

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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CASE NO. 23-13753D

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**JUAN F. RAMIREZ**, in his individual capacity;  
**STEVEN L. MURRAY**, in his individual capacity;  
**DANIEL S. FELLOWS**, in his individual capacity;  
**IRA S. PESKOWITZ**, in his individual capacity;  
**BRISA LANDA**, in her individual capacity; and  
**NICOLE A. BITNER**, in her individual capacity,  
*Defendants/Appellants,*

vs.

**CHANON MILLER**,  
*Plaintiff/Appellee.*

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On Appeal from the United States District Court  
for the Southern District of Florida  
Case No. 23-cv-80907-RLR

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**BRIEF OF APPELLEE**

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**CERTIFICATE OF INTERESTED PARTIES AND CORPORATE  
DISCLOSURE STATEMENT**

Pursuant to 11th Cir. R. 26.1, Appellant submits this Certificate of Interested Persons and Corporate Disclosure Statement, listing the following parties and entities interested in this appeal:

Barranco, Summer M., Esquire, Counsel for Defendants/Appellants;

Benjamin, David, Esquire, Counsel for Plaintiff/Appellee;

Bitner, Nicole A., Defendant/Appellant;

Bradshaw, Ric, Defendant;

DeMiles Law, Counsel for Plaintiff/Appellee (law firm);

Demiles, James, Esquire, Counsel for Plaintiff/Appellee;

Fellows, Daniel S., Defendant/Appellant;

Landa, Brisa, Defendant/Appellant;

Miller, Chanon, Plaintiff/Appellee;

Murray, Steven L., Defendant/Appellant;

Peskowitz, Ira S., Defendant/Appellant;

Purdy, Jolly, Giuffreda, Barranco & Jisa, P.A., Counsel for Defendants/Appellants;

Ramirez, Juan F., Defendant/Appellant;

Rosenberg, Robin L., United States District Court District Judge.

## **STATEMENT REGARDING ORAL ARGUMENT**

The appellee, Chanon Miller, respectfully submits that oral argument is necessary to the just resolution of this appeal and will significantly enhance the decision-making process.

## **STATEMENT REGARDING REFERENCES AND RECORD CITATIONS**

Appellee was the plaintiff in the district court and will be referred to by proper name or as “Appellee.” Appellants were the defendants in the district court and will be referred to as “Defendants” or “Appellants.” References to the record are the docket entry followed by the page number and/or paragraph number where appropriate. (“DE. \_\_: \_\_”).

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	C-1
STATEMENT REGARDING ORAL ARGUMENT .....	i
TABLE OF CONTENTS.....	ii
TABLE OF CITATIONS .....	iv
STATEMENT OF JURISDICTION.....	1
STATEMENT OF THE ISSUE.....	1
STATEMENT OF THE CASE.....	1
A. Course of Proceedings and Disposition in the Court Below .....	1
B. Statement of the Facts.....	1
1. The Facts as set forth in the Amended Complaint .....	1
2. The Facts as set forth in the Exhibits to the Amended Complaint.....	3
STANDARD OF REVIEW .....	9
SUMMARY OF THE ARGUMENT .....	9
ARGUMENT AND CITATIONS OF AUTHORITY .....	10
<b>I. DEFENDANTS ARE NOT ENTITLED TO QUALIFIED IMMUNITY AS A MATTER OF LAW.....</b>	<b>10</b>
<b>A. Introduction and Relevant Standard .....</b>	<b>10</b>
<b>B. Constitutional Right was Clearly Established .....</b>	<b>11</b>
<b>C. Neither Probable Cause nor Arguable Probable Cause Existed to Arrest Ms. Miller .....</b>	<b>13</b>

CONCLUSION.....27

CERTIFICATE OF COMPLIANCE .....27

CERTIFICATE OF SERVICE .....27

## TABLE OF CITATIONS

### CASES

<i>BeVier v. Hucal</i> , 806 F. 2d 123 (7th Cir. 1986).....	24
<i>Brown v. City of Huntsville</i> , 608 F.3d 724 (11th Cir. 2010).....	13, 14
<i>Carter v. Butts County, Ga.</i> , 821 F.3d 1310 (11th Cir. 2016).....	12, 24
<i>Coffin v. Brandu</i> , 642 F.3d 999 (11th Cir. 2011).....	13
<i>Cozzi v. City of Birmingham</i> , 892 F.3d 1288 (11th Cir. 2018), <i>abrogated on other grounds by Washington v. Howard</i> , 25 F.4th 891 (11th Cir. 2022).....	14, 26
<i>Crocker v. Beatty</i> , 886 F.3d 1132 (11th Cir. 2018).....	11
<i>Davis v. Williams</i> , 451 F.3d 759 (11th Cir. 2006).....	11
<i>District of Columbia v. Wesby</i> , 583 U.S. 48, 138 S. Ct. 577, 199 L.Ed.2d 453 (2018).....	10, 13
<i>Durruthy v. Pastor</i> , 351 F.3d 1080 (11th Cir. 2003).....	12
<i>Garcia v. Casey</i> , 75 F.4th 1176 (11th Cir. 2023).....	11, 12, 13, 14
<i>Gray v. Ferdarko</i> , 982 F. Supp. 2d 1348 (N.D. Ga. 2013).....	26
<i>Hope v. Pelzer</i> , 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).....	11
<i>Hunter v. Bryant</i> , 502 U.S. 224 , 112 S.Ct. 534, 116 L.Ed.2d 589 (1991).....	26
<i>In the Interest of M.E.</i> , 370 So.2d 795, 796–797 (Fla.1979)), <i>receded from on other grounds by Jones v. State</i> , 790 So. 2d 1194 (Fla. 1st DCA 2001).....	15
<i>Khoury v. Miami-Dade Cnty. Sch. Bd.</i> , 4. F.4th 1118 (11th Cir. 2021).....	13

*Kingsland v. City of Miami*, 382 F.3d 1220 (11th Cir. 2004), *abrogation recognized on other grounds by Warren v. Desantis*, 90 F.4th 1115 (11th Cir. 2024) .....10, 14, 24, 25

*Maggio v. Sipple*, 211 F.3d 1346 (11th Cir. 2000).....9

*Mitchell v. Peoples*, 10 F.4th 1226 (11th Cir. 2021) .....9, 10

*Morris v. Town of Lexington Alabama*, 748 F.3d 1316 (11th Cir. 2014).....13

*Ortega v. Christian*, 85 F.3d 1521 (11th Cir.1996).....12

*Paez v. Mulvey*, 915 F.3d 1276 (11th Cir. 2019).....9

*Sevigny v. Dicksey*, 846 F.2d 953 (4th Cir. 1988) .....14

*Skop v. City of Atlanta*, 485 F.3d 1130 (11th Cir. 2007) .....12

*Tillman v. Coley*, 886 F.2d 317 (11th Cir. 1989).....14

*Washington v. Rivera*, 939 F.3d 1239 (11th Cir. 2019).....14, 24

*Whetstone v. State*, 778 So. 2d 338, (Fla. 1st DCA 2000).....15

*Von Stein v. Breshcer*, 904 F.2d 572, 579 (11th Cir. 1990).....12

**STATUTORY AUTHORITIES**

Section 74.129(4)(b), Florida Statute. ....25

## STATEMENT OF JURISDICTION

Ms. Miller accepts and adopts the State of Jurisdiction as stated in Appellants' Initial Brief. [IB. 2].

## STATEMENT OF THE ISSUE

- I. Whether a reasonable officer in Appellants' position would have had probable cause to arrest Ms. Miller for domestic battery in accordance with clearly established Fourth Amendment protections, where the totality of circumstances reflects that little to no attempt was made to investigate the incident, exculpatory information (which was already known of) was willfully ignored, and inculpatory information was the sole consideration.

## STATEMENT OF THE CASE

### A. Course of Proceedings and Disposition in the Court Below

Ms. Miller accepts and adopts the description of the course of proceedings below by Appellant. [IB. 4-5].

### B. Statement of the Facts

Ms. Miller accepts and adopts Appellants' statement of the facts [IB. 5-20] to the extent that it represents an accurate, non-argumentative synopsis of the evidence adduced below, subject to the following relevant additions and clarifications:

#### 1. The Facts as set forth in the Amended Complaint

Ms. Miller obtained the mortgage for the home that she shared with her ex-fiancé, Eric McGregor (hereinafter “McGregor”), in Wellington, Florida. [DE. 15: 9; ¶¶ 28, 29].

McGregor’s erratic and abusive behavior continued on after his parents opted against having him involuntarily committed. [DE. 15: 9-10; ¶ 33].

After 911 was called in response to McGregor’s threats to the gate guards within their community on December 23, 2021, McGregor continued to refuse to get help, despite Ms. Miller’s continuing plea to do so. [DE. 15: 10; ¶ 38].

The hard drives for the interior security cameras, which McGregor had disconnected, were the only source of storage of the interior surveillance videos that captured McGregor’s abuse towards Ms. Miller. [DE. 15: 13; ¶¶ 49, 50].

Following Ms. Miller’s arrest, she, through her attorney, provided the State of Florida with a prefile memorandum detailing the many failure of the Palm Beach Sheriff’s Office, including Defendants Murry and Ramirez, in the unlawful arrest of Ms. Miller. [DE. 15: 28; ¶ 126]. All charges were dropped against Ms. Miller following the State of Florida’s review of the defense prefile memorandum and corroborating evidence including the 911 audio recordings of Mr. Miller and McGregor’s calls, the CAD reports of the 911 calls, the Offense Incident reports written in response to the 911 calls, the photos and screenshots of the abusive behavior, and the hard drive video surveillance, which unequivocally established

that McGregor was a lying abusive domestic partner, who was allowed to continue to abuse and batter Ms. Miller as a direct result of the Sheriff's Office's failures in responding to Ms. Miller's first 911 call on January 8, 2022. [DE. 15: 28; ¶ 127].

## **2. The Facts as set forth in the Exhibits to the Amended Complaint<sup>1</sup>**

The first of several calls made to 911 on January 8, 2022, was made by a scared, bruised, and scratched Ms. Miller at approximately 6:54 p.m. [DE. 15: ¶ 54]. The transcript of the 911 call, attached as Exhibit E to the Amended Complaint [DE. 15], reflected the following statements made by Ms. Miller to the 911 dispatcher:

- “Yes, we share the house.” [Ex. E: 4, line 7];
- “Both of our names are on the deed.” [Ex. E: 4, lines 9-10];
- In response to the dispatcher's question, “Can you go into a different room, close the door and lock the door,” Miller responds, “He follows me.” [Ex. E: 6, lines 3-5];
- “He's telling me to leave the home that we own together.” [Ex. E: 6, lines 7-8];
- “[H]e's been extremely abusive.” [Ex. E: 6, line 21];
- “I had a cop come here the other day, and he manipulated them and I warned them before they came out, but he's a master manipulator. He knows how to

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<sup>1</sup> References to the exhibits attached to the Amended Complaint [DE. 15] are the Exhibit letter followed by the page number and corresponding lines, if applicable. (“Ex. \_\_\_: \_\_, line(s) \_\_\_”).

get out of everything. My wrist hurts from him slamming the door. I have proof of abuse on having to deal with –” [Ex. E: 7, lines 14-19];

- “[His parents] wanted to Baker Act him and things like that because he has a mental disorder it’s just not diagnosed because he won’t go to therapy.” [Ex. E: 10, lines 22-25];
- “Officer, he’s going to try & manipulate you guys. I need you to understand, this is what he does. Every person that knows him will tell you that this is what he does.” [Ex. E: 13, lines 14-17].

The CAD report (No. 22023521) of the abovementioned call, attached as Exhibit F to the Amended Complaint [DE. 15], reflects that Defendants Murray, Ramirez, Peskowitz, and Bitner were advised by the 911 dispatcher that the complainant (Ms. Miller) was concerned that the male (McGregor) was going to manipulate them when they arrived [Ex. F: 3]; that McGregor’s family had been trying to Baker Act him [Ex. F: 3]; that Ms. Miller had advised that McGregor was hiding guns, marijuana, and illegal things around the house [Ex. F: 4]; and that McGregor stopped Ms. Miller from opening the door and she said, “Ow.” [Ex. F: 4].

The second phone call to 911 that day was again made by Ms. Miller at 8:41 p.m. [DE. 15: ¶ 80]. The transcript of the 911 call, attached as Exhibit I to the Amended Complaint [DE. 15], reflected the following exchanges between Ms. Miller and the 911 dispatcher:

DISPATCHER: Do you guys live together?

MS. MILLER: We both own this house.

[Ex. I: 3, lines 3-4]

.....

MS. MILLER: [h]e did tackle me to the ground --

[Ex. I: 3, line 12]

.....

MS. MILLER: As soon as I walked in he said get out of my house and we own this house 50/50. Both our names are on the deed.

[Ex. I: 3, lines 22-25]

.....

DISPATCHER: . . . I just don't want you guys arguing with each other if he's going to be physical. I don't want you to get hurt. And when the police were there the last time --

[Ex. I: 4, lines 6-9]

.....

MS. MILLER: He's really enraged.

[Ex. I: 6, line 2]

.....

MS. MILLER: I don't know where to go from here, because every time the police come here, they don't do anything about him. And then he laughed about it and says, you keep calling the police, but they're never going to do anything. They'll never do anything. They'll never get me out of this house. They're never going to believe you."

[Ex. I: 6, lines 13-19]

.....

DISPATCHER: . . . . You said that he assaulted you. And they will have to investigate once they get there. Let me know when you see the first officer because he seems to be very aware of what's happening, and he's waiting.

[Ex. I: 6-7, lines 22-1]

.....

MS. MILLER: . . . he's fabricating stories to manipulate the police in the court to tell them I have been violent.

[Ex. I: 7, lines 15-17]

....

DISPATCHER . . . . I'm pretty sure whoever was there earlier will be returning, and they will speak to you all.

[Ex. I: 8, lines 11-12]

....

MS. MILLER: . . . . But as I told you before, I mean, both of our names are on the deed. I had my lawyer look into it, and the lawyer said that the way the deed is set up, we 50/50% ownership.

[Ex. I: 9, lines 1-5]

....

DISPATCHER: I completely understand. Hopefully, after today, this will calm down the situation because it sounds like it's only getting worse.

[Ex. I: 9, lines 12-15]

....

MS. MILLER: . . . . I'm scared for my daughter. I'm scared for myself.

[Ex. I: 9-10, lines 25-1]

....

DISPATCHER: Okay, and you said you're outside with the gun in the bag, right?.

MS. MILLER: I left the gun at the front door. I don't want to touch it.

[Ex. I: 11, lines 8-11]

....

MS. MILLER: . . . . He's lying. Oh, my God. He keeps saying I can hear him talking on the phone. He's telling people that I --

DISPATCHER: He called the police, which is fine. He can tell them whatever they need to say.

MS. MILLER: He's lying.

[Ex. I: 11, lines 14-20]

....

DISPATCHER: . . . . I understand you're scared and you want to protect your child, and they're going to talk to you and tell you the best ways to handle that.

[Ex. I: 12, lines 5-8].

Within moments of the last exchange, the transcript reflects the following exchange that McGregor had with Ms. Miller while he was on a separate call with 911 [DE. 15: 19; ¶ 92]:

MCGREGOR: Excuse me. Excuse Me. She's breaking into the home right now.

MS. MILLER: This is my house.

MCGREGOR: Right now. Excuse me, she's breaking into the house. Please send someone. Please. I can't have her inside. I cannot have her inside.

MS. MILLER: You're hurting me.

DISPATCHER: Okay, can you just step away and go somewhere else until the police - -

MS. MILLER: He's hurting me. He's got me in the ground. He's hurting me. He's stepping on my head, ma'am.

MCGREGOR:- - I'm just trying to leave her outside where she belongs.

DISPATCHER: Can you go outside and go and wait at the courthouse?

MS. MILLER: He's lying.

DISPATCHER: I understand. I understand.

....

MS. MILLER: He's lying ma'am.

DISPATCHER: It's fine. All of this is recorded on both ends, yours and his.

[Ex. I: 12-13, lines 16-9].

The exchange continued between Ms. Miller and the 911 dispatcher:

MS. MILLER: He just walked the gun back inside.

[Ex. I: 14, line 10]

....

DISPATCHER: I have been on the phone the whole time. The deputies can access recorded calls as well.

[Ex. I: 14, lines 20-21]

....

DISPATCHER: . . . . All of this is recorded. Once they get there and do their investigation, they can pull all of the text, ma'am.

[Ex. I: 15, lines 4-7].

McGregor's phone call to 911 occurred at approximately 8:46 p.m., within minutes of Ms. Miller's call to 911. The transcript of McGregor's 911 call, attached as Exhibit K to the Amended Complaint [DE. 15], reflected the following statements made by McGregor to the 911 dispatcher:

- "My ex is trying to break back into the home." [Ex. K: 2, lines 8-9];
- "She was told to leave today and escorted out by the police earlier." [Ex. K: 2-3, lines 24-1];
- "He (*sic*) was asked to leave several days ago as well." [Ex. K: 3, lines 11-12].

## STANDARD OF REVIEW

The district court's decision to deny qualified immunity on a motion to dismiss is reviewed *de novo*. *Mitchell v. Peoples*, 10 F.4th 1226, 1229 (11th Cir. 2021). In so doing, the factual allegations in the complaint are accepted as true and all reasonable inferences are drawn in the plaintiff's favor. *Id.* (citing *Paez v. Mulvey*, 915 F.3d 1276, 1284 (11th Cir. 2019)). The facts in the complaint are construed "in the light most favorable to the plaintiff." *Maggio v. Sipple*, 211 F.3d 1346, 1350 (11th Cir. 2000).

## SUMMARY OF THE ARGUMENT

Defendants are not entitled to qualified immunity. The law has been clearly established for decades that an arrest without probable violates the Fourth Amendment. Here, no probable cause existed – arguable or otherwise – to arrest Ms. Miller for simple battery (domestic). The facts, taken in the light most favorable to Ms. Miller, reflect that Ms. Miller repeatedly called law enforcement fearing for her safety as a result of her ex-fiancé's physically abusive behavior. In response to the call that led to her arrest, Defendants not only turned a blind eye to information that was already known to them regarding Ms. Miller's fear and abuse, but also refused to consider evidence of her abuse and her ex-fiancé's behavior offered to them by Ms. Miller which would have obviously ruled out probable cause, both during the prior investigation and at the time of her arrest. Because Defendants'

investigation was not only lacking but also obviously biased, and because qualified immunity simply does not shield officers who behave in such an objectively unreasonable fashion, Defendants are not entitled to such relief.

## **ARGUMENT AND CITATIONS OF AUTHORITY**

### **I. DEFENDANTS ARE NOT ENTITLED TO QUALIFIED IMMUNITY AS A MATTER OF LAW.**

#### **A. Introduction and Relevant Standard**

Qualified immunity is, as the term implies, qualified. It is not absolute. It contemplates instances in which a public official's actions are not protected. The principles behind qualified immunity would be rendered meaningless if such immunity could be invoked to shelter officers who, because of their own interests, allegedly flout the law, abuse their authority, and deliberately imperil those they are employed to serve and protect.

*Kingsland v. City of Miami*, 382 F.3d 1220, 1233-34 (11th Cir. 2004), *abrogation recognized on other grounds by Warren v. DeSantis*, 90 F.4th 1115 (11th Cir. 2024) (internal citations omitted). “The doctrine of qualified immunity protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Mitchell*, 10 F.4th at 1229 (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 63, 138 S. Ct. 577, 589, 199 L.Ed.2d 453 (2018)).

In order to defeat a claim on qualified immunity grounds, two things must be established: (1) “that the official’s alleged conduct violated a constitutionally

protected right;” and (2) “that the right was clearly established at the time of the misconduct.” *Garcia v. Casey*, 75 F.4th 1176, 1185 (11th Cir. 2023).<sup>2</sup>

### **B. Constitutional Right was Clearly Established**

Appellants proceed under the misapprehension that a right is “clearly established” *only* when there is “a controlling case or robust of consensus of cases from the Supreme Court, this Circuit or the Florida Supreme Court” under circumstances identical to those here. [IB. 26-27, 35]. Indeed, “case law with indistinguishable facts clearly establishing the constitutional right” is one way for a right to be clearly established for qualified immunity purposes, *Crocker v. Beatty*, 886 F.3d 1132, 1138 (11th Cir. 2018), but it is not the only way. A right can also be clearly established by “a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right.” *Id.* As this Court has noted, “officials can still be on notice that their conduct violates established law even in novel circumstances,” and earlier cases involving “fundamentally similar” facts are not necessary to support a finding that a law is clearly established. *Davis v. Williams*, 451 F.3d 759, 762 (11th Cir. 2006) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002)).

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<sup>2</sup> Defendants bore the initial burden of establishing that they were “acting within [their] discretionary authority when the alleged wrongful acts occurred.” *Garcia*, 75 F.4th at 1185. Ms. Miller does not dispute that Defendants were acting within their discretionary authority when she was arrested.

It is indisputable that a violation of Ms. Miller’s constitutional right was clearly established here. Ms. Miller alleged that she was falsely arrested in violation of her Fourth Amendment rights, as there was no probable cause to support her arrest. [DE. 15: 3; ¶¶ 5, 6]. “An officer violates a person’s Fourth Amendment right against unreasonable seizures if the officer arrests that person without probable cause to make the arrest.” *Garcia*, 75 F.4th at 1186 (citing *Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007)). This right has been clearly established for quite some time and has long been recognized by this Court for decades. *See Von Stein v. Breshcer*, 904 F.2d 572, 579 (11th Cir. 1990) (finding that, “at the time Defendants arrested Plaintiff, the law was clearly established that an arrest without probable cause to believe a crime had been committed violated the Fourth Amendment.”); *Durruthy v. Pastor*, 351 F.3d 1080, 1088 (11th Cir. 2003) (“Plainly, an arrest without probable cause violates the right to be free from an unreasonable search under the Fourth Amendment.”); *Carter v. Butts County, Ga.*, 821 F.3d 1310, 1319 (11th Cir. 2016) (“By now it is well established that ‘[a] warrantless arrest without probable cause violates the Fourth Amendment and forms a basis for a section 1983 claim.’”) (quoting *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir.1996)).

Accordingly, all that Ms. Miller was required to do to meet her burden for a false arrest claim was simply to show that Defendants did not have probable cause

to arrest her. *Khoury v. Miami-Dade Cnty. Sch. Bd.*, 4. F.4th 1118, 1126 (11th Cir. 2021).

**C. Neither Probable Cause nor Arguable Probable Cause Existed to Arrest Ms. Miller**

Appellants argue that they are entitled to qualified immunity because they had probable cause, or at least arguable probable cause, to arrest Ms. Miller for simple battery (domestic). [IB. 33]. To determine whether probable cause exists for an arrest, the events leading up to the arrest must be examined, and then it must be decided “whether these historical facts, viewed from the standpoint of an objectively reasonable officer, amount to probable cause.” *Wesby*, 583 U.S. at 56-57. In the context of qualified immunity from a false arrest claim, however, an officer need not have actual probable cause, but rather only “arguable” probable cause. *Garcia*, 75 F.4th at 1186 (quoting *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010)).

Arguable probable cause exists where “reasonable officers in the same circumstances and possessing the same knowledge as the Defendants could have believed that probable cause existed to arrest Plaintiff . . . .” *Morris v. Town of Lexington Alabama*, 748 F.3d 1316, 1324 (11th Cir. 2014); *Coffin v. Brandu*, 642 F.3d 999, 1007 (11th Cir. 2011). A “totality of the circumstances” analysis is employed in making this determination. *Garcia*, 75 F.4th at 1187-88 (“To determine whether an official had actual or arguable probable cause for an arrest, we must look

at the totality of the circumstances . . . .”) (internal quotation marks omitted). This includes analyzing not only the operative fact pattern at issue, *see Brown*, 608 F. 3d at 735, but also “what the officers knew at the time of the arrest.” *Garcia*, 75 F.4th at 1188. Attention must also be paid to any and all information “reasonably discoverable by an officer acting reasonably under the circumstances.” *Sevigny v. Dicksey*, 846 F.2d 953, 957 n.5 (4th Cir. 1988).

More importantly – and particularly here – “in evaluating probable cause, 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 a suspect.” *Cozzi v. City of Birmingham*, 892 F.3d 1288, 1294 (11th Cir. 2018) (alterations adopted) (internal quotation marks omitted) (quoting *Kingsland*, 382 F.3d at 1229, 1333), *abrogated on other grounds by Washington v. Howard*, 25 F.4th 891 (11th Cir. 2022). Plainly put, an officer cannot “choose to ignore information that has been offered to him or her.” *Kingsland*, 382 F.3d at 1229. An officer also cannot “be willfully blind to facts that are exculpatory and give rise to ‘serious doubts,’” or in other words, “ignore facts that would give a reasonable officer ‘sufficient concerns.’” *Washington v. Rivera*, 939 F.3d 1239, 1248 (11th Cir. 2019) (alterations adopted) (quoting *Tillman v. Coley*, 886 F.2d 317, 321 (11th Cir. 1989)).

According to Appellants, there was at least arguable probable cause to arrest Ms. Miller for simple battery because she returned to her own residence after law enforcement merely advised her to call them if she needed to do so, then “forced her way in, confronted [McGregor] about his behavior, forcefully took [his] property (a gun) and allegedly battered him.” [IB. 33].<sup>3</sup> If the sequence of events actually occurred like this, then Appellants’ position would arguably be valid. Such is not the case, however. Like the Defendants’ investigation below, their position on appeal is advanced in a vacuum, one which ignores salient facts that focuses solely on inculcating Ms. Miller rather than objectively viewing all of the facts in their totality.

The facts alleged in the Amended Complaint, viewed in the light most favorable to Ms. Miller, establish the following: McGregor was no stranger to the Palm Beach County Sheriff’s Office. Within less than a three-week period, four calls had been made to 911 regarding his angry, erratic, and threatening behavior.

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<sup>3</sup> Contrary to Appellants’ position, there was absolutely no probable cause, actual or arguable, to arrest Ms. Miller for burglary under section 810.02(1)(b), Florida Statutes. [IB. 33, n. 8]. Florida law is well-established that “[o]ne cannot commit the crime of burglary of his own premises.” *Whetstone v. State*, 778 So. 2d 338, 342 (Fla. 1st DCA 2000) (citing *In the Interest of M.E.*, 370 So.2d 795, 796–797 (Fla.1979)), *receded from on other grounds by Jones v. State*, 790 So. 2d 1194 (Fla. 1st DCA 2001). The facts clearly establish that Ms. Miller owned the home with McGregor, that both their names were on the deed, and the mortgage was in her name. [DE. 15: 9; ¶¶ 28, 29]; [Ex. E: 4, lines 7, 9-10]; [Ex. E: 6, lines 7-8]; [Ex. G: 1]; [Ex. I: 3, lines 3-4, 23-25]; [Ex. I: 9, lines 1-5].

The first was made by the guards within his residential community on December 23, 2021, when McGregor threatened one of the gate guards. [DE. 15; ¶ 37]. The other three were made by Ms. Miller herself. Her first call to 911 was made on January 3, 2022, when McGregor was acting erratically and threatening towards her, causing her to fear for her safety. [DE. 15; ¶ 40]. She explained McGregor's erratic behavior to law enforcement when they responded to her house. [DE. 15; ¶¶ 40, 43]. She was advised that nothing could be done. [DE. 15; ¶ 43]. Ms. Miller left the home that night to stay at her mother's home until she was able to get sole custody of their daughter in family court. [DE. 15; ¶¶ 43, 46].

The other two 911 calls made by Ms. Miller occurred on January 8, 2022. Ms. Miller had returned to her home that evening after discovering that McGregor had disconnected the interior security cameras in the home. [DE. 15; ¶¶ 49, 51]; [Ex. E: 3, lines 21-25]. The hard drives for the interior security cameras were the only physical evidence of McGregor's angry, erratic, and abusive behavior, which would have been highly relevant in Ms. Miller's pursuit of sole custody of their daughter. [DE. 15; ¶ 50]. When she arrived at her home, McGregor yelled at her, grabbed her roughly by her arm, and pulled her and scratched her when she tried to get into the house. [DE. 15; ¶¶ 52, 53]. Scared, bruised and scratched, she called 911 at 6:54 p.m. [DE. 15; ¶ 54].

On that 911 call, Ms. Miller told the dispatcher that there was a gun in the house, that she believed McGregor was using drugs, that he was getting physical with her, and that she had a scratch on her wrist. [DE. 15; ¶ 55]. She stated that he would follow her when she would try to go into a different room to get away from him. [Ex. E: 6, lines 3-5]. She advised that she had previously called 911 on McGregor a few days prior and that there was already an associated case number. [DE. 15; ¶ 55]. She told the dispatcher that McGregor had been extremely abusive. [Ex. E: 6, line 21]. She insisted that McGregor was a liar and that he was a “master manipulator” who had manipulated the officers before and would do it again. [DE. 15; ¶ 57]; [Ex. E: 7, lines 14-15]; [Ex. E: 13, lines 14-17]. She informed the dispatcher that his parents wanted to Baker Act him because he has an undiagnosed mental disorder that he won’t seek therapy for. [Ex. E: 10, lines 22-25]. Ms. Miller also told the dispatcher that she had proof of the abuse that she had been having to deal with. [Ex. E: 7, lines 18-19].

The CAD report (No. 22023521) of the abovementioned call confirmed that Ms. Miller’s explanation of McGregor’s history of abuse and safety concerns were conveyed by the dispatcher to the responding officers, Defendants Murray, Ramirez, Peskowitz, and Bitner. [DE. 15; ¶¶ 61,62]. Defendants were further advised by the dispatcher of Ms. Miller’s concerns that McGregor was going to manipulate them when they arrived [Ex. F: 3]; that McGregor’s family had been trying to Baker Act

him [Ex. F: 3]; that Ms. Miller had advised that McGregor was hiding guns, marijuana, and illegal things around the house [Ex. F: 4]; and that McGregor stopped Ms. Miller from opening the door and she said, “Ow.” [Ex. F: 4].

When Defendants Murray, Ramirez, Peskowitz, and Bitner arrived and asked Ms. Miller what had occurred, she explained the history of her relationship problems with McGregor from months before, detailed his abusive behavior, the vandalism to the house, and the physical abuse she endured that day. [DE. 15; ¶ 63]. Ms. Miller was advised that the situation was a civil matter and that there was nothing that could be done to help her. [DE. 15; ¶¶ 65, 69]. She volunteered to leave the house and drove back to her mother’s home. [DE. 15: ¶ 71].

Defendant Murray’s report reflected much of the same. It also reflected that Officer Murray had made contact with McGregor, who stated that he and Ms. Miller had gotten into a verbal argument because she wanted to get back together with him, and when he walked away, she “broke the door down” to continue arguing with him. [Ex. G: 2]. No physical evidence was observed by Defendant Miller, however. [*Id.*]. Furthermore, McGregor’s lies were easily disproven by the photos and screenshots that Ms. Miller offered to show Defendant Murray and the other officers on scene, which was disregarded. [DE. 15: ¶ 64].

Ms. Miller returned to her home shortly thereafter when she realized that she had not retrieved the hard drives for the interior security cameras. [DE. 15: ¶ 72].

Just as she suspected, she saw that McGregor had removed the hard drives when she entered the home. [DE. 15: ¶ 73]. McGregor told her that he had put them outside, and when she went back inside after looking for them outside to no avail, he approached her causing her to fear for her safety. [DE. 15: ¶¶ 75, 76]. Ms. Miller nevertheless continued to look for the hard drives while McGregor sprouted angry and abusive remarks at her as he followed her. [DE. 15: ¶ 77]. She ended up grabbing one of her handbags and saw McGregor's gun in it. [DE. 15: ¶ 78]. Fearful that he had access to the gun in his angry and erratic state, she planned to call the police. [*Id.*]. As she walked with the bag towards the top of the stairs, McGregor pushed her from behind and tried to grab the bag, causing her to fall down the stairs, and leaving her with noticeable bruises all over her body. [DE. 15: ¶ 79]; [Ex. H].

Battered and yet again in fear, Ms. Miller called 911, this time at 8:41 p.m. [DE. 15: ¶ 80]. On this call, Ms. Miller again explained her history with McGregor, including that law enforcement had just been to her home an hour ago. [DE. 15: ¶¶ 83, 84]. She explained the reason she was back at the house and why the hard drives were so important. [DE. 15: ¶¶ 88, 90]. She told the dispatcher that she had found a gun in the house; that McGregor tackled her down the stairs as she was running from him and she was in pain; and that she had scratches all over her arms from McGregor. [DE. 15: ¶¶ 81, 82, 86]. She stated that McGregor was enraged. [Ex. I: 6, line 2]. She also stated that she was scared for herself and her daughter, and that she needed

a restraining order against McGregor. [Ex. I: 9-10, lines 25-1]; Ex. E: 7, lines 24-25].

Ms. Miller again emphasized that McGregor would fabricate a story to the police and manipulate them. [DE. 15: ¶ 85]; [Ex. I: 7, lines 15-17]. She wept to the dispatcher that she kept calling the police but was receiving no help. [DE. 15: ¶ 87]. She explained how McGregor mocked her about calling the police, telling her that “[t]hey’ll never do anything” and “[t]hey’re never going to believe you.” [Ex. I: 6, lines 15-19].

The dispatcher expressed concerns for Ms. Miller and offered hopeful advice to her. The dispatcher told Ms. Miller, “I don’t want you to get hurt.” [Ex. I: 4, line 8]. The dispatcher assured that since Ms. Miller said that McGregor assaulted her, the officers would “have to investigate once they get there.” [Ex. I: 6, lines 22-24]. The dispatcher also assured Ms. Miller that the responding officer “seem[ed] to be very aware of what’s happening . . . .” [Ex. I: 6-7, lines 24-1]. In fact, the dispatcher assured her that “whoever was there earlier [would] be returning” to speak to them both, and that they would tell her “the best way” to protect her child. [Ex. I: 8, lines 11-12]; [Ex. I: 12, lines 5-8]. The dispatcher expressed hope that things would “calm down” because it sounded as if the situation was “only getting worse.” [Ex. I: 9, lines 12-15].

While Ms. Miller was on the call with the dispatcher, McGregor called 911 himself. [DE. 15: ¶ 93]; [Ex. I: 11, lines 17-18]. Ms. Miller could overhear McGregor's lies – that she was breaking into the home and breaking glass – and she repeatedly told the dispatcher that he was lying. [Ex. I: 11, lines 14, 20]; [Ex. I: 12, lines 17, 20]; [Ex. I: 13, lines 8, 11, 15]. As this was occurring, Ms. Miller told the dispatcher that McGregor was hurting her, that he shoved her to the ground, and that he was stepping on her head. [DE. 15: ¶ 92]; [Ex. I: 13, lines 1-3]. Ms. Miller told the dispatcher that McGregor had walked the gun back inside. [Ex. I: 14, line 10].

The dispatcher repeatedly assured Ms. Miller that her call was being recorded. [Ex. I: 13, lines 12-13]; [Ex. I: 15, lines 4-5]. The dispatcher also assured Ms. Miller that the reporting deputies could “access recorded calls” and that “once they get there and do their investigation, they [could] pull all of the text. . . .” [Ex. I: 14, lines 20-21]; [Ex. I: 15, lines 5-7]. In addition, the CAD report of Ms. Miller's second 911 call (No. 22023535) confirmed that Ms. Miller's concerns were conveyed by the dispatcher to the responding deputies, which included Defendants Ramirez, Murray, Fellows, Peskowitz, Landa, and Bitner. [DE. 15; ¶¶ 95, 100]. The CAD report also reflected that the 911 recording captured a physical altercation at the door of the home as it occurred. [DE. 15: ¶ 95].

McGregor's call to 911 was recorded as well. He called at 8:48 p.m., approximately seven minutes after Ms. Miller called 911. [DE. 15; ¶ 96]. McGregor

told the dispatcher that Ms. Miller grabbed his gun and ran outside with it, and when he tried to stop her, she tackled him down the stairs. [DE. 15; ¶ 97]. He also told the dispatcher that Ms. Miller was “told” to leave the home earlier and was “escorted out by police” and that he had asked Ms. Miller to leave the house several days ago. [Ex. K: 2-3, lines 24-1]; [Ex. K: 3, lines 11-12].

When Defendants Ramirez, Murray, Fellows, Peskowitz, Landa, and Bitner responded to the house, Ms. Miller again explained her history with McGregor, his past abuse, her intentions to leave him, and his physical abuse of her that day. [DE. 15; ¶ 101]. Ms. Miller offered them corroborating evidence, including: (1) photos of the vandalism committed by McGregor on January 3, 2022, when he spray painted their home with fluorescent spray paint after she had called 911; and (2) screen shots of text messages where Ms. Miller tells McGregor that she plans to go to court to force the sale of their home and petition for sole custody. [DE. 15: ¶¶ 41, 44, 101]; [Ex. B, C]. She also pointed out her physical injuries to them. [DE. 15: ¶ 101].

Defendant Ramirez’s report reflects a distorted version of the above-mentioned incident. Although the officers were responding to Ms. Miller’s 911 call (which was made several minutes prior to McGregor’s), Defendant Ramirez opted to speak with McGregor first. [Ex. L: 2]. McGregor was not read his *Miranda* rights prior to providing his statement, but Ms. Miller was. [Ex. L: 2, 3].

Defendant Ramirez specifically noted that both McGregor and Ms. Miller were on the phone with 911 during the altercation. [Ex. L: 2]. Defendant Ramirez also referenced the domestic incident from earlier that day, detailing that Ms. Miller “left the residence as she did not feel safe and felt in fear for her wellbeing.” [Ex. L: 2]. Yet, after speaking with McGregor and Ms. Miller, Ms. Miller was placed in handcuffs as Defendant Ramirez found probable cause to arrest her for simple battery (domestic). [Ex. L: 2-3].

The totality of circumstances do not weigh in Appellants’ favor. Reasonable officers in the same circumstances and possessing the same knowledge could not have believed that probable cause existed to arrest Ms. Miller for simple battery. Rather, what occurred here is that Appellants chose to ignore not only what was known to them at the time of the arrest, but also information that was both offered to them and easily discoverable which would have exculpated Ms. Miller.

To start, Appellants ignored the fact that it was Ms. Miller who called 911 twice that day regarding McGregor’s abusive behavior. From that first incident, Appellants knew of the history of physical abuse that Ms. Miller had endured including the abuse she endured that day. Appellants knew that Ms. Miller was concerned for her safety. From that first incident, Appellants were apprised of the fact that McGregor’s family had been trying to Baker Act him, thus suggesting he suffered from a mental illness. From that first incident, Appellants were made aware

that McGregor would try to manipulate them into believing that Ms. Miller was at fault, which was evident from Defendant Murray's report where he acknowledged that there was no physical evidence observed to support McGregor's story.

Appellants were "willfully blind" to this information when they responded to Ms. Miller's second 911 call that day. Again, the same concerns from the first call were made known to Appellants, including the sordid history of their relationship, McGregor's abusive history towards her and the physical abuse that she continued to endure that day. To make matters worse, Ms. Miller attempted to provide Appellants with corroborating evidence of McGregor's behavior, which was willfully disregarded not once, but twice. She even pointed out her physical injuries to Appellants that evening. Yet, Appellants chose to wholly ignore all of this information when they arrested Ms. Miller – exculpatory information which would have caused "sufficient concerns" to any reasonable officer. *Washington*, 939 F. 3d at 1248. Such actions were patently unreasonable. *See Kingsland*, 382 F.3d at 1229; *Carter*, 821 F. 3d at 1321 (explaining that "no reasonable officer with the information that was readily available to [defendant] at the time he arrested [p]laintiffs could have believed that he had probable cause to arrest them for burglary, criminal trespass, or theft," where defendant ignored documentation that plaintiffs attempted to present to him establishing that they were authorized to be on the property.); *see also 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.”).

Additionally, Appellants made little to no attempt to actually investigate the last incident between Ms. Miller and McGregor.<sup>4</sup> The record shows that the reporting deputies could have accessed the 911 calls and “pull[ed] all of the text” as part of their investigation. Appellants would have heard and/or read how fearful of McGregor Ms. Miller continued to be that evening, that McGregor had tackled her down the stairs as she tried to escape him, how enraged McGregor was, and how McGregor would lie and fabricate a story to the officers. Appellants elected not to obtain this easily discoverable information.

It is clear that, contrary to this Court’s precedent, Appellants’ investigation was biased in favor of McGregor. *See Kingsland*, 382 F.3d at 1229 (“Nor may the officer conduct an investigation in a biased fashion . . .”). Appellants ignored the fact that Ms. Miller had left the residence earlier because she did not feel safe and was in fear for her well-being, as evidenced by Defendant Ramirez’s report. Appellants ignored Ms. Miller’s version of events and only gave attention to

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<sup>4</sup> Appellants’ actions were also in violation of both section 741.29(4) of the Florida Statutes and the Palm Beach Sheriff’s Office General Order 508.00. Both authorities provide guidance for an officer’s response to domestic violence complains, which require that investigations be conducted to determine who the “primary aggressor” is. *See* § 74.129(4)(b), Fla. Stat.; P.B.S.P. Gen. Order 508.00I.H.3. Both authorities also state arrest is not the preferred response with respect to a person who acts “in a reasonable manner” to protect oneself. *See id.*

McGregor’s side of the story, despite being equipped with knowledge that demanded a different outlook. Qualified immunity does not apply in such circumstances. *See, e.g., Gray v. Ferdarko*, 982 F. Supp. 2d 1348, 1352–53 (N.D. Ga. 2013) (holding qualified immunity unavailable when officers “manufacture probable cause by solely considering the inculpatory evidence . . . while turning a blind eye to the exculpatory evidence”).

All in all, qualified immunity simply does not protect “the plainly incompetent or those who knowingly violate the law.” *Hunter v. Bryant*, 502 U.S. 224, 229, 112 S.Ct. 534, 537, 116 L.Ed.2d 589 (1991). No reasonable officer could have believed that probable cause existed to arrest Ms. Miller. Based on the information available to Appellants, it was not even arguably reasonable for Ms. Miller to be arrested for simple battery (domestic). Because the facts alleged by Ms. Miller in her Amended Complaint fail to establish arguable probable cause for her arrest in violation of clearly established Fourth Amendment law, Appellants’ qualified immunity claim fails. *See, e.g., Cozzi*, 892 F.3d at 1297-98 (“In arresting Cozzi without arguable probable cause, Thomas violated clearly established law and thus is not entitled to qualified immunity.”).

## CONCLUSION

Based upon the foregoing arguments and authorities cited herein, Ms. Miller respectfully requests that this Court expressly find that Defendants are not entitled to qualified immunity for the foregoing reasons.

Respectfully Submitted,

*s/ David Benjamin*

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation of Fed. R. App. P. 32(7)(B)(i) because it contains approximately 6,579 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This document complies with the typeface and type-style requirement of Fed. R. App. P. 32(a)(5) and (a)(6) because it was prepared using a proportionally spaced typeface using Microsoft Word Times New Roman, 14-point font.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served to counsel for Appellants, Summer M. Barranco, Esq., Purdy, Jolly, Giuffreda, Barranco & Jisa, P.A., 2455 East Sunrise Boulevard, Suite 1216,

Fort Lauderdale, Florida 33304, at [summer@purdylaw.com](mailto:summer@purdylaw.com), on this 24th day of April, 2024.

*s/ David Benjamin*

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