UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Plaintiff,

v. Case No. 6:20-cv-25-Orl-37DCI

ROBERT HEMMERT; JACQUELINE GROSSI; DONNA BIRKS; and DENNIS LEMMA,

Defendants.

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**ORDER**

Defendants move to dismiss Plaintiff's complaint or to stay the case. (Doc. 53 ("**Lemma, Hemmert, Grossi Motion**"); Doc. 54 ("**Birks Motion**").) Plaintiff opposes both. (Docs. 86–87.) The Court held a hearing on the Motions on August 12, 2020. (Doc. 101 ("**Hearing**").) After considering the parties' filings and oral arguments, the Lemma, Hemmert, Grossi Motion is granted in part and the Birks Motion is denied.

## I. BACKGROUND[1]

It's been said there is "a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring). That's because some losses, like liberty, can't

[1] The Court takes the facts in the complaint (Doc. 45) as true and construes them in the light most favorable to Mr. Aguirre-Jarquin. *See Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003).

ever be repaid and some wrongs can't ever be made truly right.

This case concerns who can be held liable—at least to some degree—for their role in an investigation claimed to have caused the "far worse": an innocent man wrongfully accused and convicted of a brutal double-homicide, sentenced to death, and forced to spend over fourteen years in prison, including ten on death row awaiting execution, before he being exonerated. (*See* Doc. 45, ¶ 1.) To resolve that question, let's start by summarizing the crime and ensuing investigation before turning to the criminal trial, post-conviction proceedings, and claims in this action.

**A. The Murders**

Plaintiff Clemente Javier Aguirre-Jarquin, an undocumented immigrant from Honduras, lived in a trailer park in Seminole County next door to Samantha Williams, her mother, and her grandmother. (Doc. 45, ¶¶ 3, 13, 22, 25–26.) Mr. Aguirre-Jarquin was friendly with them, often visiting their trailer to socialize. (*Id.* ¶ 26.) But everything changed on June 16, 2004. (*See id.* ¶ 25.) That evening, Ms. Williams and her boyfriend, Mark Van Sandt, went to the Williams' trailer and planned to stay the night until she argued with her mother. (*Id.* ¶ 27.) Her mother, upset, went to Mike Weaver's trailer, the maintenance man for the trailer park, where she talked to a friend about the argument. (*Id.* ¶ 36.) Ms. Williams and Mr. Van Sandt left the trailer around 11 or 11:30 p.m. to sleep at his parents' house instead. (*Id.* ¶¶ 40, 43.)

Meanwhile, Mr. Aguirre-Jarquin went to Pretzels, a local billiards parlor and bar, around 6:30 p.m. (*Id.* ¶¶ 34, 57–58, 60.) While at Pretzels, he was in an altercation with another customer, and the police were called to the scene around 1:00 a.m. (*Id.* ¶¶ 49, 60.)

After he left, he went to his friend Salvador Prado-Cisneros' house for several hours, until around 3 or 4:00 a.m. (*Id.* ¶¶ 34, 49, 55, 58, 60, 62.) Then around 6 or 6:30 a.m., he went to the Williams' trailer where he found Ms. Williams' mother and grandmother dead. (*Id.* ¶ 50.) He lifted Ms. Williams' mother to see if she was alive, and when he realized she wasn't, he went home without calling the police because he feared deportation. (*Id.*)

Around 9:00 a.m. on June 17, 2004, Mr. Van Sandt returned to the Williams' trailer alone, allegedly to retrieve Ms. Williams' work clothes. (*Id.* ¶ 28.) Inside the front door, he found Ms. Williams' mother face down in a pool of blood. (*Id.* ¶ 29.) He called 911 and reported her mother's body was already cold and stiff. (*Id.*) The stiffness of the bodies (rigor mortis) revealed Ms. Williams' mother and grandmother had been dead for about eight to twelve hours. (*Id.* ¶ 31.) So the likely time of death was between 9:00 p.m. on June 16 and 1:00 a.m. on June 17—when Mr. Aguirre-Jarquin was at Pretzels. (*Id.* ¶¶ 31, 34, 49, 57–58, 60, 62.)

**B. The Investigation**

In response to the 911 call, two Seminole County Sheriff's Office ("**SCSO**") deputies arrived at the Williams' trailer around 9:00 a.m. (*Id.* ¶ 30.) They discovered the victims' bodies were cold and stiff and Ms. Williams' mother's body had 129 stab wounds and defensive wounds. (*Id.* ¶¶ 30, 32.) The SCSO's lead crime scene analyst, Jacqueline Grossi ("**CSA Grossi**"), and an investigator in the SCSO's Major Crimes Unit, Deputy Robert Hemmert ("**Deputy Hemmert**"), arrived soon after. (*Id.* ¶ 33.) Two officers interviewed Mr. Aguirre-Jarquin without an interpreter (although he spoke minimal English), and he said he had been at Pretzels from 6:30 p.m. to about 2:00 a.m. and then

at his friend's house. (*Id.* ¶ 34.) Another officer interviewed Mr. Weaver, who said Ms. Williams' mother had been at his trailer from 9:30 to 11:00 p.m. and mentioned an argument with her daughter. (*Id.* ¶ 36.)

Deputy Hemmert interviewed Mr. Van Sandt around 11:30 a.m., and he confirmed Ms. Williams argued with her mother the night before and when he found her mother's body it was stiff so "obviously she'd been dead for awhile." (*Id.* ¶ 39.) Mr. Van Sandt told Deputy Hemmert they left the trailer around 11:30 p.m. to sleep at his parents' house. (*Id.* ¶¶ 40–41.) He also shared Ms. Williams had been Baker Acted—involuntarily committed—multiple times. (*Id.* ¶¶ 40–41.) Deputy Hemmert interviewed Ms. Williams that afternoon. (*Id.* ¶ 43.) She claimed she and Mr. Van Sandt left the trailer around 11:00 p.m., first saying they went to a friend's house but then saying they went directly to his parents' house. (*Id.*) She also said Mr. Aguirre-Jarquin may have wanted to harm her mother and grandmother, remarking he sometimes let himself into their trailer and once she found him standing by her bed at 3:00 a.m. (*Id.* ¶ 44.) Officers also interviewed Mr. Van Sandt's mother, who didn't know if Ms. Williams was at her house that morning. (*Id.* ¶ 46.)

Three SCSO officers interviewed Mr. Aguirre-Jarquin again around 7:30 p.m. (*Id.* ¶ 49.) He reiterated he was at Pretzels the night before until around 2:00 a.m. before going to his friend's house for several hours. (*Id.*) He then admitted he had gone to the Williams' trailer and found Ms. Williams' mother and grandmother dead around 6 or 6:30 a.m. but left without calling the police out of fear of deportation. (*Id.* ¶ 50.) This led to another interview around 9:00 p.m. (*Id.* ¶ 51.) He repeatedly insisted he didn't kill anyone and

again said he had been at Pretzels. (*Id.*) He also told the police where he put the clothes from the night before and consented to photographs, buccal swabs, fingernail scrapping, and the seizure of his sneakers. (*Id.* ¶ 52.) After this interview, Deputy Hemmert arrested Mr. Aguirre-Jarquin for evidence tampering/destruction. (*Id.* ¶ 53.)

In the early morning hours of June 18, 2004, CSA Grossi executed a search warrant of Mr. Aguirre-Jarquin's residence. (*Id.* ¶ 54.) Meanwhile, Deputy Hemmert interviewed Mr. Prado-Cisneros, who confirmed Mr. Aguirre-Jarquin had been at Pretzels until about 2:00 a.m. before going to his house until around 3 or 4:00 a.m. (*Id.* ¶ 55.) Later that afternoon, three officers interviewed Guillermo Espinosa, who saw Mr. Aguirre-Jarquin picked up around 7:00 p.m. on June 16, 2004 on his way to play pool. (*Id.* ¶ 57.) Over the next two days, Deputy Hemmert interviewed David Shupe and Robert Torres—both confirmed Mr. Aguirre-Jarquin was at Pretzels until early in the morning on June 17, 2004 and then at his friend's house after that. (*Id.* ¶¶ 58, 60.) When Deputy Hemmert interviewed Charles Brown, he also confirmed Mr. Aguirre-Jarquin's whereabouts on the relevant dates and mentioned he stopped hanging out with Ms. Williams because "she just wasn't right in her head." (*Id.* ¶ 62.)

CSA Grossi finished processing the crime scene from June 22 to June 24, 2004. (*Id.* ¶ 63.) She collected various swabs and other trace evidence. (*Id.*) On June 24, 2004, another crime scene analyst determined the footwear impressions in the blood from the crime scene were "similar in tread design and size" to Mr. Aguirre-Jarquin's shoes. (*Id.* ¶ 64.) The same day, a latent print examiner, Donna Birks ("**Print Examiner Birks**"), completed a Latent Fingerprint Report on the left-palm impression on the handle of a Sysco knife—

the apparent murder weapon—which concluded there was a positive identification with Mr. Aguirre-Jarquin's left palm. (*Id.* ¶¶ 65, 89.) Based on Print Examiner Birks' report, which was fabricated, Deputy Hemmert arrested Mr. Aguirre-Jarquin on June 25, 2004 and charged him with two counts of premediated first-degree murder, carrying a potential death sentence.[2] (*Id.* ¶¶ 65, 68.)

Other evidence then came to light. On September 20, 2004, a crime scene analyst submitted a bloodstain pattern analysis report. (*Id.* ¶ 69.) He determined Mr. Aguirre-Jarquin's socks, shirt, and shorts had contact bloodstains and his socks had "dropped bloodstains." (*Id.*) But there were no medium velocity blood spatters, which would have followed stabbing someone over one-hundred times. (*Id.*) And on October 8, 2004, a crime lab analyst submitted a DNA report, which noted DNA matching Ms. Williams' mother was found on swabs from Mr. Aguirre-Jarquin's socks, shoes, t-shirt, shorts, and boxer briefs. (*Id.* ¶ 70.) It also stated DNA from the knife matched Ms. Williams' mother, not Mr. Aguirre-Jarquin. (*Id.*)

But this case is as much about what didn't happen as what did. Mr. Aguirre-Jarquin alleges the investigation should have included more collection and testing of evidence. First, Deputy Hemmert should have investigated the validity of Ms. Williams' and Mr. Van Sandt's stories given the discrepancies between them. (*Id.* ¶¶ 71–83.) Next,

[2] Mr. Aguirre-Jarquin says Print Examiner Birks admitted under oath in a deposition after his conviction that she never examined the knife, the print on the knife, or the latent lift and never compared any prints to Mr. Aguirre-Jarquin's palm. (Doc. 45, ¶ 66.) He also says a Professional Conduct Administrative Review by the Florida Department of Law Enforcement Crime Laboratory in 2007 concluded "no latent prints of value for identification purposes were noted" on the knife handle. (*Id.* ¶ 65.)

Deputy Hemmert and CSA Grossi should have photographed Ms. Williams after Deputy Hemmert observed marks on her arm and knew she had argued with her mother. (*Id.* ¶¶ 84–85.) Last, they should have collected additional evidence, like Ms. Williams' DNA and shoes, and tested critical evidence collected, including 150 blood samples from the crime scene. (*Id.* ¶¶ 86, 89–90, 95, 103–05.) Mr. Aguirre-Jarquin says Deputy Hemmert and CSA Grossi intentionally failed to test the crime scene blood evidence that would have revealed none of his DNA was at the crime scene, eight deposits of Ms. Williams' blood were in key locations, and a third DNA profile not matching Mr. Aguirre-Jarquin or the victims was in multiple locations. (*Id.* ¶¶ 91–94, 100–02.) Instead, they tested only items that could inculpate Mr. Aguirre-Jarquin despite his alibi. (*Id.* ¶ 101.)

Mr. Aguirre-Jarquin also alleges Deputy Hemmert, CSA Grossi, and Print Examiner Birks failed to thoroughly investigate his alibi, potential motive, and the murder weapon. For example, he says given the conditions of the bodies, Deputy Hemmert and CSA Grossi should have known the murder happened between 9:00 p.m. and 1:00 a.m., during which he was at Pretzels before heading to a friend's house until 4:00 a.m. (*Id.* ¶ 106.) Deputy Hermmert should have interviewed neutral witnesses, which would have revealed Mr. Aguirre-Jarquin was friendly with his neighbors and Ms. Williams had a reputation for violence and dishonesty. (*Id.* ¶¶ 108–13.) Deputy Hemmert and CSA Grossi also should have further investigated potential sources of the murder weapon, such as restaurants where Ms. Williams or her mother worked or the Sysco boxes in the Williams' trailer. (*Id.* ¶¶ 114, 116–20.)

Last, Mr. Aguirre-Jarquin alleges Deputy Hemmert didn't adequately investigate

Ms. Williams' history of mental illness and related violence despite Mr. Van Sandt saying she had Intermittent Explosive Disorder and had been involuntary committed. (*Id.* ¶ 121.) And one officer who responded to the Williams' trailer on June 17, 2004 had responded to a September 2001 incident where Ms. Williams was violent and had to be involuntarily committed. (*Id.* ¶¶ 126–28.) Had Deputy Hemmert looked into Ms. Williams' history, he would have uncovered records revealing multiple instances of violence and involuntary commitments (after responses by SCSO officers) coupled with diagnoses of Impulse Control Disorder, Bipolar Affective Disorder, Depressive Disorder, Alcohol Dependence, Borderline Personality Disorder, and Intermittent Explosive Disorder. (*Id.* ¶¶ 121–41.) Mr. Aguirre-Jarquin says Deputy Hemmert intentionally didn't investigate Ms. Williams. (*Id.* ¶¶ 142–43.)

Mr. Aguirre-Jarquin contends these investigative shortcomings resulted from the SCSO's failure to adequately train and supervise its officers. He says no adequate training or supervision existed about "red flags" in evaluating a suspect or witness nor procedures for investigations with a suspect or witness with a history of mental health crises, arrests, threats of violence against a victim, and involuntary institutionalizations. (*Id.* ¶¶ 155–59.) He also says no adequate training or supervision existed about the need to document exculpatory and impeachment evidence or to inform the Seminole County State Attorney of such evidence. (*Id.*)

**C. The Trial and Post-Conviction Proceedings**

Mr. Aguirre-Jarquin's capital murder trial began on February 20, 2006. (*Id.* ¶ 144.) The prosecutor claimed Mr. Aguirre-Jarquin entered the Williams' trailer with the knife

to burglarize the trailer and steal beer, and he murdered Ms. Williams' mother and grandmother because he feared deportation. (*Id.* ¶¶ 145–46.) The prosecutor relied on testimony from Ms. Williams about Mr. Aguirre-Jarquin watching her sleep once and the Sysco knife never being in the Williams' trailer. (*Id.* ¶¶ 149–50.) Mr. Aguirre-Jarquin was convicted on two counts of first-degree murder and one count of burglary with assault or battery on February 28, 2006. (*Id.* ¶ 151.) He contends his conviction was based on circumstantial evidence: (1) the knife was like those used in restaurants where he worked; (2) contact and blood splatter stains containing the victims' DNA were found on his clothes; (3) footprints allegedly belonging to him were found at the scene; and (4) a latent palmprint allegedly matching his was on the knife handle. (*Id.* ¶ 154.) Mr. Aguirre-Jarquin was sentenced to death on March 10, 2006. (*Id.* ¶ 152.)

The Florida Supreme Court affirmed the convictions and sentences on direct appeal, and the U.S. Supreme Court denied his petition for writ of certiorari. (*Id.* ¶ 167.) During the post-conviction proceedings, additional collected items were tested, revealing his DNA wasn't found at the scene but Ms. Williams' blood was in key places. (*Id.* ¶¶ 160–68.) Mr. Aguirre-Jarquin amended his post-conviction motion to include this new DNA evidence, but the motion was denied after an evidentiary hearing. (*Id.* ¶¶ 169–70.) In 2014, he appealed to the Florida Supreme Court, and while the appeal was pending, he filed a successive post-conviction motion in the trial court for a new trial based on newly discovered evidence. (*Id.* ¶ 171.) The new evidence included affidavits stating Ms. Williams told multiple people she killed her mother and grandmother. (*Id.* ¶ 172.) The motion was denied because the court found the statements were inadmissible hearsay

and would not produce an acquittal. (*Id.* ¶ 173.) Then, in October 2016, the Florida Supreme Court vacated Mr. Aguirre-Jarquin's conviction and granted him a new trial based on newly discovered evidence. (*Id.* ¶ 174.) Two years later, on November 5, 2018, the Seminole County State Attorney dropped all charges against him. (*Id.* ¶ 175.)

**D. This Action**

This case followed. Contending his conviction resulted from a constitutionally inadequate investigation targeting him and overlooking evidence implicating Ms. Williams, Mr. Aguirre-Jarquin sued multiple SCSO officials involved in the investigation: SCSO Sheriff Dennis Lemma ("**Sheriff Lemma**"), Deputy Hemmert CSA Grossi, and Print Examiner Birks. (*See id.* at 1; *id.* ¶¶ 1–4, 12.) Mr. Aguirre-Jarquin raised these claims: **Count I**: failure to disclose exculpatory and impeachment evidence and fabrication of evidence in violation of the right to a fair trial under the Fourteenth Amendment; **Count II**: failure to investigate in violation of the right to fair criminal proceedings under the Fourteenth Amendment; **Count III**: failure to enact adequate policies or training on investigations under *Monell*; **Count IV**: failure to enact adequate policies or training on exculpatory evidence under *Monell*; **Count V**: intentional infliction of emotional distress ("**IIED**"); and **Count VI**: *respondeat superior*. (*See id.* ¶¶ 180–249.)

Sheriff Lemma, Deputy Hemmert, and CSA Grossi move to dismiss the claims against them or to abstain or stay the case pending resolution of Mr. Aguirre-Jarquin's state-court petition for compensation as a wrongfully incarcerated person. (Doc. 53.) Print Examiner Birks separately moved to dismiss the claims against her or to stay the proceedings due to the state-court petition. (Doc. 54.) Briefing and oral argument

complete (Docs. 86, 87, 101), the Motions are ripe.

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." A complaint "that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint doesn't need detailed factual allegations, but "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks and citation omitted). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

## III. ANALYSIS

Defendants request the Court: (1) dismiss or stay the matter pending resolution of Mr. Aguirre-Jarquin's petition in state court to obtain compensation as a "wrongfully incarcerated person"; or (2) dismiss the complaint for failure to state a claim upon which relief can be granted. (Docs. 53, 54.) Because Mr. Aguirre-Jarquin voluntarily dismissed his state-court petition, Defendants' arguments to stay or dismiss the case pending its resolution are denied as moot. (*See* Doc. 86, p. 18; Doc. 87, p. 38.) So this Order addresses Defendants' failure to state a claim arguments only.[3]

[3] Defendants ask the Court to consider documents referenced in the complaint but not attached to it, including two Florida Supreme Court decisions: *Aguirre-Jarquin v. State*,

### A. § 1983 Claims Against Individual-Capacity Defendants

Counts I and II involve alleged violations of Mr. Aguirre-Jarquin's Fourteenth Amendment right to a fair trial based on *Brady* violations, the fabrication of evidence, and failure to conduct a constitutionally adequate investigation. (*See* Doc. 45, ¶¶ 180–94; *see also* Doc. 87, pp. 14, 17.) Violating a person's right to a fair trial constitutes a procedural due process violation of the Fourteenth Amendment. *See Porter v. White*, 483 F.3d 1294, 1303 n.4 (11th Cir. 2007) (citing *Daniels v. Williams*, 474 U.S. 327, 337 (1986)). A procedural due process claim has three elements: "(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1266 (11th Cir. 2011) (citation omitted). Defendants argue dismissal of Counts I and II is warranted because they enjoy qualified immunity. (*See* Doc. 53, pp. 18–33; Doc. 54, pp. 7–14.) Let's review qualified immunity before analyzing whether these Defendants enjoy it at the pleading stage.

#### 1. Qualified Immunity

"Qualified immunity protects government officials performing discretionary functions 'from liability for civil damages insofar as their conduct does not violate clearly

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9 So. 3d 593 (Fla. 2009), and *Aguirre-Jarquin v. State*, 202 So. 3d 785 (Fla. 2016). (*See* Doc. 53, pp. 15–16; Doc. 54, p. 8 n.2.) On a motion to dismiss, a court may consider a document not attached to the complaint if the document is central to the claims and its authenticity isn't challenged. *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). A document is central to the claims if the plaintiff "would have had to offer the document in order to prove its case." *Fin. Sec. Assurance, Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1285 (11th Cir. 2007). The two Florida Supreme Court decisions are related but not "central" to Mr. Aguirre-Jarquin's claims—he would not need to offer them to prove his case. *See Id.* So the Court limits the Analysis to the allegations in the complaint.

established statutory or constitutional rights of which a reasonable person would have known.'" *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 925 (11th Cir. 2000) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The objective reasonableness standard "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *See Malley v. Briggs*, 475 U.S. 335, 341 (1986).

In assessing qualified immunity at the motion to dismiss stage, "the qualified immunity inquiry and the Rule 12(b)(6) standard become intertwined." *Keating v. City of Miami*, 598 F.3d 753, 760 (11th Cir. 2010) (citation omitted). Qualified immunity is appropriate for a defendant acting within his discretionary authority unless the plaintiff can show: (1) the facts viewed in the light most favorable to him establish a constitutional violation by the officer; and (2) the unlawfulness of the defendant's actions was "clearly established." *See Pearson v. Callahan*, 555 U.S. 223, 232, 236 (2009); *Randall v. Scott*, 610 F.3d 701, 715 (11th Cir. 2010). The inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002) (citation omitted).

A right is "clearly established" if it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (citation omitted). There are multiple ways a plaintiff can show a right is clearly established:

> First, he can show that a materially similar case has already been decided giving notice to the police. He could also show that a broader, clearly established principle should control the novel facts in this situation. Finally, he could show that this case fits within the exception of conduct which so obviously violates th[e] constitution that prior case law is unnecessary. To

> make this showing, [the plaintiff] must point to law as interpreted by the Supreme Court, the Eleventh Circuit, or the Supreme Court of Florida.

*Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005) (citations omitted). Courts don't "require a case directly on point"; rather, "existing precedent must have placed the statutory or constitutional question beyond debate." *Mullenix*, 136 S. Ct. at 308 (citation omitted). "[T]he crux of the qualified immunity test is whether officers have 'fair notice' that they are acting unconstitutionally." *Id.* at 314 (Sotomayor, J., dissenting) (citation omitted). For qualified immunity to be unavailable, "pre-existing law must dictate . . . the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law in the circumstances." *Priester*, 208 F.3d at 927 (citation omitted). With these principles in mind, let's turn to the claims.

**2. Count I: *Brady* Violations**

Count I alleges violations of Mr. Aguirre-Jarquin's Fourteenth Amendment right to a fair trial based on *Brady* violations stemming from Deputy Hemmert's and CSA Grossi's intentional or reckless failure to disclose exculpatory and impeachment evidence and Print Examiner Birks' intentional or reckless fabrication of inculpatory evidence. (*See* Doc. 1, ¶¶ 180–87.) A former criminal defendant may assert a § 1983 procedural due process claim arising from a *Brady* violation. *See Porter*, 483 F.3d at 1303 n.4; *McMillian v. Johnson*, 88 F.3d 1554, 1567 (11th Cir. 1996). To state a *Brady* violation, the complaint must allege: (1) evidence was suppressed; (2) the suppressed evidence was exculpatory or impeachment evidence favorable to the accused; and (3) the suppressed evidence was material. *See McMillian*, 88 F.3d at 1567. "Evidence is material if its suppression

undermines confidence in the outcome of the trial." *Id.* (citing *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). The officers' actions must be more than a negligent act or omission to provide a basis for liability in a § 1983 case based on a *Brady* violation. *See Porter*, 483 F.3d at 1308. As the allegations concerning Deputy Hemmert and CSA Grossi differ from those concerning Print Examiner Birks, the Court addresses them separately.

For Deputy Hemmert and CSA Grossi, Mr. Aguirre-Jarquin alleges they deliberately, intentionally, and recklessly withheld exculpatory and impeachment evidence. (Doc. 45, ¶ 182.) In support, Mr. Aguirre-Jarquin says: (1) they ignored substantial evidence implicating Ms. Williams; (2) Deputy Hemmert never investigated Ms. Williams' history of mental illness or involuntary commitments despite Mr. Van Sandt telling an SCSO officer about these and previous incidents where SCSO officers responded to 911 calls about her mental health and domestic disturbances; and (3) they failed to test 150 blood samples collected from the crime scene, which would have shown Ms. Williams' blood was found in key locations. (*See* Doc. 87, p. 16 (citing Doc. 45, ¶¶ 3, 5, 92, 94–98, 121, 126–28.) But these allegations aren't enough to allege a *Brady* violation. *See McMillian*, 88 F.3d at 1567.

Though troubling, neither these allegations nor any others in the complaint identify any exculpatory or impeachment evidence that Deputy Hemmert or CSA Grossi suppressed. (*See* Doc. 45.) While Mr. Aguirre-Jarquin alleges they ignored certain evidence that could have implicated Ms. Williams—like the argument between her and her mother the night of the murders or the condition of the bodies when discovered—he doesn't allege they failed to disclose or suppressed this evidence. (*See* Doc. 45, ¶ 3.) As to

evidence of Ms. Williams' mental health history, he doesn't allege Deputy Hemmert failed to disclose any such evidence—missing are allegations he suppressed Mr. Van Sandt's statement about her mental health or establishing he actually knew about any of her other mental health episodes and failed to disclose them. (*See id.* ¶¶ 5, 121, 126–28.) Last, about the untested blood samples, he doesn't allege they suppressed the existence of these samples or had any reason to believe the samples if tested would yield exculpatory evidence. (*See id.* ¶¶ 92, 94–96.)

Rather than the standard *Brady* violation allegations where an officer possessed exculpatory or impeachment evidence and then failed to disclose it, Mr. Aguirre-Jarquin's allegations focus on Deputy Hemmert and CSA Grossi's failure to investigate, gather, or test potential exculpatory and impeachment evidence. *Cf., e.g.*, *McMillian*, 88 F.3d at 1560, 1567–70; *Porter*, 483 F.3d at 1303–11. But failing to properly investigate or test evidence, without more, doesn't amount to a *Brady* violation. *See McMillian*, 88 F.3d at 1567. Because Mr. Aguirre-Jarquin failed to allege a violation of his right to a fair trial based on a *Brady* violation by Deputy Hemmert or CSA Grossi, they are entitled to qualified immunity on Count I as pled, and the claim against them is dismissed. *See Pearson*, 555 U.S. at 232, 236; *Randall*, 610 F.3d at 715.

But the Court will allow Mr. Aguirre-Jarquin to amend Count I if he can allege Deputy Hemmert or CSA Grossi suppressed material exculpatory or impeachment evidence. For example, Mr. Aguirre-Jarquin may be able to establish a *Brady* violation if he can allege Deputy Hemmert or CSA Grossi actually suppressed the existence of the 150 blood samples rather than simply not test the samples, if they didn't test the samples

because they knew the results would show Mr. Aguirre-Jarquin's DNA wasn't at the scene, or if Deputy Hemmert actually possessed evidence of Ms. Williams' mental health, such as medical records, that he failed to disclose.

For Print Examiner Birks, however, the result is different. Mr. Aguirre-Jarquin alleges Print Examiner Birks violated his right to a fair trial by intentionally or recklessly fabricating inculpatory evidence (the Latent Fingerprint Report) and concealing its fabrication—later admitting she never examined the knife, the print on the knife, or the latent lift from the handle, nor did she compare any of those to the print taken of Mr. Aguirre-Jarquin's palm. (*See* Doc. 45, ¶¶ 65–66, 183.) He claims this evidence was material because palmprint evidence was used to arrest and wrongfully convict him. (*Id.* ¶¶ 68, 154.) "[I]t seems axiomatic that [the defendants'] failure to disclose that they fabricated evidence would . . . be a *Brady* violation." *Diaz-Martinez v. Miami-Dade Cnty.*, No. 07-20914-CIV-LENARD/GARBER, 2009 WL 2970471, at *12 (S.D. Fla. June 9, 2009), *adopted by* 2009 WL 2970468 (S.D. Fla. Sept. 10, 2009). Certainly the fact that the palmprint evidence was fabricated would have made great fodder for cross-examination of Print Examiner Birks during trial and may have cast doubt on the propriety and reliability of the entire investigation into Mr. Aguirre-Jarquin. (*See* Doc. 106, pp. 36–37.) Taking as true that Print Examiner Birks intentionally concealed she fabricated evidence used to convict Mr. Aguirre-Jarquin (*see* Doc. 45, ¶¶ 65–66, 68, 154, 183), Count I adequately alleges a *Brady* violation against her—whether this evidence was ultimately material to the conviction is an issue for a later stage after development of the full record. *See Diaz-Martinez*, 2009 WL 2970471, at *12; *see also See McMillian*, 88 F.3d at 1567.

What's more, even if the allegations against Print Examiner Birks didn't establish a *Brady* violation, the fabrication of evidence by itself can constitute a due process violation in some circumstances. "[U]sing or planting false evidence in an effort to obtain a conviction violates the Constitution." *Jones v. Cannon*, 174 F.3d 1271, 1289–90 (11th Cir. 1999) (citations omitted); *see also Riley v. City of Montgomery, Ala.*, 104 F.3d 1247, 1253 (11th Cir. 1997); *Schneider v. Estelle*, 552 F.2d 593, 595 (5th Cir. 1977). And "it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." *See Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959) (citations omitted). So allegations that Print Examiner Birks fabricated palmprint evidence used to convict him are enough to allege a due process violation. (*See* Doc. 45, ¶¶ 65–68, 154); *see also Jones*, 174 F.3d at 1289–90.

As Mr. Aguirre-Jarquin alleged a violation of his constitutional rights based on Print Examiner Birks' fabrication of evidence, next is whether the right was clearly established. The answer here is simple: Yes. For the *Brady* violation, "case law clearly established that an accused's due process rights are violated when the police conceal exculpatory or impeachment evidence." *McMillian*, 88 F.3d at 1569 (citation omitted). Likewise, for the general fabrication-of-evidence due process violation, "[i]t was well-established in 1979 that fabricating evidence violates constitutional rights." *Diaz-Martinez*, 2009 WL 2970471, at *11 (citing *Riley*, 104 F.3d at 1253). At bottom, it's hard to imagine any reasonable law enforcement official or analyst could believe fabricating evidence used to convict someone was constitutional—the question is far beyond debate. *See Priester*, 208 F.3d at 927; *Mullenix*, 136 S. Ct. at 308. So Print Examiner Birks is not

protected by qualified immunity at this stage—Count I may proceed against her. *See Diaz-Martinez*, 2009 WL 2970471, at *11–12.

**3. Count II: Failure to Adequately Investigate**

Count II alleges violations of Mr. Aguirre-Jarquin's Fourteenth Amendment right to a fair trial based on Deputy Hemmert's and CSA Grossi's failure to adequately investigate. (*See* ¶¶ 188–94; *see also* Doc. 87, p. 17.) There are constitutional requirements officers must follow when investigating a crime. An officer may not "choose to ignore information that has been offered to him or her" or investigate "in a biased fashion or elect not to obtain easily discoverable facts." *Kingsland v. City of Miami*, 382 F.3d 1220, 1228 (11th Cir. 2004).[4] "Law enforcement officers . . . have a responsibility to criminal defendants to conduct their investigations and prosecutions fairly . . . ." *Wilson v. Lawrence Cnty.*, 260 F.3d 946, 957 (8th Cir. 2001). When police officers "turn a blind eye to exculpatory information that is available to them, and instead support their actions on selected facts they chose to focus upon," they conduct a "constitutionally deficient" investigation. *Kingsland*, 382 F.3d at 1228.

Mr. Aguirre-Jarquin alleges a multitude of ways in which the investigation was constitutionally deficient. Specifically, he says Deputy Hemmert and CSA Grossi intentionally investigated only evidence and leads that would incriminate him. (*See* Doc. 45, ¶¶ 4, 48, 87–89, 189.) For example, they fingerprinted and photographed him and

[4] Abrogation of *Kingsland* was recognized by *Williams v. Aguirre*, 965 F.3d 1147 (11th Cir. 2020). But *Williams* focuses on a malicious prosecution claim and does not address the *Kingsland* court's discussion of what constitutes a constitutionally adequate investigation. *See Williams*, 965 F.3d at 1158–1166.

collected samples of his DNA and his clothing and shoes to compare to evidence at the crime scene, but they didn't collect the same critical evidence from others potentially involved, like Ms. Williams. (*Id.* ¶¶ 52–53, 69–70, 84–85, 89.) They also intentionally didn't test 150 blood samples and other evidence collected, which would have revealed his DNA wasn't at the scene, or adequately investigate his alibi, which would have revealed he couldn't have committed the murders. (*Id.* ¶¶ 4, 49, 55–62, 86–102, 106–13.) Beyond this, Deputy Hemmert and CSA Grossi blatantly and intentionally ignored evidence raising numerous red flags about Ms. Williams' credibility and alibi and intentionally failed to investigate her history of mental illness, involuntary commitments, and conflicts with her mother. (*Id.* ¶¶ 3, 24, 39, 43, 45, 47–48, 67, 71–83, 121–43, 189, 192–93.) Taking the allegations of these intentional acts (and failure to act) as true, Mr. Aguirre-Jarquin has stated a violation of his constitutional rights by Deputy Hemmert and CSA Grossi based on their involvement in the precise type of constitutionally deficient investigation described in *Kingsland*: they intentionally turned a blind eye to readily available exculpatory information and instead focused on the facts and tested the evidence they could use to convict Mr. Aguirre-Jarquin. *See Kingsland*, 382 F.3d at 1228.

With a constitutional violation established, the question becomes was the constitutional right raised by Mr. Aguirre-Jarquin—the due process right to a fair trial undergirded by a constitutionally adequate investigation (*see* Doc. 45, ¶¶ 189, 194)—clearly established? The answer here is more complicated. Mr. Aguirre-Jarquin points to three cases he contends show this right was clearly established: *Kingsland*, *Agurs*, and *Daniels*. (*See* Doc. 87, p. 29.) But none of these cases provide direct support. In *United States*

*v. Agurs*, the Supreme Court discusses the right to a fair trial under the Fourteenth Amendment but in the context of *Brady* violations and a prosecutor's duty of disclosure, not an officer's failure to adequately investigate. *See* 427 U.S. 97, 106–08 (1976). Similarly, in *Daniels v. Williams*, the Supreme Court discusses the right to procedural due process but doesn't address constitutionally adequate investigations. *See* 474 U.S. at 327–36. And although the Eleventh Circuit in *Kingsland* discusses the contours of constitutionally adequate investigations, it does so in analyzing probable cause for a false arrest claim, not a procedural due process claim and the right to a fair trial. *See* 382 F.3d at 1229. So Mr. Aguirre-Jarquin hasn't established his right to a constitutionally adequate investigation for purposes of a fair trial is clearly established based on a materially similar case.[5] *Cf. Mercado*, 407 F.3d at 1159.

But the inquiry doesn't end there. Showing a right is clearly established doesn't require a case directly on point or even a materially similar case. *See Mullenix*, 136 S. Ct. at 308; *Mercado*, 407 F.3d at 1159. Mr. Aguirre-Jarquin also contends the conduct at issue here fits within the exception for showing a right is clearly established without prior case law because the conduct obviously violates the Constitution. (Doc. 106, pp. 31–33.) Individuals have a right to a fair trial mandated by the Due Process Clause of the

[5] The other cases Mr. Aguirre-Jarquin relies on are nonbinding. (*See* Doc. 87, p. 29 (citing *Sanders v. English*, 950 F.2d 1152, 1162 (5th Cir. 1992); *Whitley v. Seibel*, 613 F.2d 682, 686 (7th Cir. 1980); *Spurlock v. Satterfield*, 167 F.3d 995 (6th Cir. 1999).) So they can't defeat qualified immunity here. *See Jenkins v. Talladega City Bd. of Educ.*, 115 F.3d 821, 826–27 n.4 (11th Cir. 1997) (requiring "decisions of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose" to meet the "clearly established" prong of qualified immunity).

Fourteenth Amendment. *See Agurs*, 427 U.S. at 107; *Daniels*, 474 U.S. at 328. The trial process involves a "truth-seeking function." *Agurs*, 427 U.S. at 103. Law enforcement officers, like prosecutors, must stay faithful to the "overriding interest" that "justice shall be done." *See id.* at 110–11; *see also United States v. Bagley*, 473 U.S. 667 (1985). In conducting investigations, law enforcement officers cannot turn a blind eye to available exculpatory evidence, choose to ignore information, or support their decisions with only selected facts. *See Kingsland*, 382 F.3d at 1228–29. And as servants of the law, the "twofold aim" of officers is "that guilt shall not escape or innocence suffer." *See Agurs*, 427 U.S. at 110–11 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

The *Kingsland* directives for constitutionally adequate investigations that apply to officers in the context of assessing probable cause to arrest someone should apply all the more when the investigation results not in an arrest and temporary detention but in a trial and conviction that could carry a life—or even death—sentence. Because it's clearly established that an investigation must meet minimal constitutional standards before it's permissible to arrest someone, *see Kingsland*, 382 F.3d at 1228–29, then failing to satisfy those same standards during an investigation that undermines the truth-seeking function of a trial violates the Constitution too. *Cf. Agurs*, 427 U.S. at 103, 110–11. So Mr. Aguirre-Jarquin's allegations that Deputy Hemmert and CSA Grossi deliberately and intentionally ignored evidence, failed to obtain easily available exculpatory evidence, and focused their murder investigation solely on him despite evidence pointing to Ms. Williams as an alternative suspect obviously violates the right to a fair trial under the Fourteenth Amendment, even without prior case law. *See Kingsland*, 382 F.3d at 1228–29;

*cf. Mercado*, 407 F.3d at 1159. And, taking Mr. Aguirre-Jarquin's allegations about the investigation as true, no reasonable officer could conclude investigating in that way was anything but unconstitutional. *See Priester*, 208 F.3d at 927.

To follow Defendants' fact-specific approach and require authority explicitly establishing it was constitutionally impermissible for Deputy Hemmert and CSA Grossi to investigate as they did based on the evidence they had would require more cases in which criminal defendants are deprived of fair trials by officers who intentionally defy proper investigative procedures and abandon their truth-seeking roles. (*See* Doc. 53, pp. 27–33.) More innocent people would need to be convicted and imprisoned. To wait for such cases before Mr. Aguirre-Jarquin can have a shot at justice would make the purposes of qualified immunity ring hollow:

> 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. In fact, if the plaintiff's version of the facts is true, the defendants' conduct is patently objectively unreasonable and no reasonable public official would contend that such conduct was lawful.

*See Kingsland*, 382 F.3d at 1234. The Court need not wait for materially similar cases before declining to protect the type of intentional conduct Mr. Aguirre-Jarquin alleges caused his wrongful conviction—and fourteen years' imprisonment—when the constitutional strictures prescribed for investigations and the right to a fair trial are clearly established. *See See Agurs*, 427 U.S. at 107, 110–11; *Kingsland*, 382 F.3d at 1228–29. We need fewer wrongful convictions, not more.

**B. *Monell* Claims Against Official-Capacity Defendant**

Counts III and IV involve alleged violations of Mr. Aguirre-Jarquin's Fourteenth Amendment right to a fair trial under *Monell* due to Sheriff Lemma's failure to enact adequate policies and training on investigating and turning over exculpatory and impeachment evidence. (*See* Doc. 45, ¶¶ 195–220, 225–43.) For a *Monell* claim, a plaintiff must allege: (1) "his constitutional rights were violated"; (2) "the municipality had a custom or policy that constituted deliberate indifference to that constitutional right"; and (3) "the policy or custom caused the violation." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004) (citation omitted). Municipal liability may be established based on an official policy enacted by a legislative body or a policymaker acquiescing in "a longstanding practice that constitutes the entity's standard operating procedure" or ratifying and adopting the acts of a subordinate official. *See Hoefling v. City of Miami*, 811 F.3d 1271, 1279 (11th Cir. 2016) (citations omitted). "[T]o demonstrate a policy or custom, it is 'generally necessary to show a persistent and wide-spread practice.'" *McDowell*, 392 F.3d at 1290 (citation omitted). But "evidence of previous incidents is not required . . . if the need to train and supervise in a particular area is 'so obvious' that liability attaches for a single incident." *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1329 (11th Cir. 2015) (citation omitted). As the arguments for dismissal of Counts III and IV are the same, the Court tackles them together.

Defendants argue for dismissal of Counts III and IV because Mr. Aguirre-Jarquin failed to demonstrate a violation of his constitutional due process rights. (Doc. 53, pp. 33–34.) "Analysis of a state entity's custom or policy is unnecessary, however, when no constitutional violation has occurred." *Garczynski v. Bradshaw*, 573 F.3d 1158, 1170 (11th

Cir. 2009) (citations omitted); *see also Rooney v. Watson*, 101 F.3d 1378, 1381 (11th Cir. 1996). Given this narrow argument, the only question for the Court is whether Mr. Aguirre-Jarquin alleged a violation of his constitutional due process rights based on the failure to adequately investigate or to disclose exculpatory and impeachment evidence. As discussed, Mr. Aguirre-Jarquin has sufficiently alleged both: Deputy Hemmert and CSA Grossi failed to conduct a constitutionally adequate investigation, and Print Examiner Birks failed to disclose exculpatory or impeachment evidence related to her fabrication of palmprint evidence used to convict Mr. Aguirre-Jarquin. *See supra* Sections III.A.2–3. So Defendants' argument for dismissal fails, and the Court saves the inquiry into the policies and customs and whether they caused the constitutional violations for when that issue is raised.[6] *See McDowell*, 392 F.3d at 1289; *cf. Garczynski*, 573 F.3d at 1170.

### C. State-Law Claims

Mr. Aguirre-Jarquin raises two state-law claims: (1) IIED against Deputy Hemmert, CSA Grossi, and Print Examiner Birks (Doc. 45, ¶¶ 244–46); and (2) *respondeat superior* against Sheriff Lemma (*id.* ¶¶ 247–49). The Court addresses each.

#### 1. Count V: IIED

Deputy Hemmert and CSA Grossi argue Count V should be dismissed for two reasons. First, they contend Mr. Aguirre-Jarquin failed to allege any conduct by them that

[6] Defendants also reference qualified immunity in arguing for dismissal of Counts III and IV. (*See* Doc. 53, pp. 33–34.) But qualified immunity doesn't apply to claims against municipalities or officers in their official capacities—it applies when an officer is sued in his individual capacity. *See, e.g.*, *Randall*, 610 F.3d at 714 ("[F]ederal law provides government officials a qualified immunity when sued *individually* for an alleged violation of a constitutional right." (emphasis added)).

would rise to the level of "outrageous" conduct. (Doc. 53, p. 34.) To state an IIED claim in Florida, "a plaintiff must show: (1) the wrongdoer's conduct was intentional or reckless; (2) the conduct was outrageous; (3) the conduct caused emotional distress; and (4) the emotional distress was severe." *Tarantino v. Citrus Cnty. Gov't*, No. 5:12-cv-434-Oc-UATCPRL, 2013 WL 12153541, at *5 (M.D. Fla. Oct. 9, 2013) (citation omitted). Outrageous conduct goes "beyond all bounds of decency, and [is] regarded as odious and utterly intolerable in a civilized society." *See Deauville Hotel Mgmt., LLC v. Ward*, 219 So. 3d 949, 954–55 (Fla. 3d DCA 2017) (citation omitted). What constitutes outrageous conduct is a question of law for the court. *Id.* at 955 (citation omitted). That said, "[p]leading a cause of action for intentional infliction of emotional distress is one thing, avoiding summary judgment or prevailing at trial is quite another." *Tarantino*, 2013 WL 12153541, at *5.

Taking Mr. Aguirre-Jarquin's allegations as true, he has adequately alleged "outrageous" conduct. As Mr. Aguirre-Jarquin tells it, Deputy Hemmert and CSA Grossi focused the murder investigation on him and intentionally and recklessly tested only evidence that could inculpate him without testing other critical evidence that would have revealed his DNA wasn't at the scene and Ms. Williams' blood was. (*See* Doc. 45, ¶¶ 7, 48, 85–102.) Consistent with this, Mr. Aguirre-Jarquin alleges they intentionally ignored the condition of the victims' bodies when discovered, which would have revealed the murders happened when he was elsewhere and were likely committed by someone with an emotional attachment to the victims given the number of stab wounds. (*Id.* ¶¶ 3, 4, 33, 47–48, 55–61, 106–13.) He further claims Deputy Hemmert intentionally didn't investigate Ms. Williams as an alternative suspect and ignored evidence implicating her despite

knowing she had a history of mental illness and involuntary commitments and had argued with her mother the night of the murders. (*Id.* ¶¶ 3, 39, 41, 45, 67, 71–85, 103–04, 121–43.) Given the gravity of the investigation of crimes carrying a potential death sentence, intentionally focusing on one suspect and overlooking or investigating no evidence implicating someone else constitutes "outrageous" conduct at the pleading stage. *See Spadaro v. City of Miramar*, 855 F. Supp. 2d 1317, 1337 (S.D. Fla. 2012) (finding alleged conduct causing the conviction of an innocent person "constitutes extreme and outrageous conduct" (citation omitted)); *see also Tarantino*, 2013 WL 12153541, at *5–6.

Second, Deputy Hemmert and CSA Grossi contend Count V should be dismissed because they enjoy immunity under Florida Statute § 768.28(9)(a). (Doc. 53, pp. 34–35.) Section 768.28(9)(a) extends immunity to state agents and officers for tort claims based on conduct within the scope of their employment "unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Fla. Stat. § 768.28(9)(a). Defendants contend they acted within the scope of their employment and Mr. Aguirre-Jarquin hasn't alleged they acted with bad faith, malice, or a wanton and willful disregard of human rights or safety. (Doc. 53, pp. 34–35.)

Although Mr. Aguirre-Jarquin doesn't use the words "bad faith," "malice," or "wanton and willful" in his complaint, he has sufficiently alleged Deputy Hemmert's and CSA Grossi's actions fall outside the scope of conducted protected by immunity under § 768.28(9)(a). As discussed, Mr. Aguirre-Jarquin alleges Deputy Hemmert and CSA Grossi intentionally or recklessly failed to properly investigate the murders and instead

focused solely on him despite evidence of his alibi and evidence implicating Ms. Williams. (*See, e.g.*, Doc. 45, ¶¶ 12, 91, 100, 102, 138, 142–43.) A reasonable inference from these claims is that the conduct was motivated by ill intent toward Mr. Aguirre-Jarquin. Taking these allegations as true and construing them in the light most favorable to Mr. Aguirre-Jarquin, they are enough to allege Deputy Hemmert and CSA Grossi acted with "bad faith," precluding immunity under § 768.28(9)(a). *See, e.g.*, *Tarantino*, 2013 WL 12153541, at *4–5. What's more, multiple Florida cases have held the reckless-conduct element of an IIED claim "would at least constitute willful and wanton conduct" under § 768.28(9)(a). *See Williams v. City of Minneola*, 619 So. 2d 983, 986–87 (Fla. 5th DCA 1993) (citing cases). Whether Mr. Aguirre-Jarquin can prove Defendants' conduct was "outrageous" or falls outside the scope of § 768.28(9)(a) immunity is for another day—Count V survives dismissal.[7]

**2. Count VI: *Respondeat Superior***

Sheriff Lemma, Deputy Hemmert, and CSA Grossi argue dismissal of Count VI is warranted because Sheriff Lemma cannot be held liable for IIED due to sovereign immunity under § 768.28(9)(a). (*See* Doc. 53, p. 35.) To hold an employer liable for the conduct of an employee under a theory of *respondeat superior*, the "employee's conduct must have been within the scope of his employment." *Ayers v. Wal-Mart Stores, Inc.*, 941 F. Supp. 1163, 1168 (M.D. Fla. 1996) (citation omitted). But the inquiry doesn't end there

[7] Print Examiner Birks argues the Court should dismiss Count V and remand the claim to state court if the Court dismisses Mr. Aguirre-Jarquin's due process claims. (Doc. 54, p. 14.) As dismissal of all Mr. Aguirre-Jarquin's due process claims isn't warranted at this stage, *see supra* Section III.A, Print Examiner Birks' argument fails.

because Florida and its subdivisions, such as the SCSO, "shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed . . . in bad faith or with malicious purpose or in a matter exhibiting wanton and willful disregard of human rights, safety, or property." Fla. Stat. § 768.28(9)(a); *see also Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1330 (11th Cir. 2015) (finding sovereign immunity under § 768.28(9)(a) available to a county sheriff's office).

Because the employee conduct underlying Mr. Aguirre-Jarquin's *respondeat superior* claim is the IIED alleged in Count V, his *respondeat superior* claim fails. "Florida courts have long recognized that Fla. Stat. § 768.28(9)(a)" as it relates to liability for the state and its subdivisions "bars claims for both intentional infliction of emotional distress and malicious prosecution." *See Weiland*, 792 F.3d at 1330 (citing *Williams*, 619 So. 2d at 986). That's partly because, as discussed, Florida courts have held the reckless-conduct element of an IIED claim "would at least constitute willful and wanton conduct" under § 768.28(9)(a). *See Williams*, 619 So. 2d at 986–87; *see also supra* Section III.C.1. As Sheriff Lemma cannot be held liable for his employees' acts done "in bad faith or with malicious purpose or in a matter exhibiting wanton and willful disregard of human rights, safety, or property," which includes conduct constituting IIED, Sheriff Lemma cannot be liable under a *respondeat superior* theory for the IIED alleged in Count V. *See* Fla. Stat. § 768.28(9)(a); *see also Williams*, 619 So. 2d at 986. So Count VI is dismissed as barred by sovereign immunity under § 768.28(9)(a). *See Weiland*, 792 F.3d at 1330 (dismissing an

IIED claim against a sheriff's office as barred by § 768.28(9)(a)).[8]

## IV. CONCLUSION

It is **ORDERED AND ADJUDGED**:

1. Motion to Dismiss, Abstain, or to Stay, by Defendants Sheriff Lemma, Hemmert, and Grossi (Doc. 53) is **GRANTED IN PART AND DENIED IN PART**:

   a. Count One of Plaintiff's complaint as to Defendants Robert Hemmert and Jacqueline Grossi (*see* Doc. 45, ¶¶ 180–87) is **DISMISSED WITHOUT PREJUDICE.**

   b. Count Six of Plaintiff's complaint (Doc. 45, ¶¶ 247–49) is **DISMISSED** as barred by § 768.28(9)(a).

   c. In all other respects, the Motion is **DENIED**.

2. Defendant Donna Birks' Motion to Dismiss the Second Amended Complaint or Alternatively to Stay the Proceedings (Doc. 54) is **DENIED**.

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[8] Defendants also argue the Court must dismiss Count VI because Mr. Aguirre-Jarquin failed to allege compliance with the notice of claim provisions of Florida Statute § 768.28(6). (Doc. 53, p. 35.) Providing notice of a claim to the state or one of its agencies or subdivisions and receiving a written denial of the claim are "conditions precedent to maintaining an action." Fla. Stat. § 768.28(6)(b). "Florida courts strictly construe this notice requirement and a claimant must allege in the complaint that he has complied with the notice provisions of [Fla. Stat.] § 768.28(b)." *Ullman v. Fla. Dept' of Corr.*, No. 5:17-cv-66-Oc-30PRL, 2017 WL 2103392, at *4 (M.D. Fla. May 15, 2017). Though a complaint "need not specifically allege compliance with section 768.28(6)," there must at least be general allegations like "[t]he plaintiff has complied with all conditions precedent." *See id.* As Mr. Aguirre-Jarquin's complaint contains no such allegations (*see* Doc. 45), dismissal without prejudice on this basis would be warranted if Count VI against Sheriff Lemma wasn't barred. *See Ullman*, 2017 WL 2103392, at *4.

3. On or before Friday, **September 11, 2020**, Plaintiff may file an amended complaint addressing the deficiencies identified in this Order. Failure to timely file will result in the case proceeding on Plaintiff's remaining claims only.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on August 28, 2020.

ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record