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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5602-14T3

BRANDON CAMACHO,
by his Guardian Ad
Litem, BEN CAMACHO,
and BEN CAMACHO,
individually,

Plaintiffs-Appellants,

v.

RIAZ MOTANI, JOSEPH
MARKULIC and HOWELL
TOWNSHIP,

Defendants-Respondents.

Argued January 18, 2017 – Decided September 25, 2017

Before Judges Espinosa, Suter and Guadagno.

On appeal from the Superior Court of New
Jersey, Law Division, Monmouth County, Docket
No. L-5544-11.

Matthew G. Bonanno argued the cause for
appellants (Rebenack, Aronow & Mascolo, LLP,
attorneys; Mr. Bonanno, on the briefs).

Jared J. Monaco argued the cause for
respondents (Gilmore & Monahan, PA, attorneys;
Mr. Monaco, on the brief).

PER CURIAM

Plaintiff Brandon Camacho,¹ a seventeen-year-old pedestrian, was struck by an automobile driven by R.W. and seriously injured. Defendant Riaz Motani, an officer with the Howell Township Police Department (HTPD), issued a summons to Brandon for jaywalking, N.J.S.A. 39:4-34, that was subsequently dismissed before trial. Plaintiffs then filed the instant action against defendants Motani; his supervisor, Joseph Markulic; and Howell Township, alleging various causes of action including malicious prosecution, malicious use of process, supervisor liability (against Markulic) and a violation of the New Jersey Civil Rights Act (CRA), N.J.S.A. 10:6-1 to -2.² He appeals from the dismissal of his complaint. For the following reasons, we affirm.

I.

In determining whether a summary judgment motion was properly granted, we review the evidence, drawing "all legitimate inferences from the facts in favor of the non-moving party." Globe

¹ This action was brought by Brandon Camacho's guardian ad litem, Ben Camacho, on behalf of Brandon and on his own behalf (collectively, plaintiffs). To avoid confusion when referring to them individually, we refer to them by their first names and intend no disrespect.

² The complaint also alleged claims of negligence, invasion of privacy, a violation of 42 U.S.C.A. § 1983 and a demand for punitive damages. Counsel confirmed at oral argument that these claims have been abandoned.

Motor Co. v. Iqdalev, 225 N.J. 469, 480 (2016) (citing R. 4:46-2(c)).

At approximately 6:19 p.m. on January 20, 2010, R.W. was driving in Howell Township on Newtons Corner Road when he struck Brandon. The section of the road where the accident occurred was unlit, extremely dark and did not have a crosswalk.

At his deposition, R.W. stated he "was heading south on Newtons Corner Road," on his way home. Newtons Corner Road is a one-lane road and he was completely within the southbound lane. He "never saw Brandon. . . . There was the impact and [he] hit the brakes." He first saw Brandon as he came across the hood of his car, from the passenger side of the front hood up to the windshield. He pulled his car to the side of the road and got out of the car. He saw Brandon lying in the street. R.W. stated Brandon was dressed all in black – jacket, jeans, sneakers and a baseball cap. Trying to provide a reason why he did not see Brandon before the accident, R.W. stated how dark it was there and referred to the fact Brandon's clothing was so dark.

Motani was the second officer to arrive at the crash scene. Because he was senior to the other officer, he took control of the investigation. Motani interviewed R.W., who reported that "an image just appeared in front of his car." He repeatedly stated, "this kid came out of nowhere," "he never saw him while he was

driving down Newto[ns] Corner Road, and after hitting him, R.W. "immediately stopped his vehicle where it was located." At Motani's request, R.W. agreed to be transported to a hospital for a medical evaluation and toxicology screening.

The Monmouth County Serious Collision Analysis Response Team (SCART) arrived at the scene at approximately 8:00 p.m. SCART's report states:

The following team members responded: Sergeants Todd Gregory and John Green, Ocean Township PD; and Patrolman John T. Fay, Eatontown PD.

Patrolman Fay handled the administrative responsibilities and photographed the crash scene, while Sergeants Gregory and Green measured the crash scene using the LTI Impulse 200 laser. Sergeant Green will complete the scene diagram, which will be used by Howell Police in their investigation.

One of the diagrams prepared by SCART depicts the impact point in the southbound travel lane. The diagrams also depict a white sock and a black sneaker in the southbound lane's shoulder, approximately thirty-five to forty-two feet from Brandon's post-impact position. A second black sneaker was located in the northbound lane, approximately ten feet north of Brandon's post-impact position.

Based upon the information he had gathered at the time, Motani told SCART he believed Brandon was "[c]rossing the northbound lane to the southbound lane when he was struck"

R.W. was released from Jersey Shore Medical Center later that evening and reported to the Howell Township Police Department, where Motani interviewed him again. In his videotaped statement, R.W. repeatedly stated he did not see Brandon prior to the impact. At one point, Motani asked, "Can you definitively tell me what direction the pedestrian was walking from? Was he walking from the right or from the left?" R.W. replied he assumed Brandon was "running" across the street from the left to the right. In his report following this interview, Motani stated,

At impact Mr. R.W. remembers seeing a dark object (possibly a jacket with fur) roll up over the windshield, as all the glass shattered. The guy that got hit just rolled up, over the car, and onto the street he believes. He stated it appeared that the guy must've been walking from his left to right.

Motani reviewed video footage of the collision taken from a security camera at the nearby Sovereign Bank and noted the following at 18:18:29-30: "Pedestrian image was slightly distorted due to the distance from the surveillance camera and the fact that the immediate area of the crash was not illuminated. Pedestrian appears to be approximately 2 ft east of the solid white fog line, in the [southbound] lane of Newtons Corner Road"

At his deposition, Motani conceded the only thing he saw on the video that supported his conclusion that Brandon was crossing the street was a frame on the fourth disc of the surveillance video labeled at 18:18:29-30. The photograph taken of this frame is dark and, viewing the evidence favorably to plaintiffs, Brandon is not visible.

The hospital treating Brandon reported to Motani that Brandon had sustained serious injuries to the right side of his body: broken right humerus, broken right tibia and fibula injuries, right side broken collarbone, possible broken right hip, swelling and laceration over right eye, and head lacerations on right side. Motani used this information to establish the direction Brandon had been facing but acknowledged it did not establish whether Brandon was moving in the moments before impact.

On February 11, 2010, Motani called Ben at his house to obtain a medical update on Brandon. He said Ben was "extremely arrogant and belligerent" and terminated the call after advising Motani "to contact his attorney." Motani testified he had explained to Ben that he believed Brandon had been crossing the roadway outside a crosswalk when he was struck.

On February 12, 2010, Motani concluded his investigation and issued Brandon a summons for violating N.J.S.A. 39:4-34.³ He described the "stepping stones" toward formulating his opinion as to who was at fault: eyewitness statements, the "specific measurements from the SCART team" to make "the best estimation of where the pedestrian was in the roadway at the time of the crash," efforts to speak to persons Brandon was with prior to the accident and the bank surveillance video, in which he saw "certain images of the depiction of the crash." He said he made the determination to issue the summons after speaking to the prosecutor's office. Although he believed N.J.S.A. 39:4-34 fit the circumstances, after discussing the matter with the prosecutor's office, Motani compared that statute with N.J.S.A. 39:4-36(a)(2), which provides, "No pedestrian shall leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it

³ N.J.S.A. 39:4-34 provides:

Where traffic is not controlled and directed either by a police officer or a traffic control signal, pedestrians shall cross the roadway within a crosswalk or, in the absence of a crosswalk, and where not otherwise prohibited, at right angles to the roadway. . . . On all highways where there are no sidewalks or paths provided for pedestrian use, pedestrians shall, when practicable, walk only on the extreme left side of the roadway or its shoulder facing approaching traffic.

is impossible for the driver to yield or stop." He determined the latter violation was more appropriate. The charge was amended to a violation of N.J.S.A. 39:4-36(a)(2), and subsequently dismissed.

Defendant Sergeant Joseph Markulic of the HTPD played only a supervisory role in the investigation. He reviews reports from the officers he supervises to ensure they are complete and accurate and that probable cause has been established; he reviewed and signed off on Motani's report. Markulic concluded there was probable cause for the complaint because Brandon crossed the road, and failed to yield to the motor vehicle in the lane of travel. He did not recall all the materials he relied upon to reach that conclusion but noted it was supported by the driver's statement, the SCART diagram and the review of the surveillance video. Markulic did not review the surveillance video himself.

On February 16, 2010, Ben filed a complaint against R.W. alleging he violated N.J.S.A. 39:4-97 (careless driving) because he "[s]truck ped[e]strian during driving carelessly above speed limit."

The Monmouth County Prosecutor's Office prepared a memorandum, dated July 23, 2010, regarding "Assault By Auto – Case #HM10-034, Victim: Brandon Camacho." The memorandum concluded Brandon's actions, which included "improperly entering and attempting to cross Newtons Corner Road while wearing dark

clothing" were "the proximate causes of the collision which resulted in his serious injuries." The memorandum recommended that the case be closed. On May 3, 2011, the complaints against Brandon and R.W. were both voluntarily dismissed. At the municipal court dismissal hearing, the State's attorney noted for the record that R.W. "has admitted that he doesn't know what happened. That he feels like Mr. Camacho came out of nowhere. So, he would be the worst witness possible for the State to proceed accordingly."⁴

Before the accident, R.W. knew two members of the HTPD. Sergeant David Flaherty had lived in the house next to R.W.'s since 1996, but R.W. characterized their relationship only as "neighborly" and asserted they "are not close." Corporal Fred Bauer, has a young daughter who had socialized with R.W.'s daughter since 2008. R.W. characterized his relationship with Bauer as "casual."

Motani testified he met Flaherty when he started working with the HTPD in 1997. He had occasionally seen him outside work at a "police-related function." Motani has known Bauer since joining the HTPD and considers him a friend. Markulic knew both Flaherty and Bauer, but he did not socialize with either.

⁴ After the ticket to Brandon was issued, R.W. contacted Motani and asked that the ticket be dismissed because the "Camacho family has enough to deal with."

Ben sought compensation for Brandon's injuries from R.W.'s automobile insurer, New Jersey Manufacturers Insurance Company (NJM). Based on NJM's liability determination, it refused to offer any money and the case proceeded to litigation. NJM took its "no-pay" position partially in reliance on Motani's report documenting that his investigation concluded with a determination that Brandon was at fault for the crash and R.W. was not at fault. After extensive discovery, NJM offered Brandon the full policy limit of \$100,000. According to the order memorializing the settlement, \$29,027 was to be paid to "Ben Camacho, Pro Se representing litigation expenses and settlement of the Xerox Healthcare lien."

In their appeal, plaintiffs argue the trial court erred in denying their motion to compel discovery of the defendant officers' internal affairs records and in granting summary judgment dismissing his complaint. Plaintiffs contend they established: a prima facie case of malicious prosecution and abuse of process against defendant Motani, a prima facie case of supervisor liability against Supervisor Markulic and a violation of the CRA. They further argue the defendants are not entitled to qualified immunity.

II.

Plaintiffs first argue the trial court erred in denying their motions to compel production of the internal affairs (IA) records of defendants Motani and Markulic. An appellate court reviews a trial court's discovery order for an abuse of discretion, and "should generally defer to a trial court's resolution of a discovery matter, provided its determination is not so wide of the mark or is not based on a mistaken understanding of the applicable law." State ex rel. A.B., 219 N.J. 542, 554 (2014) (internal quotation marks omitted). We discern no abuse of discretion in the courts' rulings.

The initial discovery period ended May 5, 2013, was extended by consent to July 4, 2013 and extended once again by court order. Plaintiffs appeal from discovery orders dated August 28, 2013, June 11, 2014 and December 10, 2014.

The first of these orders addressed a motion by plaintiffs, seeking to compel more specific answers to interrogatories and the production of documents. In a written statement of reasons, the trial court addressed each of plaintiffs' requests for more specific answers to interrogatories, granting some requests and denying others. Plaintiffs' request to compel documents was denied because they failed to attach a copy of their Notice to Produce, making the court unable to rule on the motion.

The second discovery order concerned plaintiffs' motion for reconsideration, which was heard by a different judge. Reconsideration of the denial of their request for more specific answers on certain interrogatories was denied. In support of their motion for reconsideration, plaintiff submitted the Notice to Produce previously omitted from their motion.

Plaintiffs contended Motani's deposition testimony was inconsistent with his employment and discipline history and that "any internal investigation reports and employment records" must be compelled for use as substantive evidence of municipal liability, for credibility purposes in cross-examining Motnai and to determine if he is concealing any other disciplinary actions or investigations. The motion for reconsideration was denied.

The third discovery order, December 10, 2014, denied plaintiffs' motion to compel more specific answers to interrogatories. To support their arguments, plaintiffs relied on Groark v. Timek, 989 F. Supp. 2d 378 (D.N.J. 2013)⁵ and Groark

⁵ In Groark, the plaintiff alleged two Atlantic City Police Officers beat him up without provocation and then filed false criminal charges. Plaintiff learned in discovery that from 2001 to 2013, the two officers had collectively been the subject of approximately 78 complaints similar to his - excessive force, assault, threats, improper search and arrest, and malicious prosecution, for which they were never disciplined. Groark, supra, 989 F. Supp. 2d at 383. The court found the requested documents "directly relevant" to plaintiff's claim pursuant to Monell v.

v. Timek, No. 12-1984, (D.N.J. July 18, 2014). The trial court provided the following reasons on the order:

Defendants have complied with plaintiff's reasonable discovery requests and info sought by way of records is not relevant and not discoverable under Bayer v. [Township of] Union, 414 N.J. Super. 238 [(App. Div. 2010)]. Plaintiff misreads Groark which is not binding on this court. Requested info unlike in Groark is not relevant or likely to lead to relevant information.

During the course of discovery, defendants produced Internal Affairs index cards for Motani and Markulic for the five years preceding the crash, which revealed only three complaints filed against the two of them.

Despite these disclosures, plaintiffs argue they are "entitled to discovery of investigations of dissimilar claims," including "the entirety of the IA index cards for the defendant officers" and "both pre[-] and post-incident IA files, not only files from five years preceding the incident" Furthermore, they contend defendants must provide unredacted IA index cards to cure their allegedly "vague and undefined" request for "a representative sample of Howell Township's IA files for ten

Dep't of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) and also noted the documents would "reveal whether plaintiff can support his argument that Atlantic City's Internal Affairs process and investigations are a sham." Groark, supra, 989 F. Supp. 2d at 400.

(10) years preceding the incident." Plaintiffs claim this discovery is essential to their claim for municipal liability against Howell Township for alleged civil rights violations.

Defendants argue the discovery sought is irrelevant, the Groark cases are distinguishable and non-binding, the discovery requests were too vague, and this discovery issue is moot because plaintiffs did not oppose defendants' motion for summary judgment as it related to municipal liability.

To compel discovery of police personnel records to establish a police officer's liability for civil rights violations, a plaintiff must establish "some factual predicate making it reasonably likely that information in the file could affect the officer's credibility" and "that the file may reveal prior bad acts that bear 'peculiar relevance' to the issues at trial." Bayer v. Twp. of Union, 414 N.J. Super. 238, 273 (App. Div. 2010) (quoting State v. Harris, 316 N.J. Super. 384, 387, 398 (App. Div. 1998)). This policy is attributable to the "significant public interest in maintaining the confidentiality of police personnel records." Ibid. (quoting State v. Kaszubinski, 177 N.J. Super. 136, 138 (Law Div. 1980)).

Plaintiffs make two principal arguments. First, they argue the trial court erred in its application of the law by not following the Groark cases. However, those cases are clearly

distinguishable from the facts here and, in any case, New Jersey courts are not bound by the decisions of federal district courts. State v. Witczak, 421 N.J. Super. 180, 194 (App. Div. 2011) (quoting State v. Coleman, 46 N.J. 16, 36 (1965), cert. denied, 383 U.S. 950, 86 S. Ct. 1210, 16 L. Ed. 2d 212 (1966)); In re Application of Summit & Elizabeth Tr. Co., 111 N.J. Super. 154, 166 (App. Div. 1970). The trial court's application of New Jersey law was not an abuse of discretion.

Second, plaintiffs argue all the requested IA documents must be produced to resolve "credibility issues" because testimony provided by Motani and Markulic regarding their understanding of the IA records pertinent to them was inconsistent with the information in the IA records that were produced. During their testimony, both officers noted they were unsure about those facts. While any disparity between the officers' recollection and the records provides some fodder for cross-examination, it falls far short of establishing a factual predicate that makes it "reasonably likely that information in the file could affect the officer's credibility" on any significant point or "that the file may reveal prior bad acts that bear 'peculiar relevance' to the issues at trial." Bayer, supra, 414 N.J. Super. at 398.

We therefore discern no abuse of discretion in the trial court's denial of plaintiffs' motion to compel further production of IA records.

III.

Plaintiffs next challenge the order granting summary judgment, dismissing their claims. They contend the trial judge failed to afford them the inferences to which they were entitled pursuant to Rule 4:46-2; that they established a prima facie case on each of their claims for malicious prosecution, abuse of process, violation of the CRA, and supervisor liability; and that defendants are not entitled to qualified immunity.

In reviewing a summary judgment decision, we apply the same standard as the trial court. Murray v. Plainfield Rescue Squad, 210 N.J. 581, 584 (2012). Viewing the evidence "in the light most favorable to the non-moving party," we determine "if there is a genuine issue as to any material fact or whether the moving party is entitled to judgment as a matter of law." Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41 (2012) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)). We review questions of law de novo, State v. Gandhi, 201 N.J. 161, 176 (2010), and need not accept the trial court's conclusions of law. Davis v. Devereux Found., 209 N.J. 269, 286 (2012).

A.

The essential elements of a cause of action for abuse of process are: "the filing of a complaint, without probable cause, that was actuated by malice, that terminated in favor of the party now seeking relief, and that caused the party now seeking relief to suffer a special grievance." LoBiondo v. Schwartz, 199 N.J. 62, 72 (2009). This tort is based upon the alleged malicious filing of civil litigation. Id. at 89-91; Pitcock v. Kasowitz, Benson, Torres & Friedman, LLP, 426 N.J. Super. 582, 585 n.1 (App. Div. 2012); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 4.2.7 on R. 4:6-2 (2017) (noting malicious prosecution claims are based on criminal actions and malicious abuse of process claims are based on civil actions). Because plaintiffs' allegations are not based on the filing of any civil action,⁶ this claim is not available and was properly dismissed.⁷

⁶ Violations of Title 39 are regarded as "quasi-criminal in nature, despite the fact that a traffic offense is neither a crime nor a misdemeanor." No Illegal Points, Citizens for Drivers Rights, Inc. v. Florio, 264 N.J. Super. 318, 332 (App. Div. 1993).

⁷ Because we review judgments and not the reasons stated for judgments, it is of no consequence if a trial judge employs different reasoning to reach a conclusion that is correct. Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001).

B.

We next turn to plaintiffs' malicious prosecution claim. There are four essential elements to a claim of malicious prosecution: "(1) a criminal action was instituted by this defendant against this plaintiff; (2) the action was motivated by malice; (3) there was an absence of probable cause to prosecute; and (4) the action was terminated favorably to the plaintiff." LoBiondo, supra, 199 N.J. at 90. Because a complaint was filed against Brandon that was ultimately dismissed, our focus is on the second and third elements of this cause of action, which are interrelated.

Actual malice is "the intentional doing of a wrongful act without just cause or excuse." Jobes v. Evangelista, 369 N.J. Super. 384, 398 (App. Div.), certif. denied, 180 N.J. 457 (2004). To satisfy the element of actual malice, "the underlying suit must have been initiated primarily for a purpose other than that of securing the proper adjudication of the claim on which it was based." Westhoff v. Kerr S.S. Co., 219 N.J. Super. 316, 324 (App. Div. 1987), certif. denied, 109 N.J. 503 (1987). Summary judgment may be properly granted where the plaintiff presents only a tenuous evidential basis for actual malice. Ibid.

As evidence that Motani acted with malice, plaintiffs cite his heated conversation with Ben before he issued the complaint,

in which Ben was screaming and using vulgarities and expletives. While it is true that the complaint was issued shortly after Motani's conversation with Ben, any nexus between that conversation and the decision to issue the complaint is sheer speculation, as the record shows Motani pursued an investigation and gathered the information he stated he relied upon before the conversation occurred. Plaintiffs also contend a jury could find Motani issued the summons as a favor to R.W. and that he was friendly with several officers who are friends and acquaintances of R.W. These contentions are even more obviously dependent upon speculation, which is insufficient to create a genuine issue of fact that Motani was motivated by malice.

Malice may be inferred from a "finding that the defendant had neither probable cause for the criminal complaint nor a reasonable belief in probable cause." Jobes, supra, 369 N.J. Super. at 398. This is the focus of plaintiffs' argument that Motani acted with malice.

To determine whether probable cause existed, "a court must look to the totality of the circumstances and view those circumstances 'from the standpoint of an objectively reasonable police officer.'" State v. Basil, 202 N.J. 570, 585 (2010) (citations omitted) (quoting Maryland v. Pringle, 540 U.S. 366, 371, 124 S. Ct. 795, 800, 157 L. Ed. 2d 769, 775 (2003)).

Probable cause cannot be defined with scientific precision because it is a practical, nontechnical conception addressing the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Probable cause is a fluid concept--turning on the assessment of probabilities in particular factual contexts--not readily, or even usefully, reduced to a neat set of legal rules. Although probable cause is more than a mere suspicion of guilt, it is less than the evidence necessary to convict a defendant of a crime in a court of law. Between those two extremes, it is safe to say that a police officer has probable cause to arrest a suspect when the officer possesses a well grounded suspicion that a crime has been or is being committed.

[Ibid. (citations and internal quotations omitted).]

In short, "[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt." Brinegar v. United States, 338 U.S. 160, 175, 69 S. Ct. 1302, 1310, 93 L. Ed. 1879, 1890 (1949) (citations and internal quotation marks omitted)).

In arguing that Motani lacked probable cause plaintiffs attack the sources of information he stated he relied upon: (1) the bank surveillance video, (2) SCART diagrams, (3) R.W.'s statements and (4) Brandon's injuries. Plaintiffs contend these sources of information are insufficient to form an objective basis for probable cause.

As we understand plaintiffs' criticism of Motani's reliance upon the video, it is that the frame of the video cited did not provide adequate support for Motani's conclusion that Brandon appeared to be two feet east of the solid white fog line, in the southbound lane of the road and approximately twenty feet south of a utility pole.

Plaintiffs challenge Motani's reliance upon the SCART diagrams on the ground that he admitted sharing his opinion with the SCART team that Brandon was crossing the street from left to right and was in the roadway when struck and assumed SCART took his opinion into consideration.

Plaintiffs contend R.W.'s statements provide no support for a finding of probable cause because he did not observe Brandon prior to impact and could not tell if Brandon was moving or crossing the street. They concede Brandon was struck in the roadway, but cite a statement from Motani that the roadway consists of both the travel lane and the shoulder.

Finally, plaintiffs challenge Motani's reliance upon Brandon's injuries, which he conceded did not alone establish whether Brandon was moving in the moments before impact.

The points plaintiffs raise about each of these sources of information are valid grounds for challenging the probative value of evidence to support a conviction. These isolated attacks do

not, however, vitiate probable cause because they ignore credible grounds for that determination both in the sources plaintiffs have criticized and in other facts of the investigation that Motani has cited.

Let us first acknowledge it is undisputed that Brandon was not in a crosswalk when he was struck. Although R.W. did not see Brandon before the impact, he consistently stated he was in the southbound lane of the road when the accident occurred. There is no evidence to the contrary. A logical inference, which Motani was entitled to rely upon, was that Brandon was in the travel lane when R.W. struck him. After he was hit, Brandon was lying in the street, not on a shoulder of the road. Although the injuries on the right side of his body did not establish he was crossing the street from the left to the right, the injuries were consistent with that theory. Moreover, it is immaterial whether Brandon was walking from left to right or right to left or walking at all, in light of the reasonable inference he was in the travel lane and not in a crosswalk at the time of impact. Further, Motani's reliance upon the diagrams prepared by SCART is not corrupted by the fact he shared his impression with the SCART team because there is no evidence that the diagrams were prepared based upon his opinion. To the contrary, the report reflects that the SCART team photographed the crash scene and measured the crash scene

using the LTI Impulse 200 laser as part of the preparation of the scene diagram. Motani testified that the "stepping stones" for his determination of fault included the "specific measurements from the SCART team, which were obviously not dependent upon his opinion." In light of this support for a finding of probable cause, it is of no consequence that Motani found additional support in the "distorted" image he observed in the surveillance tape.

We are satisfied these facts support an "honest belief" there was "a good or sound chance" of establishing that Brandon was guilty of violating N.J.S.A. 39:4-36(a)(2). See LoBiondo, supra, 199 N.J. at 93. Because plaintiffs failed to present prima facie proof of two essential elements of their malicious prosecution claim, that the action was motivated by malice and that there was an absence of probable cause to prosecute, summary judgment was properly granted, dismissing the malicious prosecution claim.

C.

Plaintiffs' argument regarding supervisor liability merits only limited comment.

In Schneider v. Simonini, 163 N.J. 336 (2000), cert. denied, 531 U.S. 1146, 121 S. Ct. 1083, 148 L. Ed. 2d 959 (2001), the Supreme Court adopted a "recklessness or deliberate indifference" standard for supervisor liability that is applicable to plaintiffs' claim. Id. at 373. This requires the plaintiff to

establish "that: (1) the supervisor . . . failed to supervise the subordinate official; (2) a causal link exists between the failure to . . . supervise and the violation of the plaintiff's rights; and (3) the failure to . . . supervise amounts to deliberate indifference" or recklessness. Ibid. (citation omitted). The Court stated "[t]he knowledge element . . . requires proof that the supervisor was aware of facts from which an inference could be drawn that the subordinate was acting in an unconstitutional manner that carried a substantial risk of causing serious harm." Id. at 373-74.

Plaintiffs contend the requisite level of reckless indifference was established here by evidence that purportedly proved Markulic's "neglect and non-action" in signing off on Motani's police report. They suggest Markulic should have personally investigated the facts to confirm the accuracy of Motani's report. No authority is cited to support the premise that Markulic had a responsibility to personally verify the facts contained in a subordinate's report or that the failure to do so amounted to deliberate indifference. In any event, as we have determined Motani did not lack probable cause for the issuance of the complaint, there can be no causal link between any alleged failure to supervise and a violation of Brandon's rights. In the

absence of proof of this essential element, the claim was properly dismissed.

D.

In arguing their claim for violation of the CRA was erroneously dismissed, plaintiffs merely rely upon the arguments they advanced regarding the dismissal of their malicious prosecution and abuse of process claims. As we have noted, those arguments lack merit.

Qualified immunity "shields government officials from a suit for civil damages when 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known,'" Gormley v. Wood-El, 218 N.J. 72, 113 (2014) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396, 410 (1982)), providing the officials with "immunity from suit," ibid. (quoting Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S. Ct. 2806, 2815, 86 L. Ed. 2d 411, 425 (1985)).

The only constitutional transgression claimed by plaintiffs is that the complaint was unsupported by probable cause. In light of our conclusion that the complaint was adequately supported by probable cause, the defendant officers were shielded from liability under the CRA by qualified immunity.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.