NO. _____

In The
Supreme Court of the United States

ORRILYN MAXWELL STALLWORTH,
Petitioner,

v.

RODNEY W. HURST,
Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court should recalibrate or reverse the doctrine of qualified immunity.

LIST OF PARTIES

Orrilyn Maxwell Stallworth is the Plaintiff/Petitioner.

Rodney W. Hurst, a Chilton County, Alabama Sheriff's Deputy sued in his individual capacity, is the Defendant/Respondent.

CORPORATE DISCLOSURE STATEMENT

Orrilyn Maxwell Stallworth is an individual.

Rodney W. Hurst is an individual.

LIST OF ALL PROCEEDINGS

United States District Court for the
Middle District of Alabama
Civil Action No. 2:18-cv-1005-RAH-SRW
Orrilyn Maxwell Stallworth v. Rodney W. Hurst
Date of Entry of Judgment: February 5, 2021.
The Court's decision is not officially published; it is available at 2021 WL 413524.

United States Court of Appeals for the
Eleventh Circuit
Docket No. 21-10731
Orrilyn Maxwell Stallworth v. Rodney W. Hurst
Date of Opinion: December 30, 2021
The Court's decision is not officially published; it is available at 2021 WL 6143557.

TABLE OF CONTENTS

QUESTIONS PRESENTED……i

LIST OF PARTIES……ii

CORPORATE DISCLOSURE STATEMENT……..ii

LIST OF ALL PROCEEDINGS……..…..…ii

TABLE OF CONTENTS……..……..iii

TABLE OF AUTHORITIES……v

Cases……v

Statutes……....viii

Other Authorities……..……viii

PETITION FOR WRIT OF CERTIORARI……1

OPINIONS AND ORDERS BELOW……..1

JURISDICTION……1

CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED……2

STATEMENT OF THE CASE……3

REASONS FOR GRANTING THE WRIT……..…...23

I. The Court should reexamine the qualified immunity doctrine……..…24

II. The "arguable probable cause" standard has created conflicting and unworkable approaches……28

III. This is an excellent vehicle to reevaluate qualified immunity……...32

IV. Qualified immunity is inconsistent with the text and history of Section 1983……....33

CONCLUSION……36

APPENDIX

APPENDIX A
Court of Appeals Opinion filed December 30, 2021…..……1a

APPENDIX B
District Court's Memorandum Opinion filed February 5, 2021……11a

TABLE OF AUTHORITIES

Cases

Anderson v. Creighton,
483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).....32, 43

Atwater v. City of Lago Vista,
532 U.S. 318, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001).....17

Brown v. City of Huntsville, Ala.,
608 F.3d 724 (11th Cir. 2010).....12, 40

Case v. Eslinger,
555 F.3d 1317 (11th Cir. 2009).....18

City of Tahlequah, Oklahoma v. Bond,
142 S. Ct. 9, 211 L. Ed. 2d 170 (2021).....41, 42, 43

D.C. v. Wesby,
138 S. Ct. 577, 199 L. Ed. 2d 453 (2018).....17

Gates v. Khokhar,
884 F.3d 1290 (11th Cir. 2018).....12, 40

Harlow v. Fitzgerald,
457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).....16, 17, 42, 43, 44

Imbler v. Pachtman,
424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976) 42

Kisela v. Hughes,
138 S. Ct. 1148, 200 L. Ed. 2d 449 (2018).....33

Marx v. Gumbinner,
905 F.2d 1503 (11th Cir. 1990).....18

Morrow v. Meachum,
917 F.3d 870 (5th Cir. 2019).....33

Owen v. City of Indep., Mo.,
445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673
(1980).....42

Patterson v. McLean Credit Union,
491 U.S. 164, 109 S. Ct. 2363, 105 L. Ed. 2d 132
(1989).....44

Payton v. New York,
445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639
(1980).....17

Pearson v. Callahan,
555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565
(2009).....44

Pierson v. Ray,
386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288
(1967).....15, 16, 42

Quintana v. Santa Fe Cty. Bd. of Commissioners,
No. CIV 18-0043 JB\LF, 2019 WL 452755 (D.N.M.
Feb. 5, 2019).....34

Rivas-Villegas v. Cortesluna,
142 S. Ct. 4, 211 L. Ed. 2d 164 (2021).....41

Rodriguez v. Swartz,
899 F.3d 719 (9th Cir. 2018).....33

Saucier v. Katz,
533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001).....44

Scheuer v. Rhodes,
416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974) 16

Scott v. Harris,
550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).....21, 23

Sims v. City of Madisonville,
894 F.3d 632 (5th Cir. 2018).....35

Stallworth v. Hurst,
2021 WL 413524 .....9, 12, 26, 28, 29

Stallworth v. Hurst,
2021 WL 6143557 .....9, 12, 29, 31, 38

Sturgeon v. City of Vestavia Hills,
599 So. 2d 92 (Ala. Crim. App. 1992) 38

Thompson v. Clark,
No. 14-CV-7349, 2018 WL 3128975 (E.D.N.Y. June 26, 2018).....34

Thompson v. Cope,
900 F.3d 414 (7th Cir. 2018).....33

Ventura v. Rutledge,
398 F. Supp. 3d 682 (E.D. Cal. 2019).....34

Washington v. Howard,
25 F.4th 891 (11th Cir. 2022) 12, 13, 18, 39

Williams v. Aguirre,
965 F.3d 1147 (11th Cir. 2020) 13, 14, 18, 36, 37, 38

Wood v. Kesler,
323 F.3d 872 (11th Cir. 2003).....18

Zadeh v. Robinson,
928 F.3d 457 (5th Cir. 2019).....35

Ziglar v. Abbasi,
137 S. Ct. 1843, 198 L. Ed. 2d 290 (2017) 32, 33, 42, 43

Statutes

28 U.S.C. § 1254(1).....9

42 U.S.C. § 1983 .....10, 15, 16, 17, 18, 26

Ala. Code § 32-5A-134.....24

Ala. Code § 32-5A-191.....30

Ala. Code § 32-5A-191(a)(5) 11, 25

Other Authorities

How Qualified Immunity Fails,
127 Yale L.J. 2 (2017) 35, 43

Is Qualified Immunity Unlawful?,
106 Cal. L. Rev. 45 (2018).....35, 42

Police Indemnification,
89 N.Y.U. L. Rev. 885 (2014) 43

The Case Against Qualified Immunity,
93 Notre Dame L. Rev. 1797 (2018) 35

The New Qualified Immunity,
89 S. Cal. L. Rev. 1 (2015) 35

PETITION FOR A WRIT OF CERTIORARI

Petitioner Orrilyn Maxwell Stallworth respectfully prays that this Court grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, entered on December 30, 2021.

OPINIONS AND ORDERS BELOW

The December 30, 2021, *per curiam* opinion of the Eleventh Circuit was designated "DO NOT PUBLISH." It is available at 2021 WL 6143557. It is also reproduced at App. A, 1a-10a.

The Memorandum of the District Court for the Middle District of Alabama, entered February 5, 2021, is unpublished. It is available at 2021 WL 413524. It is also reproduced at App. B, 11a-35a.

JURISDICTION

The Eleventh Circuit issued its Panel Opinion on December 30, 2021. This petition is timely under Supreme Court Rule 13.1, providing that a petition for writ of certiorari may be filed within ninety days of the final judgment (regardless of the mandate). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated …"

RELEVANT STATUTORY PROVISION

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress …

STATEMENT OF THE CASE

INTRODUCTION

The Court should recalibrate or reverse the doctrine of qualified immunity. Justices of this Court and lower court judges have underscored the compelling need to revisit qualified immunity and, even in the absence of these persuasive voices, there are multiple compelling reasons to do so. The doctrine has become nearly impenetrable armor, preventing citizens from vindicating their essential constitutional rights. This is especially so when the "arguable probable cause" standard applies to the analysis, as it adds even additional gloss to a legal barrier that is already all but insurmountable. Qualified immunity, moreover, lacks any statutory or common-law origin. It grew out of judicially expressed policy, but time has shown that it does not effectuate those policies.

This case presents a compelling opportunity for the Court to reevaluate qualified immunity. Here, Respondent, a Chilton County, Alabama Sheriff's Deputy, arrested Petitioner for the alleged offense of driving under the influence in violation of Ala. Code § 32-5A-191(a)(5). Under Alabama law, this particular alleged offense requires that a driver be impaired by a substance *other than* alcohol or controlled substances. Despite the fact that Hurst's investigation of Stallworth clearly showed that he suspected she was under the influence of alcohol, and not some "other substance," the district court found that Hurst acted with at least "arguable probable cause" when he arrested Stallworth, because, the

district court said, Hurst believed that "something was 'not right'" with Stallworth and that Hurst's "on-scene assessment" could not be second-guessed.[1] Similarly, based on Stallworth's "erratic driving, Stallworth's 'glossy' eyes and slurred speech, and Stallworth's deficient performance when completing field sobriety tests," the Eleventh Circuit panel found that Hurst "could have believed that probable cause existed to arrest" Stallworth.[2]

These conclusions, which shielded Hurst from liability based on a vague "something's not right" standard, demonstrate the inherent shortcomings of the "arguable probable cause" standard. Probable cause, of course, is always supposed to be analyzed in light of the elements of the alleged crime and the operative fact pattern.[3]

However, as the Eleventh Circuit itself has recently acknowledged, it has "not always consistently articulated the probable-cause standard in the context of arrests."[4] In *Washington*, a case decided only last month, the Eleventh Circuit purported to make a course correction to articulate the correct legal standard for probable cause.[5] It then concluded that probable cause did not dissipate even though the perpetrator of the crime recanted his identification of his alleged co-conspirator once he

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[1] *Stallworth*, 2021 WL 413524, at *10.
[2] *Stallworth*, 2021 WL 6143557, at *2.
[3] *Gates v. Khokhar*, 884 F.3d 1290, 1298 (11th Cir. 2018) (citing *Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 735 (11th Cir. 2010)).
[4] *Washington v. Howard*, 25 F.4th 891, 898 (11th Cir. 2022).
[5] *See id.* at 902.

saw her in person. The *Washington* court then went even further and held that the constitutional right was not "clearly established" because Washington had not identified a "controlling case or robust consensus of cases," … where a suspect's in-person retraction of an earlier photo identification negated the original identification or caused probable cause to dissipate.[6]

Yet, a mere year and a half ago, the Eleventh Circuit reached the opposite result when it analyzed whether the "any-crime" rule of probable cause applied to both claims of false arrest and malicious prosecution.[7] (Generally, the any-crime rule operates to insulate officers from liability so long as probable cause existed to arrest the suspect for *some* crime, even if it was not the crime the officer thought or said had occurred).[8] As part of its lengthy analysis, the *Williams* court fully acknowledged that, at common law, *probable cause was specific to each accusation.*[9] While the *Williams* court ultimately declined to do

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[6] *See id.* at 903.

[7] *See Williams v. Aguirre*, 965 F.3d 1147, 1160 (11th Cir. 2020).

[8] *See id.* at 1158.

[9] *Id.* at 1160 (emphasis supplied) ("At common law, probable cause was specific to each accusation. English courts refused to allow accusers to raise the existence of probable cause on other charges as a defense to liability. *See Ellis v. Abrahams* (1846) 115 Eng. Rep. 1039, 1041; 8 Q.B. 709, 713–14; *Delisser v. Towne* (1841) 113 Eng. Rep. 1159, 1163; 1 Q.B. 333, 342; *Reed v. Taylor* (1812) 128 Eng. Rep. 472, 473; 4 Taunt 616, 617–18. *But cf. Johnstone*, 99 Eng. Rep. at 1245 (stating in dicta that a plaintiff could not prevail if the false charges "created no additional trouble, vexation, or expense"). American courts adopted this framework and likewise concluded that accusers could not shield themselves from liability by establishing probable cause for other charges.").

away with the any-crime rule in the context of false arrests, it applied the older, common-law rule to the malicious prosecution claim that was at issue in that case. As the *Williams* court wrote:

> Regardless of its applicability to warrantless arrests, the any-crime rule does not apply to claims of malicious prosecution under the Fourth Amendment. Centuries of common-law doctrine urge a charge-specific approach, and bedrock Fourth Amendment principles support applying that approach in the context of the charges that justified a defendant's seizure.[10]

To be sure, Stallworth's arrest was a warrantless arrest, but, as discussed below, Hurst offered Stallworth "two options" at the scene to avoid arrest, a strong indication that, even after he had completed his so-called "investigation," he still lacked probable cause or even arguable probable cause to arrest. Yet, Hurst escaped liability anyway. Thus, like the recent *Williams* and *Washington* cases, which highlight the inherent problems and tensions with the judge-made immunity regime, Stallworth's case provides yet another example of the analytical unworkability of the qualified immunity doctrine.

Too, this case is an especially attractive one for review given that the conduct at issue was not the product of any emergent situation. Rather, Hurst

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[10] *Id.* at 1162.

conducted a deliberative "investigation," but then arrested Stallworth based on a vague "something's not right" feeling rather than articulable probable cause, arguable or otherwise.

LEGAL BACKGROUND

1. Section 1983 was originally enacted as part of the Civil Rights Act of 1871. As part of Congress's efforts to combat lawlessness during Reconstruction, Section 1983 provided individuals with a cause of action to sue state officials who violated their legal or constitutional rights "under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia."[11]

In *Pierson v. Ray*,[12] fifteen white and black clergymen were arrested and charged with a misdemeanor when they attempted to use segregated facilities in Mississippi.[13] The clergymen then sued the officers for false arrest and imprisonment.[14] The Court concluded that, because "the defense of good faith and probable cause" applied to "the common-law action for false arrest and imprisonment," it was available as a defense to the Section 1983 suit.[15] Ultimately, the court reasoned that, in enacting

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[11] 42 U.S.C. § 1983.
[12] *Pierson v. Ray*, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967).
[13] *Id.* at 549.
[14] *Id.* at 550.
[15] *Id.* at 557.

Section 1983, Congress did not "abolish wholesale" then-existing "common-law immunities."[16]

Subsequently, in *Scheuer v. Rhodes*,[17] the Court drew on judicial and legislative immunity doctrines[18]—not doctrines that historically provided immunity to police officers. The Court noted that its decision was driven by "policy consideration[s]," notably the risk that officials may "fail to make decisions when they are needed" or may "not fully and faithfully perform the duties of their offices."[19] From there, the Court concluded that "[t]hese considerations suggest that, in varying scope, a qualified immunity is available to officers of the executive branch of government."[20] The Court determined that this immunity required "the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief."[21]

Qualified immunity fully emerged in *Harlow v. Fitzgerald*.[22] Again the Court focused on perceived policy concerns relating to litigation against public officials: "the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public

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[16] *Id.* at 554.
[17] *Scheuer v. Rhodes*, 416 U.S. 232, 245–248, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974).
[18] *See id.* at 239 n.4.
[19] *Id.* at 241–242.
[20] *Id.* at 247.
[21] *Id.* at 247–248.
[22] *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

office."[23] In light of these policies, the Court reversed the subjective good faith requirement it had adopted in *Scheuer* and other cases.[24] The Court restated the immunity doctrine to "hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[25] In reaching this conclusion, the Court relied on neither statutory text nor common law.

2. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Because arrests are "seizures" of "persons," they must be reasonable under the circumstances.[26] In turn, a warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence.[27]

Conversely, when police officers conduct a warrantless arrest without probable cause, they violate the Fourth Amendment and therefore open themselves to suit under 42 U.S.C. § 1983 for

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[23] *Id.* at 814.
[24] *Id.* at 816–817.
[25] *Id.* at 818.
[26] See *Payton v. New York*, 445 U.S. 573, 585, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980).
[27] *D.C. v. Wesby*, 138 S. Ct. 577, 585–86, 199 L. Ed. 2d 453 (2018) (citing *Atwater v. City of Lago Vista*, 532 U.S. 318, 354, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001).

damages.[28] However, post-*Harlow*, not only is probable cause an absolute bar to a section 1983 action for false arrest, so too is "arguable" probable cause. That is, in the Fourth Amendment context, an officer need only have "arguable" probable cause to claim qualified immunity.[29]

FACTUAL BACKGROUND[30]

Early on Sunday, December 4, 2016, Stallworth, who is a black female and a licensed Alabama lawyer who served as a child and adult abuse investigator and social worker for the Alabama Department of Human Resources for over twenty years, went to church with her daughter and grandchildren.[31] Because she planned on making a lengthy solo drive that day, she then purchased a music CD from Walmart.[32]

Stallworth left her Birmingham residence, in a car she had purchased just the day before, between 3:00 and 5:00 p.m., to drive to Daleville to collect rent for some property she owns there.[33] She left Daleville for the return trip to Birmingham around 7:00 or 8:00

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[28] *See Case v. Eslinger*, 555 F.3d 1317, 1326 (11th Cir. 2009); *Marx v. Gumbinner*, 905 F.2d 1503, 1505 (11th Cir. 1990).
[29] *See Wood v. Kesler*, 323 F.3d 872, 878 (11th Cir. 2003).
[30] Because this case was decided on a motion for summary judgment, "reasonable inferences should be drawn in favor of the nonmoving party." *See Williams v. Aguirre*, 965 F.3d 1147, 1156 (11th Cir. 2020); *Washington v. Howard*, 25 F.4th 891, 895 (11th Cir. 2022).
[31] Doc. 53-2, at 33.
[32] Doc. 53-2, at 34.
[33] Doc. 53-2, at 34-35; Doc. 53-9.

p.m.[34] Stallworth stopped in Montgomery to buy gas and rest for a few minutes before resuming her drive.[35]

Shortly after 10:00 p.m. that evening, Stallworth stopped at a Texaco gas station located off the interstate in Chilton County where she proceeded to nap in her car.[36] The gas station is located at approximately Exit 200.[37] Stallworth had originally not intended to stop at this exit, because on at least two other occasions, she had been made uncomfortable at that exit by a Sheriff's Deputy "all of a sudden showing up out of nowhere."[38] However, because Stallworth was tired and sleepy, she decided to stop at this exit anyway to purchase an energy drink and take a nap before driving on towards Birmingham.[39]

Hurst, who was on patrol duty, arrived at the same gas station around 11:00 p.m. to conduct a routine business check and noticed Stallworth's parked car running with the lights on.[40] The parties sharply dispute whether Hurst was in a position to see that Stallworth was a black female.[41]

Regardless, Stallworth eventually resumed her drive on I-65, and, soon thereafter, Hurst, too, entered

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[34] Doc. 53-2, at 38.
[35] Doc. 53-2, at 39-40.
[36] Doc. 27, at 5; Doc. 53-2, at 13.
[37] Doc. 27, at ¶ 10.
[38] *See* Doc. 53-2, at 40-44.
[39] Doc. 53-2, at 43-45.
[40] Doc. 53-3, at 10-12. Hurst does not claim to have seen Stallworth herself napping.
[41] *Compare* Doc. 27, at 5-6, *with* Doc. 53-3, at 12-13, 30.

I-65 northbound and began driving behind her. Here again, the parties sharply dispute what Hurst saw while driving behind Stallworth. Hurst does not have any video of Stallworth's alleged driving behavior.[42] Hurst makes a variety of "erratic driving" claims against Stallworth; Stallworth, though, was simply trying to play her CD but was having some difficulty with the new car's audio control buttons, and consequently was simply driving more slowly than the posted speed limit:

> I was driving, and I was hitting the buttons. I wasn't driving fast at all. I was just probably not even doing the speed limit. I don't believe that I was doing the speed limit. I think the speed limit is like 65 or something. I think I was doing like 40. Then I said, "Well, I guess I better go ahead and get home and stop slowing around." So it was at that point that I had the radio going, blasting, and I proceeded to accelerate to the speed limit, which I was doing about 40. And that's when he pulled me over. The minute that I started to accelerate, he pulled me over.[43]

Around Exit 212, Hurst activated his emergency lights, and, once Stallworth stopped, Hurst began to record the encounter on his eyeglass camera.[44] Hurst approached the drivers' side of

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[42] Doc. 53-3, at 105-106.

[43] Doc. 53-2, at 52-53.

[44] Doc. 53-1; Doc. 53-3, at 29-30. Doc. 53-1 is the video from Hurst's camera. Stallworth notes that the district court, in

Stallworth's car, asking whether she was "alright" or "a little sleepy."[45]

Hurst asked Stallworth for her driver's license, which she provided, and returned to his vehicle.[46] While Hurst was running Stallworth's license, she realized that her newly purchased car had "stuff everywhere," so she began to straighten up the interior of the car.[47] When Hurst returned to the driver's side of the car, and noticed that things had been rearranged, he began to demand to search Stallworth's car. As Stallworth recounted:

> So he came back and said, "Ma'am, what was that back there? You were moving stuff around. What was that? What you doing?" I said, "I'm just straightening up my car." So he said, "I need to search your car." I said, "Why?" He said, "I need to search your car." And I don't remember exact his words, but I said, "I'm an attorney and I know the law. You don't have a reason to search my car."

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deciding summary judgment, applied *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007), and accepted the facts in the light depicted by this video *insofar as that evidence was available*. But importantly, the video fails to capture the encounter between Hurst and Stallworth in its entirety and does not include the completion of the field sobriety tests and the arrest itself. As to the events where video evidence was not provided, the district court and the Eleventh Circuit should have (but did not) viewed the facts in a light most favorable to Stallworth. *See Scott*, 550 U.S. at 381.

[45] *See* Doc. 53-1.

[46] *See* Doc. 53-1.

[47] Doc. 53-2, at 53-55.

> And the rest is kind of like what happened.[48]

Hurst also called for backup, citing a possible intoxicated driver.[49] Notably in this regard, Hurst asked Stallworth if she had anything *to drink*, which Stallworth denied, and inquired extensively about an open *bottle* of *liquid* in the floorboard, which Stallworth told Hurst contained tea.[50] Hurst told Stallworth:

> You didn't use a blinker a-ways back. Your speed has been going up and down for the last few miles. You rolled down the middle of the road at one point. And right now, your speech is kind of slurred. You're slow to react. I've never met you, so I'm just having to go by what I see, okay?[51]

All the while, Stallworth repeatedly asserted that she did not drink or do drugs and informed Hurst that she was a licensed attorney.[52]

Hurst continued to demand to search the car, as well as asking Stallworth to step out of the car and take a sobriety test.[53] After City of Clanton Police Officer Matt Foshee arrived at the scene, Stallworth

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[48] Doc. 53-2, at 53-55.
[49] Doc. 53-1; Doc. 53-3, at 17.
[50] Doc. 53-1; Doc. 53-3, at 33.
[51] Doc. 53-1.
[52] Doc. 53-1.
[53] Doc. 53-1; Doc. 53-2, at 56-63.

eventually exited her car to perform field sobriety tests ("SFSTs") at the officers' instance.[54]

During the horizontal gaze nystagmus test, the battery in Hurst's eyeglass camera died, and there is no video depicting the rest of the encounter.[55] Consequently, all of the following events are required to be viewed in a light most favorable to Stallworth.[56]

According to Stallworth, Hurst and Foshee assured her before the field sobriety tests if she was "not drinking" they would let her go.[57] After the walk-and-turn and ABC test, the officers again stated, "we've got one more test we're going to let you go. If you do this, we're going to let you go home."[58] That test was the one-leg stand test.[59] Before starting, Stallworth told the officers, "'Now, look, I fell at work, so I may not feel like standing on one leg. I don't know how strong my leg is going to be,' and here it is 11:00 at night, but I stood on one leg and started to count to 9; stood on the other leg, started to count to 9."[60]

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[54] Doc. 53-1. Specifically, Hurst and Foshee administered a horizontal gaze nystagmus test, the walk-and-turn test, a one-leg stand, and a drug recognition test ("DRE test"). (Doc. 53-2, at 17-18; Doc. 53-3, at 8, 19-20.) Stallworth additionally recounts that the officers administered a fifth test - the ABC test – although Hurst never mentioned it in his deposition. (*See* Doc. 53-2, at 17.)

[55] Doc. 53-3, at 18.

[56] *See Scott*, 550 U.S. at 381.

[57] Doc. 53-2, at 56-63.

[58] Doc. 53-2, at 56-63.

[59] Doc. 53-2, at 56-63.

[60] Doc. 53-2, at 56-63.

Despite multiple reassurances to Stallworth about letting her go after the SFSTs, Hurst arrested Stallworth for driving under the influence; that is, "DUI, any substance."[61] He additionally issued her a traffic citation for failure to signal in violation of Ala. Code § 32-5A-134.[62]

According to Hurst, before handcuffing her, he offered Stallworth "two options" to avoid arrest and jail:

> I asked her is there anyone that can come get you. Can someone come pick you up. ... The question was "Is there anyone, a friend or relative, that can come pick you up" on the side of the highway before she was arrested.[63]

After Stallworth said "no," Hurst presented the second option for Stallworth to avoid arrest and jail: "She was asked would she go to the hospital. She was asked if I call out an ambulance, would you go to the hospital and get checked out."[64] Stallworth declined option two.[65]

Hurst testified he then told Stallworth that "then you leave me no choice, I'm going to have to arrest you" for "DUI, any substance."[66]

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[61] See Doc. 53-3, at 8-9, 70; Doc. 53-10; Doc. 53-13.
[62] See Doc. 53-13.
[63] Doc. 53-3, at 68.
[64] Doc. 53-3, at 69-70.
[65] Doc. 53-3, at 69.
[66] Doc. 53-3, at 69-70.

Hurst then handcuffed Stallworth, and Stallworth, under duress and feeling forced to consent, said "'Just go ahead and search my car, then,' I said, if that's what it's going to take, because I don't do drugs, I don't do alcohol. Just search my car."[67] Hurst's search found only an energy drink, a bottle of tea, and a FedEx uniform shirt.[68]

Once Hurst arrived with Stallworth at the Chilton County jail, Stallworth was administered a Drager Alcotest, which proved negative for alcohol.[69] Yet, Stallworth was detained in jail until Monday, December 5, 2016, at which time she paid a professional bail bonding company to obtain release.[70] On December 6, 2016, Hurst formally charged Stallworth with driving under the influence in violation of Ala. Code § 32-5A-191(a)(5).

Stallworth was prosecuted by the Chilton County District Attorney, with a trial set for March 16, 2017. However, when Stallworth and her attorney appeared for trial, Hurst personally initiated dismissal talks with the defense, which ultimately resulted in the prosecution's unsolicited dismissal with prejudice of the charges. Hurst recommended dismissal of the case on the condition that Stallworth submit to and pass a drug test.[71] Stallworth agreed and passed the drug test.[72] The charges against

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[67] Doc. 53-2, at 56-63.
[68] Doc. 53-3, at 33.
[69] Doc. 53-2, at 2 & Ex. 2.
[70] Doc. 53-8.
[71] Doc. 53-2, at 20; Doc. 53-3, at 28.
[72] Doc. 53-2, at 21.

Stallworth were voluntarily dismissed with prejudice on March 16, 2017.[73]

PROCEEDINGS BELOW

Stallworth filed her 42 U.S.C. § 1983 action on November 29, 2018.[74] As amended, and as following the dismissal of some originally named parties and claims, the remaining claims were against Hurst for false arrest, false imprisonment, and malicious prosecution.

Hurst moved for summary judgment, generally asserting that he was entitled to qualified immunity because he had at least arguable reasonable suspicion to conduct the investigative stop, arguable probable cause to conduct the traffic stop, and arguable probable cause to arrest.[75]

The district court agreed with Hurst. At the threshold, it found that there was "reasonable suspicion" (a lower standard that probable cause) for the initial traffic stop.[76] As to the arrest itself, the district court opined that, at the time he arrested Stallworth:

> Taken in the light depicted by video footage, and otherwise in a light most favorable to Stallworth, the summary judgment record shows that Hurst

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[73] Doc. 59-4.
[74] Doc. 1.
[75] *Stallworth*, 2021 WL 413524, at *5.
[76] *Id.* at *8.

possessed the following information at the time he placed Stallworth under arrest shortly after midnight on December 5, 2016: Hurst had observed Stallworth drive at inconsistent and erratic speeds late at night, and as she began to weave within her own lane and eventually into the adjacent lane, his focus on her narrowed. When she changed lanes without a signal, Hurst pulled Stallworth over. Hurst approached her car window and began interacting with Stallworth, at which point he observed Stallworth's reduced faculties including drowsiness and impaired coordination and speech, points that Stallworth does not really dispute. As she has admitted, she was "just a little tired."

Then, as Hurst was running Stallworth's license, Stallworth moved belongings in her vehicle around, including items that were contained on the floorboard of her back seat. Again, Stallworth gave an innocent explanation; she was "just straightening up." But Hurst's suspicions were piqued, and when Officer Foshee arrived several minutes later, he pointed out to Hurst that Stallworth's eyes seemed "glossy" and her speech sounded "slowed and slurred."

> When Stallworth did submit to a sequence of field sobriety tests, she did little to instill confidence that she was not under the influence of any substance. She had difficulty following Hurst's basic instruction for the horizontal gaze nystagmus test and appeared distracted, continually looking over her shoulder rather than giving her attention to Hurst. She also had difficulty finding her balance while completing the other tests, though she once again offered an innocent explanation – a fall at work.
>
> Based on this information, Hurst arrested Stallworth for driving under the influence. For her part, Stallworth does not dispute that she was slow to respond, slurring her words, or unsteady on her feet. In short, Hurst readily "could have believed that probable cause existed to arrest" Stallworth.[77]

The district court (incorrectly) went on to hold Stallworth's "innocent explanations for her observed, and generally uncontested, behavior only serve to strengthen Hurst's entitlement to qualified immunity. The legal standard requires an objective inquiry into the defendant officer's actions based on the totality of evidence known to him at the time he made the arrest. As Hurst explained, he believed something was "not right", and based on the

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[77] *Id.* at *9-10.

testimony provided, including that of which Stallworth acknowledges, the Court cannot now find a reason to second guess Hurst's on-scene assessment of Stallworth.[78]

The district court then granted Hurst qualified immunity on the false arrest claim. It also summarily rejected the malicious prosecution claim for a reason that Hurst had not even raised – that Stallworth's arrest could not serve as the "predicate deprivation of liberty" for a malicious prosecution claim.[79]

On appeal, Stallworth argued that the district court had committed three critical errors in its probable cause / arguable probable cause analysis:[80] First, the district court's summary-judgment analysis had failed to account for the sharp factual disputes between the parties, including, but not limited to, disputes about Stallworth's driving behavior and Stallworth's testimony that Hurst promised to let her go multiple times after the SFSTs.[81] Second, the district court's analysis failed to account for the fact that even after presumably completing the SFST battery, Hurst still did not have sufficient indicia to

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[78] *Id.* at *10.
[79] *Id.* at *10.
[80] Although Stallworth also addressed the impropriety of the district court granting summary judgment on a basis not argued by Hurst, this petition is primarily concerned with the fundamental flaws of the qualified immunity doctrine, and therefore, Stallworth does not address this issue further. This is especially so because the Eleventh Circuit Panel decided the entire case on the basis of qualified immunity, regardless of whether "the district court might have erred on some other ground." *Stallworth*, 2021 WL 6143557, at *4.
[81] Appellant's Br., at 20.

reach an objectively reasonable conclusion that Ms. Stallworth was driving under the influence, as indicated by the fact that he did not then arrest her, but voluntarily offered her "options" and "alternatives" to arrest.[82]

Third, and last but certainly not least, Stallworth argued that "the district court improperly gave Hurst 'credit' for his actions by finding that 'Hurst was neither acting unreasonably nor reaching far-flung conclusions in believing that *something* was inhibiting Stallworth's ability to safely operate a car.'"[83] In this regard, Stallworth noted that Hurst's so-called "investigation" of Stallworth was clearly centered on his belief that she had consumed *alcohol* or *drugs,* not some nebulous "other substance," but that it was remarkably well-settled under Alabama law (and had been for more than twenty years), that an "any substance" charge under subsection (a)(5) of Ala. Code § 32-5A-191 is not properly based on a subject's impairment from alcohol or controlled substances, which is *all that Hurst ever even said he suspected.* As Stallworth explained, even if the district court felt that Hurst had made a "mistake of law" in this regard, it was not a *reasonable* mistake for qualified immunity purposes, given the settled nature of the law, and that the facts did not give rise to even "arguable" probable cause.[84]

The Panel affirmed, finding that Hurst was entitled to qualified immunity because, as to both Stallworth's arrest and detention, he acted with at

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[82] *Id.*
[83] *Id.* at 22.
[84] *Id.* at 22-24.

least arguable probable cause. Significantly, in reaching this conclusion, the Panel emphasized many of the same "facts" relied on by the district court:

> Here, by the time he arrested her, Hurst had observed Stallworth's erratic driving, Stallworth's "glossy" eyes and slurred speech, and Stallworth's deficient performance when completing field sobriety tests. Based on these observations, a reasonable officer in the same situation and with the same knowledge "could have believed that probable cause existed to arrest" Stallworth for driving under the influence of an impairing substance.[85]

REASONS FOR GRANTING THE WRIT

The Court should grant review. A chorus of voices has raised substantial questions regarding the scope and legal function of qualified immunity. This issue is indeed important: Qualified immunity recurs with frequency, and it has severely inhibited the refinement of governing constitutional standards.

The "arguable probable cause" analysis also suffers from lack of clarity. And this is a particularly good case for review, because any less aggressive application of qualified immunity would result in victory for Petitioner.

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[85] *Stallworth*, 2021 WL 6143557, at *2.

Finally, review is warranted because qualified immunity has grown far too strong—yet it has no legitimate foundation. The doctrine sprang wholly as judicial policy, without any constitutional, statutory, or common law origin. And time has shown that—even if those policy judgments could support the doctrine—qualified immunity does not accomplish these stated goals.

I. The Court should reexamine the qualified immunity doctrine.

The scope and viability of the prevailing qualified immunity doctrine requires careful evaluation— significant criticisms have surfaced, the doctrine presently leads to stagnation in the refinement of governing constitutional standards, and the issue arises with considerable frequency.

In recent years, criticism of prevailing qualified immunity doctrine has been widespread and sustained. Justice Thomas, for example, recently "note[d] [his] growing concern with [the Court's] qualified immunity jurisprudence."[86] As the doctrine has evolved, the Court has "'completely reformulated qualified immunity along principles not at all embodied in the common law.'"[87] And, because the Court's "analysis is no longer grounded in the common-law backdrop against which Congress enacted the 1871 Act," the Court no longer is

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[86] *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1870, 198 L. Ed. 2d 290 (2017) (Thomas, J., concurring in part and concurring in the judgment).

[87] *Id.* at 1871 (quoting *Anderson v. Creighton*, 483 U.S. 635, 645, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)).

"interpreting the intent of Congress in enacting the Act."[88] Justice Thomas ultimately urged that, "[i]n an appropriate case, we should reconsider our qualified immunity jurisprudence."[89]

Justice Sotomayor has likewise expressed concerns regarding the current reaches of the doctrine.[90] Because "[n]early all of the Supreme Court's qualified immunity cases come out the same way—by finding immunity for the officials," Justice Sotomayor cautioned that the current "one-sided approach to qualified immunity transforms the doctrine into an absolute shield for law enforcement officers."[91] In the Fourth Amendment context, the result is to "gut[]" its "deterrent effect."[92] More broadly, this "sends an alarming signal to law enforcement officers and the public"—"It tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished."[93]

These concerns are broadly recognized.[94] In critiquing prevailing doctrine, Judge James Browning

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[88] *Id.* (quotation alteration omitted).
[89] *Id.* at 1872.
[90] *Kisela v. Hughes*, 138 S. Ct. 1148, 1162, 200 L. Ed. 2d 449 (2018) (Sotomayor, J., dissenting).
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *See Morrow v. Meachum*, 917 F.3d 870, 874 n.4 (5th Cir. 2019) (Oldham, J.) ("Some—including Justice Thomas—have queried whether the Supreme Court's post-*Pierson* qualified-immunity cases are 'consistent with the common-law rules prevailing [when [Section] 1983 was enacted] in 1871.'"); *Rodriguez v. Swartz*, 899 F.3d 719, 732 n.40 (9th Cir. 2018), *cert. granted,*

supplied a district court perspective: "Factually identical or highly similar factual cases are not * * * the way the real world works. Cases differ. Many cases have so many facts that are unlikely to ever occur again in a significantly similar way."[95] In Judge Browning's view, the current "obsession with the clearly established prong" improperly "assumes that officers are routinely reading Supreme Court and [circuit court] opinions in their spare time, carefully comparing the facts in these qualified immunity cases with the circumstances they confront in their day-to-day police work."[96] That is not how police operate: "in their training and continuing education, police officers are taught general principles, and, in the intense atmosphere of an arrest, police officers rely on these general principles."[97] In requiring a "highly factually analogous case," this Court's jurisprudence "has either lost sight of reasonable officer's experience

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judgment vacated, 140 S. Ct. 1258, 206 L. Ed. 2d 250 (2020) (Kleinfeld, J.) ("Some argue that the 'clearly established' prong of the analysis lacks a solid legal foundation."); *Thompson v. Cope*, 900 F.3d 414, 421 n.1 (7th Cir. 2018) (Hamilton, J.) ("Scholars have criticized [the qualified immunity] standard."); *Ventura v. Rutledge*, 398 F. Supp. 3d 682 (E.D. Cal. 2019), *aff'd,* 978 F.3d 1088 (9th Cir. 2020) ("[T]his judge joins with those who have endorsed a complete re-examination of the doctrine which, as it is currently applied, mandates illogical, unjust, and puzzling results in many cases."); *Thompson v. Clark*, No. 14-CV-7349, 2018 WL 3128975, at *10 (E.D.N.Y. June 26, 2018) (Weinstein, J.) ("The legal precedent for qualified immunity, or its lack, is the subject of intense scrutiny.").

[95] *Quintana v. Santa Fe Cty. Bd. of Commissioners*, No. CIV 18-0043 JB\LF, 2019 WL 452755, at *37 (D.N.M. Feb. 5, 2019), *aff'd in part, vacated in part, remanded,* 973 F.3d 1022 (10th Cir. 2020).

[96] *Id.*

[97] *Id.*

or it is using that language to mask an intent to create 'an absolute shield for law enforcement officers.'"[98]

Until this Court examines it, the qualified immunity doctrine will continue to face criticism.[99] The current state of qualified immunity jurisprudence leaves significant violations of constitutional rights, including the one at issue here, without vindication. "This current 'yes harm, no foul' imbalance leaves victims violated but not vindicated. Wrongs are not righted, and wrongdoers are not reproached."[100] And, given the frequent use of qualified immunity, courts fail to refine the contours of constitutional rights—perpetually locking in the cycle of immunity.

This now occurs frequently, with courts "avoid[ing] scrutinizing the alleged offense by skipping to the simpler second prong."[101] The inexorable result is "constitutional stagnation" and an increasing (and exasperating) lack of matter-of-

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[98] *Id.*

[99] See, e.g., William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 46–49 (2018); Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1800 (2018); and Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 Yale L.J. 2, 11–12 (2017).

[100] *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part).

[101] *Id.* at 479 (Willett, J.) See also *Sims v. City of Madisonville*, 894 F.3d 632, 638 (5th Cir. 2018) (noting that the case was the "fourth time in three years that an appeal has presented the question whether someone who is not a final decisionmaker can be liable for First Amendment retaliation."); Aaron L. Nielson & Christopher J. Walker, *The New Qualified Immunity*, 89 S. Cal. L. Rev. 1, 37–38 (2015) (finding a post-*Pearson* decrease in the willingness of circuit courts to decide constitutional questions).

fact guidance about what the Constitution requires.[102]

II. The "arguable probable cause" standard has created conflicting and unworkable approaches.

As we just described, the need to reevaluate the qualified immunity doctrine is reason enough to grant the petition. Beyond that, the "clearly established" prong of qualified immunity, especially when overlaid with the "arguable probable cause" standard, has created conflicting and unworkable approaches. One need look no further for this conclusion than the Eleventh Circuit decisions in *Williams v. Aguirre*, *Washington v. Howard,* and the instant case, to see why.

In *Williams,* the Court was faced with an egregious set of facts. There, Aubrey Williams encountered two police officers (Haluska and Aguirre) during an investigatory stop. After being shot by Aguirre and spending two months in a hospital recovering from his injury, Williams spent more than 16 months in pretrial detention on charges of attempted murder based on the officers' accusations that he pointed a gun at each of them during an investigatory stop. Eventually, a news organization published a video recorded on a dashboard camera that supported Williams's account that he had dropped his gun and complied with the officers' commands. The district attorney later dismissed the

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[102] *Id.*

charges against Williams, who then sued the officers and alleged that they fabricated the accusations against him to excuse their use of force.[103]

In grappling with qualified immunity as to Williams's malicious prosecution claim, and whether the "any-crime" rule would insulate the officers from liability (because there was probable cause to charge Williams with carrying a concealed firearm), the *Williams* court fully acknowledged that, at common law, *probable cause was specific to each accusation.*[104] While the *Williams* court ultimately declined to do away with the any-crime rule in the context of false arrests, it applied the older, common-law rule to the malicious prosecution claim that was at issue in that case. As the *Williams* court wrote:

> Regardless of its applicability to warrantless arrests, the any-crime rule does not apply to claims of malicious prosecution under the Fourth Amendment. Centuries of common-law

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[103] *Williams*, 965 F.3d at 1152.

[104] *Id.* at 1160 (emphasis supplied) ("At common law, probable cause was specific to each accusation. English courts refused to allow accusers to raise the existence of probable cause on other charges as a defense to liability. *See Ellis v. Abrahams* (1846) 115 Eng. Rep. 1039, 1041; 8 Q.B. 709, 713–14; *Delisser v. Towne* (1841) 113 Eng. Rep. 1159, 1163; 1 Q.B. 333, 342; *Reed v. Taylor* (1812) 128 Eng. Rep. 472, 473; 4 Taunt 616, 617–18. *But cf. Johnstone*, 99 Eng. Rep. at 1245 (stating in dicta that a plaintiff could not prevail if the false charges "created no additional trouble, vexation, or expense"). American courts adopted this framework and likewise concluded that accusers could not shield themselves from liability by establishing probable cause for other charges.").

> doctrine urge a charge-specific approach, and bedrock Fourth Amendment principles support applying that approach in the context of the charges that justified a defendant's seizure.[105]

Fast-forward to the instant case, which landed in the Eleventh Circuit a mere nine months after *Williams* was decided. Stallworth strongly urged the Panel that, based on the decision in *Williams*, Hurst would have to have probable cause for the *specific* crime with which he charged Stallworth—the "any substance" subsection of Alabama's DUI law.[106] And Hurst ***did not***, because "subsection (a)(5)" does ***not*** include alcohol or drugs, a legal principle that has been established since the Alabama Court of Criminal Appeals' 1992 decision in *Sturgeon*.[107]

However, in upholding the district court's grant of qualified immunity, the Panel found that Stallworth had not shown a violation of "clearly established law," in that she had not "presented a case with materially similar facts, demonstrated that a broad statement of constitutional law clearly established a constitutional right, or shown conduct so egregious that her rights were clearly violated."[108]

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[105] *Id.* at 1162.
[106] *See* Appellant's Br., at 28-29.
[107] *Sturgeon v. City of Vestavia Hills*, 599 So. 2d 92, 93–94 (Ala. Crim. App. 1992) (holding that Ala. Code § 32A-5A-191(a)(5) covers only situations where mental or physical faculties are impaired by something other than alcohol or controlled substances).
[108] *Stallworth*, 2021 WL 6143557, at *4.

Too, the Panel dismissed Stallworth's reliance on *Williams*, opining that she had simply "cited" it, but had never contended that it contained "sufficiently similar facts to put Hurst on notice."[109]

The Panel noted (and Stallworth agrees) that the *facts* of *Williams* are "significantly different" from her case. But that is *precisely the point*—the current understanding of qualified immunity allows courts to distinguish past precedent based on superficial factual distinctions even though the legal principles are clear. The whole point of *Williams* is that an officer is not protected when the facts (whatever they may be) indicate the officer did not act with arguable probable cause. Without belaboring the point, here, Hurst's own actions belie any conclusion that he subjectively believed he had arguable probable cause, much less that it objectively existed. Yet, somehow, Stallworth lost anyway on the qualified immunity argument. This should not be.

Further support for the pernicious results that can occur because of the requirement of "sufficiently similar facts" and "controlling cases" to defeat qualified immunity is found in *Washington*. It is notable that, in that case, the Eleventh Circuit initially acknowledged its own inconsistencies in articulating the probable cause standard,[110] but nevertheless reached a result that *upheld* qualified immunity based on the lack of a "controlling case or robust consensus of cases," … where a suspect's in-person retraction of an earlier photo identification

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[109] *Id.* at *4, n. 3.
[110] *See Washington*, 25 F.4th at 902.

negated the original identification or caused probable cause to dissipate.[111]

Altogether, these cases require an impossibly high level of factual similarity to past precedent before a constitutional violation can be deemed "clearly established." Too, the current articulation of the "arguable probable cause" standard leads to results like the one in Stallworth's case, where an officer need only have a feeling of "something's not right" rather than *articulable* and *specific* probable cause, which is what the Constitution requires and what the doctrine of qualified immunity *should* require. This is all the more reason why review is warranted, and why recalibration of the standards governing qualified immunity is necessary.

III. This is an excellent vessel to reevaluate qualified immunity.

This case presents an attractive opportunity to re-evaluate qualified immunity. This case lies at the extreme outer limits of qualified immunity in that, *factually*, it was based on the officer's feeling that "something's not right," which should not be found to satisfy even the lax "arguable probable cause" standard, and *legally*, it was based on ignoring the principle that probable cause is supposed to be analyzed in light of the elements of the alleged crime and the operative fact pattern.[112] The district court and appellate decisions in this case are wholly divorced from these principles.

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[111] *See id.* at 903.

[112] *Gates*, 884 F.3d at 1298 (citing *Brown*, 608 F.3d at 735).

What's more, this case also features no truly urgent decision-making.[113] The detention in this case was lengthy and involved, at one point, multiple officers. Too, Hurst refused to re-evaluate not only Stallworth's arrest, but the subsequent prosecution, after it was conclusively shown that there was no alcohol in her system. So, Hurst was not faced with a split-second decision that forced him to act without deliberation. Rather, he had an opportunity to consider his course of action—and he chose to proceed just the same, in a way that violated Stallworth's constitutional rights. These circumstances render application of qualified immunity especially dubious. Immunity should be at its nadir when officials have more than ample time to contemplate the legality of their proposed conduct.

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[113] Stallworth is cognizant that in a pair of *per curiam* opinions issued just last year, this Court reversed lower courts' denials of application of qualified immunity on the grounds that neither officer committed violations of clearly established law, and, in both cases, did so without oral argument. *See Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 211 L. Ed. 2d 164 (2021); *City of Tahlequah, Oklahoma v. Bond*, 142 S. Ct. 9, 211 L. Ed. 2d 170 (2021). Arguably, this could signal that this Court is not prepared to re-evaluate or recalibrate qualified immunity at this time. However, neither *Rivas-Villegas* nor *City of Tahlequah* should prevent this Court from doing so in this case. This is especially so because both *Rivas-Villegas* and *City of Talequah* were excessive force cases involving truly split-second decision making in dangerous circumstances involving armed and non-compliant defendants. Thus, those cases (unlike Stallworth's) did not present an attractive opportunity to review qualified immunity in this more deliberative context.

IV. Qualified immunity is inconsistent with the text and history of Section 1983.

Review is additionally warranted because qualified immunity, as currently formulated, bears no relation to either the text of Section 1983 or the common-law immunities from which it sprang.[114]

The current qualified immunity doctrine has no basis in the text of Section 1983. The Court has acknowledged this point time and again—Section 1983 "on its face admits of no immunities,"[115] and "[Section 1983's] language is absolute and unqualified; no mention is made of any privileges, immunities, or defenses that may be asserted."[116]

Rather than growing out of any textual hook, qualified immunity was borne out of a putative "good faith" defense to a few specific torts.[117] It is now applied to all Section 1983 claims. But scholarship suggests that no such free-standing defense existed at common law.[118]

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[114] *See Ziglar*, 137 S. Ct. at 1869–1872 (Thomas, J., concurring); William Baude, 106 Cal. L. Rev. 45.
[115] *Imbler v. Pachtman*, 424 U.S. 409, 417, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976)
[116] *Owen v. City of Indep., Mo.*, 445 U.S. 622, 635, 100 S. Ct. 1398, 63 L. Ed. 2d 673 (1980).
[117] *Pierson*, 386 U.S. at 554–556.
[118] *See* Baude, *supra,* at 55–57. *See also Ziglar*, 137 S. Ct. at 1871 (Thomas, J., concurring) ("some evidence supports the conclusion that common-law immunity as it existed in 1871 looked quite different from our current doctrine").

Indeed, the current doctrine bears no resemblance whatsoever to any common-law immunity defense. The modern test refers to whether the right in question was clearly established.[119] This reflects, the Court itself acknowledges, "principles not at all embodied in the common law" when Section 1983 was enacted.[120]

Rather than emanating from text or history, qualified immunity was informed by judge-made policy determinations. In particular, the court was concerned with the imposition of personal liability on public officials and the burden of litigation.[121] But, as Justice Thomas observed, these "qualified immunity precedents * * * represent precisely the sort of freewheeling policy choices that [the Court has] previously disclaimed the power to make."[122]

Beyond that, qualified immunity has proven not to accomplish the goals it seeks. As for officer liability, indemnification is the norm. One study found that officers in a sample of settlements for police misconduct only paid 0.02% of the damages paid to plaintiffs, demonstrating the strong protection already afforded by indemnification.[123] And there is evidence that qualified immunity plays no meaningful role in alleviating litigation burdens.[124]

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[119] *See Harlow*, 457 U.S. 800.
[120] *Anderson*, 483 U.S. at 645. *See also* Baude, *Id.* at 60.
[121] *See Harlow*, 457 U.S. at 813–814 (addressing perceived social costs of claims against government officials).
[122] *Ziglar*, 137 S. Ct. at 1871 (Thomas, J., concurring) (quotation and alteration omitted).
[123] Schwartz, *Police Indemnification*, 89 N.Y.U. L. Rev. 885, 890 (2014).
[124] *See* Schwartz, 127 Yale L.J., at 48–51.

While justified solely by judicially identified policy, decades of experience have proven that those policies are not meaningfully advanced by the doctrine.

No factors counsel in favor of retaining qualified immunity in its current fashion. The Court has previously altered its judge-made rules regarding Section 1983, without serious hesitation.[125] Having been "tested by experience,"[126] existing doctrine has proven not just ineffective at accomplishing its stated ends, but affirmatively detrimental to litigants and the law alike.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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[125] See, e.g., *Pearson v. Callahan*, 555 U.S. 223, 233–234, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (overruling *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001)); *Harlow*, 457 U.S. at 816–818 (overruling subjective good-faith requirement identified in Scheuer, Gomez, and other authorities).

[126] *Patterson v. McLean Credit Union*, 491 U.S. 164, 173–174, 109 S. Ct. 2363, 105 L. Ed. 2d 132 (1989).

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

Orrilyn Maxwell Stallworth v. Rodney W. Hurst

TABLE OF CONTENTS

Opinion of the United States Court of Appeals for the Eleventh Circuit (December 30, 2021).....1a

Memorandum of the United States District Court for the Middle District of Alabama (February 5, 2021).11a

[DO NOT PUBLISH]

In the
UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 21-10731

Non-Argument Calendar

ORRILYN MAXWELL STALLWORTH,

Plaintiff-Appellant,

versus

RODNEY W. HURST,
in his personal and official capacities (dismissed 10/8/2019)
as Chilton County Sheriff's Deputy,

Defendant-Appellee,

KENNETH HARMON,
in his personal and official capacities as Chilton County Sheriff's Deputy, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:18-cv-01005-RAH-SRW

Before ROSENBAUM, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Orrilyn Stallworth sued Rodney Hurst under 42 U.S.C. § 1983 for violating her Fourth Amendment right to be free from unreasonable searches and seizures. She contended that Hurst arrested her and charged her with driving under the influence without probable cause. Hurst filed a motion for summary judgment, which the district court granted, holding that Hurst was protected by qualified immunity. On Stallworth's appeal, we must determine whether the district court erred in granting summary judgment for Hurst based on qualified immunity. For the following reasons, we affirm.

I

Stallworth was driving from Daleville to Birmingham, Alabama in a newly purchased car. Shortly after 10:00 p.m., she stopped at a gas station located off the interstate and took a nap in her vehicle. Hurst, who was on patrol duty at the time, arrived at the same gas station around 11:00 p.m. to conduct a routine business check and noticed Stallworth's parked automobile running with the lights on.

Stallworth eventually resumed her drive, and as she drove away from the gas station, Hurst noticed that her car had a dealership drive-off tag rather than a government-issued license plate. Soon after, Hurst, too, resumed driving on the highway. While on the highway, Hurst observed Stallworth driving erratically, including changing lanes without signaling and swerving in her lane.[1]

Hurst pulled Stallworth over and inquired how she was doing and whether she had consumed any alcohol. Stallworth replied that she hadn't and that she was just "a little tired." Doc. 53-1 (Vid. 23:57:05-23:57:12). She further insisted that she didn't drink or do drugs. While Hurst checked Stallworth's license in his computer, Hurst organized some of the belongings in her car. Upon returning and noticing an open bottle of liquid on the car's floorboard, Hurst asked Stallworth what it was, to which she replied that it was tea. As they conversed, Hurst observed that Stallworth's speech was slurred, her eyes were "glossy," and she was slow to react to his questions.

Hurst, and another officer, whom Hurst had called for backup, asked Stallworth to exit her car so

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[1] Stallworth says she was simply trying to activate her car's audio system and that she was driving under the speed limit. On appeal, Stallworth assets that, by testifying that she was driving under the speed limit, she created a genuine issue of material fact regarding whether she "committed any driving errors that would have constituted a violation of law." But driving under the speed limit and driving erratically aren't mutually exclusive, and Stallworth never contested Hurst's testimony that she drove erratically. If anything, Stallworth's testimony about pushing buttons on her car's audio system explains her driving infractions.

that they could perform field sobriety tests. Based on those tests, Hurst concluded that probable cause existed that Stallworth had been driving "under the influence." Hurst asked whether Stallworth had anyone who could pick her up or whether she would be willing to go to the hospital to get checked out. When she answered both questions in the negative, Hurst arrested her for driving under the influence.

At the county jail, Stallworth was administered a test to determine whether she had alcohol in her system. The results came back negative. Regardless, Hurst charged Stallworth with driving under the influence of an unknown substance pursuant to Ala. Code § 32-5A-191(a)(5). When Stallworth appeared for trial, Hurst recommended dismissal of the case on the condition that Stallworth submit to and pass a drug test. Stallworth took and passed the drug test, and the charges were voluntarily dismissed with prejudice. Stallworth then sued Hurst for violating her Fourth Amendment rights.

II

Based on the above facts, we must determine whether Hurst was entitled to summary judgment with regard to Stallworth's false-arrest, false-imprisonment, and malicious-prosecution claims based on qualified immunity.[2]

> To obtain qualified immunity, an official such as a police officer must first show

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[2] We review *de novo* a grant of summary judgment on the basis of qualified immunity, drawing all inferences and viewing all evidence in the light most favorable to the nonmoving party." *Mobley v. Palm Beach Ctny. Sheriff Dep't*, 783 F.3d 1347, 1352 (11th Cir. 2015).

> he was act[ing] within his discretionary authority. Once an official establishes that his activities were within that scope, the plaintiff must demonstrate (1) that the facts show that the official violated the plaintiff's constitutional rights and (2) that the law clearly established those rights at the time of the alleged misconduct. We may address those two inquiries in either order.

Mobley v. Palm Beach Cnty. Sheriff Dep't., 783 F.3d 1347, 1352-53 (11th Cir. 2015) (citations and quotations omitted).

We start with the false-arrest claim. When police officers conduct a warrantless arrest without probable cause, they violate the Fourth Amendment and therefore open themselves to suit under 42 U.S.C. § 1983 for damages. *See Case v. Eslinger*, 555 F.3d 1317, 1326 (11th Cir. 2009); *Marx v. Gumbinner*, 905 F.2d 1503, 1505 (11th Cir. 1990). But probable cause is an "absolute bar to a section 1983 action for false arrest." *Case*, 555 F.3d at 1326-27. And, in the Fourth Amendment context, an officer need only have "arguable" probable cause to claim qualified immunity. *See Wood v. Kesler*, 323 F.3d 872, 878 (11th Cir. 2003).

"Probable cause exists when 'the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an

offense.'" *Wilkerson v. Seymour*, 736 F.3d 974, 978 (11th Cir. 2013) (quoting *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002)). And arguable probable cause exists "where 'reasonable officers in the same circumstances and possessing the same knowledge as the Defendants could have believed that probable cause existed to arrest' the plaintiff." *Id.* at 978 (quotations omitted). The existence of probable cause or arguable probable cause "depends on the elements of the alleged crime and the operative fact pattern." *Gates v. Khokhar*, 884 F.3d 1290, 1298 (11th Cir. 2018) (citation omitted). If Hurst had probable cause—or even arguable probable cause—then he gets the benefit of qualified immunity.

At the very least, Hurst had arguable probable cause to arrest Stallworth for driving under the influence in violation of Ala. Code § 32-5A-191(a)(5). In relevant part, that section states that "[a] person shall not drive or be in actual physical control of any vehicle while: . . . Under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving." Ala. Code § 32-5A-191(a)(5). Here, by the time he arrested her, Hurst had observed Stallworth's erratic driving, Stallworth's "glossy" eyes and slurred speech, and Stallworth' deficient performance when completing filed sobriety tests. Based on these observations, a reasonable officer in the same situation and with the same knowledge "could have believed that probable cause existed to arrest" Stallworth for driving under the influence of an impairing substance. *Wilkerson*,

736 F.3d at 978. Thus, Hurst is entitled to summary judgment on the false-arrest claim.

Next, false imprisonment. "Where a police officer lacks probable cause to make an arrest, the arrestee has a claim under section 198 for false imprisonment based on a detention pursuant to that arrest." *Ortega v. Christian*, 85 F.3d 1521, 1526 (11th Cir. 1996). "A false imprisonment claim under § 1983 requires meeting the common law elements of false imprisonment and establishing that the imprisonment was a due process violation under the Fourteenth Amendment." *Helm v. Rainbow City*, 989 F.3d 1265, 1278 (11th Cir. 2021).

> [I]n order to establish a due process violation, a plaintiff must show that the officer acted with deliberate indifference, i.e., demonstrating that the officer had subjective knowledge of a risk of serious harm and disregarded that risk by actions beyond mere negligence. *If an officer has arguable probable cause to seize an individual, that finding may defeat a claim of deliberate indifference.*

Id. at 1278-79 (quotations removed and emphasis added).

As already explained, Hurst had at least arguable probable cause to arrest Stallworth based on his observations. Accordingly, Hurst is not liable for the initial detention. Stallworth contends, however, that Hurst violated her due process rights when he continued to detain her even after determining that she didn't have alcohol in her system. But Hurst could have reasonably believed that Stallworth was

under the influence of some other substance. Thus, Hurst still had arguable probable cause for Stallworth's arrest, and he is entitled to summary judgment on this claim as well.

Lastly, Stallworth contends that Hurst violated her Fourth Amendment rights through malicious prosecution. "To establish a federal malicious prosecution claim under § 1983, the plaintiff must prove a violation of his Fourth Amendment right to be free from unreasonable seizures in addition to the elements of the common law tort of malicious prosecution." *Wood*, 323 F.3d at 881 (emphasis removed). "Under the common-law elements of malicious prosecution, [Stallworth] must prove that the officer instituted or continued a criminal prosecution against [her], with malice and without probable cause, that terminated in [her] favor and caused damaged to [her]. *Williams v. Aguirre*, 965 F.3d 1147, 1157 (11th Cir. 2020) (quotations omitted). We have previously held that a "plaintiff's arrest cannot serve as the predicate deprivation of liberty because it occurred prior to the time of arraignment, and was not one that arose from malicious prosecution as opposed to false arrest." *Kingsland v. City of Miami*, 382 F.3d 1220, 1235 (11th Cir. 2004) (quotations omitted).

Without reaching the "clearly established" prong of the qualified-immunity analysis, the district court held that Stallworth failed to show a violation of her Fourth Amendment right because, as a matter of law, Stallworth was required to show that some deprivation of liberty occurred *after* her arraignment. Before us, Stallworth contends that the district court

erred in granting summary judgment on that ground because Hurst never presented it as a basis for summary judgment and the court shouldn't have raised it sua sponte without giving her a chance to respond. Even so, "[w]hen reviewing a grant of summary judgment, we may affirm on any adequate ground" that the record supports and that an appellee puts properly before us, "regardless of whether the district court relied on that ground." *McCabe v. Sharrett*, 12 F.3d 1558, 1560 (11th Cir. 1994).

Here, the merits of Stallworth's malicious-prosecution claim aside, Hurst is entitled to qualified immunity because, as he explains, his actions did not violate clearly established law. Hurst raised qualified immunity as a defense to his claims both at the district court and on appeal. To establish a violation of clearly established law, Stallworth had to show one of three things: "'(1) case law with indistinguishable facts clearly establishing the constitutional rights; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law.'" *Lewis v. city of W. Palm Beach*, 561 F.3d 1288, 1291-92 (11th Cir. 2009) (citation omitted).

Stallworth has not met her burden. Although Stallworth argues that Hurst violated her "clearly established rights," she has not presented a case with materially similar facts,[3] demonstrated that a broad

[3] To be sure, Stallworth cited a malicious-prosecution case in her brief, *Williams v. Aguirre*, 965 F.3d 1147 (11th Cir. 2020), but she never contended that it contains sufficiently similar facts to put

statement of constitutional law clearly established a constitutional right, or shown conduct so egregious that her rights were clearly violated. Instead, her discussion of malicious prosecution focuses exclusively on the district court's alleged error in deciding the case on a ground not argued by Hurst. But because Hurst has argued qualified immunity as an alternative basis for affirmance, Stallworth was required to meet her burden regardless of whether the district court might have erred on some other ground. Stallworth failed to demonstrate a violation of clearly established law, so Hurst is entitled to qualified immunity.

* * *

Because Hurst is entitled to qualified immunity on each of Stallworth's claims, we **AFFIRM**.

Hurst on notice. With good reason—the facts in *Williams* are significantly different from those in this case. In *Williams*, the Court held that officers were not entitled to qualified immunity on a malicious-prosecution claim after the officers arrested and charged a defendant based on a defective warrant. *Id.* at 1169 ("Notwithstanding the ambiguity in our standard of malicious prosecution, Williams had a clearly established right to be free from a seizure based on intentional and material misstatements in a warrant application."). By contrast, Hurst arrested Stallworth based on an on-the-spot probable-cause determination.

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

ORRILYN MAXWELL STALLWORTH,	)	
Plaintiff,	)	
v.	)	CASE NO.: 2:18–cv-1005-RAH-SRW (WO)
RODNEY V. HURST,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This lawsuit arises from Plaintiff Orrilyn Maxwell Stallworth's ("Stallworth" or "Plaintiff") arrest and prosecution for driving under the influence.

Stallworth claims that Rodney W. Hurst[1] ("Hurst" or "Defendant"), a Chilton County Sheriff's

[1]In Stallworth's initial Complaint filed on November 29, 2018, she also brought suit against Kenneth Harmon, Corry McCartney, and Unknown Deputy One in their individual and official capacities as Chilton County Sheriff's Deputies, and

Deputy, is liable pursuant to 42 U.S.C. § 1983 for false arrest, false imprisonment, and malicious prosecution in violation of the Fourth and Fourteenth Amendments. Now before the Court is Hurst's motion for summary judgment on all claims ("Motion"). (Doc. 54.) The parties have since filed evidence and briefs in support of their respective positions on the Motion, which is now ripe for review.

After carefully considering the Motion, Stallworth's response, (Doc. 59), and Hurst's reply, (Doc. 60), and for the reasons more fully set forth below, the Court finds that Defendant Hurst's Motion is due to be GRANTED.

I. RELEVANT FACTUAL BACKGROUND

The events giving rise to this action took place late on the evening of December 4, 2016, when Stallworth, a black female , was driving from Daleville to Birmingham, Alabama along I-65 northbound in a newly purchased car. (Doc. 27, p. 5; doc. 53-2, pp. 12-13, 17.) Shortly after 10:00 p.m. that evening, she stopped at a Texaco gas station located off the interstate in Chilton County where she proceeded to nap in her car.[2] (Doc. 27, p. 5; Doc. 53-2,

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against Matt Foshee in his individual and official capacities as a City of Clanton Police Officer. (Doc. 1.) The Court previously granted a motion to dismiss filed by Defendants Harmon and McCartney, (Doc. 40), and dismissed Defendant Foshee upon the filing of a Joint Stipulation of Dismissal by the parties, (Doc. 52). The Court additionally dismissed all claims brought against Hurst in his official capacity. (Doc. 40.) The only claims that remain, therefore, are the federal claims Stallworth brings against Hurst in his individual capacity.

[2] Hurst does not claim to have observed Stallworth napping in her car while her engine was running.

p. 13.) Hurst, who was on patrol duty, arrived at the same gas station around 11:00 p.m. to conduct a routine business check and noticed Stallworth's parked car running with the lights on. (Doc. 53-3, pp. 10-12.) Stallworth claims Hurst was in a position to see that she was a black female, (Doc. 27, pp. 5-6), but Hurst disputes this, (Doc. 53-3, pp. 12-13, 30). Stallworth eventually resumed her drive on I-65, and as she drove away from the gas station, Hurst noticed that her car had a dealership drive-off tag rather than a government-issued license plate. (*Id.*, p. 13.)

Soon after, Hurst, too, entered I-65 northbound, though according to Hurst, he was not following Stallworth. (*Id.*) However, while on the interstate, Hurst began paying special attention to Stallworth's car as it fluctuated in speeds from as low as around 40 mph, as Stallworth herself admits, (Doc. 53-2, p. 16), to as high as around 85 mph, and swerved within its lane, (Doc. 53-3, pp. 14-15). For her part, Stallworth disputes that she ever accelerated over the speed limit; however, she admits that she tried to play a CD and struggled with the car's audio control buttons. (Doc. 53-2, p. 16.) Regardless, Hurst began driving behind her, at which point he observed Stallworth's car swerve over the dividing lien multiple times and change lanes without signaling. (Doc. 53-3, p. 15.) Based on Stallworth's erratic driving, Hurst determined it appropriate to conduct a traffic stop. (Doc. 53-3, pp. 15-16.)

A. Investigatory Stop

Hurst directed Stallworth to pull over at an off-ramp by activating his emergency lights and, once stopped, began recording the encounter on his

eyeglass camera.[3] (Doc. 53-1; Doc. 53-3, pp. 29-30.) He approached the driver side of Stallworth's car, shined a flashlight into the car, and questioned Stallworth, asking whether she was "alright" or "a little sleepy."[4] (Doc. 53-1.) In the video, Stallworth

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[3] Defendant Hurst furnished this video evidence to benefit the Court in its summary judgment determination. (*See* Doc. 53-1.) In his reply brief, (Doc. 60, pp. 3-4), Hurst cites the Supreme Court's decision in *Scott v. Harris*, to support his argument that, where a movant's video evidence otherwise contradicts the non-movant's version of the facts, the Court should view the facts in the light depicted by the video rather than in the light most favorable to the non-movant. 550 U.S. 372, 380-81 (2007). The Court adopts this position and accordingly presents the facts in the light depicted by the video where such evidence is available. *See Murphy v. Demings*, 626 F. App'x 836, 838 n. 3 (11th Cir. 2015) ("Because Plaintiff's version of the facts is 'blatantly contradicted' by video evidence (the accuracy of which is unchallenged), we do not adopt Plaintiff's version of this fact as true."). But importantly, the Court notes that the video fails to capture the encounter between Hurst and Stallworth in its entirety and does not include the completion of the field sobriety tests and the arrest itself. (Doc. 53-1.) Where video evidence is not provided and there remains a genuine dispute as to those facts, the Court views the facts in a light most favorable to Stallworth. *See Scott*, 550 U.S. at 381; *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000) (requiring courts to review all evidence and make all reasonable inferences in favor of the party opposing summary judgment).

[4] As Stallworth characterizes this particular interaction, Hurst's first words to her where "I smell marijuana," to which she responded, "I've never done drugs a day in my life." (Doc. 53-2, pp. 16-17.) Yet this exchange is not reflected in the video. Stallworth also accuses Hurst of saying, "I smell alcohol", to which she contends that she responded by saying she had "never had alcohol da day in [her] life." (*Id.*, p. 17.) But this testimony too is not reflected in the video of Hurst and Stallworth's initial interaction.

can be seen rubbing her legs before slowly responding that she was "just a little tired." (*Id.*) Hurst then asked whether Stallworth had been taking a nap at the gas station, and Stallworth, who appears lethargic on video, sluggishly confirmed that she had indeed been napping while parked at the gas station (*Id.*) Before returning to his vehicle, Hurst asked Stallworth for her license, and she complied. (*Id.*)

While Hurst ran Stallworth's license, Stallworth reshuffled the belongings in her backseat. According to Stallworth, she simply straightened up the interior of the car "to look nice." (Doc. 53-2, p. 17.) But Hurst noticed that items had been rearranged, and upon returning to the driver's side of Stallworth's car, he immediately called for backup, citing a possible intoxicated driver. (Doc. 53-1; Doc. 53-3, p. 17.) Again, Hurst approached Stallworth's window and asked, "Have you have anything to drink at all tonight?" to which Stallworth replied in the negative. (Doc. 53-1.) Hurst also asked about a boot and jacket that had been moved from the backseat and an open bottle on the floorboard that Stallworth insisted contained tea. (Doc. 53-1; Doc. 53-3, p. 33.) As Hurst explained to Stallworth at the time, "something [didn't] seem right," and he gave Stallworth the following reasons for the traffic stop:

> You didn't use a blinker a-ways back. Your speed has been going up and down for the last few miles. You rolled down the middle of the road at one point. And right now, your speech is kind of slurred. You're slow to react. I've never met you,

> so I'm just having to go by what I see, okay?

(Doc. 53-1.) All the while, Stallworth repeatedly asserted that she did not drink or do drugs and informed Hurst that she was a licensed attorney. (*Id.*)

Hurst then questioned Stallworth about the contents of her car, and specifically, whether it contained anything illegal. (*Id.*) Though she told him it did not, when he eventually requested her consent to search the car, she only replied, "why?" (*Id.*) Hurst then referenced the displaced boot, to which Stallworth maintained that she was "just straightening up." (*Id.*) As Stallworth tried to reason, "there's nothing wrong with that." (*Id.*) Hurst then asked her to step out of the car in order to perform a set of field sobriety tests; Stallworth's only response, again, was "why?" (*Id.*) City of Clanton Police Officer Matt Foshee arrived at the scene around this time and both officers then unsuccessfully attempted to convince Stallworth to submit to the field sobriety tests. Once out of Stallworth's earshot, Foshee noted to Hurst that Stallworth's eyes seemed "glossy" and her speech "slowed and slurred." (*Id.*)

B. Field Sobriety Tests

Stallworth eventually exited her car a few minutes later, at which point Hurst and Foshee administered several field sobriety tests ("FSTs"), including a horizontal gaze nystagmus test, the walk-and-turn test, a one-leg stand, and a drug recognition test ("DRE test"). (Doc. 53-2, pp. 17-18; Doc. 53-3, pp. 8, 19-20.) Stallworth additionally recounts that the officers administered a fifth test - the ABC test - though Hurst did not discuss it in his deposition or

brief. (Doc. 53-2, p. 17.) Each of these tests, as explained in the expert report of Shane D. Healey, (Doc. 53-12, p. 12), has been recognized in numerous courts as the standard to establish whether an individual is impaired.

As Hurst administered the horizontal gaze nystagmus test,[5] Hurst noted that Stallworth appeared paranoid, confused, distracted, and slow to react. (Doc. 53-3, pp. 18-19.) He also concluded that she "lacked smooth tracking." (Doc. 53-3, p. 20.) Foshee agreed with this assessment. (Doc. 53-4, p. 15.) According to Stallworth, she was "concerned and felt threatened for her life" while Hurst administered this test.[6] (Doc. 53-2, p. 18.)

The parties' accounts of the other three FSTs[7] – none of which Hurst or any other officer captured on video – differ slightly but not substantially. As Hurst administered the one-leg stand test, both he and Foshee observed that Stallworth had difficulty keeping her balance. (Doc. 53-3, p. 20; doc. 53-4, p. 9.) And as she completed the walk-and-turn test, Hurst testified that Stallworth's heels and toes did not meet. (Doc. 53-3, p. 20.) According to Stallworth, her poor balance was traceable to a fall she had suffered at work. (Doc. 53-2, pp. 17-18.)

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[5] Stallworth mistakenly recounts that the horizontal gaze nystagmus test was administered last–a statement that is controverted by video evidence. (*See* Doc. 53-2, p. 18.)

[6] Notably, the battery in Hurst's eyeglass camera died while he was administering this test, so there is no video depicting the rest of the encounter. (Doc. 53-3, p. 19.)

[7] According to Stallworth, Hurst assured her more than once before administering an FST that "after this test, I'm going to let you go." (Doc. 53.2, p. 18.)

The DRE test requires a person to put her arms straight out, tilt her head back, close her eyes, count to thirty, and once she has finished counting, to notify the test administrator. (Doc. 53-3, p. 20.) According to Officer Hurst's testimony, Stallworth reported that she had completed tasks, including counting to thirty, after only 10 seconds. (*Id.*)

C. Arrest for Driving Under the Influence

Based upon Hurst's observations of Stallworth's erratic driving behavior and mannerisms over the course of the investigatory stop, and performance on the field sobriety tests, Hurst determined that probable cause existed to arrest Stallworth for driving under the influence. (*See* Doc. 53-3, pp. 8-9; Doc. 53-10; Doc. 53-13.) He additionally issued her a traffic citation for failure to signal in violation of Ala. Code § 32-5A-134. (*See* Doc. 53-13.) According to Hurst, before handcuffing her, he asked Stallworth whether she had anyone who could pick her up from the scene or if she would voluntarily go to the hospital for further examination, but she declined both options. (Doc. 53-3, p. 20.) Stallworth disputes that she was given any option to avoid arrest. (Doc. 53-2, p. 20.)

Hurst then handcuffed Stallworth, who testified that she believed consenting to a search of her car at this point would keep the officers from arresting her. (*Id.*, p. 18.) In her words, she told them to "go ahead and search my car, then ... if that's what it's going to take, because I don't do drugs, I don't do alcohol. Just search my car." (*Id.*) Hurst seated Stallworth in the back of his vehicle and proceeded

with the search, finding only an energy drink, a bottle of tea, and a FedEx uniform shirt. (Doc. 53.3, p. 33.) He then proceeded with the arrest and transported Stallworth to the Chilton County jail. (*Id.*, pp. 21-22.) At the jail, Stallworth was administered a Drager Alcotest, which proved negative for alcohol. (Doc. 59-2). She was then placed in a holding cell[8] until she was released the following morning. (Doc. 53-2, p. 19; Doc. 53-8.)

On December 6, 2016, Hurst formally charged Stallworth with driving under the influence in violation of Ala. Code § 32-5A-191(a)(5).

D. Voluntary Dismissal of Stallworth's Case

Stallworth was prosecuted by the Chilton County District Attorney. (Doc. 59-3.) However, shortly before the trial commenced, Hurst recommended dismissal of the case to the District Attorney on the condition that Stallworth submit to and pass a drug test. (Doc. 53-2, p. 20; Doc. 53-3, p. 28.) Stallworth agreed, and subsequently passed the drug test. (Doc. 53-2, p. 21.) The charges against Stallworth were voluntarily dismissed with prejudice on March 16, 2017. (Doc. 59-4.) Stallworth commenced this lawsuit nearly two years later.

II. STANDARD OF REVIEW

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[8] Stallworth brings no claims relating to the conditions of her incarceration in the Chilton County jail. (Doc. 53-2, pp. 19-20.) Accordingly, what transpired as it concerns Stallworth's booking and treatment at the jail is largely irrelevant for summary judgment purposes. Accordingly, Hurst's Motion for Leave to Supplement The Evidentiary Record (Doc. 61) is due to be denied.

Summary judgment is proper "if there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(a). The party moving for summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion," relying on submissions "which it believes demonstrate the absence of a genuine issue of material fact." *Id.* at 323. Once the moving party has met its burden, the nonmoving party must "go beyond the pleadings" and show that there is a genuine issue for trial. *Id.* at 324.

A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Both the party "asserting that a fact cannot be," and a party asserting that a fact is genuinely disputed, must support their assertions by "citing to particular parts of materials in the record," or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(A), (B). Thus, in opposing summary judgment, the nonmoving party "must do more than show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

The evidence of the nonmovant must be believed and all justifiable inferences must be drawn in its favor. *See Anderson*, 477 U.S. at 255. But if the

nonmoving party fails to make "a sufficient showing on an essential element of her case with respect to which she has the burden of proof," the moving party is entitled to summary judgment. *Celotex Corp.*, 477 U.S. at 323. "Summary judgment is justified only for those cases devoid of any need for factual determinations." *Offshore Aviation v. Transcon Lines, Inc.*, 831 F.2d 1013, 1016 (11th Cir. 1987) (citation omitted).

III. ANALYSIS

In Stallworth's Complaint, as amended, she asserts claims of False Arrest and Imprisonment (Count I) and Malicious Prosecution (Count II) against Hurst under 42 U.S.C. § 1983. (*See* Doc. 27.) As to both claims, Hurst argues that he is entitled to qualified immunity because he had at least arguable reasonable suspicion to conduct the investigative stop, arguable probable cause to conduct the traffic stop, and arguable probable cause to arrest. Of course, Stallworth challenges Hurst on each of these contentions, arguing in large part that Hurst's conduct was underpinned by racial animus rather than reasonable suspicion or probable cause.

A. General Principles

Section 1983 creates a civil cause of action for any person deprived of any rights, privileges, or immunities secured by the Constitution and laws, by another person acting under the color of state law. 42 U.S.C. § 1983. Notably, the statute "does not in itself create federal rights, but rather provides a vehicle for asserting those rights." *Sprauer v. Town of Jupiter*, 331 F. App'x 650, 652 (11th Cir. 2009).

Liability under Section 1983, however, is not absolute. "Qualified immunity protects law enforcement officials from § 1983 suits for civil damages arising from the discharge of their discretionary functions as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Douglas Asphalt Co. v. Qore, Inc.*, 541 F.3d 1269, 1273 (11th Cir. 2008) (citation and quotation omitted). The intent of the doctrine is "to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, protecting from suit all but the plainly incompetent or one who is knowingly violating the federal law." *Hoyt v Cooks*, 672 F.3d 972, 977 (11th Cir. 2012) (citation and quotation omitted).

In order to receive qualified immunity, an officer must first show that he acted within his discretionary authority. *See Mobley v. Palm Beach Cty. Sheriff Dep't*, 783 F.3d 1347, 1352 (11th Cir. 2015). To do so, an officer must show that he was "(a) performing a legitimate job-related function ... (b) through means that were within his power to utilize." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1265 (11th Cir. 2004). Here, it is undisputed that Hurst has satisfied this showing, and accordingly, the burden shifts to Stallworth to challenge Hurst's claim to qualified immunity by showing both "(1) that there was a violation of the Constitution and (2) that the illegality of [the officer's] actions was clearly established at the time of the incident." *Hoyt*, 672 F.3d at 977.

To that end, the Court ultimately must address the following key question: When arresting Stallworth, and subsequently initiating a criminal prosecution against her, did Hurst act with (1) actual probable cause, (2) arguable probable cause, or (3) neither?

If Hurst acted with actual probable cause, then he did not violate Stallworth's Fourth Amendment rights. *See Case v. Eslinger*, 555 F.3d 1317, 1326 (11th Cir. 2009) ("the existence of probable cause at the time of an arrest ... constitutes an absolute bar to a section 1983 action for false arrest") (citations omitted); *Kjellsen v. Mills*, 517 F.3d 1232, 1237 (11th Cir. 2008) (recognizing the existence of probable cause will defeat a section 1983 claim for malicious prosecution), *abrogated on other grounds by Williams v. Aguirre*, 965 F.3d 1147, 1162-65 (11th Cir. 2020). Even if he had only arguable probable cause, qualified immunity similarly shields Hurst from liability. *See Wood v. Kesler*, 323 F.3d 872, 878 (11th Cir. 2003) (noting an officer need only have had arguable probable cause to receive qualified immunity protection) (citing *Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997)).

On the other hand, if neither probable cause nor arguable probable cause existed, then Stallworth's claims concerning her arrest will survive summary judgment. The Court thus proceeds to examine Stallworth's claims under that rubric, after first determining whether Hurst had reasonable suspicion or probable cause to conduct the stop.

B. <u>False Arrest and Imprisonment</u>

Stallworth first alleges that she suffered a false arrest and imprisonment[9] in violation of the Fourth and Fourteenth Amendments (Count I). "Under the Fourth Amendment, an individual has a right to be free from 'unreasonable searches and seizures,' ... [and in] Fourth Amendment terminology, an arrest is a seizure of the person." *Slop v. City of Atlanta, GA*, 485 F.3d 1130, 1137 (11th Cir. 2007). As is pertinent here, the Fourth Amendment's protections "extend to brief investigatory stops of persons or vehicles." *United States v. Arvizu*, 534 U.S. 266, 273 (2002). Naturally the parties disagree about whether Hurst had actual or arguable reasonable suspicion to conduct the initial stop and whether he thereafter developed the actual or arguable probable cause to arrest Stallworth, and the Court accordingly addresses the same.

i. Investigatory Stop

As to the initial investigatory traffic stop, an officer can "lawfully detain an individual without a warrant if (1) there is probable cause to believe that a traffic violation has occurred (a traffic stop), or (2) there is reasonable suspicion to believe the individual has engaged or is about to engage in criminal activity (an investigative or *Terry* stop)." *United States v.*

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[9] False imprisonment is derivative of a false arrest. *See Ortega v. Christian*, 85 F.3d 1521, 1526 (11th Cir. 1996A) ("Where a po lice officer lacks probable cause to make an arrest, the arrestee has a claim under section 1983 for false imprisonment based on a detention pursuant to that arrest.") (citation omitted). Here, Stallworth's false imprisonment claim is predicated on her false arrest claim, (Doc. 27, pp. 13-14), and the Court thus analyzes them simultaneously.

Gibbs, 917 F.3d 1289, 1294 (11th Cir. 2019) (citing *United States v. Harris*, 526 F.3d 1334, 1337 (11th Cir. 2008) (discussing *Terry v. Ohio*, 392 U.S. 1 (1968). In *Gibbs*, the Eleventh Circuit explained that while a traffic stop and a *Terry* stop have obvious differences, "the Supreme Court has recognized that the two are 'analogous' both in their 'duration and atmosphere.'" 917 F.3d at 1294 (citing *Berkemer v. McCarty*, 468 U.S. 420, 439 n.29 (1984)).

Reasonable suspicion, while a less demanding standard than probable cause, nevertheless "requires at least a minimal level of objective justification for making the stop." *Jackson v. Sauls*, 206 F.3d 1156, 1165 (11th Cir. 2000) (citation and quotation omitted). The presence of such "articulable suspicion that criminal activity is afoot" gives an officer license to "conduct a brief, investigatory stop," *id.*, so long as that stop and the officer's inquiry are "reasonably related in scope to the justification for their initiation," *Terry v. Ohio*, 392 U.S. 1, 29 (1968). And in the context of qualified immunity, "the issue is not whether reasonable suspicion existed in fact, but whether the officer had 'arguable' reasonable suspicion to support an investigatory stop." *Jackson*, 206 F.3d at 1166. The Court thus considers the question objectively "from the standpoint of a reasonable official at the scene." *Young v. Brady*, 793 F. App'x 905, 909 (11th Cir. 2019) (citing *Hicks v. Moorer*, 422 F.3d 1246, 1252 (11th Cir. 2005)).

In this case, Hurst had more than enough objective reasonable suspicion to stop Stallworth. Hurst notes various traffic violations Stallworth committed including Stallworth's failure to display a

valid license tag on her car in violation of Ala. Code §§ 32-6-51 and 40-12-142 and her failure to signal before changing lanes in violation of Ala. Code § 32-5A-134. (Doc. 55, pp. 21-22.) *See Reid v. henry Cty., Ga.*, 568 F. App'x 745, 748 (11th Cir. 2014) (finding lane changes without the use of a signal provided reasonable articulable suspicion to make an investigatory stop); *United States v. Rosian*, 822 F. App'x 964, 967 (11th Cir. 2020) (concluding that officers lawfully stopped defendant for a traffic violation of failing to have a plainly visible license plate); *United States v. DeJesus*, 435 F. App'x 895, 899 (11th Cir. 2011) (license plate). Notably, Stallworth is silent as to whether she changed lanes without using a signal, and thus fails to create a genuine dispute for the Court to resolve. All told, Hurst executed the stop with the requisite arguable reasonable suspicion.

Further, Stallworth's slow driving and erratic speeds, in combination with the failure to signal a lane change, which she attributed to her focus on the car's audio controls, (*see* Doc. 53-2, p. 16), would have provided arguable reasonable suspicion that Stallworth was guilty of driving under the influence. While true that playing music is "seemingly innocent" and generally does not constitute criminal conduct, the absence of criminal conduct alone does not defeat reasonable suspicion. *See United States v. Byron*, 817 F. App'x 753, 757 (11th Cir. 2020) ("Reasonable suspicion may exist even if each fact alone is susceptible of innocent explanation.") (citing *United States v. Bautista-Silva*, 567 F.3d 1266, 1272 (11th Cir. 2009)). Instead, the "arguable reasonable suspicion" standard allows officers to rely on their

own inferences and deductions, and from Hurst's vantage point, Stallworth was driving at inconsistent speeds and with shifting attention. He would have had no way of knowing that Stallworth was distracted rather than inebriated, and moreover, his training and experience indicated that Stallworth's poor driving was due to intoxication. (*See* Doc. 53-10.) *See Jenkins v. Gaither*, 543 F. App'x 894, 897 (11th Cir. 2013) (finding report that plaintiff was "driving at an unusual speed" and "weaving across the road" was sufficient to provide reasonable suspicion); *United States v. Franklin*, No. 2:17-CR-13, 2017 WL 3393084, at *4 (S.D. Ga. July 11, 2017), *r. & r. adopted*, No. 2:17-CR-13, 2017 WL 3392746 (S.D. Ga. Aug. 7, 2017) (holding the combination of plaintiff's driving at an unusual hour and an unusually slow rate of speed while weaving was sufficient to support officer's reasonable suspicion that plaintiff was driving under the influence); *see also United States v. Williams*, 876 F.2d 1521, 1524 (11th Cir. 1989) (the reasonable suspicion standard requires an officer to "provide some minimal, objective justification for the stop.... Such facts may be derived from various objective observations ... and consideration of the modes or patterns of operation of certain kinds of lawbreakers.").

For her part, Stallworth does little to counter Hurst's contentions as they relate to the legality of the traffic stop. In her brief, she goes no further than simply assert that it would be a "reasonable inference" that Hurst decided Stallworth was driving under the influence as early as when he observed her in the Texaco parking lot, (Doc. 59, p. 24), and thus

insinuating that the stop was pretextual. Notably, Stallworth offers nothing to demonstrate that Hurst lacked reasonable suspicion, whether actual or arguable. Nor does she offer any direct or circumstantial evidence of pretext. But in any case, Hurst's "subjective motivations" for conducting the stop have no bearing on the court's objective inquiry into the reasonableness of the stop. *E.g., Byron*, 817 F. App'x at 757. The circumstances described, viewed in their totality and in a light most favorable to Stallworth, support a particularized and objective basis to suspect that Stallworth had committed both traffic violations and was driving under the influence.

Further, Hurst also would have had arguable probable cause to stop Stallworth who, here again, was actively engaged in wrongdoing. Indeed, as Hurst notes and Stallworth does not dispute, Stallworth was failing to display a valid license tag and to maintain a reasonable and prudent speed. (*See* Doc. 53-3, p. 15.) The existence of such probably cause means that, even if considered a traffic stop, Hurst's decision to pull over Stallworth did not constitute a violation of her Fourth Amendment rights. And where an officer has probable cause to make a stop, he also has probable cause to make an arrest for the same offense. *See Holley v. Town of Camp Hill*, 351 F. Supp. 3d 1359, 1367 (M.S. Ala. 2018) (citing *Stephens v. DeGiovanni*, 852 F.3d 1298, 1320 n.21 (11th Cir. 2017) ("A custodial arrest may be made for misdemeanor offenses and traffic violations.")). But in any case, Stallworth does not argue that the stop was a traffic stop, as opposed to a *Terry* stop, and there is no need to discuss it with any more specificity.

See Resolution Trust Corp. v. Dunmar Corp., 43 F. 3d 587, 599 (11th Cir. 1995) ("[t]here is no burden upon the district court to distill every potential argument that could be made based upon the materials before it"). To the extent that Stallworth seeks to support a claim for false arrest and imprisonment on the initial investigatory traffic stop, her claim is unavailing.

ii. The Arrest

Where the arrest itself is challenged, the "reasonableness" requirement hinges on "the presence or absence of probable cause for the arrest." *Skop*, 485 F.3d at 1137. Eleventh Circuit precedent is clear – "[a] warrantless arrest without probable cause violates the Constitution and provides a basis for a section 1983 claim" *Case*, 555 F.3d at 1326. However, as noted above, the converse is also true – "[t]he existence of probable cause at the time of arrest ... constitutes an absolute bar to a section 1983 action for false arrest." *Id.* at 1326-27 (quoting *Kingsland v. City fo Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004), *abrogated on other grounds by Aguirre*, 965 F.3d 1147).

Importantly, probable cause to arrest exists when an arrest is "objectively reasonable based on the totality of the circumstances." *Lee*, 284 F.3d at 1195. "This standard is met when the facts and circumstances within the officer's knowledge ... would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Rankin v. Evans*, 133 F.3d 1425, 1435 (11th Cir. 1998) (quoting *Williamson v. Mills*, 65 F. 3d 155, 158 (11th Cir. 1995)). A probable cause determination

should be based upon the elements of the alleged crime and the objective facts available to the officer at the time of arrest. *See Durruthy v. Pastor*, 351 F.3d 1080, 1988 (11th Cir. 2003). Moreover, such a determination "'does not require convincing proof' and 'need not reach the [same[standard of conclusiveness and probability as the facts necessary to support a conviction.'" *Id.* (quoting *Lee*, 284 F. 3d at 1195).

Further, and crucial as to the case at bar, an officer who lacks probable cause may nevertheless claim qualified immunity so long as he acted with *arguable* probable cause. "Arguable probable cause exists where reasonable officers in the same circumstances and possessing the same knowledge as the Defendant could have believed that probable cause existed to arrest." *Durruthy*, 351 F.3d at 1089 (citing *Jones v. Cannon*, 174 F.3d 1271, 1283 (11th Cir. 1999) (citing in turn *Lindsey v. Storey*, 936 F.2d 554, 562 (11th Cir. 1991)). In contrast with "actual" probable cause, arguable probable cause "gives ample room for mistaken judgments... and reasonable error." *Gold v. City of Miami*, 121 F.3d 1442, 1446 (11th Cir. 1997) (citations omitted). Accordingly, the relevant inquiry is "whether the [officer's] conduct violated clearly established law and not whether an arrestee's conduct is a crime or ultimately will result in conviction." *Scarbrough v. Myles*, 245 F.3d 1299, 1303 n. 8 (11th Cir. 2001).

Here, Hurst arrested Stallworth for driving under the influence in violation of Ala. Code § 32-5A-191(a)(5), which provides, in relevant part: "A person shall not drive or be in actual physical control of any vehicle while ... [u]nder the influence of any substance

which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving."[10] (*See* Doc. 53-10.)

Taken in the light depicted by video footage, and otherwise in a light most favorable to Stallworth, the summary judgment record shows that Hurst possessed the following information at the time he placed Stallworth under arrest shortly after midnight on December 5, 2016: Hurst had observed Stallworth drive at inconsistent and erratic speeds late at night, and as she began to weave within her own lane and eventually into the adjacent lane, his focus on her narrowed. When she changed lanes without a signal, Hurst pulled Stallworth over. Hurst approached her car window and began interacting with Stallworth, at which point he observed Stallworth's reduced faculties including drowsiness and impaired coordination and speech, points that Stallworth does not really dispute. As she has admitted, she was "just a little tired."

Then, as Hurst was running Stallworth's license, Stallworth moved belongings in her vehicle around, including items that were contained on the floorboard of her back seat. Again, Stallworth gave an innocent explanation; she was "just straightening up." But Hurst's suspicions were piqued, and when

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[10] As Hurst points out, "any substance" in the context of the statute refers to any substance that may affect a driver's ability to safely operate an vehicle. *See Sturgeon v. City of Vestavia Hills*, 599 So.2d 92, 93 (Ala. Crim. App. 1992) (concluding that (a)(5) of the statute encompasses substances other than alcohol or controlled substances that impair a person's mental or physical faculties).

Officer Foshee arrived several minutes later, he pointed out to Hurst that Stallworth's eyes seemed "glossy" and her speech sounded "slowed and slurred."

When Stallworth did submit to a sequence of field sobriety tests, she did little to instill confidence that she was not under the influence of any substance. She had difficulty following Hurst's basic instruction for the horizontal gaze nystagmus test and appeared distracted, continually looking over her shoulder rather than giving her attention to Hurst. She also had difficulty finding her balance while completing the other tests, though she once again offered an innocent explanation – a fall at work. Based on this information, Hurst arrested Stallworth for driving under the influence. For her part, Stallworth does not dispute that she was slow to respond, slurring her words, or unsteady on her feet. In short, Hurst readily "could have believed that probable cause existed to arrest" Stallworth. *Lee*, 284 F.3d at 1195. And significantly, at no point during the video do the parties discuss race, nor does either party recount a discussion of race in any record evidence before the Court.

Stallworth's claims that she had neither consumed alcohol nor smoked marijuana on the night in question to merit some discussion. Indeed, at the Chilton County jail, staff administered a Drager Alcotest which indicated that Stallworth did not have alcohol in her system. (Doc. 59-2.) In her brief, Stallworth also questions why Hurst would not have taken any further steps to confirm that she was, in fact, under the influence of any substance before arresting her.

But Stallworth's culpability as it concerns the crime of driving under the influence is not at issue, and her innocent explanations for her observed, and generally uncontested, behavior only serve to strengthen Hurst's entitlement to qualified immunity. The legal standard requires an objective inquiry into the defendant officer's actions based on the totality of evidence known to him at the time he made the arrest. As Hurst explained, he believed something was "not right", and based on the testimony provided, including that of which Stallworth acknowledges, the Court cannot find a reason to second guess Hurst's on-scene assessment of Stallworth.

In viewing the video footage in particular, the Court is inclined to find that Hurst was neither acting unreasonably nor reaching far-flung conclusions in believing that something was inhibiting Stallworth's ability to safely operate a car. But in any case, "[t]he protection of qualified immunity applies regardless of whether the [officer's] error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" *Groh v. Ramirez*, 540 U.S. 551, 567 (2004) (Kennedy, J., dissenting) (quoting *Butz v. Economou*, 438 U.S. 478, 507 (1978) (qualified immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law")); *see also Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (approvingly quoting the same).

The Court now answers the question it posed earlier in this opinion and finds that Hurst possessed reasonable suspicion in instigating the stop and arguable probable cause when arresting Stallworth.

Hurst is thus entitled to qualified immunity and his motion for summary judgment as to Stallworth's false arrest and imprisonment claim is due to be granted.

C. Malicious Prosecution

Malicious prosecution, which is the basis of Stallworth's second claim (Count II), is also "a violation of the Fourth Amendment and [a] viable constitutional tort under § 1983."[11] *Blue v. Lopez*, 901 F.3d 1352, 1357 (11th Cir. 2018). To establish a federal claim for malicious prosecution under § 1983, a plaintiff must prove (1) the elements of the common law tort of malicious prosecution, (2) an unlawful seizure in violation of the Fourth Amendment, and (3) that the unlawful seizure related to the prosecution. *Kingsland*, 382 F.3d at 1234-35.

Stallworth claims that Hurst maliciously prosecuted her for driving under the influence and for refusing to dismiss the criminal case until after Stallworth had retained legal counsel and suffered mental stress attributable to her pending criminal case. However, "the plaintiff's arrest cannot serve as the predicate deprivation of liberty." *Kingsland*, 382 F.3d at 1235. Instead, for the unlawful seizure to

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[11] The difference between a malicious prosecution claim and a false arrest claim is that to be entitled to qualified immunity from a malicious prosecution claim, the officer must show that he had arguable probable cause for each crime charged. *See Uboh v. Reno*, 141 F.3d 1000, 1005 (11th Cir. 1998) (holding that conviction on some charges in the indictment did not preclude plaintiff's malicious prosecution claim based on other charges that were dismissed). The rationale is that, unlike an arrest, "once an individual is prosecuted, each additional charge imposes, additional costs and burdens." *Elmore v. Fulton Cty. School District*, 605 F. App'x 906, 915 (11th Cir. 2015).

relate to the prosecution, the deprivation of liberty suffered by a plaintiff must have occurred after his or her arraignment. *Id.* This requirement proves to ban an insurmountable hurdle for Stallworth, who has failed to point to any deprivation of liberty, other than her arrest, as the basis for her malicious prosecution claim. *See Donley v. City of Morrow, Georgia*, 601 F. App'x 805, 814 (11th Cri. 2015) ("warrantless arrest cannot serve as the requisite Fourth Amendment seizure for purposes of his § 1983 malicious prosecution claim") (citing *Kingsland*, 382 F.3d at 1235). "[E]ven assuming [she] could meet the first two elements of a malicious prosecution-like Fourth Amendment claim, [her] failure to produce evidence on the third element dooms [her] chances for success." *Exford v. City of Montgomery*, 887 F. Supp. 2d 1210, 1226 (M.D. Ala. 2012).

Accordingly, Stallworth cannot maintain a claim for malicious prosecution and summary judgment is due to be granted in Hurst's favor.

IV. CONCLUSION

For the reasons set forth above, the Court concludes that Defendant Rodney Hurst is entitled to qualified immunity. Accordingly, it is

ORDERED that Defendant Hurst's Motion for Summary Judgment, (Doc. 54), be and is hereby **GRANTED**. The claims against Defendant Hurst in his individual capacity are dismissed with prejudice. Furthermore, Defendant Hurst's Motion for Leave to Supplement the Evidentiary Record (Doc. 61) is due to be and hereby is **DENIED**.

A separate judgment will issue.

DONE and ORDERED, this 5th day of February, 2021.

/s/ R. Austin Huffaker, Jr.
R. AUSTIN HUFFAKER, JR.
UNITED STATES DISTRICT JUDGE