APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14245

D.C. Docket No. 2:17-cv-00174-KOB

TRINELL KING,

Plaintiff - Appellant,

versus

RICKY PRIDMORE,
COREY ARCHER,
ANDREW HILL,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(June 5, 2020)

Before ED CARNES and ROSENBAUM, Circuit Judges, and VINSON,* District Judge.

VINSON, District Judge:

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* Honorable C. Roger Vinson, United States District Judge for the Northern District of Florida, sitting by designation.

On September 28, 2015, Trinell King was reluctantly helping the police apprehend a fugitive in Warrior, Alabama. The operation ended in a shootout in which the fugitive was shot thirteen times and King was shot several times and seriously injured. King brought this civil rights action against three of the police officers involved, Ricky Pridmore, Andrew Hill, and Corey Archer (collectively, the officers).[1] As the case was winnowed down, King alleged a § 1983 claim for involuntary servitude under the Thirteenth Amendment to the U.S. Constitution and a violation of substantive due process under the Fourteenth Amendment. He also alleged claims for negligence, wantonness, failure to train/supervise, and false imprisonment under Alabama state law. In two separate orders, the District Court granted summary judgment for the officers on the constitutional claims (based on qualified immunity) and on the state law claims (based on state agent immunity). King appeals both rulings. After full review, and with the benefit of oral argument, we affirm.

I.

"We review a grant of summary judgment *de novo* and apply the same legal standards that governed the

[1] King also sued the City of Warrior, its Chief of Police, and two additional officers as well, but he voluntarily dismissed those parties, leaving Pridmore, Hill, and Archer as the only defendants. Although we will collectively refer to them as "officers," we note that Pridmore, Hill, and Archer held different ranks at the time (officer, detective, and lieutenant, respectively).

district court's decision." *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1288 n.7 (11th Cir. 2019) (citing *Ave. CLO Fund, Ltd. v. Bank of Am., N.A.*, 723 F.3d 1287, 1293 (11th Cir. 2013)). Summary judgment is properly granted only " '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.' " *Id.* (quoting Fed. R. Civ. P. 56(a)). In considering a motion for summary judgment, the non-movant's evidence must be accepted as true and all reasonable inferences must be drawn in his favor. *Shaw v. City of Selma*, 884 F.3d 1093, 1098 (11th Cir. 2018); *see also Allen v. Bd. of Pub. Educ. for Bibb Cty.*, 495 F.3d 1306, 1315 (11th Cir. 2007).

II.

The following facts come almost entirely from King's deposition testimony, so for purposes of our review we must (and do) accept these facts as true and draw all reasonable inferences in his favor.

In the morning hours of September 28, 2015, King drove his girlfriend's Chevrolet Monte Carlo from Birmingham to nearby Warrior to give Donavan Brown a ride. King and Brown were both convicted felons at the time, and King was on a form of state probation known as Treatment Alternatives for Safer Communities (TASC), which was part of the Jefferson County Community Corrections Program (JCCCP). In giving Brown a ride that morning, King knew that he was breaking the law in several ways. Specifically, it is

undisputed that he knew: (1) the car didn't have a license plate; (2) he didn't have (and, in fact, had never had) a driver's license; (3) he was driving without proof of insurance; and (4) being in the presence of a convicted felon violated his TASC and "the people at JCCCP wouldn't have liked that at all."[2]

At approximately 9:45 that morning, Officer Pridmore, who was driving a police SUV with a K-9, stopped the Monte Carlo because it did not have a license plate. During the stop, Officer Pridmore asked King for his name and social security number, and King responded truthfully and produced a valid ID (albeit not a driver's license). However, when Officer Pridmore asked Brown the same questions, Brown gave false information. Officer Pridmore then went to his SUV to run their names in his database. Shortly thereafter, he returned to the Monte Carlo and told Brown to be honest with him and provide his real name. King encouraged Brown to do the same, telling him "yeah, just be one hundred with him. That mean

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[2] King claims in his appellate brief that he and Brown were "not good friends" and that he was only giving Brown a ride because Brown's girlfriend had asked him to. However, King testified that he and Brown grew up together, had attended the same school, socialized together, and had known each other for approximately 20 years. King also said that he considered Brown his friend and "homeboy" and that he had given him rides before. In any event, whether King and Brown had known each other for 20 years (as he testified) or were not good friends (as his brief claims) is irrelevant to the outcome of this case. Regardless of how their relationship is characterized, it is undisputed that King knew Brown well enough to know that Brown, like himself, was a convicted felon.

be honest." Officer Pridmore again asked Brown for his name and social security number, but Brown again gave false information. When Officer Pridmore went back to his vehicle a second time, King asked Brown why he was lying, in response to which Brown told him that he had outstanding warrants and that he was carrying a gun. Brown told King that he was going to try and make a run for it, and King said "Oh Lord," and began to shake his head. At that point, Brown opened the passenger side door and ran into some nearby woods. Officer Pridmore quickly pulled King from the car, handcuffed him, and put him in the backseat of his SUV. As he was doing so, King told Officer Pridmore that Brown had a gun. Officer Pridmore radioed for back-up and gave chase with his K-9.

Notably, King testified that up to this point in time, Officer Pridmore hadn't done anything that King felt was wrong; in fact, he said that the officer "did what he was supposed to do." At some point, a tow truck was called to the scene and the Monte Carlo was hoisted onto the truck, but it wasn't driven away.

A number of police officers reported to the scene (Hill and Archer among them) to help search the woods and surrounding area, which included a residential neighborhood. As they were conducting their search, several people stopped by to report that Brown had been seen in the neighborhood. King conceded at deposition that it was (obviously) a dangerous situation for Brown, while armed with a gun, to be running around and hiding from the police in a residential neighborhood.

At various points during the search, the officers asked King questions about Brown. King (who had already voluntarily told the officers about the gun), gave them Brown's real name, told them about his outstanding warrants, and provided them with his cell phone number.[3] King testified that he was willing to help the officers—and in the process he hoped to help himself—because he knew that he had violated the law and was at risk of being put back in jail, and he was worried that his girlfriend's car was going to be towed.

After looking for Brown for about an hour without success, the officers got tired and frustrated. They once again approached King—who was still handcuffed in the backseat of Officer Pridmore's SUV—and tried to get him to do more to help with their search. King testified as follows (emphasis added):

> A: . . . So when they got tired, they came back with me, like, f**k him, *you don't want to help us out, we're going to throw—we're going to hit you with this charge, you gonna start f**king us over, we'll f**k over you. I don't know where you get your car back.* You have to cooperate and help us catch him.
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> Q: Did they tell you what charges that they were going to put on you, as you say?
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> A: No.
>
> Q: They weren't specific about any charges?

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[3] The officers tried to call Brown on the cell phone number that King provided, but he wouldn't answer.

> A: No, because, I mean, first of all, I ain't got no—they still hadn't told me why I got pulled over.
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> Q: Well, you knew you didn't have that car tag; right?
>
> A: Yes. . . . Okay. The lieutenant [Archer] . . . was doing all the talking, like *if you are not going to help us, we're going to get you with this, we're going to try to throw some charges on you; we're going to make sure we f**k over you, if you f**k over us. I don't know where you get your car down*, you've got to cooperate with us. Every now and then a car pulled up and spotted him close. I guess they was trying to give me time to see what I was going to do. So I guess they got tired of it. I got tired of it. I'm already nervous, I'm already fixing to miss out on [a] job. I need to go to TASC. So I'm like, man, can ya'll just stop doing this and get me wherever ya'll got to do and let me go because I didn't do nothing wrong.

Eventually, the officers devised a ruse to try and get Brown. The plan was simple and straightforward: King would tell Brown over the phone that the police had let him go and offer to pick Brown up wherever he was hiding, at which point the officers—who were supposed to be following at a distance—would converge on the scene and arrest him. King told the officers that he did not want to participate in this ruse, but he contends that he was forced into it and agreed to go along only because he was "nervous and scared." Specifically, he testified that:

> A: With the negotiation, the threats, everything they was telling me, if I don't cooperate they're going to throw some charges on me and they going to f**k over me. So in the streets that means it could mean anything. It can mean being shot. It can mean being anything. My life—I was nervous and scared. So I ain't never—
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> Q: What do you mean in the streets that means?
>
> A: Like what that mean, don't f**k over me, I'm going to f**k over you. That mean like if you cross over them, then they're going to deal with you in a bad way, like get shot or killed, anything. So that's how I felt. That's how I was feeling and they left me no choice.

Although King testified at deposition that he was concerned the officers might tow his girlfriend's car and file criminal charges against him—and those were factors in his decision—he claims the threat of physical violence is what ultimately overcame his will and forced him to participate in the ruse. His attorney conceded the point at oral argument, and King made it clear in a post-deposition affidavit, where he averred that (emphasis added):

> *The Defendants' threats of violence against me forced me to pick up Brown.* I was repeatedly asked in my deposition whether I was worried about my girlfriend's car being towed, worried about being charged with traffic offenses, and worried that I had violated [probation]. I testified that I was worried about these things

> and I did not want these things to happen. This is true. I was also concerned about Defendants making false charges against me, or planting drugs or a gun on me. *However, . . . [t]he main reason I picked up Brown is that the Defendants were going to hurt me if I refused. I was ready to go to jail, to have the car towed, pay any traffic offenses, and fight false charges if the Defendants had not threatened to hurt me.*

To be clear, the alleged threats of physical violence against King consisted entirely of the officers telling him "[if] you gonna start f**king us over, we'll f**k over you." That was the only language they used that King perceived to be a threat of violence.[4]

At or around the time that King (very reluctantly) agreed to participate in the ruse, Brown called King's cell phone. Because he was in handcuffs, one of the officers told everyone to be quiet, answered the phone, and put it on speaker so that King could play his part. As they had discussed, King told Brown that the police had let him go and he offered to pick him up, and Brown replied that he was hiding in the woods near a bridge right up the street. King's car was then taken down off the tow truck and the officers let him go retrieve Brown, which he did.

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[4] During his deposition, King was asked to provide all the details and to be as specific as possible about the officers' threats, and that is the only language he mentioned. He was asked several times if the officers had said anything else to him that was relevant to (or part of) his claims in this lawsuit, and he said "no."

Shortly after King picked up Brown near the woods, the officers attempted to pull the Monte Carlo over. As King's car was slowing to a stop, Brown removed the gun from his pocket. When King saw the gun, he told Brown to get out of the car and run. Instead, Brown started shooting at the police through the passenger window. The police returned fire, which King readily concedes they had every right to do. Brown shot Officer Pridmore once, and the officers shot Brown thirteen times. King found himself caught in the crossfire and was shot five times. Fortunately (and incredibly), all the parties survived—albeit with serious injuries. This lawsuit followed.

III.

It is important to make clear at the outset what this case is and is not about. King does not challenge the initial traffic stop itself, and he does not allege that Officer Pridmore did anything wrong during the stop. And, as just indicated, he also doesn't allege that any of the officers were wrong to return fire once Brown started firing at them. Rather, this case centers on what happened between these two events: the ruse that the officers employed to get Brown. Specifically, King contends that he was forced to participate under threats of false criminal charges and physical violence in violation of the Thirteenth and Fourteenth Amendments, and Alabama state law. The District Court held that the officers were entitled to qualified immunity on the constitutional claims and state agent immunity on

the state law claims. We will consider and discuss both immunities in turn.

A. Qualified Immunity

Qualified immunity protects government officials who have been sued in their individual capacity "'unless the law preexisting the defendant official's supposedly wrongful act was already established to such a high degree that every objectively reasonable official standing in the defendant's place would be on notice that what the defendant official was doing would be clearly unlawful given the circumstances.'" *Morton v. Kirkwood*, 707 F.3d 1276, 1280 (11th Cir. 2013) (quoting *Pace v. Capobianco*, 283 F.3d 1275, 1282 (11th Cir. 2002)). To be entitled to qualified immunity, the government official must first establish that he was acting within his discretionary authority at the time of the allegedly unlawful conduct. *Id.* Because it is undisputed that the officers in this case were performing discretionary governmental functions at the relevant time, the burden shifts to King to show (1) that the officers violated the constitutional rights at issue, and (2) that those rights were clearly established at the time of the alleged misconduct. *Id.* at 1281. "These two requirements may be analyzed in any order," *Paez v. Mulvey*, 915 F.3d 1276, 1284 (11th Cir. 2019), but it is "'often beneficial'" to analyze them sequentially. *Plumhoff v. Rickard*, 572 U.S. 765, 774, 134 S. Ct. 2012, 2020, 188 L. Ed. 2d 1056 (2014) (quoting *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 818, 172 L. Ed. 2d 565 (2009)). On the facts of this specific case,

we believe it is appropriate to analyze the two qualified immunity prongs in order because, as will be seen, a discussion of what the officers actually did (for purposes of the first step) informs our decision as to whether that underlying conduct violated clearly established law (at the second step).

(1) Was there a Violation of Constitutional Rights?

At the first step in the qualified immunity analysis, we consider whether the officers violated King's Thirteenth and Fourteenth Amendment rights.

The Thirteenth Amendment provides, in relevant part, that "[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. Amend. XIII, § 1. "While the immediate concern was with African slavery, the Amendment was not limited to that. It was a charter of universal civil freedom for all persons, of whatever race, color, or estate, under the flag. The words involuntary servitude have a 'larger meaning than slavery.'" *Bailey v. State of Alabama*, 219 U.S. 219, 240-41, 31 S. Ct. 145, 151, 55 L. Ed. 191 (1911). "Various forms of coercion may constitute a holding in involuntary servitude. The use, or threatened use, of physical force . . . is the most grotesque example of such coercion." *United States v. Warren*, 772 F.2d 827, 833-34 (11th Cir. 1985). Another example of involuntary servitude is when "the victim is forced to work for the defendant . . . by the use or

threat of coercion through law or the legal process." *United States v. Kozminski*, 487 U.S. 931, 952, 108 S. Ct. 2751, 2765, 101 L. Ed. 2d 788 (1988). The temporal duration of the involuntary servitude need not be long; it "can be slight." *United States v. Pipkins*, 378 F.3d 1281, 1297 (11th Cir. 2004), *vacated on other grounds, but later reinstated*, 412 F.3d 1251 (11th Cir. 2005).

The Fourteenth Amendment provides, in relevant part, that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. Amend. XIV, § 1. "The Supreme Court has interpreted this clause to provide two distinct guarantees: substantive due process and procedural due process." *DeKalb Stone, Inc. v. Cty. of DeKalb, Ga.*, 106 F.3d 956, 959 (11th Cir. 1997) (citing *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d 100 (1990)). The right to substantive due process—the claimed right at issue in this case—protects individuals from arbitrary conduct by government officials that "shocks the conscience." *See id.; see also Waddell v. Hendry Cty. Sheriff's Office*, 329 F.3d 1300, 1305 (11th Cir. 2003). "The somewhat nebulous 'shocks the conscience' phrase has taken on different meanings in different cases, depending on a given case's factual setting." *Nix v. Franklin Cty. Sch. Dist.*, 311 F.3d 1373, 1375 (11th Cir. 2002). It has generated "[c]onfusion in jurisprudence that can be fairly described as untethered from the text of the Constitution," and, for that reason, "the Supreme Court has been 'reluctant to expand the concept of substantive due process.'" *Echols*

v. Lawton, 913 F.3d 1313, 1326 (11th Cir. 2019) (quoting *Collins v. Harker Heights*, 503 U.S. 115, 125, 112 S. Ct. 1061, 1068, 117 L. Ed. 2d 261 (1992)). Thus, to prove a substantive due process violation, plaintiffs face a very "high bar." *Maddox v. Stephens*, 727 F.3d 1109, 1119 (11th Cir. 2013); *see also Nix*, 311 F.3d at 1379 ("Substantive due process is a doctrine that has been kept under tight reins, reserved for extraordinary circumstances."). Indeed, "[e]ven intentional wrongs seldom violate the Due Process Clause, and 'only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.'" *Maddox*, 727 F.3d at 1119 (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846, 118 S. Ct. 1708, 1716, 140 L. Ed. 2d 1043 (1998)).

King contends that the officers forced him to "work" for them under threat of false criminal charges and physical violence. For our analysis, we will assume, *arguendo*, that it would indeed violate the Thirteenth and Fourteenth Amendments if the officers had made such threats. But that begs the question: is there evidence they actually did that?

As for the alleged false charges, King testified that the officers never told him they were going to charge him with any specific crime, let alone false crimes. The officers never said or implied, for example, that they would plant evidence on him and charge him with a drug or firearm offense (or any other false crime) if he didn't help them. According to King, the officers merely told him that they would "throw some charges on [him]" if he didn't agree to participate in their ruse.

It is undisputed, however, that there were several different offenses that he could have been lawfully charged with—at least three motor vehicle violations and being in the presence of a convicted felon while on probation. It simply doesn't violate the Constitution for police officers searching for an armed fugitive running and hiding in a residential neighborhood to tell his confederate who has himself violated the law that he could be charged unless he helps find him. The police lawfully use the same or similar tactics to encourage and incentivize people to assist law enforcement all the time. To be sure, confidential informants don't usually agree to help the police out of a sense of altruism or civic duty but, rather, because they are facing arrest and have been threatened with prosecution for their own criminal conduct. Thus, even taking King's testimony as true and drawing all reasonable inferences in his favor, there is no evidence that the officers threatened him with false charges. King is essentially asking us to speculate that when the officers said they were going to "throw some charges on [him]" that meant *false* charges. This we cannot do since there is no evidence to support it. *See*, *e.g.*, *Chapman v. Am. Cyanamid Co.*, 861 F.2d 1515, 1518 (11th Cir. 1988) (explaining that although reasonable inferences must be drawn in favor of the non-movant on summary judgment, "an inference based on speculation and conjecture is not reasonable"); *see also Lee v. Celotex Corp.*, 764 F.2d 1489, 1491 (11th Cir. 1985) ("The allegation that plaintiff [relied on to avoid summary judgment] is not supported by reasonable inferences arising from the undisputed facts, but is based on speculation and

conjecture that renders them mere guesses or possibilities.").[5]

As for the alleged threats of physical violence, the evidence is similarly thin. If the officers had told King "help us, or we're going to f**k you up" (or something like that) then King would have a more compelling argument. But that isn't what he said they said. Instead, King testified that the officers told him "[if] you don't want to help us out, we're going to throw—we're going to hit you with this charge, you gonna start f**king us

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[5] Although King conceded at deposition that the officers never threatened to charge him with any specific crime, he stated in his post-deposition affidavit that he was "concerned" they were going to plant drugs or a gun on him and charge him with a false crime. He argues in his brief on appeal that this was a reasonable inference to draw because the officers had threatened him with "serious" charges, and the offenses that he committed weren't serious. We see at least three problems with this argument. First, there is no evidence in the record to support this argument. King never said at his deposition (or in his affidavit) that the officers threatened him with "serious" charges. He said only that they threatened to "throw *some* charges" on him. Second, even if the officers had threatened him with serious charges and the offenses that he committed wouldn't usually qualify, the consequences of his being charged with those minor offenses in this case—i.e., his girlfriend's car being towed and the possibility if not probability that his probation would be revoked and he would be sent back to prison—were things that most people (both civilians and law enforcement alike) would consider serious. Third and lastly, it bears noting that even if we accept that the officers threatened him with serious and false charges, King testified that he was willing to fight those charges in court. Thus, as earlier noted (and as his attorney acknowledged at oral argument), it wasn't the threat of false charges that he claims overcame his will and forced him to assist in the ruse. It was the alleged threat of physical violence, which we will discuss next in the text above.

over, we'll f**k over you. I don't know where you get your car back." Thus, when the "if you f**k over us, we'll f**k over you" language is viewed *in the context that King himself provides*, it is clear the officers were warning him that if he did something that they perceived as bad to them first (i.e., not participate in the ruse), then they would respond in kind and do something bad to him, specifically by charging him and towing his girlfriend's car for an indefinite duration.

In short, based on the facts as taken from King's own deposition testimony, the officers didn't violate the Thirteenth or Fourteenth Amendment. Nevertheless, as will be seen next, we don't have to (so we don't) hang our hat solely on that peg of the analysis.

(2) Was the Law "Clearly Established"?

Assuming that King has shown a violation of the Thirteenth and Fourteenth Amendments, we next consider whether it was "clearly established" that what the officers did in this case violated his rights thereunder. In doing so, we must apply a "wholly objective" standard:

> The qualified immunity defense embodies an objective reasonableness standard, giving a government agent the benefit of the doubt, provided that the conduct was not so obviously illegal in the light of then-existing law that only an official who was incompetent or who knowingly was violating the law would have committed the acts. Because we have rejected the inquiry into an official's state of

> mind in favor of a wholly objective standard, the government actor's intent and motivation are insignificant in determining entitlement to qualified immunity. State officials can act lawfully even when motivated by a dislike or hostility if the record shows that they would have acted in the same way without such sentiments. . . . Whenever a public officer is sued for money damages in his individual capacity for violating federal law, the basic qualified immunity question looms unchanged: Could a reasonable officer have believed that what the defendant did might be lawful in the circumstances and in the light of the clearly established law?

Crosby v. Paulk, 187 F.3d 1339, 1344-45 (11th Cir. 1999) (citations, quotation marks, and brackets omitted). Thus, "[f]or the law to be clearly established to the point that qualified immunity does not protect a government official, pre-existing law must dictate, that is, truly compel (not just suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law in the circumstances." *Hudson v. Hall*, 231 F.3d 1289, 1294 (11th Cir. 2000) (citation and quotation marks omitted). This "standard of objective reasonableness" provides protection to "'all but the plainly incompetent or those who knowingly violate the law.'" *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 925 (11th Cir. 2000) (quoting *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 1096, 89 L. Ed. 2d 271 (1986)).

In undertaking this analysis, we are mindful that the Supreme Court has "repeatedly told courts . . . not to define clearly established law at a high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742, 131 S. Ct. 2074, 2084, 179 L. Ed. 2d 1149 (2011) (citations omitted); *see also White v. Pauly*, ___ U.S. ___, 137 S. Ct. 548, 551-52, 196 L. Ed. 2d 463 (2017) ("In the last five years, this Court has issued a number of opinions reversing federal courts in qualified immunity cases. . . . Today, it is again necessary to reiterate the longstanding principle that 'clearly established law' should not be defined 'at a high level of generality.' As this Court explained decades ago, the clearly established law must be 'particularized' to the facts of the case.") (citations omitted).

For a right to be "clearly established," the contours of the right must be so clear that a reasonable official—again, judged by an objective standard—would know that he was violating that right. *See Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019). A plaintiff can show that the contours of the right at issue were clearly established in one of three ways:

> First, the plaintiffs may show that a materially similar case has already been decided. Second, the plaintiffs can point to a broader, clearly established principle that should control the novel facts of the situation. Finally, the conduct involved in the case may so obviously violate the constitution that prior case law is unnecessary. Under controlling law, the plaintiffs must carry their burden by looking to the law as interpreted at the time by the

> United States Supreme Court, the Eleventh Circuit, or the [relevant State Supreme Court].

Terrell v. Smith, 668 F.3d 1244, 1255-56 (11th Cir. 2012) (citations, quotation marks, and brackets omitted); *id.* at 1256-58 (discussing the three methods in further detail); *see also Vinyard v. Wilson*, 311 F.3d 1340, 1350-53 (11th Cir. 2002) (same).

King agrees that there is no materially similar case on point, so the first method is out. Consequently, the question is whether this case falls under the second or third methods to establish that the law at issue was clearly established.

The second and third methods are known as "obvious clarity" cases. *Gaines v. Wardynski*, 871 F.3d 1203, 1209 (11th Cir. 2017). "They exist where the words of the federal statute or constitutional provision at issue are so clear and the conduct so bad that case law is not needed to establish that the conduct cannot be lawful, or where the case law that does exist is so clear and broad (and not tied to particularized facts) that every objectively reasonable government official facing the circumstances would know that the official's conduct did violate federal law when the official acted." *Id.* (citation, quotation marks, and footnote omitted). In *Dukes v. Deaton*, 852 F.3d 1035 (11th Cir. 2017), we conflated the two methods and referred to them together as a "narrow exception." *Id.* at 1043; *accord Lee v. Ferraro*, 284 F.3d 1188, 1199 (11th Cir. 2002) (same). Cases that fall under this narrow exception are rare

and don't arise often. *Gaines*, 871 F.3d at 1209 (citing multiple cases); *see also*, *e.g.*, *Rowe v. City of Fort Lauderdale*, 279 F.3d 1271, 1280 n.10 (11th Cir. 2002).

In light of the rarity of obvious clarity cases, if a plaintiff cannot show that the law at issue was clearly established under the first (materially similar case on point) method, that usually means qualified immunity is appropriate. *Corbitt*, 929 F.3d at 1312 ("Notwithstanding the availability of [the obvious clarity exceptions], this Court has observed on several occasions that 'if case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant.' ") (citing *Oliver v. Fiorino*, 586 F.3d 898, 907 (11th Cir. 2009), in turn quoting *Priester*, 208 F.3d at 926)).

We have no difficulty concluding that this is not the sort of case that would justify applying the rare and narrow exception to requiring a plaintiff to identify a materially similar case on point. Again, sandwiched in between telling King that they were going to "throw some charges" on him if he didn't help with the ruse, and that they were going to tow his girlfriend's car and they didn't know when or how he would be able to get it back, the officers told him "[if] you gonna start f**king us over, we'll f**k over you." It cannot be maintained that all objectively reasonable officers in their position would have known—*with obvious clarity*—that what they said, in context, would necessarily be understood as a threat of false criminal charges and physical violence in violation of the Constitution. While King may have *subjectively* interpreted the

officers' words to that effect, that is categorically not the standard that we must apply.[6]

In summary, even if the officers violated the Thirteenth and Fourteenth Amendments (and, as discussed earlier, we do not believe they did), those rights were not so clearly established that all objectively reasonable officers in their position would have known that what they said to King violated the Constitution's prohibition against involuntary servitude or its "nebulous" doctrine of substantive due process.

B. State Agent Immunity

Alabama law provides state agents with "immunity from tort liability arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties." Ala. Code § 6-5-338(a). As we recently noted in *Hunter v. Leeds, City of*, 941 F.3d 1265 (11th Cir. 2019), the restatement of state-agent immunity that the Alabama Supreme Court set forth in *Ex parte Cranman*, 792 So. 2d 392 (Ala. 2000), governs whether the officers are entitled to immunity under § 6-5-338(a). *Id.* at 1283 (citations omitted). The test laid out in *Cranman*,

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[6] Even if King's subjective interpretation of what the officers said was reasonable from his point of view, a reasonable officer in their position could have seen it as mere enticement. Indeed, King himself testified that the officers' statement "could mean anything." If what they told King could mean "anything" to someone in his position, it obviously cannot be said that all reasonable officers in their position would have known it to mean an unconstitutional threat of false criminal charges and physical violence.

subsequently modified by *Hollis v. City of Brighton*, 950 So. 2d 300 (Ala. 2006), provides in relevant part as follows:

> A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's . . . exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers' arresting or attempting to arrest persons, or serving as peace officers under circumstances entitling such officers to immunity pursuant to § 6-5-338(a).

Hunter, 941 F.3d at 1283 (quoting *Ex parte City of Homewood*, 231 So. 3d 1082, 1087 (Ala. 2017) (quotation marks and citations omitted)). In other words, law enforcement officers are generally immune from tort liability for conduct that falls within the scope of their discretionary law enforcement duties. *Id.* (citing *Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 741 (11th Cir. 2010)). However, there are exceptions to this general rule. Specifically, "a state agent is not entitled to state-agent immunity if (1) the U.S. Constitution, federal law, the state Constitution, or state laws, rules, or regulations enacted or promulgated for the purpose of regulating the activities of a governmental agency, require otherwise; or (2) the agent acts 'willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law.'" *Id.* (citations omitted).

The test for discretionary function and state-agent immunity follows the same burden-shifting analysis as the test for federal qualified immunity. *Hunter*, 941 F.3d at 1283. First, the officer asserting immunity has the burden to show that the plaintiff's claims arise from a function that would entitle the officer to immunity. *Id.* (citations omitted). The burden then shifts to the plaintiff to show that one of the two aforementioned exceptions applies. *Id.* Because the officers here were performing discretionary law enforcement functions at the relevant time, the burden shifts to King to show "either that they failed to discharge their duties in accordance with the law or that they acted willfully, maliciously, fraudulently, in bad faith, beyond their authority, or under a mistaken interpretation of the law." *Id.* at 1283-84.

This Court has observed several times that because the Alabama Supreme Court has largely equated federal qualified immunity with state discretionary-function immunity, "the same facts which establish an entitlement to qualified immunity may also establish that the officers are entitled to discretionary-function immunity." *Id.* at 1284; *accord id.* ("For the same reasons that Jackson, Reaves, and Chalian are entitled to qualified immunity on Hunter's § 1983 claim, we find that they are also entitled to discretionary-function immunity on Hunter's state-law claims."); *see also*, *e.g.*, *Sheth v. Webster*, 145 F.3d 1231, 1239-40 (11th Cir. 1998) ("Under both Alabama law and federal law, the core issue is whether a defendant violated clearly established law . . . The same facts which establish

Sergeant Williams' entitlement to qualified immunity establish that his acts were not willful, malicious or in bad faith. The Alabama Supreme Court has equated qualified immunity with discretionary function immunity.").

For the same reasons that the officers are entitled to qualified immunity on King's § 1983 claims, we find that they are also entitled to discretionary-function immunity on his state law claims.[7]

IV.

The decision by the District Court granting the officers qualified immunity on the federal claims and state agent immunity on the Alabama state law claims is **AFFIRMED**.

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[7] We recognize, as was noted in *Sheth*, "that entitlement to qualified immunity under federal law will [not] always entitle a defendant to discretionary function immunity." 145 F.3d at 1240 n.8. But we find that result justified on the facts of this case. Because federal and state law do not "require otherwise," and because there is insufficient evidence that the officers acted "willfully, maliciously, fraudulently, in bad faith, beyond [their] authority, or under a mistaken interpretation of the law," we don't find it necessary to undertake a separate analysis. The same reasons that entitle the officers to qualified immunity here entitle them to state agent immunity.

ROSENBAUM, Circuit Judge, concurring in the judgment:

I concur in the judgment. As for footnote 2, the point there is that it is "undisputed that King knew Brown well enough to know that Brown . . . was a convicted felon." *See* Op. at 4 n.2. In fact, King outright admitted knowing before the events at issue in this case that Brown was a convicted felon. ECF No. 65-3 at 23(87-88). That fact has never been in dispute. For that reason, I fail to see the purpose of the rest of footnote 2.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

TRINELL KING,	]	
Plaintiff,	]	
v.	]	**CIVIL ACTION NO. 2:17-CV-174-KOB**
COREY ARCHER, *et al.*,	]	
Defendants.	]	

MEMORANDUM OPINION

(Filed Sep. 6, 2018)

In this § 1983 case, the police used Plaintiff Trinell King as unwilling bait in an impulsive fishing expedition that, unsurprisingly, went awry. Mr. King claims that Defendants Corey Archer, Ricky Pridmore, and Andrew Hill, all officers with the City of Warrior police department, violated the Fourteenth Amendment's guarantee of substantive due process by acting with deliberate indifference to his health and safety. Mr. King also brings state-law claims of negligence, wantonness, and false imprisonment. The case is now before the court on the Officers' motions for summary

judgment as to all claims. (Docs. 63, 67).[1] Also before the court is the Officers' "Motion to Strike." (Doc. 85).

The court will DENY the Officers' motion to strike. (Doc. 85). The court will GRANT the Officers' motions for summary judgment. (Docs. 63, 67).

In short, Mr. King asserts that the Officers threatened to injure him or prosecute him on false charges unless he agreed to help them in their half-baked sting operation. Mr. King, who received several gunshot wounds as a reward for acting as the Officers' lure in the botched sting, explains that he only agreed to help the Officers because of these threats.

Mr. King argues that, because, by threatening him, the Officers deprived him of his ability to choose whether he participated in the dangerous sting, the Officers are liable under the Fourteenth Amendment for their deliberate indifference to the safety risks posed to him by the operation. On similar grounds, Mr. King claims that the Officers acted with negligence and wantonness and that their acts resulted in his false imprisonment. The Officers raise qualified immunity as to the § 1983 claim and state-agent immunity as to the state-law claims.

Only for the purpose of deciding the Officers' entitlement to qualified immunity, the court assumes that Mr. King has shown that the Officers acted to deprive

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[1] Each Defendant adopts the others' arguments in their motions for summary judgments; so, in effect, their motions are one in the same.

him of his Fourteenth Amendment right to substantive due process. But to overcome the qualified immunity defense, Mr. King must also show that the right violated by the Officers was clearly established, which, in this case, requires Mr. King to establish that a reasonable officer would have *known* the Officers' acts rendered Mr. King's consent to participate in the sting operation involuntary. Here, although the Officers' acts may have left *Mr. King* with the belief that he had no choice but to participate in the sting, the same acts would not have been plainly or obviously coercive to a *reasonable officer.* Hence, the constitutional violation asserted by Mr. King is not clearly established.

The Officers are entitled to qualified immunity as to Mr. King's Fourteenth Amendment substantive due process claim and state-agent immunity as to Mr. King's state-law claims. The court will GRANT the Officers' motions for summary judgment. (Docs. 63, 67). The court explains its decisions in further detail below.

STANDARD OF REVIEW

Summary judgment is an integral part of the Federal Rules of Civil Procedure. Summary judgment allows a trial court to decide cases when no genuine issues of material fact are present and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56. When a district court reviews a motion for summary judgment, it must determine two things: (1) whether any genuine issues of material fact

exist; and if not, (2) whether the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56). The moving party can meet this burden by offering evidence showing no dispute of material fact or by showing that the non-moving party's evidence fails to prove an essential element of its case on which it bears the ultimate burden of proof. *Id.* at 322-23.

Once the moving party meets its burden of showing the district court that no genuine issues of material fact exist, the burden then shifts to the non-moving party "to demonstrate that there is indeed a material issue of fact that precludes summary judgment." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In reviewing the evidence submitted, the court must "view the evidence presented through the prism of the substantive evidentiary burden," to determine whether the nonmoving party presented sufficient evidence on which a jury could reasonably find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986); *Cottle v. Storer Commc'n, Inc.*, 849 F.2d 570, 575 (11th Cir. 1988). And the court must view all evidence and inferences drawn from the underlying facts in the light most favorable to the nonmoving

party. *Graham v. State Farm Mut. Ins. Co.*, 193 F.3d 1274, 1282 (11th Cir. 1999).

FACTS

Plaintiff Trinell King enjoyed the morning of September 28, 2015, cruising Highway 31 near Warrior, Alabama, in his girlfriend's bright red Chevy Monte Carlo. His passenger, Donovan Brown, a convicted felon, carried a pistol and apparently few qualms about using it.[2]

The car Mr. King drove had no license plate. And at around 9:45 AM on that early-fall Monday, Defendant Ricky Pridmore, an officer with the City of Warrior police department, saw Mr. King and the Monte Carlo, noticed that it lacked a license plate, and consequently conducted a traffic stop. During the stop, Officer Pridmore discovered that Mr. King also did not have a driver's license. And, worse, Mr. King was serving a criminal sentence, having been released on probation. Mr. King's choices to drive a car without a license plate, drive a car without a valid driver's license, and associate with a convicted felon would have been sufficient under Alabama law to revoke his probation.

When Officer Pridmore returned to his patrol car to attempt to verify Mr. King's and Mr. Brown's identities, Mr. Brown told Mr. King that he was carrying a

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[2] In his deposition Mr. Brown testified that he "had" to shoot at the police officers who attempted to arrest him because he felt that Mr. King "sold [him] out" to the police. (Doc. 65-9 at 11).

gun, that he had outstanding warrants for his arrest, and that he wanted to flee. Almost as soon as he said those words, Mr. Brown bailed out of the car and fled into the woods alongside the highway.

When Mr. Brown fled, Officer Pridmore quickly detained Mr. King and secured him inside the patrol car. Defendant Corey Archer, a lieutenant with the City of Warrior police department, arrived on the scene minutes later. Defendant Andrew Hill, a detective, also arrived at the scene. The three officers—assisted by Officer Pridmore's K-9—then began searching for Mr. Brown in the nearby wooded area.

Mr. King remained detained in Officer Pridmore's patrol vehicle for the duration of the search, which lasted until around 11:00 AM. During that time, Mr. King freely offered assistance to the Officers, telling them what he knew about Mr. Brown—including that Mr. Brown had a gun—and showing the police where he picked up Mr. Brown. The Officers' search, however, was unsuccessful.

The Officers called a tow truck to remove the Monte Carlo from the scene; they intended to write Mr. King a ticket and then grab lunch. Yet, before towing the vehicle, the Officers devised a plan to catch Mr. Brown. Their plan required Mr. King's assistance.

As Mr. King relates the events, the Officers surrounded Mr. King—who remained handcuffed in the back of the patrol car—and told him that, if he refused to play the role of bait, they would tow his girlfriend's car and bring "serious" charges against him. And, the

Officers summarily informed Mr. King that if he "fuck[ed] over" the police, they would "fuck [him] over" as well. (Doc. 81 at 17).

In his deposition, Mr. King testified that he perceived this latter statement as a threat to physically injure him because "in the streets" such statement could mean "anything," including physical violence. (Doc. 65-3 at 53). In an affidavit submitted after his deposition,[3] Mr. King averred that his belief that the Officers would physically injure him as reprisal for refusing to cooperate was the main factor motivating him to help in the sting operation.

At some point during the exchange, Mr. Brown called Mr. King's cell phone. At the Officers' direction, Mr. King answered the call, said that he had been released, and asked Mr. Brown about his current location. Mr. Brown told Mr. King that he was in the woods nearby. At the Officers' direction, Mr. King offered to pick up Mr. Brown.

Lieutenant Archer and Detective Hill planned to use Mr. King to capture Mr. Brown. They told Mr. King to pick up Mr. Brown in the Monte Carlo and drive onto the nearby interstate highway. And they told Mr. King that they and other officers—five or six in total—would be following close behind. Lieutenant Archer and Detective Hill planned to stop the vehicle on the

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[3] The Officers have asked the court to strike Mr. King's affidavit, which Mr. King only provided after the Officers filed the motions for summary judgment currently before the court. The court denies that request as discussed in further detail below.

interstate, ideally in an area with a wall to prevent a second escape by Mr. Brown. The Officers told Mr. King to tell Mr. Brown to throw away his gun before allowing him into the car.

Mr. King agreed to participate, but he maintains that he only did so because the Officers threatened to hurt him or prosecute him on false charges if he refused. The Officers removed Mr. King's handcuffs and lowered the Monte Carlo from the tow truck and returned its keys to him. Mr. King drove away as directed and picked up Mr. Brown.

But, the ruse did not fool Mr. Brown. Mr. King tried to confirm that Mr. Brown did not have his gun, but Mr. Brown, perhaps contemplating revenge, lied and told him that he had left it in the woods. Mr. King then drove toward the interstate highway as directed. But Mr. King or Mr. Brown saw the officers behind them before they drove onto the highway; worse, the officers attempted to conduct the traffic stop too soon. Mr. King then stopped or attempted to stop the car and told Mr. Brown to get out of the car.

Mr. Brown refused, choosing instead to open fire on the police; the Officers responded likewise. Mr. Brown testified in his deposition that he shot at the police in part because he wanted to get revenge on Mr. King for helping the police catch him.

As Mr. Brown intended, Mr. King found himself caught in the crossfire; he was shot five times. The police shot Mr. Brown 13 times, and Mr. Brown shot Officer Pridmore once. Miraculously, all parties

survived—albeit with serious injuries. Mr. King subsequently filed the instant lawsuit.

MOTION TO STRIKE

The court first addresses the Officers' motion to strike. The Officers ask that the court exclude three of Mr. King's submissions of evidence: (1) an audio recording of an investigator's interview with Mr. King during his post-shooting hospitalization; (2) a compilation of summaries prepared of that interview by investigators; and (3) Mr. King's post-deposition affidavit (doc. 80-1).

The court will DENY the Officers' motion as to the audio recording of Mr. King's interview and the compilation of summaries prepared of the interview. The court agrees, however, that—considered or not—neither piece of evidence "affect[s] the outcome of this case under the governing substantive law." (Doc. 85 at 5). In light of that conclusion, the court sees no reason to consider the issue further.

Conversely, the court's potential rejection of Mr. King's post-deposition affidavit *could* alter the outcome of the Officers' summary judgment motions. In his post-deposition affidavit, Mr. King avers (1) that no one asked him at his deposition whether the Officers threatened to physically harm him if he failed to cooperate, and (2) that the Officers, in fact, threatened to physically harm him if he failed to cooperate.

The Officers move to strike Mr. King's post-deposition affidavit on the ground that, at his deposition and despite being asked whether he had omitted any critical facts relevant to why he participated in the sting operation, Mr. King failed to mention that the Officers threatened to physically harm him if he did not cooperate in their sting operation. Although the Officers do not argue that Mr. King *directly* contradicts his deposition testimony in his affidavit, they contend that his omission of these critical facts amounts to acknowledging that the Officers *did not* threaten to physically injure him.

The motion to strike relies on the principle that a court should disregard as a "sham" the content of a post-deposition affidavit to the extent it directly contradicts earlier deposition testimony without explanation. *See Tippens v. Celotex Corp.*, 805 F.2d 949, 953 (11th Cir. 1986). And a thin line exists between discrepancies that create "sham" affidavits and discrepancies that create credibility issues. While the court may disregard an affidavit in the former case, a jury must resolve the latter. *Id.* at 953-54.

The court finds that Mr. King did not testify inconsistently in his deposition and in his affidavit. Mr. King testified that he *perceived* certain remarks made by the Officers as *implied* threats to physically harm him. For example, in his deposition, Mr. King said—somewhat unclearly—that he interpreted the Officers' statement that "we're going to make sure we f--- over you, if you f--- over us" as an *implied* threat of physical violence as reprisal for refusing to cooperate in the

sting operation. And, in his deposition, Mr. King made known his belief that "in the streets" the Officers' remarks "could mean anything," including physical violence. (Doc. 65-3 at 53).

The court sees Mr. King's post-deposition affidavit as a clarification of that testimony. Indeed, in his affidavit, Mr. King states—just as he did in his deposition—that he *felt* threatened and that he *feared* physical reprisal if he refused to participate in the sting operation. Likewise, in his response to the Officers' motion to strike, Mr. King acknowledges that his affidavit simply "articulat[ed] what he thought and felt, not what someone else thought and felt." (Doc. 92 at 5). Accordingly, the court will not strike Mr. King's affidavit as a sham. *See Tippens*, 805 F.2d at 953.

Yet the court also finds that, by failing to identify any *specific* and *express* threat in response to the Officers' counsel's request at the deposition to identify significant information relevant to his claims that he had not yet testified about, Mr. King implicitly acknowledged that the Officers *did not* make any *specific* and *express* threat to injure him. The Officers' counsel asked Mr. King if he had failed to mention any other significant facts, and an express statement from the Officers such as, "We will hit you if you refuse to help us," is nothing if not significant. (Doc. 65-3 at 39). Mr. King thus had sufficient opportunity at his deposition to identify any *express* threats of physical harm; further, the broad questions counsel asked of him required him to identify any such threats. Likewise, in his affidavit, Mr. King does not identify what, if

anything, the Officers said that he might have interpreted as an *express* threat. Instead, he only generally states that the Officers threatened him.

In sum, the court will not strike Mr. King's affidavit as requested by the Officers, but the court also cannot reasonably infer from Mr. King's testimony or affidavit that the Officers made an express threat to harm him. The court will DENY the motion to strike.

DISCUSSION

The court turns next to the substance of Mr. King's claims. Mr. King argues that the Officers violated the Fourteenth Amendment's guarantee of substantive due process by forcing him to assist in Mr. Brown's capture. He also contends, under Alabama law, that the Officers acted negligently and wantonly in planning the sting operation and that the Officers falsely imprisoned him. The court addresses Mr. King's § 1983 claim first and then his state-law claims. Ultimately, Mr. King fails to overcome the significant barriers of qualified immunity and state-agent immunity. The court, therefore, will grant the Officers' motions for summary judgment in all respects.

I. Fourteenth Amendment Substantive Due Process Claim (Count 1)

Through § 1983, Mr. King asserts that the Defendant Officers violated his Fourteenth Amendment right to due process by forcing him to participate in the

capture of a dangerous fugitive. The Officers assert qualified immunity.

The applicability of qualified immunity presents a question of law for the court. *Lee v. Ferraro*, 284 F.3d 1188, 1190 (11th Cir. 2002). To be eligible for qualified immunity, a government official must first establish that he was acting within the scope of his discretionary authority when the alleged wrongful acts occurred. *Id.* at 1194. The burden then shifts to the plaintiff to show that qualified immunity is inappropriate. *Id.* The claim of qualified immunity then fails only if the plaintiff has shown the deprivation of a clearly-established constitutional right. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001); *see also Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (holding that courts may conduct *Saucier*'s analysis in any order).

The parties do not contest that, in interrogating Mr. King and conducting the sting operation, the Officers acted within their discretionary authority. In consequence, the court must only determine whether the Officers violated a clearly-established constitutional right.

Mr. King claims that the Officers deprived him of his Fourteenth Amendment substantive due process rights first by "forcing him to participate in [the Officers'] dangerous sting operation by threatening to hurt him and (to a lesser extent) bring false charges against him," and second by "failing to protect him from the real threat of being shot by [Mr.] Brown during the sting." (Doc. 81 at 36). He points specifically to the

Officers' threats that they would bring "serious" charges against him as evidence that the Officers intended to prosecute him on false charges and he points to the Officers' statement that they would "f--- [him] over" as evidence that the Officers intended to injure him.

From those remarks, Mr. King concludes that, under the circumstances, he did not face the permissible choice of jail or participation in the sting, but the impermissible choice of participation in the sting or violent retaliation from the police. The court will assume, for the purpose of this Opinion, that these assertions suffice to show a constitutional violation under the Fourteenth Amendment under the circumstances. Nevertheless, the asserted constitutional violation—that the Officers forced Mr. King to participate in a dangerous sting operation with deliberate indifference to his health and safety in violation of the Fourteenth Amendment—is not clearly established.

Mr. King confronts a mighty obstacle in setting out a *clearly established* constitutional violation. "For the law to be clearly established to the point that qualified immunity does not protect a government official, 'preexisting law must dictate, that is, truly compel (not just suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law in the circumstances.'" *See Hudson v. Hall*, 231 F.3d 1289, 1294 (11th Cir. 2000). A government official is entitled to qualified immunity unless *only* a plainly incompetent official or one who was knowingly violating

the law would have committed the acts alleged to have violated the Constitution. *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

As noted above, Mr. King argues that the Officers violated a clearly-established constitutional rule derived from the Fourteenth Amendment. The Fourteenth Amendment's due process clause protects individuals from arbitrary and conscience-shocking abuses of power by government officials that deprive them of life, liberty, or property; this right is known as "substantive due process." *See* U.S. Const, Amend. XIV; *see*, *e.g.*, *Waddell v. Hendry Cnty. Sheriff's Office*, 329 F.3d 1300, 1305 (11th Cir. 2003). But, in this case, the parties do not dispute that Mr. Brown, not the Officers, directly created and caused the harms that befell Mr. King. And, under the Fourteenth Amendment, a government official generally does not carry a duty to shield people from harms created and caused by third parties. *See White v. Lemacks*, 183 F.3d 1253, 1257 (11th Cir. 1999).

But when a government official possesses a custodial power over a person and displaces that person's ability to protect himself, the official's deliberate indifference to that person's safety from predictable third-party harms may "shock the conscience" and violate the Fourteenth Amendment. *See Vaughn v. Athens*, 176 Fed Appx. 974, 977 (11th Cir. 2006) (concluding that plaintiff who State released from jail on personal recognizance in exchange for work as confidential informant was not under the government's "custodial power" and, therefore, defendant state agents had no

automatic duty under the Fourteenth Amendment to protect plaintiff from third-party harms suffered in the course of plaintiff's work as confidential informant). As the Eleventh Circuit has stated: "the only relationships that automatically give rise to a governmental duty to protect individuals from harm by third parties under the substantive due process clause are custodial relationships, such as those which arise from the incarceration of prisoners or other forms of involuntary confinement through which the government deprives individuals of their liberty and thus of their ability to take care of themselves." *White*, 183 F.3d at 1257; *see also County of Sacramento v. Lewis*, 523 U.S. 833, 850-52 (1998).

Furthermore, courts have observed that "deliberate indifference" is only the *minimal* intent necessary to establish a Fourteenth Amendment violation. *Waddell*, 329 F.3d at 1306. The Supreme Court has suggested that the requisite intent may be higher depending on the circumstances, which include the state actor's ability to deliberate about whether action or inaction might protect a person from third-party harms. *Lewis*, 523 U.S. at 850-52.

At the time of the sting that resulted in his injuries, Mr. King was not confined or otherwise incarcerated in the traditional sense. But the state cannot evade liability for a shark attack when it forced the victim to play the role of bait—a role that carries predictable and inherent risks of harm. *Cf. Vaughn*, 176 Fed. Appx. at 977 (affirming dismissal of Fourteenth Amendment deliberate-indifference claim based on

qualified immunity because plaintiff was not in custody and "the complaint does not allege that [the plaintiff] was forced to function as an informant."). In that situation, government officials invite liability under the Fourteenth Amendment for their deliberate indifference to the victim's safety because, by their actions, they remove the victim's ability to choose whether he faces those inherent risks. The victim survives or avoids harm at the state's discretion, not his own. *See DeShaney v. Winnebago Cnty. Dep't of Social Servs.*, 489 U.S. 189, 199-200 (1998) ("The affirmative duty to protect arises . . . from the limitation [that the state] has imposed on [the victim's] freedom to act on his own behalf."); *see also K.H. v. Morgan*, 914 F.2d 846, 848-49 (7th Cir. 1990) (Posner, J.) ("[T]he state would be a doer of harm . . . just as the Roman state was a doer of harm when it threw Christians to the lions."). Therefore, if the Officers deprived Mr. King of his ability to choose whether he participated in the sting, the law burdened the Officers with an affirmative duty to protect Mr. King from Mr. Brown's violent acts.

So, in this case, the critical question is whether Mr. King voluntarily consented to act as bait, or whether the Officers forced him on the hook, making them responsible for the harms Mr. King suffered during their fishing expedition. And, to show that a constitutional violation premised on a lack of voluntary consent[4] was

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[4] As noted above, the court assumes that Mr. King established that he did not voluntarily consent to participate in the sting. To find that an individual voluntarily consented, the court would consider the totality of the circumstances and conclude that

"clearly established," a plaintiff must identify case law "holding that a similar statement in similar circumstances was sufficiently coercive to render an otherwise-voluntary consent involuntary." *See Hudson*, 231 F.3d at 1297 (addressing under § 1983 and Fourth Amendment whether clearly established violation existed when defendant police officer, after making coercive remark, searched plaintiff without his consent).

Here, the acts that Mr. King asserts resulted in his consent becoming involuntary were, first, the Officers' remarks to him that they would bring "serious" charges against him and, second, the Officers' remarks to him that they would "f--- [him] over." Mr. King points to no cases with similar statements and similar circumstances that would have put the Officers on notice that their remarks were improperly coercive. The court has likewise found no sufficiently similar cases.

Instead, Mr. King argues that the Officers' conduct was so egregious that any reasonable officer would know that this conduct violated Mr. King's constitutional rights. When the coercive nature of a police officer's statements or actions is at issue and no on-point cases otherwise establish their coercive nature, the impropriety of the statements or actions must be "plain" or "obvious" to any reasonable officer under the circumstances. *See Hudson*, 231 F.3d at 1297-98 ("[B]ecause the impropriety of Officer Hall's statement was not

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the individual's decision was "the product of an essentially free and unconstrained choice." *Hudson*, 231 F.3d at 1296 (quoting *United States v. Garcia*, 890 F.2d 355, 360 (11th Cir. 1989)).

obvious and because no materially similar, pre-existing case law was around, a reasonable police officer in the circumstances might not have known that Meadows' consent was involuntary."); *see also Crocker v. Beatty*, 886 F.3d 1132, 1136 (11th Cir. 2018) (observing that a constitutional rule or principle can be clearly established if "every objectively reasonable government official facing the same circumstances would know that his conduct violated federal law at the time he acted.").

But Mr. King overstates the obviousness of the improperly coercive nature of the Officers' remarks in this case. Considering their context and the circumstances, they were not "plainly" or "obviously" improper; even if Mr. King could reasonably interpret the remarks as threats, a reasonable officer would not *know* that these remarks rendered Mr. King's agreement to participate in the sting operation involuntary.

First, Mr. King infers too much from the Officers' use of the word "serious"; on the basis of that word alone, Mr. King concludes that the Officers would plant evidence on him or otherwise prosecute him for crimes he did not commit. Yet Mr. King does not dispute that the Officers made these statements in the context of their threats to revoke his probation and to impound his girlfriend's car. Revocation of probation alone can cause serious consequences.

Nor does Mr. King dispute that the Officers could entice him to cooperate with these prosecutorial *concessions*. And, although the court has found no on-point rule from the Eleventh Circuit, persuasive authority

outside the Eleventh Circuit confirms the generally accepted truth that police officers can entice cooperation—even for cooperation in very dangerous stings—through these types of concessions, at least to a degree. *See Alexander v. DeAngelo*, 329 F.3d 912, 918 (7th Cir. 2003) (Posner, J.) ("[C]onfidential informants often agree to engage in risky undercover work in exchange for leniency. . . . The rub here is that [plaintiff] . . . was intentionally and grossly deceived [about the seriousness of potential charges if she failed to cooperate]. . . . [But] we cannot say that it would have been obvious to the average officer that the deceit employed in this case rose to the level of a constitutional violation.").

And here, even though Mr. King maintains that he did not consider charges that resulted in revocation of his probation to be "serious," most other people, including a reasonable officer, would indeed. Adding to the ire of the court, Mr. King presumably would face the ire of his girlfriend, if her car were impounded—serious indeed. For those reasons, the court cannot say that the Officers' threat to bring "serious" charges against Mr. King would have been plainly or obviously coercive to a reasonable officer.

Second, considered with context, the parallel structure of the Officers' statement that they would "f--- over" Mr. King if he "f--- [ed] over" the police, might suggest, at bottom, that, if Mr. King refused to help the police, they would refuse to help him. That is, if Mr. King would not help, the Officers would not ignore that Mr. King had violated his probation or that he was driving a car without a driver's license. So, even if Mr.

King's interpretation of the Officers' remark is reasonable from his point of view, a reasonable officer could nevertheless see it as innocuous enticement. The statement's ambiguity means that it was neither plainly nor obviously coercive. *See Hudson*, 231 F.3d at 1297-98.

Indeed, Mr. King himself testified that the Officers' statement could have meant "anything," including—but not necessarily—violence. The court agrees: curse-based exclamations derive much, if not all, their meaning from the context and the non-verbal acts that surround them. So, with the right context, the Officers' same remarks could have been plainly improper to a reasonable officer. But here, Mr. King identifies not one non-verbal act by the Officers or other circumstance that would indicate their remarks plainly suggested violence. For example, although Mr. King testified that the officers surrounded him while he was handcuffed, he did not testify that the officers had pulled their guns or other weapons at that point in the encounter or otherwise physically intimidated or threatened him. Taking these circumstances into account, the court cannot *conclude* that the Officers' statements would be plainly or obviously coercive to a reasonable officer.

Lastly, Mr. King urges the court to consider whether the constitutional violation was clearly established through the wide lens of whether he was "in custody" at the time of the shooting. He opines that, because he was "in custody"—*i.e.*, he was not free to leave—at the time of the shooting, the Officers violated a clearly established constitutional right.

True enough, a government official cannot act with deliberate indifference toward the health and safety of an individual over whom he has restrained liberty. *See DeShaney*, 489 U.S. at 199-200. But that general rule alone lacks adequate specificity to put a reasonable officer on notice that the Officers' actions *under these circumstances* violated the Fourteenth Amendment. *See Forrester v. Stanley*, 394 Fed. Appx. 673, 675 (11th Cir. 2010) ("*DeShaney* by no means establishes that it would be clear to a reasonable officer in [the defendant officer's] position that he had an affirmative duty of care to [the plaintiff] or that his conduct violated that duty in contravention of the Fourteenth Amendment.").

Indeed, the Supreme Court has recently reaffirmed that "'clearly established law' should not be defined 'at a high level of generality.'" *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (citations omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). Rather, "the clearly established law must be 'particularized' to the facts of the case." *Pauly*, 137 S. Ct. at 552 (citing *Creighton*, 483 U.S. at 640); *cf. Lewis*, 523 U.S. at 850-51 (opining that the "[r]ules of due process are not . . . subject to mechanical application in unfamiliar territory" and stating that "[d]eliberate indifference that shocks in one environment may not be so patently egregious in another, and our concern with preserving the constitutional proportions of substantive due process demands an exact analysis of circumstances before any abuse of power is condemned as conscience shocking.").

And, particularizing this law to the facts of this case, the legal question of whether the Officers' acts "shock the conscience" turns on whether Mr. King voluntarily consented to lure in Mr. Brown. Because a reasonable officer would not have known that the Officers' remarks deprived Mr. King of any meaningful choice about whether to act as bait, the court must conclude that the Fourteenth Amendment substantive due process violation alleged by Mr. King in this case was not clearly established.

The Officers, therefore, are entitled to qualified immunity. The court will GRANT the Officers' motion for summary judgment as to Mr. King's Fourteenth Amendment Substantive Due Process Claim.

II. State-Law Claims: Negligence, Wantonness, and False Imprisonment (Counts 4, 5, and 7)

In addition to his § 1983 and Fourteenth Amendment substantive due process claim, Mr. King argues that the Officers acted negligently and wantonly in planning the sting operation and that they falsely imprisoned him. The Officers assert that Alabama law entitles them to state-agent immunity on these state-law claims.

In Alabama, "state-agent immunity" generally shields a police officer "from tort liability arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties." Ala. Code § 6-5-338(a). The officer claiming state-agent immunity must first demonstrate

that his actions arose from a function that would entitle him to state-agent immunity, *i.e.*, that his "discretionary function" actions fell "within the line and scope of his or her law enforcement duties." *Ex parte Kennedy*, 992 So. 2d 1276, 1282 (Ala. 2008). If the officer makes that showing, the burden shifts to the plaintiff to show that an exception to state-agent immunity applies. *Id.*

The Officers have shown that their actions arose from their discretionary functions as police officers. Mr. King does not dispute that the Officers detained him and planned the sting operation as part of their duties as police officers—only that the Officers wrongfully coerced him into participating in the sting operation. Because the allegedly wrongful acts arose from the Officers' discretionary effort to enforce Alabama's criminal laws, the burden shifts to Mr. King to identify an exception to state-agent immunity. *See Ex parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000) ("[E]xercising judgment in the enforcement of the criminal laws of the State" constitutes a discretionary function from which state-agent immunity arises).

The Alabama Supreme Court has identified two exceptions to Alabama state-agent immunity: first, "when the Constitution or laws of the United States, or the Constitution of [Alabama], or laws, rules, or regulations of [Alabama] enacted or promulgated for the purpose of regulating the activities of a governmental agency *require otherwise;* or [second] when the State agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken

interpretation of the law." *Cranman*, 792 So. 2d at 405 (emphasis added).

Mr. King offers an argument for each exception. Under the first exception, Mr. King contends that the Officers violated both the U.S. Constitution and Alabama's harassment statute, such that those laws "require otherwise." But Mr. King misreads the first exception to state-agent immunity, incorrectly substituting the term "violates" for the actual text—"require[s] otherwise." *See id.* The question is whether the Constitution or any other law requires *the stripping of immunity* in these circumstances, not whether the Officers might be liable under any particular constitutional provision or statute. *See id.* Reading the exception using Mr. King's construction of the language would, in effect, eviscerate this immunity from suit because an immunity that evaporates upon *any* plausible claim or evidence of liability provides no meaningful protection from suit. *See Giambrone v. Douglas*, 874 So. 2d 1046, 1052 (Ala. 2003) (describing state-agent immunity as an "immunity from suit").

And, here, neither the U.S. Constitution nor Alabama's harassment statute require the stripping of immunity. The Constitution does not require the stripping of immunity for state-law offenses based on the existence of a constitutional violation; indeed, its text does not address the issue at all. Likewise, Alabama's harassment statute says nothing about whether violating it strips a police officer of state-agent immunity. *See* Ala. Code § 13A-11-8(2).

Next, Mr. King contends that the Officers acted beyond their authority, so as to invoke the second *Cranman* exception. Specifically, Mr. King points to the City of Warrior police department regulations that prohibit physical coercion of suspects and dictate that officers "shall not use duress or coercion nor mistreat an accused person in any way when endeavoring to obtain investigative information." (Doc. 81 at 29).

True, a state-agent acts beyond his authority and loses immunity if, in the pursuit of his duties, he fails to follow "detailed rules or regulations." *Giambrone*, 874 So. 2d at 1052 (quoting *Ex parte Butts*, 775 So. 2d 173, 178 (Ala. 2000)). But the failure to follow a rule or regulation erases a state agent's immunity only if the rule provided "specific instructions" to the state agent or was otherwise "checklist-like." *Giambrone*, 874 So. 2d at 1052. The rule or regulation must "remove a [s]tate agent's judgment in the performance of required acts;" "general statements" or standards do not suffice to invoke *Cranman*'s second exception to state-agent immunity. *Id.* In other words, to invoke the second *Cranman* exception, a rule or regulation must be so specific that it removes the state agent's discretion and puts him on notice that certain, specific acts are unacceptable. *See Ex parte Ingram*, 229 So. 3d 220, 230-31 (Ala. 2017) (noting similarities in analysis of beyond-authority exception for state-agent immunity and of "clearly established" constitutional violation for qualified immunity); *see*, *e.g.*, *Giambrone*, 874 So. 2d at 1054 (vitiating state-agent immunity for high-school wrestling coach when he violated specific regulation

prohibiting use of a certain wrestling technique on students).

As the Officers observe, the regulations to which Mr. King points are not the kind of detailed, discretion-stripping regulations contemplated by the Alabama Supreme Court. *See Giambrone*, 874 So. 2d at 1052. Rather, the regulations identified by Mr. King are broad regulations that allow significant discretion to the acting officer to determine what acts constitute "duress" or "coercion." These rules or regulations do not suffice to erase a police officer's state-agent immunity. *See Howard v. City of Atmore*, 887 So. 2d 201, 207 (Ala. 2003) (concluding that correction officer's potential violation of a regulation that required him to intermittently check on incarcerated "drug addicts" did not "strip him of his cloak of [s]tate-agent immunity" because the regulation left to the officer's discretion and judgment the determination of which inmates were drug addicts). Mr. King has thus failed to identify an applicable exception to state-agent immunity.

For those reasons, the Officers are entitled to state-agent immunity as to Mr. King's negligence, wantonness, and false imprisonment claims. The court will GRANT summary judgment in the Officers' favor as to those state-law claims.

CONCLUSION

The court will GRANT the Officers' motions for summary judgment in all respects. The Officers are entitled to qualified immunity as to Mr. King's § 1983

claim and state-agent immunity as to Mr. King's negligence, wantonness, and false imprisonment claims. The court will ENTER SUMMARY JUDGMENT in the Officers' favor on these claims by separate order.

DONE and **ORDERED** this 6th day of September, 2018.

/s/ Karon O. Bowdre
KARON OWEN BOWDRE
CHIEF UNITED STATES
DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

TRINELL KING,	]	
Plaintiff,	]	
v.	]	**CIVIL ACTION NO.**
COREY ARCHER, *et al.*,	]	**2:17-CV-174-KOB**
Defendants.	]	

FINAL ORDER

(Filed Sep. 6, 2018)

For the reasons stated in the court's Memorandum Opinion, filed contemporaneously, the court **GRANTS** Defendants Corey Archer, Ricky Pridmore, and Andrew Hill's motions for summary judgment in all respects. (Docs. 63, 67). The court **DENIES** their "Motion to Strike" docs. 79, 80-1 and 80-2. (Doc. 85). The court **ENTERS SUMMARY JUDGMENT** in favor of Defendants Corey Archer, Ricky Pridmore, and Andrew Hill. Defendant Ray Horn's motions for summary judgment (docs. 62, 69) are **MOOT** because the court previously dismissed Mr. Horn from the suit (doc. 87). As no claims remain in the action, the court **DIRECTS** the Clerk of Court to **CLOSE** this case.

The court taxes costs as paid.

DONE and **ORDERED** this 6th day of September, 2018.

/s/ Karon O. Bowdre
KARON OWEN BOWDRE
CHIEF UNITED STATES
DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14245-HH

TRINELL KING,

Plaintiff - Appellant,

versus

WARRIOR, THE CITY OF, et. al.,
a municipality

Defendants,

RICKY PRIDMORE,
an individual
COREY ARCHER,
an individual
ANDREW HILL,
an individual

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Filed Jul, 30, 2020)

BEFORE: ROSENBAUM and ED CARNES, Circuit Judges, and VINSON,* District Judge.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

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* Honorable C. Roger Vinson, United States District Judge for the Northern District of Florida, sitting by designation.