FILED
2016 Nov-08 PM 01:59
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

SHARON ANN RANSOM,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Civil Action No. 5:14-cv-1795-CLS**
	)	
RICHARD SHERMAN,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff, Sharon Ann Ransom, asserts claims against Richard Sherman, a Deputy Sheriff for Morgan County, Alabama, for violation of her Fourth Amendment rights to be free from unlawful searches and seizures, excessive force, and wrongful arrest.[1] The case currently is before the court on defendant's motion for summary judgment.[2] Upon consideration of the motion, briefs, and evidentiary submissions, the court concludes that the motion should be granted.

I. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56 provides that a court "shall grant summary

---

[1] *See* doc. no. 1 (Complaint), at Counts One, Two, and Three. Ms. Ransom also asserted a claim for malicious prosecution under Alabama law, and her husband, Conley Ransom, asserted a claim for loss of consortium. *See id.* at Count Four and Damages Clause. Those claims were dismissed, with plaintiffs' consent, on December 2, 2014. *See* doc. no. 18 (Order of Partial Dismissal). Conley Ransom does not have any remaining claims.

[2] Doc. no. 39.

judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In other words, summary judgment is proper "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "In making this determination, the court must review all evidence and make all reasonable inferences in favor of the party opposing summary judgment." *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000) (*en banc*) (quoting *Haves v. City of Miami*, 52 F.3d 918, 921 (11th Cir. 1995)). Inferences in favor of the non-moving party are not unqualified, however. "[A]n inference is not reasonable if it is 'only a guess or a possibility,' for such an inference is not based on the evidence, but is pure conjecture and speculation." *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1324 (11th Cir. 1983) (alteration supplied). Moreover,

> [t]he mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is *material* to an issue affecting the outcome of the case. The relevant rules of substantive law dictate the materiality of a disputed fact. A genuine issue of material fact does not exist unless there is sufficient evidence favoring the nonmoving party for a reasonable jury to return a verdict in its favor.

Chapman, 229 F.3d at 1023 (quoting *Haves*, 52 F.3d at 921) (emphasis and alteration

supplied). *See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986) (asking "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law").

II. FINDINGS OF FACT

Plaintiff, Sharon Ransom, lives with her husband, Conley Ransom, at 1395 Gravel Ridge Road near Summerville, in rural Morgan County, Alabama.[3] There are two buildings on the Ransoms' one-acre property: a "main house" that contains two bedrooms, a kitchen, two living rooms, a bathroom, and a laundry room; and, a separate, smaller "master bedroom" building containing a bedroom and bathroom.[4] The master bedroom building has an attached porch that is six feet wide and four feet deep, with steps leading down to the yard.[5] At all relevant times, plaintiff and her husband slept in the separate master bedroom building, and used the kitchen and laundry facilities in the "main house." The couple's teenage and adult children slept in the bedrooms in the "main house."[6]

The Ransoms had three nearby neighbors at the time of the events leading to

---

[3] Doc. no. 41-2 (Deposition of Sharon Ransom), at 16.

[4] *Id.* at 32-33.

[5] Doc. no. 41-3 (Deposition of Conley Ransom), at 32.

[6] Sharon Ransom Deposition, at 33-35.

this suit. A woman lived alone in a house across the street, approximately 500-600 feet from the Ransoms' residence.[7] Another woman lived alone in a trailer approximately 100 feet behind the Ransoms' residence.[8] And a man lived alone in a home on the same side of the street as the Ransoms, and approximately 150 yards away.[9]

Defendant, Richard Sherman, has been a Deputy for the Morgan County Sheriff's Department since 2007.[10] He and other Deputies were conducting a driver's license check point in the area of Upper River Road and Antioch Road in Morgan County on June 22, 2013.[11] They observed a motorcycle approach the check point, but then turn around and drive away in the opposite direction.[12] The driver of the motorcycle was Justin Ransom, plaintiff's 23 year-old son, who was staying at his parents' home at the time.[13] Justin had borrowed the motorcycle from his parents'

---

[7] Sharon Ransom Deposition, at 25; Conley Ransom Deposition, at 24.

[8] Sharon Ransom Deposition, at 26-27; Conley Ransom Deposition, at 26-27.

[9] Sharon Ransom Deposition, at 22-23; Conley Ransom Deposition, at 28.

[10] Doc. no. 41-1 (Deposition of Richard Sherman), at 5-6.

[11] Doc. no. 41-21 (Defendant Richard Sherman's Responses to Plaintiff's First Interrogatories to Defendant), at ECF 8 (Response to Interrogatory No. 9). The record does not clearly state the distance between the check point and the Ransom residence, but it does not appear to be more than a couple of miles, given that the dashboard camera in Deputy Sain's patrol car shows Justin driving onto his parents' front yard one minute and twenty seconds after the video was activated. *See* doc. no. 41-18 (Video, conventionally filed), at 1:20.

[12] Doc. no. 41-21 (Defendant Richard Sherman's Responses to Plaintiff's First Interrogatories to Defendant), at ECF 8 (Response to Interrogatory No. 9); *see also* Sherman Deposition, at 207-08.

[13] Sharon Ransom Deposition, at 33-34; doc. no. 41-4 (Deposition of Justin Ransom), at 12-13; Conley Ransom Deposition, at 29 (stating that Justin was twenty-five years old on the date of

neighbor and was taking it for a test drive.[14] He testified that he turned around when he saw the check point because he did not have a driver's license, he had consumed two sixteen-ounce beers that morning, and he knew the owner of the motorcycle had not registered or insured the bike.[15]

When Justin Ransom turned the motorcycle around to avoid the check point, Brandon Sain and Dallas Jones, two other Morgan County Sheriff's Deputies working the check point, entered Sain's patrol car and gave pursuit. Defendant followed behind them in his own patrol car.[16] At some point that cannot be determined from the current record, Deputy Sain activated the dashboard camera in his patrol car, and the remainder of the chase and subsequent events were recorded through a combination of video and audio.[17] Justin drove back in the direction of his parents' residence, and the chase ended when he pulled the motorcycle into his parents' front yard one minute and twenty seconds after the recording begins.[18] Justin stepped off the motorcycle, allowing it to fall to the ground, then crouched down onto his knees

---

the deposition, which was taken on September 16, 2015, a little more than two years after the incident in question).

[14] Justin Ransom Deposition, at 12.

[15] *Id.* at 13-15.

[16] Sherman Deposition, at 208; doc. no. 41-7 (Deposition of Dallas Jones), at 8.

[17] *See* doc. no. 41-18 (Video, conventionally filed).

[18] *Id.* at 1:20.

and put his hands behind his head.[19]

Both of Justin's parents were inside the master bedroom building, approximately 25 to 30 feet from where Justin stopped the motorcycle.[20] When plaintiff heard the patrol cars' sirens, she stepped out onto the porch of the master bedroom, and her husband followed.[21] Deputies Sain and Jones exited Sain's patrol car and advanced toward Justin, with their pistols drawn, to place him under arrest.[22] Deputy Sain instructed Justin to dismount the motorcycle, lie on the ground, and put his hands out.[23] Defendant then pulled up, parked his patrol car just in front of Deputy Sain's vehicle, and immediately stepped out.[24] As defendant was exiting his patrol car, Deputy Sain shouted for plaintiff and her husband to get back in the house.[25] Plaintiff's husband complied with Deputy Sain's order, but plaintiff did not. Instead, she remained on the porch and shouted, "That's my son!"[26] Defendant walked toward the porch where plaintiff and her husband were standing, with his gun

---

[19] Justin Ransom Deposition, at 15-16.

[20] Sharon Ransom Deposition, at 40-41; Conley Ransom Deposition, at 29, 45; Sherman Deposition, at 104.

[21] Sharon Ransom Deposition, at 43, 45; Conley Ransom Deposition, at 35-36.

[22] Doc. no. 41-5 (Deposition of Brandon Sain), at 12-16; doc. no. 41-7 (Deposition of Dallas Jones), at 9-10; Video, at 1:29.

[23] Video, at 1:32-1:33.

[24] *Id.* at 1:39-1:40; Sherman Deposition, at 212.

[25] Video, at 1:39-1:40; Sain Deposition, at 17.

[26] Video, at 1:41; Sharon Ransom Deposition, at 49; Conley Ransom Deposition, at 47-48.

drawn, and shouted at plaintiff to go back into her house.[27] Plaintiff screamed, "This is my house!"[28] Defendant again shouted the order for plaintiff to go back inside, but plaintiff shouted, "No! This is my house!"[29]

While defendant still was walking toward the porch where plaintiff was standing, Deputy Sain instructed defendant to "1015" plaintiff, which was a code meaning to take plaintiff into custody.[30] Sain testified that he gave that directive because plaintiff's yelling and physical movements posed a potential threat to the officers and their control over the situation.[31] Plaintiff, on the other hand, testified that, once she walked onto her porch, she did not move from the place where she stood to advance toward the officers. She did not take a fighting posture, clench her fists, shake, or stomp her foot. She admitted yelling at the officers, but she asserts that raising her voice was necessary for her to be heard over the officers' yelling and the other "general commotion" taking place in her yard, and she maintains that she

---

[27] Video, at 1:42-1:44; Sharon Ransom Deposition, at 54-55; Conley Ransom Deposition, at 42.

[28] Video, at 1:44-45; Sharon Ransom Deposition, at 54-55.

[29] Video, at 1:46-1:47; Sharon Ransom Deposition, at 55-56; Sherman Deposition, at 152; Sain Deposition, at 20.

[30] Video, at 1:48; Sain Deposition, at 18-20. Defendant testified that he did not make the decision to arrest plaintiff just because Deputy Sain instructed him to do so. Instead, it "was two of us [defendant and Deputy Sain] independently coming to the decision that she needed to be arrested." Sherman Deposition, at 53-54 (alteration supplied).

[31] Sain Deposition, at 26-28.

did not verbally threaten or curse at the officers.[32] Even so, the excessive volume and disrespectful, angry tone of plaintiff's voice are apparent from the audio recorded on the video tape.

Sain also testified that plaintiff's behavior interfered with his ability to take Justin into custody:

> She was interfering with the fact that she was stopping me from doing what I was having to do. I didn't know what type of threat she posed as far as — I didn't know was she going to harm me, did she have a weapon, was she going to come out and do physical harm to me. I didn't know what she was doing at the time. I didn't know why whenever I gave her a command to go inside, she did not do that. That's all I knew at the time.

Doc. no. 41-5 (Deposition of Brandon Sain), at 17. Deputy Jones concurred with Deputy Sain's assessment by testifying that plaintiff's screaming diverted his attention while he was attempting to place Justin under arrest.[33] He characterized his observations of plaintiff as being "like a movie that was edited because my focus was being drawn away from Justin Ransom to try to figure out what this lady was trying to say and do."[34] Defendant agreed that plaintiff's body language, level of agitation, and refusal to comply with orders made her a "possible threat."[35]

---

[32] Doc. no. 45-1 (Declaration of Sharon Ransom), at ¶ 3.

[33] Jones Deposition, at 12-13.

[34] *Id.* at 19.

[35] Sherman Deposition, at 50-51, 64-66.

Defendant reached the porch and handcuffed plaintiff. Plaintiff was facing defendant, so defendant placed one of plaintiff's hands in the cuffs, and then instructed her to turn around so he could secure her other hand in the cuffs behind her back. Plaintiff followed defendant's instructions and did not resist being cuffed.[36] The cuffs defendant used to secure plaintiff were hinged, not chained. Defendant testified that he has discretion whether to use hinged or chained cuffs, but he typically uses hinged cuffs because he likes them better and because they are easier for him to grab from his belt.[37] Captain John Billi confirmed that Morgan County Sheriff's Deputies have discretion whether to use hinged cuffs or chained cuffs, and he testified that many of the Deputies used hinged cuffs.[38] Defendant testified that hinged cuffs can be more uncomfortable than chained cuffs because "they don't twist."[39] That characteristic makes the hinged cuffs more difficult to place on a person's wrists, sometimes requiring more force in order to secure the cuffs.[40] It also allows for more control over the person being cuffed, because a person who is moving around or attempting to resist will experience pain when their wrists rub

---

[36] *Id.* at 184-86.

[37] *Id.* at 186-87.

[38] Doc. no. 41-8 (Deposition of Captain John Dean Billi), at 60, 79.

[39] Sherman Deposition, at 186-88.

[40] *Id.*

against the inflexible cuffs.[41]

As defendant was handcuffing plaintiff, Deputies Charles Porter and Nathan McCarley arrived on the scene in Porter's patrol car. Deputy McCarley exited the passenger side of the car and walked in front of Deputy Sain's patrol car to assist defendant in detaining plaintiff.[42] Plaintiff's version of what happened next differs slightly from that of the officers. Plaintiff attested:

> I did not resist the arrest. Deputy Sherman cuffed me very roughly and then pulled me down the stairs backwards. At the bottom of the stairs, Deputy Sherman spun me around, twisted the cuffs up behind my back, and started pushing me toward the patrol car. I was walking on my own, but Deputy Sherman would not let me walk. Sherman gripped the cuffs in the middle between my hands, twisted the cuffs so that they painfully dug into my wrists, and raised my arms up behind me and pushed me. Even after I told Deputy Sherman he was hurting me, he continued to hurt me with the handcuffs by twisting them and by raising my arms up above my head. Even after I was at the car, he held me there with the cuffs twisted so that they dug into my wrists for several seconds.

Doc. no. 45-1 (Declaration of Sharon Ransom), ¶ 4.

Defendant testified that, once he had handcuffed plaintiff, he "backed her down the stairs" and then turned her around to walk toward the patrol car. Plaintiff planted her foot on the ground and pushed back against defendant, saying that she was not going with him. Because of that resistance, defendant lifted plaintiff's hands upward

---

[41] Billi Deposition, at 61-63, 75-76; Sain Deposition, at 57-58.

[42] Doc. no. 41-6 (Deposition of Charles Porter), at 16-17; doc. no. 41-10 (Deposition of Nathan McCarley), at 9-11; Video, at 1:58.

behind her back, which he had learned through his experience would cause plaintiff to feel as though she would fall on her face if she did not start walking. Plaintiff then began walking, and defendant escorted her to the patrol car with her hands lifted high behind her back.[43]

Plaintiff can be heard on the audio track of the video recording before she approached the patrol car, requesting defendant to "Stop jerking me around!"[44] She also screamed, "You're hurting me!," and defendant yelled, "Well, then, walk!"[45] Plaintiff then screamed, "Stop pushing me!"[46] One of the Deputies — it is not clear whether it is defendant or Deputy Sain — stated, "We told you what to do, ma'am."[47] Approximately two seconds later, plaintiff appeared on the screen, with two Deputies (defendant and Deputy McCarley) holding her cuffed hands behind her back at approximately the height of her head, escorting her to defendant's patrol car.[48] Deputy McCarley opened the door of the patrol car, and defendant attempted to place plaintiff in the back seat.[49] Plaintiff cooperatively sat in the car and placed her right foot in the floorboard, but she refused to place her left foot inside the car, thereby

---

[43] Sherman Deposition, at 202-03. *See also* McCarley Deposition, at 13-14.

[44] Video, at 2:12.

[45] *Id.* at 2:15-2:16.

[46] *Id.* at 2:18-2:19.

[47] *Id.* at 2:20-2:21.

[48] *Id.* at 2:23-2:26.

[49] *Id.* at 2:27-2:35.

preventing defendant from shutting the door.[50] In order to persuade plaintiff to place her other foot in the car, defendant took out his pepper spray and pointed it in her face.[51] Plaintiff testified that defendant discharged the pepper spray in her face while she was sitting in the back seat of his patrol car, though not at a "full blast."[52] Defendant denies actually discharging the pepper spray,[53] but it cannot clearly be determined from the video whether he discharged the spray, or whether he simply pointed the spray in the direction of plaintiff's face as a threat.[54] Thus, at this summary judgment stage, plaintiff's version of events must be accepted as true, and the court will assume that defendant did discharge the spray at less than full blast.[55] In any event, defendant did not point the pepper spray toward plaintiff's face for more than one second. After defendant re-holstered his pepper spray, plaintiff placed both

---

[50] Video, at 2:36-2:38. *See also* Sherman Deposition, at 195-96.

[51] Sherman Deposition, at 195-96. *See also* Video, at 2:38-2:41.

[52] Sharon Ransom Deposition, at 65-68.

[53] Sherman Deposition, at 42.

[54] *See* Video, at 2:38-2:41.

[55] Defendant offers testimony from the other Deputies on the scene that defendant did not discharge the pepper spray. He also offers testimony from others who later came into contact with plaintiff that they did not smell pepper spray or see any pepper spray residue on plaintiff's person. That testimony might have been persuasive to a jury hearing plaintiff's case if it went to trial, but it is not sufficiently contradictory to negate, at the summary judgment stage, plaintiff's testimony that defendant did spray her. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.").

feet inside the patrol car, and defendant was able to shut the door.[56] Plaintiff was handcuffed and secured inside defendant's patrol car approximately one minute and twenty-two seconds after Justin pulled the motorcycle into his parents' yard.

Conley Ransom testified that the road in front of his house was "busy," with approximately three or four cars driving by each hour.[57] In fact, the video shows six vehicles passing by during an eleven-minute period.[58] Deputy Porter also testified that, when he arrived on the scene, there were some people (not officers) "milling around," but he did not know who they were. He did not see any neighbors come out of their homes to observe the events occurring in the Ransoms' yard.[59] On the other hand, plaintiff, her husband Conley, and her son Justin all stated they did not see anyone at or near the scene that day, other than their own family members.[60]

After plaintiff was placed in defendant's patrol car, defendant spoke with Conley Ransom about what next would happen to plaintiff. Conley described that conversation as follows:

> And I asked [defendant] what [plaintiff] was being charged for. And the first thing he said was I'm charging her with resisting arrest. And I told

---

[56] Video, at 2:41-2:42.

[57] Conley Ransom Deposition, at 63-64.

[58] Video, at 5:17, 5:55, 12:41, 14:25, 14:55, 16:42.

[59] Porter Deposition, at 32-33.

[60] *See* Sharon Ransom Declaration, at ¶ 6; Sharon Ransom Deposition, at 77; Conley Ransom Deposition, at 61-62; Justin Ransom Deposition, at 28-31.

> him, I said I watched everything. I said at what point did she resist you. He said I don't know, let me talk to my fellow officers. And so when he came back to the door, he asked me did you dial 911. I said I did. And he told me at that point she's being arrested for disorderly conduct. I didn't argue with that or anything like that. I stood on the porch. He turned around and ordered me to get back in my house and shut the damn door. And I didn't shut it all the way to, but I did close it, but I kept it open enough to where I could hear.

Doc. no. 41-3 (Deposition of Conley Ransom), at 67-68 (alterations supplied). Conley also testified that defendant told him that disorderly conduct was the "least offense" plaintiff could have been charged with at the time.[61] Defendant described his conversation with Conley Ransom as follows:

> I went back and talked to him briefly. I don't recall the entire conversation. I do recall him explaining that he — that they were — or that — or that at least she was ordained ministers [*sic*] — boys ranch, used to have something to do with the boys ranch and that she didn't need to be charged with all this and different things.
>
> And I remember talking to him briefly about the different things that she could be charged with. And after having this conversation, I told him that what I would do would just — instead of charging her with the different charges that I could charge her with, that I would be — I wouldn't make a mountain out of a mole hill and I would work with them and that I would charge her only with the least of all the charges I could charge her with, which would be disorderly conduct.

Doc. no. 41-1 (Deposition of Richard Sherman), at 243-44.

Approximately fourteen minutes after being placed in the back of defendant's patrol car, but while the car still was parked in plaintiff's yard, plaintiff was

[61] Conley Ransom Deposition, at 68.

transferred to a transport van driven by Deputy Matthew Aderton.[62] According to Sheriff's Department protocol, defendant removed his handcuffs from plaintiff's wrists, and Deputy Aderton placed another set of cuffs on plaintiff with her hands in front of her body.[63] Deputy Aderton then transported plaintiff to the Morgan County Jail.[64]

When plaintiff arrived at the jail, she complained that her wrists were broken and that there was a big knot on her wrist.[65] Deputy Aderton stated that he only observed "redness" on plaintiff's wrists where the cuffs had been located.[66] A member of the jail medical staff was summoned to look at plaintiff's wrist, but he never actually examined plaintiff.[67]

Plaintiff bonded out of the Morgan County Jail approximately one hour after arriving and immediately went to Decatur General Hospital for an evaluation of her wrist.[68] Plaintiff testified that the emergency room physician told her she had a torn ligament,[69] and that she experienced pain in her right wrist for more than a year after

---

[62] Doc. no. 41-9 (Deposition of Matthew Aderton), at 9-10.

[63] *Id.* at 12; Sharon Ransom Deposition, at 72-73; Sherman Deposition, at 193-94.

[64] Aderton Deposition, at 12-13.

[65] *Id.* at 13-14; Sharon Ransom Deposition, at 80.

[66] Aderton Deposition, at 13.

[67] Sharon Ransom Deposition, at 81-83.

[68] *Id.* at 79, 83-84.

[69] *Id.* at 84-85.

the incident.[70] The emergency room records do not mention a torn ligament, however. Instead, the records indicate that plaintiff experienced "tenderness," bruising, and decreased range of motion in her wrists.[71] The clinical impression was contusion of the wrist.[72] X-rays revealed a metal plate in plaintiff's distal ulna from a previous injury, and degenerative changes in her distal radioulnar joint, but no evidence of acute bony disease.[73] Three medications were prescribed for plaintiff , but she left the emergency room before those medications could be dispensed.[74]

Plaintiff saw Dr. Joseph Clark, an orthopedic specialist, on July 24, 2013, just over a month after her arrest. Upon examination, plaintiff had slightly limited range of motion in her wrist and "tenderness around the right distal ulna area."[75] Dr. Clark reviewed the x-rays that had been taken in the emergency room and noted "a little arthritic change around the distal radioulnar joint and the ulnar shortening osteotomy plate in place."[76] His assessment was that plaintiff "probably has strained the tendons and ligaments there," and he recommended physical therapy and anti-inflammatory

---

[70] Sharon Ransom Declaration, at ¶ 5.

[71] Doc. no. 41-19 (Redacted Records from Decatur Morgan Hospital), at ECF 11.

[72] *Id.* at ECF 12.

[73] *Id.* at ECF 13.

[74] *Id.* at ECF 14. *See also* Sharon Ransom Deposition, at 85.

[75] Doc. no. 41-20 (Redacted Records from The Orthopedic Center), at ECF 7.

[76] *Id.*

medications.[77] He planned to follow up with plaintiff after six weeks.[78] Plaintiff did not go to physical therapy as suggested, however. Instead, she testified that she had been to physical therapy for her wrist in the past, and she "knew what to do."[79] She did not seek any additional medical treatment for her wrist.[80]

The record does not contain any information regarding the ultimate disposition of the charges against plaintiff.

III. DISCUSSION

Defendant asserts that he is entitled to qualified immunity from plaintiff's claims of unlawful search and seizure, excessive force, and wrongful arrest. The doctrine of qualified immunity protects governmental officials who are sued under 42 U.S.C. § 1983 for money damages in their personal, or individual, capacities, but only so long as "their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The doctrine requires that a defendant claiming immunity must initially "prove that 'he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred.'" *Lee v. Ferraro*,

---

[77] *Id.*

[78] *Id.*

[79] Sharon Ransom Deposition, at 89-90.

[80] *Id.* at 90.

284 F.3d 1188, 1194 (11th Cir. 2002) (quoting *Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir. 1991)). That threshold inquiry is easily satisfied here, as defendant was engaged in law enforcement functions on the date and at the time of the events that led to plaintiff's complaint.

Courts generally next apply a two-part test. The first step is for the court to determine whether the facts, viewed "in the light most favorable to the party asserting the injury," show that "the officer's conduct violated a constitutional right?" *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If that question is answered affirmatively, the court will proceed to analyze the second aspect of the two-part inquiry: *i.e.*, "whether the right was clearly established." *Id.* Strict adherence to the order of those two inquiries is not required, however. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009) ("On reconsidering the procedure required in *Saucier*, we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory."). Instead, in appropriate cases, it is within a district court's discretion to assume that a constitutional violation occurred in order to address, in the first instance, the question of whether such a *presumed violation* was "clearly established" on the date of the incident leading to suit. *Id.*

When determining whether the unlawfulness of an official's actions was "clearly established," the pertinent question is whether the state of the law on the date

of the defendant's alleged misconduct placed defendants on "fair warning that their alleged treatment of [the plaintiff] was unconstitutional." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (alteration supplied); *Williams v. Consolidated City of Jacksonville*, 341 F.3d 1261, 1270 (11th Cir. 2003) (same).

The Supreme Court has rejected the requirement that the facts of previous cases must always be "materially similar" to those facing the plaintiff. *Hope*, 536 U.S. at 739. Instead, in order for a constitutional right to be deemed as having been "clearly established,"

> its contours "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, *see Mitchell* [*v. Forsyth*, 472 U.S. 511,] 535, n. 12, 105 S. Ct. 2806, 86 L. Ed. 2d 411; but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).

Hope, 536 U.S. at 741 (alteration in original). An officer can receive "fair notice" of his or her unlawful conduct in various ways.

> First, the words of the pertinent federal statute or federal constitutional provision in some cases will be specific enough to establish clearly the law applicable to particular conduct and circumstances and to overcome qualified immunity, even in the *total absence of case law.* This kind of case is one kind of "obvious clarity" case. For example, the words of a federal statute or federal constitutional provision may be so clear and the conduct so bad that case law is not needed to establish that the conduct cannot be lawful.

Second, if the conduct is not so egregious as to violate, for example, the Fourth Amendment on its face, we then *turn to case law.* When looking at case law, some broad statements of principle in case law are not tied to particularized facts and can clearly establish law applicable in the future to different sets of detailed facts. *See Marsh* [*v. Butler County, Ala.*], 268 F.3d [1014,] 1031-32 n.9 [11th Cir. 2001]. For example, if some authoritative judicial decision decides a case by determining that "X Conduct" is unconstitutional *without tying* that determination to a particularized set of facts, the decision on "X Conduct" can be read as having clearly established a constitutional principle: put differently, the precise facts surrounding "X Conduct" are immaterial to the violation. These judicial decisions can control "with obvious clarity" a wide variety of later factual circumstances. These precedents are hard to distinguish from later cases because so few facts are material to the broad legal principle established in these precedents; thus, this is why factual differences are often immaterial to the later decisions. But for judge-made law, there is a presumption against wide principles of law. And if a broad principle in case law is to establish clearly the law applicable to a specific set of facts facing a governmental official, it must do so "with obvious clarity" to the point that every objectively reasonable government official facing the circumstances would know that the official's conduct did violate federal law when the official acted.

Third, if we have no case law with a broad holding of "X" that is not tied to particularized facts, we then look at precedent *that is tied to the facts.* That is, we look for cases in which the Supreme Court or we, or the pertinent state supreme court has said that "Y Conduct" is unconstitutional in "Z Circumstances." We believe that most judicial precedents are tied to particularized facts and fall into this category. . . . When fact-specific precedents are said to have established the law, a case that is fairly distinguishable from the circumstances facing a government official cannot clearly establish the law for the circumstances facing that government official; so, qualified immunity applies. On the other hand, if the circumstances facing a government official are not fairly distinguishable, that is, are materially similar, the precedent can clearly establish the applicable law.

Vinyard v. Wilson, 311 F.3d 1340, 1350-52 (11th Cir. 2002) (emphasis in original, alterations and ellipsis supplied). *See also Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) ("We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.").

A. Unlawful Search and Seizure/Unlawful Arrest

Because no search or seizure occurred other than plaintiff's arrest, the court will consider plaintiff's unlawful search and seizure claim together with her unlawful arrest claim. To establish a violation of the Fourth Amendment when making an arrest, the plaintiff must show that the arrest was unreasonable. *See*, *e.g.*, *Brower v. County of Inyo*, 489 U.S. 593, 599 (1989) ("Seizure alone is not enough for § 1983 liability; the seizure must be unreasonable.") (internal quotation marks and citation omitted).

An arrest is unreasonable when it is not supported by probable cause. *See*, *e.g.*, *Crosby v. Monroe County*, 394 F.3d 1328, 1332 (11th Cir. 2004). "Probable cause is defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." *Id*. (citing *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975)). Courts have recognized that "[t]he probable-cause standard [often] is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the

circumstances." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (alterations supplied). *See also Illinois v. Gates*, 462 U.S. 213, 232 (1983) ("[P]robable 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.") (alteration supplied).

The best that can be said is this: probable cause to effect an arrest exists if, at the moment the arrest was made, "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing" that the person arrested either had committed, or was in the process of committing, an offense. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)) (alteration supplied). *See also Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) ("Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest."). Therefore, "[t]o determine whether an officer had probable cause to arrest an individual, [courts] examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." *Pringle*, 540 U.S. at 371 (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)) (alterations supplied).

Even if an officer has effected an arrest without probable cause (and without a warrant), he still will be entitled to qualified immunity if the arrest was supported by *arguable* probable cause. *See Crosby*, 394 F.3d at 1332 ("Qualified immunity applies when there was *arguable* probable cause for an arrest even if *actual* probable cause did not exist.") (emphasis supplied) (citing *Jones v. Cannon*, 174 F.3d 1271, 1283 n. 3 (11th Cir. 1999)); *Cottrell v. Caldwell*, 85 F.3d 1480, 1485 n.1 (11th Cir. 1996) ("[W]hen the claim is that a search and seizure or arrest violated the Fourth Amendment, qualified immunity depends upon whether arguable probable cause existed.") (alteration supplied). "*Arguable* probable cause exists if, under all of the facts and circumstances, an officer reasonably *could* — not necessarily *would* — have believed that probable cause was present." *Crosby*, 394 F.3d at 1332 (emphasis supplied).

In any event, courts must refer to the elements of the relevant offense, because the question of "[w]hether a particular set of facts gives rise to probable cause . . . to justify an arrest for a particular crime depends, of course, on the elements of the crime." *Crosby*, 394 F.3d at 1333 (alteration and ellipsis supplied). Moreover, the arrest is lawful as long as there is probable cause to support an arrest for *any* offense, even if probable cause is not present for the offense announced at the time of arrest. As the Eleventh Circuit has held:

> "[t]he validity of an arrest does not turn on the offense announced by the officer at the time of the arrest." *Bailey* [*v. Board of County Commissioners of Alachua County*], 956 F.2d [1112,] 1119 n. 4 [(11th Cir. 1992)] (holding that arrest was proper based on bribery, unlawful compensation, and unlawful possession of money in jail even though arrest report reflected only conveying tools into jail to aid escape, for which defendant was not charged) (citing *United States v. Saunders*, 476 F.2d 5, 7 (5th Cir.1973)). Indeed, "[w]hen an officer makes an arrest, which is properly supported by probable cause to arrest for a certain offense, neither his subjective reliance on an offense for which no probable cause exists nor his verbal announcement of the wrong offense vitiates the arrest." *Saunders*, 476 F.2d at 7 (holding that arrest was valid based on marijuana possession even though agents making arrest relied only on charges of harboring and concealing a fugitive, for which there was no probable cause) (citations omitted).

Lee, 284 F.3d at 1195-96 (second, third, and fourth alterations supplied, other alterations in original).

Defendant had at least arguable probable cause to arrest plaintiff for the Alabama offense of resisting arrest.[81] In Alabama, "[a] person commits the crime of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from affecting a lawful arrest of himself or of another person." Ala. Code § 13A-10-41(a) (1975 & 2005 Repl. Vol.) (alteration supplied). A reasonable officer in defendant's position could have believed that plaintiff was intentionally interfering with the efforts of Deputies Sain and Jones to arrest her son. Plaintiff's loud, angry yelling

[81] Because there was arguable probable cause to support plaintiff's arrest for resisting her son's arrest, there is no need for the court to consider whether there was actual or arguable probable cause to support an arrest for disorderly conduct, the offense that was announced at the time of plaintiff's arrest, or for obstructing governmental operations, as defendant argues in his brief.

and refusal to follow orders distracted Deputies Sain and Jones from their attempts to take Justin into custody, because those officers were required to divert their attention to plaintiff in order to determine whether she might pose a threat.

Plaintiff asserts that she should not suffer any negative consequences from her failure to obey the orders by defendant and Deputy Sain to go back in her house, because those orders were unlawful. To support that assertion, plaintiff cites *Kleinschnitz v. Phares*, No. 1:13-cv-0209-MEF, 2013 WL 5797621 (M.D. Ala. Oct. 28, 2013). There, an officer attempted a traffic stop on the plaintiff "without any basis for doing so." *Id.* at *2. It was late at night and the plaintiff wanted to make sure the person initiating the traffic stop actually was a police officer, so he drove at a reasonable rate of speed to a well-lit commercial parking lot before he pulled over. Even though the plaintiff's actions were in accordance with local law, he was arrested for his failure to immediately submit to the traffic stop. *Id.* at *2-3. The district court found that there was no actual or arguable probable cause to arrest the plaintiff for violating Ala. Code 1975 § 32-5A-4 (1975 & 2010 Rep. Vol.), which provides: "No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or fireman invested by law with authority to direct, control or regulate traffic." The plaintiff was not required to comply with the officer's demand to pull over because the officer had no lawful basis for making that demand.

Kleinschnitz, 2013 WL 5797621, at *6. As the district court stated: "Since, as alleged, [the officer] had no authority to stop [the plaintiff's] vehicle, his verbal demand for [the plaintiff] to pull over does not create arguable probable cause to arrest [the plaintiff] for failure to comply because the order was not 'lawful' within the meaning of the statute." *Id.* (alterations supplied).

Plaintiff's reliance on the *Kleinschnitz* decision is not persuasive. As an initial matter, because *Kleinschnitz* is an unpublished district court decision, it cannot serve as the basis for a finding that defendant violated clearly established law when he arrested plaintiff. *See Barnes v. Zaccari*, 669 F.3d 1295, 1307 (11th Cir. 2012) ("To answer this question [of whether a legal principle is 'clearly established'], we look to law as decided by the Supreme Court, the Eleventh Circuit, or the Supreme Court of [Alabama]."") (citing *Willingham v. Loughnan*, 321 F.3d 1299, 1304 (11th Cir. 2003)) (alterations supplied). Additionally, the presence of a "lawful order" from a law enforcement officer was an element of the criminal statute in question in *Kleinschnitz*. *See* Ala. Code 1975 § 32-5A-4. That is not so for the resisting arrest statute, which only requires that a person take *any* intentional action to prevent a law enforcement officer from affecting an arrest. *See* Ala. Code § 13A-10-41(a).

Because a reasonable officer in defendant's position could have believed that plaintiff had committed the offense of resisting arrest, defendant had at least arguable

probable cause to arrest plaintiff, and he is entitled to qualified immunity from plaintiff's claims of unlawful search and seizure and unlawful arrest. *See Brown v. City of Huntsville*, 608 F.3d 724, 735 (11th Cir. 2010) ("If the arresting officer had arguable probable cause to arrest for any offense, qualified immunity will apply.") (citing *Skop v. City of Atlanta*, 485 F.3d 1130, 1137-38 (11th Cir. 2007)).

B. Excessive Force

"The Fourth Amendment's freedom from unreasonable searches and seizures encompasses the plain right to be free from the use of excessive force in the course of an arrest." *Lee*, 284 F.3d at 1197 (citing *Graham v. Connor*, 490 U.S. 386, 394-95 (1989)). The reasonableness inquiry is an objective one: "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham*, 490 U.S. at 397 (citations omitted). In other words, "[a]n officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." *Id*. (alteration supplied, citations omitted).

The court may consider a number of factors when determining whether the force applied was "reasonable" under the circumstances, including: (1) the "severity, or lack of severity, of the alleged crime in issue," *id*. at 396; (2) "whether the person

against whom the force was used posed an immediate threat to the safety of the police or others," *id*.; (3) "the need for the application of force," *Jackson v. Sauls*, 206 F.3d 1156, 1170 n.18 (11th Cir. 2000); (4) "the relationship between the need and the amount of force used," *id*.; (5) "the extent of the injury inflicted," *id*.; (6) "whether the force was applied in good faith or maliciously and sadistically," *id*.; (7) "the possibility that the persons subject to the police action are themselves violent or dangerous," *id*.; (8) "the possibility that the suspect may be armed," *id*.; (9) "the number of persons with whom the police officers must contend at one time," *Jackson v. Sauls*, 206 F.3d 1156, 1170 n.18 (11th Cir. 2000)); and (10) "whether the suspect was resisting or fleeing." *Id*.

"Use of force must be judged on a case-by-case basis 'from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.'" *Post v. City of Fort Lauderdale*, 7 F.3d 1552, 1559 (11th Cir. 1993) (quoting *Graham*, 490 U.S. at 396) (alteration supplied). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396-97. Finally, "[a] law enforcement officer receives qualified immunity for use of force during an arrest if an objectively reasonable officer in the

same situation could have believed the use of force was not excessive." *Brown*, 608 F.3d at 738 (alteration supplied, citations omitted).

Plaintiff claims that defendant used excessive force when he handcuffed her and when he discharged his pepper spray.[82]

1. Handcuffing

The Supreme Court "has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham*, 490 U.S. at 396. In fact, the Eleventh Circuit "recognize[s] that the typical arrest involves some force and injury." *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002) (citing *Nolin v. Isbell*, 207 F.3d 1253, 1257-58 (11th Cir. 2000)) (alteration supplied). To that end, "[p]ainful handcuffing, without more, is not excessive force in cases where the resulting injuries are minimal." *Rodriguez*, 280 F.3d at 1352 (alteration supplied, citations omitted).

In *Rodriguez*, the Eleventh Circuit held that the following circumstances did not constitute excessive force:

> Sgt. Farrell grabbed plaintiff's arm, twisted it around plaintiff's back, jerking it up high to the shoulder and then handcuffed plaintiff as

[82] Plaintiff asserts that, because her arrest was unlawful, *any* use of force to effect the arrest also was unlawful. *See* doc. no. 45 (Plaintiff's Response Brief), at 23 ("Because there was no probable cause, there was no basis for any force.") (citing *Reese v. Herbert*, 527 F.3d 1253, 1272 (11th Cir. 2008)). Because this court already has found that there was at least arguable probable cause to support plaintiff's arrest, that argument is not persuasive.

> plaintiff fell to his knees screaming that Farrell was hurting him. Plaintiff was placed in the rear of Sgt. Farrell's patrol car, kept handcuffed behind his back and transported to the police station. The handcuffs were removed minutes after arrival at the police department. The handcuffing technique used by Sgt. Farrell is a relatively common and ordinarily accepted non-excessive way to detain an arrestee.

Rodriguez, 280 F.3d at 1351. That was true even though a pre-existing condition caused the otherwise lawful handcuffing to lead to complications that eventually necessitated an amputation, because the officer did not know about the pre-existing condition at the time of the arrest. *Id.* at 1352-53 ("What would ordinarily be considered reasonable force does not become excessive force when the force aggravates (however severely) a pre-existing condition the extent of which was unknown to the officer at the time."). *See also Gold v. City of Miami*, 121 F.3d 1442, 1446-47 (11th Cir. 1997) (holding that an officer did not use excessive force when he applied handcuffs "too tightly" for twenty minutes, resulting in skin abrasions that did not require medical treatment).

In the present case, plaintiff does not complain about the mere fact that she was handcuffed, nor could she, because an officer obviously must be permitted to handcuff a detainee. Instead, she complains about defendant's use of hinged cuffs and his lifting of her arms behind her back to force to her to walk forward. She offered no evidence, however, to refute defendant's testimony that the technique he used is "a relatively common and ordinarily accepted non-excessive way to detain an

arrestee." *See Rodriguez*, 280 F.3d at 1351.[83] Moreover, there is no case law, policy, or any other authority indicating that the use of hinged cuffs is constitutionally prohibited. Finally, an analysis of the factors set forth in *Jackson* leads to the conclusion that the force used was not excessive. While plaintiff's crime was not severe, her actions indicated defiance, a high level of emotion, and the potential for unpredictable behavior. As such, defendant did not know whether plaintiff might present a threat to him, his fellow officers, or other individuals present at the scene, or to the security of the situation. The amount of force used was proportional to the need for force. Defendant would not have needed to lift plaintiff's hands over her head if she had cooperated by walking forward on her own, and lifting her arms to create the sensation of falling forward was a relatively gentle way to force plaintiff to walk. The evidence regarding the extent of plaintiff's wrist injury is disputed, but even if plaintiff's testimony that she tore a ligament is to be credited, the seriousness of that injury is diminished by the fact that plaintiff did not remain in the emergency room long enough to receive pain medication, did not follow her orthopedic

[83] *See* Sherman Deposition, at 203 ("And [plaintiff] pushes her back, I'm not going. Well, I have done this my whole life, my whole career. If she doesn't want to go, I'll pick up. Now, you feel like you're going to fall on your face, don't you? If we're walking, you feel like you're going to fall on your face. Let's go, you are walking. So you're going to walk versus falling on your face. This is what happened. I escorted her to the car this way with her arms lifted up.") (alteration supplied); Sharon Ransom Deposition, at 65 ("And I was not trying to resist and he was — he was walking me to the car and he was lifting my hands up in the back, you know, and — but — and *I understand that may be a procedure that they do*, but he was shoving me at the same time.") (emphasis supplied).

specialist's recommendation to undergo physical therapy, and did not seek any further medical treatment for her injury. The totality of the circumstances indicates that the force defendant used in handcuffing plaintiff and walking her to his patrol car was reasonable under the circumstances. In any event, plaintiff has not demonstrated that defendant violated any *clearly established* law when he handcuffed and detained plaintiff. Accordingly, defendant is entitled to qualified immunity from plaintiff's excessive force claim related to the handcuffing.

2. Pepper spray

Plaintiff also asserts that defendant used excessive force when he sprayed her with less than a full blast of pepper spray in order to induce her to place both her feet inside his patrol car.[84] The Eleventh Circuit has addressed the constitutional validity of the use of pepper spray on several occasions. In *Vinyard v. Wilson*, 311 F.3d 1340 (11th Cir. 2002), Vinyard and her arresting officer "exchanged verbal insults" while Vinyard was being transported to the jail. *Id.* at 1343. When Vinyard started screaming at the officer, he pulled his patrol car over, exited the car, and opened the back door near where Vinyard was sitting, handcuffed, with both feet on the floorboard. *Id.* at 1343-44. Vinyard, fearful of what the officer might do, ducked to

[84] As discussed on pages 11-12, *supra*, it is heavily disputed whether defendant actually discharged his pepper spray, but it will be assumed for purposes of summary judgment that he did discharge the pepper spray at less than full blast.

one side, and the officer grabbed Vinyard's arm, bruising her arm and breast. *Id.* at 1343. The officer then released Vinyard's arm, pulled her head back by her hair, and sprayed her in the face with two to three bursts of pepper spray. *Id.* There was "no indication that [Vinyard] actively resisted the initial arrest or attempted to flee at any time." *Id.* at 1348 (alteration supplied). The Eleventh Circuit noted that

> [c]ourts have consistently concluded that using pepper spray is excessive force in cases where the crime is a minor infraction, the arrestee surrenders, is secured, and is not acting violently, and there is no threat to the officers or anyone else. *Courts have consistently concluded that using pepper spray is reasonable, however, where the plaintiff was either resisting arrest or refusing police requests, such as requests to enter a patrol car or go to the hospital*. Furthermore, "'as a means of imposing force, pepper spray is generally of limited intrusiveness,' and it is 'designed to disable a suspect without causing permanent physical injury.'" *Gainor v. Douglas County*, 59 F. Supp. 2d 1259, 1287 (N.D. Ga. 1998) (quoting *Griffin v. City of Clanton*, 932 F. Supp. 1359, 1369 (M.D. Ala. 1996)). Indeed, pepper spray is a very reasonable alternative to escalating a physical struggle with an arrestee.

Vinyard, 311 F.3d at 1348 (alteration and emphasis supplied, footnotes omitted). The Eleventh Circuit held that the officer's use of force was constitutionally excessive because

> Vinyard was under arrest for offenses of minor severity, handcuffed, secured in the back of a patrol car, and posing no threat to Officer Stanfield, herself or the public. In addition, the jail ride was four miles and relatively short. There also was a glass or plastic partition between Stanfield and Vinyard.

Id. at 1348-49 (footnotes omitted). The officer also was not entitled to qualified

immunity because

> no objectively reasonable police officer could believe that, after Vinyard was under arrest, handcuffed behind her back, secured in the back seat of a patrol car with a protective screen between the officer and the arrestee, an officer could stop the car, grab such arrestee by her hair and arm, bruise her and apply pepper spray to try to stop the intoxicated arrestee from screaming and returning the officer's exchange of obscenities and insults during a short four-mile jail ride.

Id. at 1355.

In *Brown v. City of Huntsville*, 608 F.3d 724 (11th Cir. 2010), officers were attempting to arrest Brown for playing music too loudly from her car. *Id.* at 729. The arresting officer twice ordered plaintiff to step out of her car, but she informed the officer that she was not able to immediately comply because she experienced mechanical difficulty unlocking her car doors. *Id.* at 729-30. Once Brown was able to open her door, she put one arm and leg outside the vehicle, but the officer slammed the door back on her and shouted that she was trying to run. *Id.* at 730. Brown denied trying to run, but the officer pushed her back into her car and sprayed her for half a second to three seconds with pepper spray in the mouth, eyes, and face. *Id.* at 730-31. The officer then "threw Brown out of the vehicle while holding her arm and hair and slammed her onto the ground," while another officer assisted by "grabbing one of Brown's arms, pulling her out of the car, and placing her face-down on the ground." *Id.* at 731. Both officers then handcuffed Brown. *Brown*, 608 F.3d at 731.

The Eleventh Circuit held that, because "Brown had submitted to [the officer's] authority, was getting out of the car to be arrested, and posed no threat, [the officer's] conduct in pushing her back into the car, gratuitously using pepper spray, and then slamming her to the pavement, was excessive force that violated Brown's constitutional rights." *Id.* at 739 (alterations supplied). Moreover, the defendant officer was not entitled to qualified immunity because "the law was clearly established [at the time of the incident] that [the officer's] combined gratuitous use of pepper spray and other force against Brown in this minor offense context violated the Constitution." *Id.* at 740 (alterations supplied). *See also Reese v. Herbert*, 527 F.3d 1253, 1273-74 (11th Cir. 2008) (holding that the use of pepper spray was excessive when the plaintiff "was lying face down on the ground, was not suspected of having committed a serious crime, did not pose an immediate threat of harm to anyone, and was not actively resisting or evading arrest").

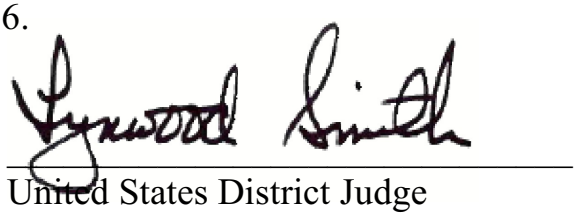
The facts of the present case are distinguishable from all of the cases discussed above. Here, the pepper spray was unaccompanied by any other act of force, like grabbing or shoving. Additionally, none of the plaintiffs in the above cited cases were resisting the officers in any way. Here, even though plaintiff was handcuffed, she still resisted defendant's effort to further subdue her by placing her other foot in his patrol car. That refusal constituted a potential threat to the other officers' efforts to arrest

Justin and maintain control over the scene. *See Vinyard*, 311 F.3d at 1348 ("Courts have consistently concluded that using pepper spray is reasonable, however, where the plaintiff was either resisting arrest or refusing police procedures, *such as requests to enter a patrol car* or go to the hospital.") (emphasis supplied). As a result of those circumstances, the court finds that defendant's use of pepper spray did not constitute excessive force, especially considering plaintiff's acknowledgment that defendant did not discharge the pepper spray at "full blast," and the fact that plaintiff did not require any medical treatment as a result of the spraying. At the very least, defendant did not violate any *clearly established* law when he discharged his pepper spray on plaintiff. Instead, "an objectively reasonable officer in the same situation could have believed the use of [pepper spray] was not excessive." *Brown*, 608 F.3d at 738 (alteration supplied, citations omitted). Accordingly, defendant is entitled to qualified immunity from plaintiff's excessive force claim related to the use of pepper spray.

IV. CONCLUSION AND ORDER

In accordance with the foregoing, it is ORDERED that defendant's motion for summary judgment is GRANTED, and all of plaintiff's claims are DISMISSED with prejudice. Costs are taxed to plaintiff. The Clerk is directed to close this file.

DONE this 8th day of November, 2016.



United States District Judge