Smith, and Burton asserted a qualified-immunity defense in their summary-judgment motion. The district court granted their motion, leaving Lackey's claims against Officer Penn's estate. Months later, Lackey settled his remaining claims, and the district court entered a final judgment. This appeal followed.

II.

We review *de novo* a district court's order granting summary judgment based on qualified immunity. *Burnett v. Griffith*, 33 F.4th 907, 911 (6th Cir. 2022). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Officers are entitled to qualified immunity at summary judgment "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." *Cotton v. Hughes*, 176 F.4th 886, 897 (6th Cir. 2026) (citation modified). To overcome a qualified-immunity defense at the summary-judgment stage, Lackey must show that (1) the officers "violated his constitutional rights, and (2) at the time of the violation, it was clearly established that the officer[s'] conduct would violate the Constitution." *Salter v. City of Detroit*, 133 F.4th 527, 535 (6th Cir. 2025) (citation modified).

A.

Lackey brings fabrication-of-evidence claims against the officers under the Fourth and Fourteenth Amendments. Although we recognize fabrication-of-evidence claims under both constitutional provisions, the core rights at issue differ. *Clark v. Abdallah*, 131 F.4th 432, 447 (6th Cir. 2025). We address each claim in turn.

1.

We begin with Lackey's Fourteenth Amendment fabrication-of-evidence claim. The Fourteenth Amendment's Due Process Clause prohibits government officials from "depriv[ing]

any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Among other things, the government cannot imprison someone without providing due process. *Ingraham v. Wright*, 430 U.S. 651, 674–75 (1977).

What must Lackey show to establish his Fourteenth Amendment fabrication-of-evidence claim? First, he must show that the officers knowingly fabricated evidence. *Clark*, 131 F.4th at 448. Second, he must show that the fabricated evidence “likely affected” the jury’s decision to convict him. *Id.* This type of claim “focuse[s] on the adjudicative process—in particular, the potential effect of knowingly fabricated evidence on the trier of fact.” *Tanner v. Walters*, 98 F.4th 726, 733 (6th Cir. 2024).

Lackey contends that the officers fabricated two pieces of evidence that led to his convictions at trial. First, Lackey asserts that they “fabricated the physical description of the perpetrator that was provided by S.S.” D. 29 at pp.36–37. According to him, the officers “include[d] information in their reports that identified the perpetrator as a black male” only after they identified Lackey as a suspect. *Id.* at 38. Second, Lackey alleges that Officer Smith fabricated S.S.’s description of the assailant’s “blue steel handgun.” *Id.* at 40. We reject both arguments.

Assailant’s race. We begin with the officers’ description of the assailant’s race. We can quickly reject Lackey’s claim against Officer Hurley because Officer Hurley did not testify at trial. Nor has Lackey shown that the prosecution offered any evidence at the criminal trial that Officer Hurley allegedly fabricated or that the prosecution obtained based on Officer Hurley’s alleged fabrications. *See Jackson v. City of Cleveland*, 925 F.3d 793, 816 (6th Cir. 2019). So Lackey cannot show that Officer Hurley’s actions affected the jury’s verdict.

In support of his claim against the remaining officers, Lackey points to S.S.’s testimony that she never told them the race of the assailant. But Lackey still cannot establish his Fourteenth Amendment fabrication-of-evidence claim. Although Lackey points to evidence that S.S. did not tell anyone the assailant was black, Lackey does not dispute that *Cynthia* told the officers that S.S. said the assailant was black. And Cynthia later conveyed that information to the jury. So the jury heard S.S.’s description of the assailant’s race apart from the officers’ testimony. Lackey thus

cannot show that there is a reasonable likelihood that the allegedly fabricated evidence impacted the jury's decision to convict him. *See Clark*, 131 F.4th at 447.

Lackey's argument suffers another defect. He believes that S.S.'s father, a black man, committed the assault. So to the extent that the officers fabricated S.S.'s description of the culprit's race, Lackey ultimately agrees with that description. It is therefore difficult for him to argue the allegedly fabricated description of the suspect's race "likely affected" the jury's verdict. *See id.* at 448.

Handgun. We turn to Officer Smith's report that S.S. saw a "blue steel handgun." R. 84-22, PageID 1535. At Lackey's trial, Officer Smith did not testify about S.S.'s assailant having a "blue steel handgun." Not only that, but the prosecution did not charge Lackey with a gun crime. And evidence of a gun was not necessary to convict him of the charged crimes. So Officer Smith's description of the gun in his report had no impact on the jury's decision to convict Lackey. *See Jackson*, 925 F.3d at 816.

2.

We turn next to Lackey's Fourth Amendment fabrication-of-evidence claim. The Fourth Amendment protects the people's right "to be secure in their persons . . . against unreasonable . . . seizures." U.S. Const. amend. IV. Detaining a person constitutes a seizure. *See Torres v. Madrid*, 592 U.S. 306, 312, 319 (2021). "Fourth Amendment seizures are reasonable only if based on probable cause to believe that the individual has committed a crime." *Bailey v. United States*, 568 U.S. 186, 192 (2013) (citation modified). The Fourth Amendment thus "prohibits government officials from detaining a person in the absence of probable cause." *Manuel v. City of Joliet*, 580 U.S. 357, 367 (2017).

A Fourth Amendment fabrication-of-evidence claim arises "when probable cause rests on fabricated evidence presented to a grand jury or to a judge determining probable cause." *Clark*, 131 F.4th at 447. Probable cause exists when a reasonable person would believe that a suspect is guilty of a crime based on the facts and circumstances presented. *District of Columbia v. Wesby*, 583 U.S. 48, 56–57 (2018). "It requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Id.* at 57 (citation modified). That "is not a high

bar” to clear. *Id.* (quotation omitted). Qualified immunity protects officers “who mistakenly but reasonably conclude that probable cause exists.” *Lester v. Roberts*, 986 F.3d 599, 607 (6th Cir. 2021).

At Lackey’s preliminary hearing, the state-court judge bound him over for trial on several criminal charges. Those were two counts of first-degree criminal sexual conduct, one count of second-degree criminal sexual conduct, and one count of breaking and entering with intent to commit criminal sexual conduct.

Criminal sexual conduct. Consider the criminal-sexual-conduct charges. Under Michigan law, a person is guilty of criminal sexual conduct in the first degree when he uses force to sexually penetrate someone, and he is guilty of the same offense in the second degree when he uses force to sexually contact someone. *People v. Green*, 272 N.W.2d 216, 220 (Mich. Ct. App. 1978), *overruled on other grounds as recognized by People v. Marshall*, 320 N.W.2d 396, 399 (Mich. Ct. App. 1982).

Lackey does not dispute that someone sexually assaulted S.S. Nor does he contest S.S.’s explanation of how the sexual assault occurred. Instead, Lackey posits that the officers fabricated the evidence that he committed the assault.

Even if the officers fabricated S.S.’s description of the assailant’s race, probable cause existed to support Lackey’s pretrial detention. Lackey agrees that S.S. told the officers that the assailant was a man wearing yellow pants and black gym shoes. She conveyed that he was about the size of her father, had facial hair, and was around eighteen or nineteen years old. She heard him leave the house through the back door, and Cynthia observed that the back gate was open. Cynthia also conveyed to the officers that S.S. told her that the assailant was black.

Given that evidence, probable cause existed to believe that Lackey sexually assaulted S.S. When the officers found Lackey, he was standing on his front porch at his house on Chalmers Street, located just behind S.S.’s home on Marlborough Street. At the time, Lackey was a slim eighteen-year-old black man with facial hair wearing black gym shoes and pants with large yellow patches. Officer Penn’s tracking dog led him to Lackey from S.S.’s backyard. In sum, Lackey

matched the description provided by S.S., the dog tracked to him, and he was located just behind S.S.'s home, where the assailant fled shortly after the assault occurred.

Lackey challenges S.S.'s ability to describe the assailant. But for probable-cause purposes, eyewitness statements based on firsthand observations "are generally entitled to a presumption of reliability and veracity." *Ahlers v. Schebil*, 188 F.3d 365, 370 (6th Cir. 1999). "Even an admittedly vague and inconsistent account can provide ample probable cause." *Provience v. City of Detroit*, 529 F. App'x 661, 667 (6th Cir. 2013) (citation modified). And an eyewitness's statement need not be consistent with all the other evidence. *Id.* S.S. said she could identify details like the assailant's clothes, his facial hair, his build, and his age, even though it was dark. Moreover, there was evidence corroborating S.S.'s account. Again, Lackey matched the description she provided, he lived behind her house, and Officer Penn's canine tracked to him. So the officers reasonably relied on S.S.'s description. *See Lester*, 986 F.3d at 609–10.

True, the evidence against Lackey was not ironclad. But "reasonable doubt is not the question." *Newman v. Township of Hamburg*, 773 F.3d 769, 773 (6th Cir. 2014). Rather, the question is whether there was probable cause to believe Lackey sexually assaulted S.S. There was. And the fact that another individual, S.S.'s father, may have also matched elements of the assailant's description does not, without more, destroy probable cause as to Lackey. *See Lester*, 986 F.3d at 611–12.

Breaking and entering. Probable cause likewise existed for Lackey's breaking-and-entering charge. "The elements of breaking and entering an occupied dwelling with intent to commit a felony are: (1) a breaking and entering; (2) of an occupied dwelling; and (3) with felonious intent." *People v. Brownfield*, 548 N.W.2d 248, 250 (Mich. Ct. App. 1996). Cynthia testified that someone ripped off the screen to S.S.'s window and opened it sometime after she closed it the night before the assault. There were muddy footprints outside the window and mud on the fence just beneath it. Both S.S. and Cynthia reported that the assailant had to have broken into the bedroom through the window. Their statements, the physical evidence corroborating them, and the evidence establishing probable cause that Lackey sexually assaulted S.S. suffice to establish probable cause to believe that Lackey committed breaking and entering.

Lackey resists this conclusion, arguing that the officers omitted facts undermining Cynthia's and S.S.'s version of events. According to him, no one could have broken into S.S.'s window or escaped out the back door without alerting the guard dog in the backyard or waking up other family members, including S.S.'s two sisters who slept in the same bed as S.S. And if there were muddy footprints outside the window, then there should have been muddy footprints inside the home as well, but there were none. He faults the officers for failing to disclose the absence of these facts: that the guard dog did not bark, that the sisters did not wake up, and that there were no muddy footprints inside.

Contrary to Lackey's assertions, the officers did not omit any of this evidence—it simply did not exist. And our analysis focuses on whether enough evidence exists to support a charge. Indeed, “after the officer determines, on the basis of the facts and circumstances known to him, that probable cause exists, the officer has no further duty to investigate or to search for exculpatory evidence.” *Logsdon v. Hains*, 492 F.3d 334, 341 (6th Cir. 2007). It would be impractical to require officers to catalogue every piece of nonexistent evidence.

Because there was probable cause for Lackey's criminal-sexual-conduct and breaking-and-entering charges, his Fourth Amendment fabrication-of-evidence claim fails.

B.

Lackey's Fourth Amendment malicious-prosecution claim fares no better than his Fourth Amendment fabrication-of-evidence claim. To make out a malicious-prosecution claim, a plaintiff must establish that: “(1) the defendant made, influenced, or participated in the decision to prosecute; (2) the government lacked probable cause; (3) the proceeding caused the plaintiff to suffer a deprivation of liberty; and (4) the prosecution ended in the plaintiff's favor.” *Lester*, 986 F.3d at 606 (citation modified). In other words, Lackey “must show that a government official charged him without probable cause, leading to an unreasonable seizure of his person.” *Chiaverini v. City of Napoleon*, 602 U.S. 556, 558 (2024).

We have already concluded that probable cause supported the criminal charges against Lackey. So his malicious-prosecution claim necessarily fails.

C.

Finally, we reach Lackey's claim based on *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* holds that a prosecutor violates the Due Process Clause when he suppresses "evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87. The elements of a *Brady* claim are: "[1] the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [2] that evidence must have been suppressed by the State, either willfully or inadvertently; and [3] prejudice must have ensued." *Jackson*, 925 F.3d at 814 (quoting *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)).

We treat police officers and prosecutors the same way for *Brady* purposes. *Salter*, 133 F.4th at 535. So officers are required to give the prosecutor exculpatory evidence they collect, and the prosecutor must then disclose that evidence to a criminal defendant. *Moldowan v. City of Warren*, 578 F.3d 351, 378–81 (6th Cir. 2009). But "there is no *Brady* violation if the defendant knew or should have known the essential facts permitting him to take advantage of the information in question or if the information was available to him from another source." *Hughbanks v. Hudson*, 2 F.4th 527, 537 (6th Cir. 2021) (quotation omitted).

Lackey contends that the officers violated his *Brady* due-process rights. Specifically, he argues that the officers "did not disclose the fact that there was no evidence to support the main theory . . . that Mr. Lackey broke into S.S.'s home and committed the sexual assault." D. 29 at p.46. He faults the officers for failing to disclose that the window into S.S.'s bedroom was 6.5 feet off the ground, so the assailant needed to climb the fence beneath it and reach across, holding a plank position, to get inside. He also argues that the officers unlawfully withheld the fact that there were no muddy footprints inside the house and his shoes were not muddy when they arrested him, even though he would have had to step in mud before entering the home through the window. And he asserts that the officers failed to disclose the fact that the dog did not bark and no one woke up during the attack, even though S.S.'s sisters were sleeping in the same bed as S.S.

Lackey's arguments are meritless. The officers turned over pictures of the home, including the window and S.S.'s bedroom, to the prosecutor, who in turn gave them to Lackey. They also

turned over pictures of Lackey's shoes. Their reports contained information about the dog in the backyard and the sleeping sisters. So the officers armed Lackey with the information he says he needed; it was his job to characterize it, not theirs. *See Hughbanks*, 2 F.4th at 537. Neither the Due Process Clause nor *Brady* requires police officers to build a defendant's defense. Nor are they required to disclose how much weight to give certain evidence.

Lackey also argues that the officers withheld evidence that S.S.'s father "was home at the time of the assault and that he was wearing clothing that matched the description of the clothing worn by the perpetrator." D. 29 at pp.47–48. As the officers point out, Lackey did not allege this theory of liability in his complaint, nor did he defend it at summary judgment. So Lackey has forfeited this argument. *See Bannister v. Knox Cnty. Bd. of Educ.*, 49 F.4th 1000, 1011 (6th Cir. 2022). And he has not shown that "a plain miscarriage of justice" would result if we decide not to address this forfeited argument. *Id.* at 1012 (citation modified). Thus, we decline to address it.

As a last gasp, Lackey recycles his argument that the officers failed to disclose that they fabricated S.S.'s description of the assailant's race. As explained above, this argument fails—Lackey cannot show any impact on the outcome of his criminal trial. *See Strickler*, 527 U.S. at 280.

III.²

For these reasons, we **AFFIRM** the district court's judgment.

²The officers raise judicial estoppel as a defense to Lackey's § 1983 claims. Because Lackey cannot show that the officers violated his constitutional rights, we need not reach the judicial estoppel argument.