United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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Lyle W. Cayce
Clerk

No. 24-20503

NOEL T. DEAN,

Plaintiff—Appellee,

versus

DARSHAN R. PHATAK,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:13-CV-73

Before ELROD, *Chief Judge*, and RICHMAN and WILLETT, *Circuit Judges*.

DON R. WILLETT, *Circuit Judge*:

This case returns to us on a second interlocutory appeal from a second order denying Dr. Darshan Phatak's motion for summary judgment based on qualified immunity. In the first appeal, we vacated the district court's decision because it relied on the complaint's allegations rather than the actual summary-judgment record. This time, we must vacate again—though for a different reason. Despite our prior instruction that Dr. Phatak is entitled to summary judgment "unless a rational juror could find that [he] *intentionally*

misstated his finding,"[1] the district court applied a different—and more forgiving—deliberate-indifference standard. Accordingly, we again VACATE the denial of summary judgment and REMAND for the district court to determine whether a reasonable juror could conclude that Dr. Phatak "intentionally misstated his finding"—that is, affirmatively reported a conclusion he had not actually reached.

I

We recounted the events giving rise to this case in our previous opinion,[2] and we briefly review the pertinent facts here.

A

On the evening of July 29, 2007, Noel Dean and his wife, Shannon, held a small gathering at their Houston-area home. When Shannon became severely intoxicated, two guests moved her to the couple's bedroom. Later that night, after every guest except one—who was asleep in the spare bedroom—had left, Dean discovered a message on Shannon's phone suggesting she was having an affair with a male coworker. According to Dean, when he confronted Shannon about the message, she took a gun from a dresser drawer, ran to the master bathroom, held the gun to her head, and pulled the trigger.

Dean called 911, and police transported him to the station for questioning. There, officers asked him three separate times to demonstrate how Shannon had held the gun. Each time, he indicated that she held it with the handle pointing downward, toward her feet.

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[1] *See Dean v. Phatak*, 911 F.3d 286, 290 (5th Cir. 2018) (emphasis added).

[2] *See id.* at 288–89.

B

The next day, Dr. Phatak—an assistant medical examiner—performed the autopsy. Before the autopsy, a detective who had interviewed Dean told Dr. Phatak that he believed Dean had murdered Shannon. He explained that determining how the gun was oriented when the shot was fired would help assess the truth of Dean's account. Initially, Dr. Phatak was unable to determine whether Shannon's death was a homicide or a suicide, so he classified it as "pending" in the first draft of his autopsy report.

A week later, Dr. Phatak met with—among others—the Chief Medical Examiner and the detective who interviewed Dean. During their discussion of Shannon's death, Dr. Phatak concluded that the gun's handle must have been pointing upward, toward the top of Shannon's head, when it was fired—not downward, as Dean had said. Believing his memory of the autopsy photos and the gun to be sufficient, he did not compare the gun with Shannon's wounds. He assured those at the meeting that he would be able to classify Shannon's death as either a homicide or a suicide.

Later, Dr. Phatak reviewed the video of Dean's interview with police—including the portion in which Dean demonstrated how Shannon had held the gun. He concluded there was a "large discrepancy" between the medical evidence and Dean's account. He also concluded, based on his review of toxicology reports and scene photographs, that Shannon was unconscious at the time of the shooting. On September 10, 2007, Dr. Phatak (along with his supervisor, Dr. Wolf) signed an autopsy report classifying Shannon's death as a homicide.

C

Relying in part on Dr. Phatak's autopsy report, the State obtained a warrant for Dean's arrest and later secured an indictment for murder. Dean's first trial ended in a mistrial when the jury could not agree on a verdict. At

the second trial, Dr. Phatak testified that the handle of the gun was pointed upward when Shannon was shot. Dr. Wolf also testified. While preparing to testify, Dr. Wolf created photographic overlays comparing the muzzle of the gun with Shannon's head wound to demonstrate the direction the handle had been pointing. These overlays, however, indicated that the gun's handle was pointed downward (as Dean said)—not upward (as Dr. Phatak had concluded). As a result, Dr. Wolf, Dr. Phatak, and the Chief Medical Examiner amended the autopsy report from "homicide" to "undetermined," and the State dismissed the charges mid-trial.

D

After the charges were dismissed, Dean sued Dr. Phatak (along with other defendants not parties to this appeal) under 42 U.S.C. § 1983, alleging that Dr. Phatak intentionally fabricated the original autopsy report. Dr. Phatak moved for summary judgment, arguing (among other things) that qualified immunity shielded him from liability. The district court denied the motion in relevant part, and Dr. Phatak filed an interlocutory appeal.

On appeal, we vacated the district court's ruling because its "analysis cite[d] allegations in the pleadings, without reference to the record evidence."[3] We instructed the court on remand to "cite [the] summary judgment evidence—the depositions, documents, affidavits or declarations, stipulations, admissions, or other materials in the record" supporting its renewed decision.[4] We also explained that "unless a rational juror could find that Phatak intentionally misstated his finding, he is entitled to qualified immunity."[5] Thus, we warned, "[i]f the record fails of facts upon which a

[3] *Id.* at 290.

[4] *Id.*

[5] *Id.*

reasonable jury could conclude that Phatak intentionally fabricated the [autopsy] report, the district court should grant Phatak's motion for summary judgment."[6]

After remand, the district court gave the parties 45 days to file supplemental briefs—an opportunity that Dr. Phatak accepted but Dean did not. The docket then remained silent for nearly five years until the defendants requested a scheduling conference "to establish deadlines to resolve Dr. Phatak's motion for summary judgment." The district court held a scheduling conference, and just under seven months later issued an order again denying summary judgment. It concluded that the "evidence, taken together, could lead a reasonable juror to conclude that Dr. Phatak intentionally or with deliberate indifference fabricated the autopsy report." Dr. Phatak again appealed.

II

A

Although we review the district court's denial of qualified immunity *de novo*, "our review is 'circumscribed'" by the limits on our jurisdiction.[7] Thus, we begin by examining those limits.

We have jurisdiction under 28 U.S.C. § 1291 to review "final decisions of the district courts."[8] Generally, only a final judgment—a decision that "ends the litigation on the merits and leaves nothing for the [district] court to do but execute the judgment"—qualifies as a "final

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[6] *Id.*

[7] *Sims v. Griffin*, 35 F.4th 945, 949 (5th Cir. 2022) (quoting *Kokesh v. Curlee*, 14 F.4th 382, 391 (5th Cir. 2021)).

[8] 28 U.S.C. § 1291.

decision."[9] In *Cohen v. Beneficial Industrial Loan Corp.*, however, the Supreme Court recognized a "small class" of orders that, although not final judgments, nevertheless qualify as "final decisions" and are thus immediately appealable.[10] To fit within that small class, "an order must (1) 'conclusively determine the disputed question,' (2) 'resolve an important issue completely separate from the merits of the action,' and (3) 'be effectively unreviewable on appeal from a final judgment.'"[11] These criteria must be applied "stringent[ly]," lest the collateral-order doctrine "swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered."[12]

In *Mitchell v. Forsyth*, the Supreme Court held "that a district court's denial of a claim of qualified immunity . . . is an appealable 'final decision'" under *Cohen*.[13] But there is a catch: such an order is appealable only "to the extent that it turns on an issue of law."[14] Thus, in *Johnson v. Jones*, the Court held that interlocutory immunity appeals cannot be used to revisit a decision that "though entered in a 'qualified immunity' case, determines only a question of 'evidence sufficiency,' *i.e.*, which facts a party may, or may not, be able to prove at trial."[15]

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[9] *Catlin v. United States*, 324 U.S. 229, 233 (1945).

[10] 337 U.S. 541, 546 (1949).

[11] *Midland Asphalt Corp.. v. United States*, 489 U.S. 794, 798 (1989) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 489 (1978)).

[12] *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994) (citation omitted).

[13] 472 U.S. 511, 530 (1985).

[14] *Id.*

[15] 515 U.S. 304, 313 (1995).

We have said that an order denying a motion for summary judgment based on qualified immunity consists, "even if only implicitly," of "two distinct determinations": (1) "that a certain course of conduct would, as a matter of law, be objectively unreasonable in light of clearly established law," and (2) "that a genuine issue of fact exists regarding whether the defendant(s) did, in fact, engage in such conduct."[16] Under *Mitchell* and *Johnson*, we may review the first determination, but the second lies beyond our authority.[17] In other words, we can decide whether a factual dispute is *material*, but not whether it is *genuine*.[18]

Both determinations, however, presuppose that there is a factual dispute at all—that is, that the parties have taken conflicting positions on the fact in question. As explained below, our resolution of Dean's Fourth Amendment claim turns on whether questions of that type fall within our purview on an interlocutory immunity appeal—a question we have not previously addressed. We hold that they do. Though it is not within our power to assess "which facts a party may, or may not, be able to prove at trial,"[19] it *is* within our power to note that a plaintiff simply has not made a particular factual claim that is necessary to establish liability.

The *Johnson* Court distinguished *Mitchell* primarily on the ground that, while the question of a factual dispute's *materiality* can be separated from the merits, the question of a factual dispute's *genuineness* cannot.[20] In *Mitchell*, the Court explained that the immunity issue was legally separable

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[16] *Kinney v. Weaver*, 367 F.3d 337, 346 (5th Cir. 2004) (en banc).

[17] *See id.* at 346–47 (citations omitted).

[18] *See, e.g.*, *Kovacic v. Villareal*, 628 F.3d 209, 211 n.1 (5th Cir. 2010).

[19] *Johnson*, 515 U.S. at 313.

[20] *See id.* at 313–15.

because "[a]n appellate court reviewing the denial of the defendant's claim of immunity need not consider the correctness of the plaintiff's version of the facts."[21] In *Johnson*, by contrast, the Court emphasized that it will "often prove difficult to find any such 'separate' question" when "a defendant simply wants to appeal a district court's determination that the evidence is sufficient to permit a particular finding of fact."[22] Here, as in *Mitchell*, we face the former scenario: determining whether a plaintiff made a particular factual assertion does not require us to assess whether the record would support that assertion or whether the plaintiff's other assertions are adequately supported. Thus, "review *now* is less likely to force the appellate court to consider approximately the same (or a very similar) matter more than once."[23]

In *Moore v. Andreno*, the Second Circuit likewise exercised jurisdiction after concluding that the relevant facts were undisputed.[24] It reasoned that "[t]he district court's determination . . . did not require resolution of disputed facts" because the district court "came to its decision on the basis of the uncontroverted, albeit one-sided, record before it."[25] Although the facts in *Moore* were undisputed because the plaintiff did not respond to the summary-judgment motion at all (rather than because he did not make a particular assertion),[26] the principle is the same: an appellate court may note the absence of a factual contention even in an interlocutory immunity appeal.

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[21] 472 U.S. at 528; *see also Johnson*, 515 U.S. at 313.

[22] 515 U.S. at 314.

[23] *Id.* at 311.

[24] 505 F.3d 203, 207–08 (2d Cir. 2007).

[25] *Id.* at 207.

[26] *See id.* at 207–08.

We acknowledge that we have previously used language suggesting that whether a factual dispute "exists" is part of the broader inquiry into whether there is a genuine dispute—an issue beyond the scope of our jurisdiction.[27] In context, however, those cases used the word "exists" to refer to the *evidentiary* record, not the parties' *contentions*.[28] They therefore do not foreclose the conclusion we reach today: that the limits on our jurisdiction over interlocutory immunity appeals do not prevent us from noting that a plaintiff has not alleged a particular fact.

We note one limitation. Under Federal Rule of Civil Procedure 56(c)(3), a district court may (though it need not) consider record evidence not cited by the parties.[29] It is possible that when a district court relies on such uncited evidence to identify a disputed fact, we must treat that fact as disputed even if the plaintiff did not make the factual claim. But that is not this case, and we need not address that scenario. Here, neither the district court nor the plaintiff makes the assertion at issue. Accordingly, we proceed as though that factual allegation is absent from the case.

B

One last threshold issue: Dean failed to file a brief in this court. However, "that does not preclude our consideration of the merits."[30] We

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[27] *See, e.g.*, *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 331 (5th Cir. 2020) ("In short, we may evaluate whether a factual dispute is *material* (i.e., legally significant), but we may not evaluate whether it is *genuine* (i.e., exists)." (emphasis in original) (footnote omitted)).

[28] *See id.*

[29] FED. R. CIV. P. 56(c)(3).

[30] *Hager v. DBG Partners, Inc.*, 903 F.3d 460, 464 (5th Cir. 2018) (citation omitted); *see also Lalli v. Lalli*, 439 U.S. 259, 264 n.4 (1978) (considering an appeal on the merits even though the appellee did not file a brief).

"decide the appeal on the appellant's brief alone,"[31] though we "look to [Dean's] filings below to aid our analysis."[32]

III

Courts often refer to claims that, like Dean's, allege that an official unconstitutionally manufactured false evidence (here, the autopsy report) in a criminal case as "false-evidence claims,"[33] "fabricated-evidence claims,"[34] or simply "fabrication claims."[35] For consistency, clarity, and concision, we use the term "fabrication claim." The "hallmark" of such a claim is that officials "created evidence that they knew to be false."[36] This sort of "deliberate deception . . . by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'"[37] It "works an

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[31] *Schmidt v. Gray*, 399 F. App'x 925, 926 n.2 (5th Cir. 2010) (per curiam) (quoting *Allgeier v. United States*, 909 F.2d 869, 871 n.3 (6th Cir. 1990)).

[32] *In re Living Benefits Asset Mgmt., L.L.C.*, 916 F.3d 528, 532 n.2 (5th Cir. 2019).

[33] *See, e.g.*, *McDonough v. Smith*, 588 U.S. 109, 124 n.10 (2019) ("a § 1983 false-evidence claim"); *Buckley v. Fitzsimmons*, 509 U.S. 259, 281 (1993) (SCALIA, J., concurring) ("petitioner's false-evidence claims"); *Winslow v. Smith*, 696 F.3d 716, 732 (8th Cir. 2012) ("a false evidence claim").

[34] *See, e.g.*, *McDonough*, 588 U.S. at 114 ("a fabricated-evidence claim"); *Armstrong v. Ashley*, 60 F.4th 262, 271 (5th Cir. 2023) ("Fabricated evidence claims"); *Smalls v. Collins*, 10 F.4th 117, 125(2d Cir. 2021) ("section 1983 fabricated-evidence claims").

[35] *See, e.g.*, *McDonough*, 588 U.S. at 126–27 (THOMAS, J., dissenting) ("fabrication claim"); *Armstrong*, 60 F.4th at 272 ("fabrication claim"); *Alvarez v. City of Brownsville*, 904 F.3d 382, 388 (5th Cir. 2018) ("fabrication claim").

[36] *Petty v. City of Chicago*, 754 F.3d 416, 423 (7th Cir. 2014).

[37] *Giglio v. United States*, 405 U.S. 150, 153 (1972) (quoting *Mooney v. Holohan*, 294 U.S. 103, 112 (1935)).

unacceptable 'corruption of the truth-seeking function'" of the criminal process. In the right circumstances, it violates the Constitution.[38]

There are three distinct legal theories on which a fabrication claim can rest.[39] First, the Supreme Court held in *Franks v. Delaware* that the Fourth Amendment prohibits officials from "knowingly and intentionally, or with reckless disregard for the truth," including false information in a warrant affidavit.[40] Second, we have recognized a freestanding "due process right not to have [officials] deliberately fabricate evidence and use it to frame and bring false charges against a person."[41] Finally, some courts have held that an official who suppresses evidence of fabrication (that is, evidence suggesting

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[38] *Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 130 (2d Cir. 1997) (quoting *United States v. Agurs*, 427 U.S. 97, 104 (1976)); *see also In re Michael*, 326 U.S. 224, 227 (1945) ("All perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth. Therefore it cannot be denied that it tends to defeat the sole ultimate objective of a trial.").

[39] Both the district court and the parties also gestured toward a supposed violation of Dean's "Sixth Amendment right to a fair trial." But the Sixth Amendment contains no generic fair-trial guarantee. Rather, it enumerates specific rights that safeguard some of "the basic elements of a fair trial." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Neither the parties nor the district court identified a violation of any of those specific guarantees. We therefore understand the reference to invoke the Due Process Clauses' fair-trial guarantee instead. *See In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."). And that guarantee is the foundation of two of the three fabricated-evidence theories we have identified.

[40] 438 U.S. 154, 155–56 (1978).

[41] *Cole v. Carson*, 802 F.3d 752, 771 (5th Cir. 2015), *cert. granted, judgment vacated sub nom.*, *Hunter v. Cole*, 580 U.S. 994 (2016), *and opinion reinstated in part*, 935 F.3d 444 (5th Cir. 2019) (en banc); *see also Morgan v. Chapman*, 969 F.3d 238, 250 & n.7 (5th Cir. 2020) (summarizing *Cole*'s "peripatetic procedural history" and stating that its "holding is binding Fifth Circuit precedent today").

that other evidence was fabricated) violates *Brady v. Maryland*[42] when the suppressed evidence is material.[43]

The district court acknowledged these distinct theories but treated them as a single, undifferentiated whole. That was a mistake; because "the true nature of the claim matters," we must be "precise in [our] terminology."[44] Thus, we address each theory in turn.[45]

A

We begin by rejecting Dean's Fourth Amendment fabrication theory.

The Warrant Clause—"[t]he bulwark of Fourth Amendment protection"[46] provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation."[47] "[N]ot merely a probable-cause guarantee," the Clause is also "a guarantee that a warrant will not issue unless a neutral and disinterested magistrate *independently* decides that probable cause exists."[48] In *Franks*, the Supreme Court recognized that the Warrant Clause "would be reduced to a nullity if a police officer was able to

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[42] 373 U.S. 83 (1963).

[43] *See Lewis v. City of Chicago*, 914 F.3d 472, 480 (7th Cir. 2019) ("[M]isconduct of this type that results in a conviction might also violate the accused's right to due process under the rubric of *Brady* . . . if government officials suppressed evidence of the fabrication."); *see also Tassin v. Cain*, 517 F.3d 770, 780 (5th Cir. 2008) ("A finding of materiality of the evidence is required under *Brady*." (citation omitted)).

[44] *See Petty*, 754 F.3d at 423.

[45] *See Reed v. Goertz*, 598 U.S. 230, 236 (2023) ("[T]he Court focuses first on the specific constitutional right alleged to have been infringed.") (citation omitted)).

[46] *Franks*, 438 U.S. at 164.

[47] U.S. CONST. amend. IV.

[48] *Rainsberger v. Benner*, 913 F.3d 640, 650 (7th Cir. 2019) (BARRETT, J.) (emphasis added).

use deliberately falsified allegations to demonstrate probable cause."[49] Thus, it held that an officer who includes a "false statement" in a warrant affidavit "knowingly and intentionally, or with reckless disregard for the truth" violates the Fourth Amendment if the "false statement is necessary to the finding of probable cause."[50]

Franks addressed only "[t]he deliberate falsity or reckless disregard . . . of the *affiant*."[51] But in *Hart v. O'Brien*, we extended *Franks*, holding that "[a] governmental official violates the Fourth Amendment when he deliberately or recklessly provides false, material information for use in an affidavit in support of a search warrant, regardless of whether he signs the affidavit."[52] In *Melton v. Phillips*, our en banc court further explained that "an officer who has provided information for the purpose of its being included in a warrant application" may be held liable under *Franks*, "but an officer who has not provided information for the purpose of its being included in a warrant application may be liable only if he signed or presented the application."[53] Under *Hart* and *Melton*, therefore, an official may be held liable under *Franks* only if he (1) signed or presented the application, or (2) provided information *for the purpose* of its inclusion in a warrant application.

Dean has never claimed that Dr. Phatak signed or presented the application, or that he wrote his autopsy report with the purpose of including

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[49] 438 U.S. at 168.

[50] *Id.* at 155–56.

[51] *Id.* at 171 (emphasis added)

[52] *Hart v. O'Brien*, 127 F.3d 424, 448–49 (5th Cir. 1997), *abrogated on other grounds by Kalina v. Fletcher*, 522 U.S. 118 (1997).

[53] *Melton v. Phillips*, 875 F.3d 256, 262 (5th Cir. 2017) (en banc).

it in a warrant application. He did not allege as much in his complaint, did not argue it in response to Dr. Phatak's motion for summary judgment, and did not file a brief making that assertion on remand from the previous appeal. For its part, the district court never suggested that Dr. Phatak signed or presented the application or wrote the autopsy report for use in a warrant application. Thus, as explained above, we may treat it as undisputed that he did not. Under *Hart* and *Melton*, that is fatal to Dean's Fourth Amendment theory.

B

Next, we conclude that the district court applied the wrong mental-state requirement to Dean's freestanding due-process fabrication theory.

1

Liability under each fabrication theory requires a different level of culpability. Under *Franks*, an official is liable only if he makes a false statement "knowingly and intentionally, or with reckless disregard for the truth."[54] *Brady*-based fabrication claims derive from *Brady*; thus, no culpability is required to establish the constitutional violation itself,[55] though some courts require culpability before imposing individual § 1983 damages

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[54] *Franks*, 438 U.S. at 155; *see also Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1126 (9th Cir. 2002) (holding that "a coroner's reckless or intentional falsification of an autopsy report that plays a material role in the false arrest and prosecution of an individual can support a claim under 42 U.S.C. § 1983 and the Fourth Amendment").

[55] *See Brady*, 373 U.S. at 87 ("We now hold that the suppression by the prosecution of evidence favorable to the accused . . . violates due process where the evidence is material either to guilt or to punishment, *irrespective of the good faith or bad faith of the prosecution.*" (emphasis added)); *Strickler v. Greene*, 527 U.S. 263, 288 (1999) ("[U]nder *Brady* an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate concealment.").

liability.[56] Freestanding fabrication theories, by contrast, derive from the Supreme Court's decision in *Napue v. Illinois*.[57] And because a *Napue* violation requires knowledge,[58] a freestanding fabrication claim does as well.[59]

Dean does not allege that any part of the autopsy report is false except the portion reporting Dr. Phatak's inference that Shannon's death was a homicide. Because that portion of the report—unlike the parts reporting the autopsy's brute facts—reflects only that Dr. Phatak reached a particular conclusion, he could know it was false only if he never actually reached that conclusion. Otherwise, the report is not a false statement but an accurate statement that he drew a certain inference, even if that inference was mistaken. That is why our prior opinion explained that summary judgment is warranted "unless a rational juror could find that Phatak intentionally misstated his finding."[60] If Dr. Phatak did conclude that Shannon's death

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[56] *See, e.g.*, *Tennison v. City of San Francisco*, 570 F.3d 1078, 1088 (9th Cir. 2009); *Porter v. White*, 483 F.3d 1294, 1308 (11th Cir. 2007); *Villasana v. Wilhoit*, 368 F.3d 976, 980 (8th Cir. 2004). Our court has not yet addressed this question. *See Stewart v. Coughlin*, No. 3:20-cv-497-M, 2023 WL 121989, at *3 (N.D. Tex. Jan. 6, 2023). Because Dean's *Brady* claim fails on other grounds, as explained below, we need not answer it here.

[57] 360 U.S. 264 (1959); *see Brown v. Miller*, 519 F.3d 231, 237 & nn. 12–16 (5th Cir. 2008).

[58] *See Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025) ("To establish a *Napue* violation, a defendant must show that the prosecution *knowingly* solicited false testimony or *knowingly* allowed it to go uncorrected when it appeared." (emphasis added) (cleaned up)).

[59] *See Brown*, 519 F.3d at 237 ("We therefore hold that the *deliberate or knowing* creation of a misleading and scientifically inaccurate serology report amounts to a violation of a defendant's due process rights." (emphasis added)).

[60] *Dean*, 911 F.3d at 290.

was a homicide (rightly or wrongly), then he did not intentionally misstate his finding; at most, he reported a mistaken finding, not a fabricated one.

The district court did not follow that instruction. Instead, it held that the evidence "could lead a reasonable juror to conclude that Dr. Phatak intentionally *or with deliberate indifference* fabricated the autopsy report." And its reasoning relied entirely on what additional precautions Dr. Phatak should have taken to verify his manner-of-death determination—not on whether he had actual knowledge that Shannon died by suicide. Deliberate indifference is a lesser mental state than knowledge; "it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result."[61] The district court erred by conflating the two. As our prior opinion explained, "[n]egligence, even gross negligence, is not sufficient" to trigger liability.[62]

To be sure, the district court referenced our intent standard, stating that it "agree[d]" with Dean "that there is a genuine dispute of material fact regarding whether Dr. Phatak's acts and omissions amounted to an intentional falsification of the autopsy report in violation of his constitutional rights." But read alongside the court's reliance on deliberate indifference and the precautions it believed Dr. Phatak should have taken, that statement only confirms the conflation: the court treated intentional falsification as interchangeable with a lesser deliberate-indifference standard.

2

Ordinarily, when a district court applies the wrong analysis in ruling on summary judgment, we have a choice: we may either decide for ourselves

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[61] *Farmer v. Brennan*, 511 U.S. 825, 835 (1994).

[62] *Dean*, 911 F.3d at 290.

whether summary judgment is warranted or remand so the district court can reassess its conclusion disabused of its legal error.[63] Here, however, this case arrives on an interlocutory appeal from the denial of summary judgment based on qualified immunity. In that posture, the first option is off the table. We lack jurisdiction to decide whether "a genuine issue of fact exists" regarding the defendant's conduct.[64] Our authority extends only to "purely legal question[s]," leaving questions of evidentiary sufficiency to the district court.[65]

Still, Dr. Phatak presents two "purely legal" arguments that, in his view, warrant rejecting Dean's freestanding fabrication theory outright, without remand.

First, invoking *Manuel v. City of Joliet*,[66] he contends that Dean's freestanding fabrication claim fails at the threshold because the Fourth Amendment supplies the exclusive framework for unlawful-pretrial-detention claims. But we squarely rejected that argument in *Jauch v. Choctaw County*, holding that "*Manuel* does not address the availability of due process challenges after a legal seizure, and it cannot be read to mean . . . that *only* the Fourth Amendment is available to pre-trial detainees."[67] Dr.

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[63] *Compare Resol. Tr. Corp. v. Kimball*, 963 F.2d 820, 827 (5th Cir. 1992) ("Having found the district court in error in its understanding of the law . . . we nevertheless affirm the granting of summary judgment concluding no genuine issue of material fact exists."), *with Hare v. City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996) ("As we will explain, the district court applied the incorrect legal standard in denying summary judgment. We leave to the district court the question whether there are genuine issues of material fact measured by the correct standard.").

[64] *Davis*, 11 F.4th at 333 (citation omitted).

[65] *Id.* (citation omitted).

[66] 580 U.S. 357 (2017).

[67] 874 F.3d 425, 429 (5th Cir. 2017).

Phatak's argument that the Due Process Clause falls entirely out of the picture thus misses the mark.

Second, Dr. Phatak—joined by amici the American Medical Association, Texas Medical Association, National Association of Medical Examiners, and College of American Pathologists—argues that no precedent clearly establishes that a medical examiner's opinion can violate a criminal defendant's constitutional rights. He stresses that we have never held that "an honest, albeit mistaken, medical opinion of an assistant medical examiner" can constitute a constitutional violation. But this framing elides the actual issue. As we have explained, the question for the district court is whether "a rational juror could find that Phatak intentionally misstated his finding,"[68] not whether his conclusion was ultimately incorrect.

To be sure, medical examiners play an essential role in criminal investigations, and their work warrants deference and breathing room. The Constitution does not demand "an error-free investigation."[69] But a medical examiner who states, "I have concluded that the death was a homicide," when he has not in fact reached that conclusion, is not exercising medical judgment. He is stating a deliberate falsehood—or, as our prior decision put it, "intentionally misstat[ing] his finding."[70] And decades of precedent make clear that such conduct crosses a constitutional line.[71]

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[68] *Dean*, 911 F.3d at 290.

[69] *Baker v. McCollan*, 443 U.S. 137, 146 (1979).

[70] *Dean*, 911 F.3d at 290.

[71] *See Brown*, 519 F.3d at 237 ("A false or scientifically inaccurate report is equivalent to any other false evidence created by investigators, such as a false police report . . . . We therefore hold that the deliberate or knowing creation of a misleading and scientifically inaccurate serology report amounts to a violation of a defendant's due process rights.").

We reiterate that we do not—and in this interlocutory posture cannot—decide whether Dr. Phatak intentionally misstated his finding. But if he did, he violated clearly established law. Remand is therefore required.

C

That leaves the *Brady* theory. To state a *Brady* claim, a § 1983 plaintiff must identify evidence that was (1) exculpatory or impeaching, (2) suppressed, and (3) material.[72] Here, Dean's *Brady* claim fails as a matter of law because he identifies no evidence that Dr. Phatak actually suppressed. Dean—and the district court—point to various investigative steps that, if taken, might have uncovered evidence suggesting Shannon died by suicide rather than homicide. But *Brady* is not concerned with steps an official did not take. It "clearly does not impose an affirmative duty . . . to take action to discover information which [the state] does not possess."[73]

Because Dean's claim falters on *Brady*'s suppression requirement, we need not decide whether a plaintiff who is ultimately acquitted may nevertheless bring a *Brady* claim under § 1983.[74]

IV

We have "repeatedly stated that the purpose and function of" summary judgment "is to permit the speedy and expeditious disposal of cases

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[72] *See United States v. Valas*, 40 F.4th 253, 258 (5th Cir. 2022).

[73] *United States v. Beaver*, 524 F.2d 963, 966 (5th Cir. 1975).

[74] *Cf. Craig v. Dall. Area Rapid Transit Auth.*, 504 F. App'x 328, 333 (5th Cir. 2012) ("The duty to disclose exculpatory information exists to ensure that the accused receives a fair trial. Because Craig was acquitted in her criminal trial, any intrusion, during that trial, upon her due process rights is harmless."(citations omitted)).

when there is no genuine issue of fact to be tried."[75] And the Supreme Court has "repeatedly stressed the importance of resolving immunity questions at the earliest possible stage of the litigation."[76] Yet here, the district court first failed to consult the summary-judgment record and then—on remand, after nearly six years of inaction—ignored our instruction to decide whether "a rational juror could find that Phatak intentionally misstated his finding."[77] We therefore have no choice but to return this case to the district court for a third look at a summary-judgment motion filed more than a decade ago.

The tragedy at the heart of this case—Shannon's death from a gunshot wound to the head—occurred in July 2007, nearly two decades ago. The charges against Dean were dropped in January 2011, nearly fifteen years ago. This § 1983 suit was filed in January 2013, nearly thirteen years ago. And our first opinion issued in December 2018, more than seven years ago. Whatever the ultimate result (and whatever it ought to be), justice in this case has been grievously delayed—and thus denied.

Still, we are left to hope that the third review proves the charm. Whether Dean's fabrication claim may proceed under a freestanding due-process theory turns on whether the record evidence permits a finding that Dr. Phatak knowingly misstated his conclusion, rather than merely reached a mistaken one—a question the district court did not answer and one we cannot.

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[75] *Diplomat Elec., Inc. v. Westinghouse Elec. Supply Co.*, 378 F.2d 377, 386 (5th Cir. 1967); *cf.* FED. R. CIV. P. 1 ("These rules . . . should be . . . administered . . . by the court and the parties to secure the just, *speedy*, and inexpensive determination of every action and proceeding." (emphasis added)).

[76] *Wood v. Moss*, 572 U.S. 744, 755 n.4 (2014).

[77] *Dean*, 911 F.3d at 290.

Accordingly, we once again VACATE the judgment of the district court and REMAND for reconsideration of the denial of summary judgment.