No. 21-1501

In The
Supreme Court of the United States

ORRILYLN 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

BRIEF IN OPPOSITION FOR RESPONDENT RODNEY W. HURST

FRED L. CLEMENTS, JR.
Counsel of Record
WEBB MCNEILL WALKER PC
One Commerce Street, Ste. 700
Montgomery, Alabama 36104
(334) 262-1850 T
(334) 262-1772 F
fclements@wmwfirm.com
Counsel for Respondent

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

COUNTERSTATEMENT OF QUESTIONS PRESENTED

The Court should deny the petition based upon the following:

I. The Eleventh Circuit properly affirmed the district court's grant of qualified immunity on the false arrest, false imprisonment, and malicious prosecution claims because probable cause to arrest for driving under the influence existed where Deputy Hurst observed the following: (1) Stallworth driving at inconsistent speeds late at night on the interstate; (2) Stallworth changing lanes without use of a signal; (3) Stallworth's reduced faculties including drowsiness, impaired coordination, and speech; (4) Stallworth moving items around in her vehicle, including items in her backseat, while he was running her license; (5) Stallworth's eyes appearing "glossy"; (6) Stallworth's speech sounding "slowed and slurred"; (7) Stallworth having difficulty following basic instructions during the horizontal gaze nystagmus test; (8) Stallworth appearing distracted and continually looking over her shoulder as though looking for something that was not there during field sobriety testing; (9) Stallworth having difficulty maintaining her balance while completing field sobriety tests; (10) Stallworth showing difficulty maintaining a sense of time during the DRE test; and (11) Stallworth refusing the opportunity to voluntarily go to the hospital for testing to potentially avoid arrest.

II. The district court properly granted summary judgment on the malicious prosecution claim where

COUNTERSTATEMENT OF QUESTIONS PRESENTED – Continued

Stallworth failed to produce any evidence on the third element of a malicious prosecution claim, that the unlawful seizure related to the prosecution, because her arrest cannot serve as the predicate deprivation of liberty.

III. The Eleventh Circuit correctly held that Stallworth failed to meet her burden of showing a violation of clearly established law under the facts of this case where Deputy Hurst's objective observations supported his conclusion that Stallworth's condition made it unsafe for her to drive.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Respondent Rodney W. Hurst has no reportable entities concerning parent companies, subsidiaries, partners, limited liability entity members and managers, trustees (but no trust beneficiaries), affiliates, or similar reportable entities and lists the following entities/persons as parties in this proceeding:

1. Hurst, Rodney – Respondent;
2. Stallworth, Orrilyn – Petitioner.

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INTRODUCTION

The Eleventh Circuit properly affirmed the district court's grant of summary judgment on the basis that Deputy Hurst was entitled to qualified immunity on the false arrest, false imprisonment, and malicious prosecution claims because Hurst had at least arguable probable cause to arrest Stallworth for driving under the influence. The existence of probable cause, or in this case arguable probable cause, acts as a bar to false arrest, false imprisonment, and malicious prosecution claims. Under the totality of the circumstances, the following objective facts support Deputy Hurst's determination of probable cause. Before pulling Stallworth over, Deputy Hurst observed Stallworth driving at inconsistent speeds late at night on the interstate, weaving within her own lane and into the adjacent lane, and changing lanes without use of a signal. Upon interacting with Stallworth, Deputy Hurst observed her reduced faculties including drowsiness, impaired coordination, and speech. Deputy Hurst observed Stallworth moving items around inside her car, including items in her backseat, while he was running her license. Deputy Hurst observed that Stallworth's eyes appeared "glossy," and her speech sounded "slowed and slurred." During field sobriety testing, Deputy Hurst observed Stallworth having difficulty following basic instructions during the horizontal gaze nystagmus test, appeared distracted, and continually looked over her shoulder as though looking for something that was not there. Deputy Hurst further observed Stallworth having difficulty maintaining her balance while

completing field sobriety tests. Stallworth also showed difficulty maintaining a sense of time during the DRE test. Additionally, Stallworth refused the opportunity to voluntarily go to the hospital for testing to potentially avoid arrest. Given such facts, a reasonable officer could believe that Stallworth was under the influence and posed a danger to herself and others if permitted to drive.

The district court properly granted summary judgment on the malicious prosecution claim because Stallworth failed to point to any deprivation of liberty, other than her arrest, as the basis for her malicious prosecution claim. Stallworth does not argue that the district court's conclusion was incorrect; rather, Stallworth's argument focuses on the fact that this point of law was not expressly argued by Deputy Hurst. The district court, however, did not err in its holding because courts are permitted, and even obligated, to conduct their own research on the legal issues before them.

Stallworth has not, and cannot, meet her burden of demonstrating Deputy Hurst's actions violated clearly established law. In her briefs to this Court and the district court below, Stallworth failed to point to a case, statute, or constitutional provision providing sufficient clarity for a reasonable officer to know that arresting her would violate a clearly established constitutional right. Instead, Stallworth merely makes generalized assertions that because Deputy Hurst lacked probable cause, or arguable probable cause, he violated her clearly established rights under the Fourth Amendment, which is insufficient to meet her

burden. Additionally, Stallworth never challenged the doctrine of qualified immunity prior to filing her petition for certiorari with this Court. The Stallworth has improperly raised the issue with this Court.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit was not selected for publication but is available at *Stallworth v. Hurst*, No. 21-10731, 2021 WL 6143557 (11th Cir. Dec. 30, 2021). The order of the United States District Court for the Middle District of Alabama granting summary judgment to the respondent is unreported but is available at *Stallworth v. Hurst*, No. 2:18-CV-1005-RAH-SRW, 2021 WL 413524 (M.D. Ala. Feb. 5, 2021).

STATEMENT OF THE CASE

A. Statement of Facts

At approximately 11:00 p.m., Chilton County Deputy Rodney Hurst was on patrol duty and drove through a local Texaco station to conduct a business check. (Doc. 53-3, Hurst Dep. 10:9-14, 27:20-28:5.) While on patrol duty, Chilton County deputy sheriffs routinely conduct checks on local businesses, churches, and other buildings. (Doc. 53-6, Harmon Dep. 20:10-21:5, 23:12-17.) Patrolling deputies frequently check on this particular location, which has a heightened potential for criminal activity because the station is

isolated, open 24 hours, located directly off the interstate, and commonly staffed by a single clerk. (Doc. 53-3, Hurst Dep. 28:7-15, 32:5-18; Doc. 53-6, Harmon Dep. 20:1-23:4.)

At the station, Deputy Hurst noticed a car, that was later discovered to be driven by petitioner Orrilyn Stallworth, parked at the side of the station, with its engine running, and the lights on. (Doc. 53-3, Hurst Dep. 34:22-36:23.) Deputy Hurst parked his patrol vehicle and sat observing, not just Stallworth's car, but also traffic passing by on the road and people entering and exiting the station. (Doc. 53-3, Hurst Dep. 40:3-18.)

According to Stallworth, she awoke from a nap and then began driving northbound on Interstate 65 to Birmingham. (Doc. 53-2, Stallworth Dep. 50:22-51:3.) As Stallworth pulled out of the station, Deputy Hurst observed that her car had a dealership drive-off tag rather than a valid state license tag. (Doc. 53-3, Hurst Dep. 40:22-41.) Shortly after Stallworth entered I-65, Deputy Hurst decided to leave the Texaco station and get on the interstate. (Doc. 53-3, Hurst Dep. 41:6-10.)[1]

Stallworth was aware that Deputy Hurst's patrol vehicle was behind her, but she was not alarmed by it and did not believe he was following her per se. (Doc. 53-2, Stallworth Dep. 51:16-52:20.) On the interstate, Stallworth was pushing the buttons on her CD player

[1] Deputy Hurst's decision to go to the interstate at this time was not for the purpose of pursuing Stallworth's vehicle. (Doc. 53-2, Hurst Dep. 41:8-21.)

trying to find the particular selection of music that she wanted to listen to and estimates that she was driving around 40 mph. (Doc. 53-2, Stallworth Dep. 52:6-12.) After getting her music situated, Stallworth accelerated up to the speed limit. (Doc. 53-2, Stallworth Dep. 52:21-53:2.)

On the interstate, Deputy Hurst began paying more attention to Stallworth's car as he observed her speeds were varying from well below 55 mph up to 85 mph. (Doc. 53-3, Hurst Dep. 43:20-44:8, 43:23.) Around mile marker 203, Deputy Hurst began to actively follow Stallworth's car after observing her car swerving within its lane. (Doc. 53-3, Hurst Dep. 46:13-47:1.)[2] Around mile marker 208, Deputy Hurst observed Stallworth's car swerve over the dividing line of the interstate multiple times. (Doc. 53-3, Hurst Dep. 47:5-15.) Deputy Hurst observed Stallworth's car change lanes without use of a signal while passing a semi, then drive over the dividing line for an extended period of time. (Doc. 53-3, Hurst Dep. 47:16-48:10.)

Based upon the vehicle having a drive-off tag, no use of a signal lane change, failure to maintain lane, failure to maintain a reasonable and prudent speed, Deputy Hurst determined there was sufficient cause to conduct a traffic stop. (Doc. 53-3, Hurst Dep. 49:2-14.) Deputy Hurst initiated his emergency flashers and

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[2] Deputy Hurst explained that officers will observe how a car is being driven within its own lane as simply because a car is staying within its lane does not mean that the operator is driving well. (Doc. 53-2, Hurst Dep. 46:16-21.)

Stallworth pulled over. (Doc. 53-3, Hurst Dep. 50:13-14.)[3] After Stallworth stopped, Deputy Hurst began video recording the traffic stop using a glasses camera. (Doc. 53-3, Hurst Dep. 105:15-106:1; Doc. 53-1, Vid. 23:56:22.)[4] Deputy Hurst called into dispatch a traffic stop on a light-blue Nissan with drive-off tags on I-65 Northbound at the 212 offramp. (Doc. 53-1, Vid. 23:56:30-23:56:37; Doc. 53-3, Hurst Dep. 106:5-13.)

On video, Deputy Hurst exits his patrol vehicle and walks up to the driver's side door of Stallworth's car. (Doc. 53-1, Vid. 23:56:40-23:56:56.) When Stallworth rolls down her window, Deputy Hurst asks, "How you doing? Are you alright? Are you a little sleepy or what are we up to tonight?" (Doc. 53-1, Vid. 23:57:00-23:57:05.)[5] Stallworth does not respond

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[3] Deputy Hurst waited to execute the traffic stop until Exit 212, where there is plenty of overhead lighting and room to pull off the interstate, due to the high number of traffic fatalities that occur on the interstate from mile marker 200 to 212. (Doc. 53-2, Hurst Dep. 49:22-50:9.)

[4] Video of a part of the stop was captured on Deputy Hurst's eyeglass camera and was filed conventionally with the district court. (Doc. 53-2, Hurst Dep. 104:21-105:9.) The video has been provided to this Court with the brief of the respondent. The video does not capture the entire incident as it stops while Deputy Hurst was conducting field sobriety tests because the battery camera died. (Doc. 53-2, Hurst Dep. 116:7-12.) According to Chilton County Sheriff John Shearon, the eyeglass cameras were ideal for capturing officers' field of view, but the CCSO had to phase them out of use due to issues with battery life, reliability, and durability. (Doc. 53-15, Shearon Aff. ¶ 9.)

[5] It was alleged in the complaint that Stallworth was targeted because of her race. However, Deputy Hurst was unaware of the race of the driver or even the number of people in the car

immediately, but rubs her legs with her hands, adjusts a knob on her console, and then says, "Just a little tired," and upon further questioning, tells Hurst she is driving to Birmingham. (Doc. 53-1, Vid. 23:57:05-23:57:15.)

Deputy Hurst then asks whether Stallworth was taking a nap at the Texaco station (Doc. 53-1, Vid. 23:57:16-23:57:20; Doc. 53-3, Hurst Dep. 107:4-11.) Stallworth responds, "It's like I told her I was tired." (Doc. 53-1, Vid. 23:57:20-23:57:23; Doc. 53-3, Hurst Dep. 108:2-5.) Hurst then asks, "Who were you talking to . . . you say you told somebody is that what you just said?" (Doc. 53-1, Vid. 23:57:26-23:57:29.)[6] Stallworth replies, "back at the gas station." (Doc. 53-1, Vid. 23:57:30-23:57:31.) "Oh okay! Alright! [laughing] I was about to say, wasn't nobody over there." (Doc. 53-1, Vid. 23:57:32-23:57:35.)

Deputy Hurst then asks to see Stallworth's license. (Doc. 53-1, Vid. 23:57:35.) Stallworth without responding, begins adjusting the controls on the dash panel before retrieving and handing her license to Deputy Hurst. (Doc. 53-1, Vid. 23:57:35-23:58:02.) During this time, Deputy Hurst asks questions related to

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until after he executed the traffic stop and walked up to the drivers-side door. (Doc. 53-3, Hurst Dep. 107:12 21.)

[6] At his deposition, Deputy Hurst explained that he at first did not understand who Stallworth was referring to as "her" and was concerned that Stallworth might be referring to an imaginary person, but then understood Stallworth was referring to the female cashier back at the Texaco station. (Doc. 53-3, Hurst Dep. 108:6-18.)

ownership of the car, but Stallworth does not respond at first. (Doc. 53-1, Vid. 23:57:47-23:58:02.) Deputy Hurst asks more about the car and confirms Stallworth had just purchased it after Stallworth produces the bill of sale. (Doc. 53 1, Vid. 23:58:02-23:58:23, Doc. 53-3, Hurst Dep. 109:4-7.)

Deputy Hurst returns to his vehicle and runs Stallworth's information through the computer. (Doc. 53-1, Vid. 23:58:24-23:59:55; Doc. 53-3, Hurst Dep. 109:8-17.) Deputy Hurst walks back to Stallworth's car, shines his flashlight into the backseat area, and notices that items inside the car have been moved. (Doc. 53-1, Vid. 00:00:16-00:01:00; Doc. 53-3, Hurst Dep. 57:4-16, 110:6-18.)[7] Deputy Hurst then walks to the back of Stallworth's car and calls for back-up for a possible "10-55," which means possible intoxicated driver. (Doc. 53-1, Vid. 00:26-00:54; Doc. 53-3, Hurst Dep. 110:6-18.)

When Deputy Hurst returns to the drivers-side window, Stallworth asks, "What's wrong?" Hurst then asks "Did . . . uh . . . you have anything to drink at all tonight?" Stallworth replied she does not drink. (Doc. 53-1, Vid. 01:00-01:10.) Stallworth again asks, "What's wrong?" Deputy Hurst then explains that he noticed a boot had been moved from the back to the front and asks, "Did you just move your shoes a minute ago, what happened?" (Doc. 53-1, Vid. 01:11-01:17.) Stallworth

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[7] The clock timer on the video changes to "00:00:00" during this point because it was past midnight and reset for the following day.

replies, "Nothing. What's wrong?" (Doc. 53-1, Vid. 01:18-01:20.) Deputy Hurst then asks about an open bottle containing liquid on the backseat floorboard, and Stallworth responds that it is tea. (Doc. 53-1, Vid. 01:23-01:27; Doc. 53-3, Hurst Dep. 120:14-26.)

Deputy Hurst then explains what he has observed, and Stallworth states "I don't drink. What's wrong?" (Doc. 53-1, Vid. 01:28-01:36.) Deputy Hurst explains, "Something doesn't seem right, okay? . . . Right now, your speech is kind of slurred. You're slow to react . . . and that's why I asked you a while ago were you sleepy" (Doc. 53-1, Vid. 01:44-01:55.) After Stallworth talks about taking a nap back at the Texaco station, Deputy Hurst asks, "Have you had any kind of medication tonight at all?" (Doc. 53-1, Vid. 01:56-02-2:10.) Stallworth replies, "I don't drink and I don't do drugs. I'm a licensed attorney in the State of Alabama. I don't drink. I don't smoke." (Doc. 53-1, Vid. 02:11-2:26.) As Deputy Hurst attempts to explain what he has observed, Stallworth proceeds to ramble on about "straightening up her car" as she moves more items about her car until Hurst asks her to stop. (Doc. 53-1, Vid. 2:27-2:44.) After some additional discussion, Deputy Hurst explains to Stallworth the reason he pulled her over:

> 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, Vid. 03:02-3:18.)

City of Clanton Police Officer Matt Foshee arrives and stops his patrol cruiser facing south in the northbound lane in front of Stallworth's car. (Doc. 53-1, Vid. 3:25; Doc. 53-4, Foshee Dep. 17:19-18:9, 37:10-23.)[8] Stallworth continues talking about being tired, pulls an energy drink out of her purse, and says something like, "I'm not going to drink it right now." (Doc. 53-1, Vid. 3:26-3:40.) Deputy Hurst references Stallworth's earlier statements that she does not drink or use drugs, asks whether there's anything illegal or that he should know about in her car, and when Stallworth replies "no", Hurst requests consent to search the car. (Doc. 53-1, Vid. 3:41-4:10.) Stallworth asks, "why?" and then begins telling Officer Foshee that she does not drink or smoke. (Doc. 53-1, Vid. 4:11-4:28.)

Officer Foshee then asks Stallworth whether she has taken any medications or prescribed medications and explains that they can sometimes make people drowsy. (Doc. 53-1, Vid. 4:29-4:42.) After some further discussions, Deputy Hurst goes over what he has observed about the moved boot and asks whether Stallworth had simply moved the boot to put on her shoes. (Doc. 53-1, Vid. 5:10-5:24.) Stallworth then goes into a small rant:

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[8] The CCSO and Clanton PD commonly provide the assistance to each other. (Doc. 53-4, Foshee Dep. 16:4-17:11, 53:1-7.)

> I was straightening up everything in my car. I had stuff everywhere. Trash, papers, everything. I was just straightening up my car. I just bought the car. So, I straightened up the car. There's nothing wrong with that. I don't want stuff all over the car. There's nothing wrong with it.

(Doc. 53-1, Vid. 5:24-5:43.)[9]

Deputy Hurst then asks Stallworth to step out of her car to perform field sobriety tests. (Doc. 53-1, Vid. 5:44-5:48.)[10] Stallworth sits quietly momentarily before asking, "why?" (Doc. 53-1, Vid. 5:44 6:02.) Deputy Hurst explains:

> Because I'm not for sure that you are not under the influence of anything. If you're okay on FSTs,[11] I'll cut you loose and everything will be good, okay? But I need to make sure you're safe to drive. 'Cause when I followed you for the last few miles, it doesn't tell me you're safe to drive.

(Doc. 53-1, Vid. 6:03 6:14.) Deputy Hurst and Officer Foshee then spend time reasoning with Stallworth to step out of the car to take some FSTs. (Doc. 53-1, Vid.

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[9] While Stallworth may have been correct that there is technically nothing wrong with straightening up one's car, in the context of a traffic stop on the interstate after midnight it not only seems like an unusual time to tidy up but could appear to a reasonable officer as a possible attempt to hide something.

[10] At this time, video shows two other Clanton police officers have arrived and park behind Hurst's patrol vehicle. (Doc. 53-1, Vid. 05:56; Doc. 53-4, Foshee Dep. 21:6-22.)

[11] "FSTs" is short for field sobriety tests.

6:15-7:50.) Because Stallworth would not step out of her car, Deputy Hurst asks one of the other Clanton officers to continue reasoning her while he steps away to speak with Foshee. (Doc. 53-1, Vid. 7:51; Doc. 53-3, Hurst Dep. 59:17-22, 60:22-61:2.) Deputy Hurst and Officer Foshee walk behind Stallworth's car and have the following discussion regarding Stallworth's condition:

> Hurst: Am I right or wrong?
>
> Foshee: Her eyes are really glossy.
>
> Hurst: She's not right. That's all there is to it.
>
> Foshee: Her speech is really slowed and slurred.
>
> Hurst: When I went to my car, there's a bottle laying back there in the back seat. She said it's tea. I didn't pay any attention to it. When I came back, she had a jacket and a boot covering that bottle. I came back around the car, that's when I called you, I went back she'd done pulled her boot back up front. Something's not . . . something doesn't add up.

(Doc. 53-1, Vid. 7:55-8:28.) Deputy Hurst returns to Stallworth's car and continues to reason with her to step out and conduct field sobriety tests while she remains nonresponsive. (Doc. 53-1, Vid. 09:30-11:07.)

Stallworth eventually steps out of the car voluntarily and then eventually walks to the front of her car

to begin the FSTs. (Doc. 53-1, Vid. 12:04.)[12] At the front of the car, Deputy Hurst conducts the eye nystagmus test and observes Stallworth exhibiting paranoia, confusion, distraction, and slowness to react. (Doc. 53-3, Hurst Dep. 61:8-14, 62:22-63:12.) Deputy Hurst instructs Stallworth to stand with her hands by her side and with her feet together, but Stallworth stands with her feet apart until Hurst repeats the instruction. (Doc. 53-1, Vid. 12:14-12:23.) During the test, Stallworth keeps looking beside and behind her as though looking for someone there. (Doc. 53-1, Vid. 12:04-12:07, 12:25-12:29, 12:42-45, 13:09-13:11, 13:36-13:37, 14:08-14:10.) At his deposition, Deputy Hurst described his observations on Stallworth's behavior as follows:

> She was asked to put her feet together, at that point she didn't. She come back and she asked me what did I say, I think is what she asked me. She was – just confused – she was in a confused state is the way I would put it. But I'd asked her to put her hands by her side and put her feet together. Eventually she did that. But the whole time I'm trying to talk to her, she's distracted; she's looking behind her, she's looking beside her, like there's someone else there.

(Doc. 53-3, Hurst Dep. 62:22-63:12.)

On video, Deputy Hurst begins the nystagmus test by instructing Stallworth to watch his finger, but

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[12] The officers spent over five minutes reasoning with Stallworth to step out of the car to take the FSTs. (Doc. 53-1, Vid. 05:48-11:07.)

instead of following the instruction she asks why the test was not being conducted at the back of her car. (Doc. 53-1, 12:24-12:25-12:30) Deputy Hurst again instructs Stallworth to watch his finger, and when he asks whether she could see his finger, Stallworth replies, "No, I'm watching you. Why I got to watch your finger?" (Doc. 53-1, Vid. 12:52-13:05.) After Deputy Hurst explains it is part of the test, Deputy Hurst again asks Stallworth to watch his finger and begins moving it horizontally, and Stallworth's eyelids begin to close. (Doc. 53-1, Vid. 13:06-13:32.) Deputy Hurst says, "Open your eyes up for me. Don't go to sleep." Stallworth replies, I ain't going to sleep. I have small eyes." (Doc. 53-1, Vid. 13:33-37.) Deputy Hurst again asks Stallworth to follow his finger as it moves horizontally and then toward and away from Stallworth. (Doc. 53 1, Vid. 13:38-14:07.)[13]

During the eye nystagmus test, Deputy Hurst determined that Stallworth lacked smooth tracking. (Doc. 53-3, Hurst Dep. 66:18-67:1.) During the nystagmus test, Officer Foshee observed from slightly behind Hurst's left shoulder and likewise concluded that Stallworth had signs of nystagmus and explained the following:

> Your eyes have natural nystagmus. But if you take any type of alcohol or narcotic or something, prescription drugs, they'll slow down

[13] Deputy Hurst's camera stopped recording after the nystagmus test and ends with him stating, "the next thing we're going to do is you're going to walk to me" while Stallworth again looks behind her. (Doc. 53-1, Vid. 14:08-10.)

> the nystagmus in your eyes; whereas, someone who is at a normal level can actually see the nystagmus. If I remember correctly, she had pendulum nystagmus, which is where your eyes are straight forward and they bounce; and she also had horizontal which is where they move side to side. . . . . but instead of being a smooth pursuit, it jumps.

(Doc. 53-4, Foshee Dep. 46:4-47:20.)

In addition to the eye nystagmus test, Deputy Hurst conducted a walk-and-turn test, a one-legged stand, and a DRE test for drug recognition. (Doc. 53-3, Hurst Dep. 65:19-66:7.) Deputy Hurst observed that during the one-legged stand, Stallworth showed balance issues and repeatedly held her arms by her sides to try to maintain her balance, and during the walk and turn, Stallworth's heels and toes did not meet. (Doc. 53-3, Hurst Dep. 67:2-12.) Officer Foshee also observed the one-legged stand and the walk-and-turn tests and observed her being off balance and having to keep catching her balance. (Doc. 53-4, Foshee Dep. 23:2 5, 48:10-13.) In a DRE test, persons being tested put their arms straight out, tilt their head back, close their eyes, count to 30, and then report when they reach 30 seconds; Stallworth counted to 30 within 10 seconds. (Doc. 53-3, Hurst Dep. 65:19-66:17.)

The series of tests conducted by Deputy Hurst are called standardized field sobriety tests (SFSTs) and are accepted by courts across the country as the standard for establishing whether an individual is

impaired. (Doc. 53-12, Healey Rep. – Pg. 11 of 13.)[14] Deputy Hurst attended the Alabama Peace Officers Standards and Training Commission (APOSTC) police academy where he was properly trained and certified to conduct SFSTs. (Doc. 53 12, Healey Rep. – Pg. 11 of 13; Doc. 53-3, Hurst Dep. 15:18-19.) Based upon his observances during the field sobriety tests, during the traffic stop, and on the interstate, Deputy Hurst determined probable cause existed to arrest Stallworth for driving under the influence. (Doc. 53-3, Hurst Dep. 17:18-22:4; Doc. 53-10, Uniform Arrest Rep at 2-3.)

Before arresting Stallworth, Deputy Hurst explained the situation and asked whether anyone was available to pick her up or whether she would voluntarily go to hospital to get checked out, but Stallworth declined both options. (Doc. 53-3, Hurst Dep. 67:22-69:14.) Deputy Hurst then arrested Stallworth for DUI any substance under Ala. Code § 32-5A-191(a)(5). (Doc. 53-3, Hurst Dep. 70:14-16; Doc. 53-10, Uniform Arrest Rep. at 2-3; Doc. 53-13, Uniform Traffic Ticket and Compl. at 2-3.) Stallworth was also issued a traffic citation for failure to signal in violation of Ala. Code § 32-5A-134. (Doc. 53-13, Uniform Traffic Ticket and Compl. at 2-3.) Deputy Hurst placed Stallworth in handcuffs and transported her to the Chilton County

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[14] Shane Healey is an expert witness in in the areas of police use of force, best practices, and policy and procedure. (Doc. 53-11, Healey Decl. ¶ 1.) Healey's declaration affirms that the opinions in his report are reliable and given to a reasonable degree of professional certainty. (Doc. 53-11, Healey Decl. ¶¶ 2-5.)

Jail without incident. (Doc. 53-3, Hurst Dep. 72:15-73:20.)

At the jail, in accordance with standard intake procedure at the jail, corrections staff handcuffed Stallworth to a metal bar in the booking area until a pat-down was performed by corrections staff. (Doc. 53-3, Hurst Dep. 75:3 15, 77:3-15.) Deputy Hurst last saw Stallworth at a desk being booked into the jail as he returned to patrol duty. (Doc. 53-3, Hurst Dep. 79:20-80:19.) In accordance with standard jail policy for detainees arrested for driving under the influence, Stallworth was placed in a holding cell at the front of the jail. (Doc. 53-3, Hurst Dep. 78:7-17.) Stallworth was released on bond the same day. (Doc. 53-2, Stallworth Dep. 66:12-20; Doc. 53 8, Booking Rep. at 2.)

At the subsequent hearing, Deputy Hurst told the district attorney, who was prepared to prosecute the case, that because Stallworth was an attorney and a professional who worked for FedEx, he would be willing to dismiss the case if Stallworth would be willing to take and pass a drug test and pay her fines. (Doc. 53-3, Hurst Dep. 99:21-101:4.) The district attorney approached Stallworth's attorney, she took and passed the drug test, and her case was dismissed. (Doc. 53-3, Hurst Dep. 101:6-16.)

B. Course of Proceedings Below

United States District Court for the Middle District of Alabama granted summary judgment to Deputy Hurst on the basis of qualified immunity.

Stallworth v. Hurst, No. 2:18-CV-1005-RAH-SRW, 2021 WL 413524, at *11 (M.D. Ala. Feb. 5, 2021). The Eleventh Circuit Court of Appeals affirmed the district court, likewise, holding Deputy Hurst was entitled to qualified immunity as Stallworth failed to demonstrate a violation of clearly established law. *Stallworth v. Hurst*, No. 21-10731, 2021 WL 6143557, at *4 (11th Cir. Dec. 30, 2021).

REASONS FOR DENYING THE WRIT

I. THE ELEVENTH CIRCUIT CORRECTLY HELD DEPUTY HURST IS ENTITLED TO QUALIFIED IMMUNITY.

Qualified immunity offers complete protection for government officials sued in their individual capacities if their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments," and "protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 131 S. Ct. 2074, 2085 (2011)). To overcome a public official's entitlement to qualified immunity, a plaintiff must be able to establish not only that the public official acted wrongfully, but also be able to point the Court to law existing at the time of the alleged violation that provided "fair warning" that the conduct of the defendant

was illegal. *Willingham v. Loughnan*, 321 F.3d 1299, 1301 (11th Cir. 2003). The analysis does not take into account the officer's alleged subjective intent; rather, it "turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were clearly established at the time it was taken." *Messerschmidt*, 565 U.S. at 546 (citations omitted).

In *Saucier v. Katz*, 533 U.S. 194 (2001), this Court directed courts to use a two-part test to determine whether qualified immunity applies. First, the court determines whether there was a constitutional violation. *Saucier*, 533 U.S. at 201. Second, the court determines whether the constitutional right in question was clearly established. *Id.* This Court has abandoned the rigid order of analysis enunciated in *Saucier*, which required courts to first determine whether there was a constitutional violation, and directed courts exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

A. Deputy Hurst's arrest of Stallworth for driving under the influence was constitutionally reasonable.

Stallworth alleged § 1983 claims against Deputy Hurst for false arrest, false imprisonment, and malicious prosecution. (Doc. 27 – Pgs. 13, 15.) Regarding the false arrest claim, "[a] warrantless arrest without

probable cause violates the Constitution and provides a basis for a section 1983 claim." *Marx v. Gumbinner*, 905 F.2d 1503, 1505 (11th Cir. 1990). As noted by the district court, "false imprisonment is derivative of a false arrest," and because Stallworth's false imprisonment claim is predicated on her false arrest claim, the claims can be analyzed simultaneously. (Doc. 76 – Pg. 14) (citing *see Ortega v. Christian*, 85 F.3d 1521, 1526 (11th Cir. 1996).

To establish a malicious prosecution claim under § 1983, plaintiffs must "prove a violation of [their] Fourth Amendment right to be free from unreasonable seizures in addition to the elements of the common law tort of malicious prosecution." *Wood v. Kesler*, 323 F.3d 872, 881 (11th Cir. 2003). 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 v. City of Miami*, 382 F.3d 1220, 1234-35 (11th Cir. 2004), abrogated on other grounds by *Williams v. Aguirre*, 965 F.3d 1147 (11th Cir. 2020).

Significant to this case, is that the existence of probable cause is an absolute bar to § 1983 malicious prosecution claims. *Kjellsen v. Mills*, 517 F.3d 1232, 1237 (11th Cir. 2008). The existence of probable cause, likewise, acts as an absolute bar to § 1983 false arrest and imprisonment claims. *Case v. Eslinger*, 555 F.3d 1317, 1326 (11th Cir. 2009). "Simply put, our case law makes clear that probable cause exists whenever an

officer reasonably believes that an offense is being committed." *Durruthy v. Pastor*, 351 F.3d 1080, 1090 (11th Cir. 2003).

"Absent probable cause, an officer is still entitled to qualified immunity if arguable probable cause existed." *Case*, 555 F.3d at 1327. "It is well settled that 'even law enforcement officials who reasonably but mistakenly conclude that probable cause is present are entitled to [qualified] immunity.' " *Strickland v. City of Dothan, AL*, 399 F. Supp. 2d 1275, 1291 (M.D. Ala. 2005) (citing *Wood*, 323 F.3d at 878) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)). "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." *Case*, 555 F.3d at 1327; *Durruthy*, 351 F.3d at 1089. The distinction between arguable probable cause and actual probable cause is significant because 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). "Arguable probable cause exists if, under all of the facts and circumstances, an officer reasonably *could – not necessarily would* – have believed that probable cause was present." *Crosby v. Monroe County*, 394 F.3d 1328, 1332 (11th Cir. 2004) (emphasis added).

1. Deputy Hurst had at least arguable reasonable suspicion to conduct an investigative stop and at least arguable probable cause to conduct a traffic stop.

In the context of qualified immunity, the Eleventh Circuit has stated "the issue is not whether reasonable suspicion existed in fact, but whether the officer had 'arguable' reasonable suspicion." *Jackson v. Sauls*, 206 F.3d 1156, 1165 (11th Cir. 2000). In this case, it is undisputed that Stallworth failed to have a valid governmental license tag on her vehicle. (Appellant's Br. at 28 n.81) (stating "[a]ll parties agree that Stallworth was displaying a dealership 'drive off' tag on her car"). Law enforcement officers investigate vehicles lacking license tags as it is not uncommon for such vehicles to be improperly registered or possibly stolen. (Doc. 53-11, Healey Report – Pg. 6.) Under Alabama law, the absence of a valid license tag on Stallworth's car is covered under Ala. Code §§ 32-6-51 and 40-12-242, which requires a plainly visible rear license tag on motor vehicles used on public roadways. Thus, reasonable suspicion was present to stop Stallworth because she lacked a valid license tag visibly posted on her vehicle. *United States v. Rosian*, 822 F. App'x 964, 967 (11th Cir. 2020) (concluding that officers lawfully stopped a vehicle for failing to have a plainly visible license tag); *United States v. DeJesus*, 435 F. App'x 895, 899 (11th Cir. 2011) (same).

Additionally, it is undisputed that Stallworth failed to signal when changing lanes. Deputy Hurst

issued Stallworth a traffic citation for failure to signal in violation of Ala. Code § 32-5A-134. (Doc. 53-13, Uniform Traffic Ticket at 2-3.) Additionally, Stallworth's complaint failed to challenge the failure to signal citation. (*See* Doc. 27.) Nor did Stallworth present evidence at summary judgment disputing the validity of the ticket. Deputy Hurst's stop, therefore, was proper if for no other reason than the failure to signal. *See Reid v. Henry Cty., Ga.*, 568 F. App'x 745, 748 (11th Cir. 2014) (finding reasonable articulable suspicion to make an investigatory stop for lane changes without use of signal).

Stallworth's varying speed on the interstate provided at least arguable probable cause. According to Deputy Hurst, Stallworth's speeds varied from below the speed limit to 85 miles per hour. (Doc. 53-3, Hurst Dep. 43:20-44:8, 43:23; Doc. 53-10, Arrest Report – Pg. 2.) Stallworth testified that, while she was searching for a CD she wanted to listen to on her CD player, she drove as slow as 40 mph on the interstate and then accelerated once she found the right music. (Doc. 53-2, Stallworth Dep. 52:6-12.) Thus, Stallworth's own testimony demonstrates that her speed on the interstate varied. Stallworth explains her variation in speed as innocent behavior. Even "seemingly innocent activity," however, can serve as a basis for probable cause. *Case v. Eslinger*, 555 F.3d 1317, 1327 (11th Cir. 2009).

Additionally, Stallworth on video demonstrates difficulty finding the controls on the control panel of her recently purchased car. Given that Stallworth had difficulty operating controls while her car was stopped

on the side of the interstate, it is not a logistical leap of faith to conclude that she experienced at least the same difficulty operating the controls while driving on the interstate. Nor is it a logistical leap that distracted drivers can vary the speed of their cars significantly and weave in and out of their lane. Accordingly, Stallworth's own testimony supports Deputy Hurst's decision to conduct a traffic stop. As observed by the district court, Stallworth's failure to display a valid license tag and to maintain a reasonable and prudent speed was sufficient probable cause to support a traffic stop. (Doc. 76 – Pgs. 18-19) (citing *Holley v. Town of Camp Hill*, 351 F. Supp. 3d 1359, 1367 (M.D. Ala. 2018)) (citing *Stephens v. DeGiovanni*, 852 F.3d 1298, 1329 n.21 (11th Cir. 2017)).

Stallworth crossing the dividing line and fog line, driving side to side within her own lane, and occupying both lanes further supports the existence of probable cause. Under Ala. Code § 32-5A-88, a driver is required to drive "as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Stallworth's failure to signal violated Ala. Code § 32-5A-134, which requires drivers to signal a lane change "by means of the hand and arm or by signal lamps." Additionally, Stallworth received a citation for failure to signal while changing lanes. (Doc. 53-13, Traffic Ticket and Complaint – CCSO Doc. No. 76.)

Significantly, the basis for probable cause to conduct a traffic stop also supports Deputy Hurst's

determination of probable cause for DUI. According to expert Shane Healey, elements of Stallworth's driving behavior can be signs of impaired driving. (Doc. 53-12, Healey Report – Pg. 7 of 13.) The Standardized Field Sobriety Testing training manual used by Deputy Hearst at the police academy identifies a list of thirty-six cues of impairment. (Doc. 53-12, Healey Report – Pg. 7 of 13.) Such cues include "weaving, weaving across lane lines, straddling a lane line, drifting, varying speed, slow speed [10+ mph under limit], failure to signal or signal inconsistent with action, improper or unsafe lane change." (Doc. 53-12, Healey Report – Pg. 7 of 13.) Notably, Deputy Hurst discusses these precise driving behaviors with Stallworth on the video, and they were also contained in his arrest report. (Doc. 53-10, Uniform Arrest Report – Pg. 2.) Because Stallworth's driving patterns that formed the basis for the stop are signs of cues of impairment, they also supported probable cause that Stallworth was driving impaired.

2. Deputy Hurst had at least arguable probable cause to arrest Stallworth for DUI.

"Whether a particular set of facts gives rise to probable cause or arguable probable cause to justify an arrest for a particular crime depends, of course, on the elements of the crime." *Crosby*, 394 F.3d at 1333. Thus, the issue in this case is whether probable cause or at least arguable probable cause existed to arrest

Stallworth under Alabama's DUI statute, Ala. Code § 32-5A-191. The DUI statute, in relevant part, states:

> (a) A person shall not drive or be in actual physical control of any vehicle while:
>
> (1) There is 0.08 percent or more by weight of alcohol in his or her blood;
>
> (2) Under the influence of alcohol;
>
> (3) Under the influence of a controlled substance to a degree which renders him or her incapable of safely driving;
>
> (4) Under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving; or
>
> (5) 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).

In this case, Deputy Hurst arrested Stallworth under Ala. Code § 32-5A-191(a)(5). (Doc. 53-13 –Ticket and Compl. – Pg. 2; Doc. 53-10, Arrest Report – Pg. 2.) Notably, the basis for arrest under Subsection (a)(5) is mental or physical impairment under "any substance" affecting a driver's ability to operate a vehicle safely. Ala. Code § 32-5A-191(a)(5). In *Sturgeon v. City of Vestavia Hills* 599 So. 2d 92, 93 (Ala. Crim. App. 1992), the Alabama Court of Civil Appeals addressed the legislative intent behind the enactment of Subsection (a)(5)

to determine the meaning of the term "any substance." 599 So. 2d 92, 93 (Ala. Crim. App. 1992). Addressing the issue of whether "any substance" under subsection (a)(5) could include alcohol, the court concluded that "subsection (a)(5) does not include the substances covered by subsections (a)(1) through (a)(4)." *Sturgeon*, 599 So. 2d at 93. Furthermore, after noting that (a)(5) enacted some years after the other subsections and discussing requirement of proof under subsections (a)(1) through (a)(4), the court stated:

> Our review of the statute leads us to conclude that (a)(5) was enacted to cover those situations in which the defendant's mental and/or physical faculties are impaired by some substance other than alcohol or a controlled substance. An example of the proper application of (a)(5) can be seen in *Raper v. State*, 584 So. 2d 544 (Ala. Crim. App. 1991). The different subsections of § 32-5A-191 are alternative methods of proving the same offense (DUI) and that specific alternative must be alleged and proved.

Id. at 93-94.

Subsection (a)(5) is essentially designed for scenarios where an officer in the field has probable cause to believe a driver is impaired but substance causing the impairment in unknown to the arresting officer. Although this definition may appear somewhat nebulous, in this age of prescription drug addiction, the ability of designer drugs to stay a step ahead of states' drug testing capabilities, and the availability of legal

but impairment causing over-the-counter drugs, nutritional supplements, and beverages for purchase at drug stores, nutrition stores, and gas stations, subsection (a)(5) is a necessity. Otherwise, law enforcement officers would be required to let impaired drivers back on the road merely because they were unable to identify the substance causing the impairment. Significant to this case, Stallworth has not challenged the "any substance" element under Subsection (a)(5). Thus, Deputy Hurst's arrest was proper, irrespective of whether he was aware of what may have been causing Stallworth's impairment, as long as there was probable cause, or at least arguable probable cause, to believe that Stallworth was driving impaired.

In *Raper v. State*, the Alabama Court of Civil Appeals concluded evidence was legally sufficient to sustain a conviction under § 32-5A-191(a)(5) where the arresting officer testified the arrestee's eyes were "glossy, glass-looking," that his speech was slurred, he had trouble determining where he was when asked, he showed difficulty during repeated attempts to use a telephone, and the fact that arrestee repeatedly claimed that he was not drunk but had received a shot for the injury to his arm. 584 So. 2d 544, 547 (Ala. Crim. App. 1991). It should be noted that *Raper* arose from a challenge of a conviction, and Deputy Hurst's determination of probable cause, or here arguable probable cause, is held to a lesser standard than evidence sufficient to support a conviction. Thus, it is significant that some of the same signs of impairment

present in Stallworth were also present to support the conviction in *Raper*.

For example, in addition to Deputy Hurst and Officer Foshee's testimony, the video itself demonstrates that Stallworth's speech was, at least arguably, slurred, and her eyes were, at least arguably, glossy. (Doc. 53-1, Vid. 01:44-01:55, 7:55-8:28.) Additionally, the video shows Stallworth was at times unsteady on her feet, appeared confused and slow to process and respond to questioning, repeatedly asked "what's wrong?" despite Deputy Hurst's multiple explanations, was non-responsive at various times, acted in a paranoid manner looking behind her during the SFTs, and repositioned items in car including covering a bottle of liquid in the back seat. The video further shows Stallworth distracted, slow to respond, paranoid, and struggling to follow simple directions during the nystagmus test. Such behaviors by Stallworth "are consistent with post stop impairment cues taught to Deputy Hurst through the NHTSA course" at the police academy. (Doc. 53-12, Healey Report – Pg. 10 of 13.)

The field sobriety tests supported Deputy Hurst's determination of probable cause. Deputy Hurst conducted four tests: eye nystagmus test, walk-and-turn, one-legged stand, and a DRE test for drug recognition. As shown on video, Deputy Hurst conducted the nystagmus test first. Both Deputy Hurst and Officer Foshee observed that Stallworth's eyes lacked smooth tracking and the presence of nystagmus (Doc. 53-3, Hurst Dep. 66:18-67:1; Doc. 53-4, Foshee Dep.

46:4-47:20.)[15] Stallworth is shown on video at this time exhibiting signs of paranoia, inability to understand or follow simple instructions, and a general unresponsiveness. Additionally, both Hurst and Foshee observed balance and coordination issues during the walk-and-turn and one-legged stand tests. (Doc. 53-3 Hurst Dep. 67:2-12; Doc. 53-4, Foshee Dep. 23:2-5, 48:10-13.) Deputy Hurst also observed that Stallworth had issues with tracking time during the DRE drug recognition test. (Doc. 53-3, Hurst Dep. 65:19-66:17.) Alabama has recognized that the tests performed by Deputy Hurst are a proper basis for determining probable cause. *Sides v. State*, 574 So. 2d 856, 858 (Ala. Crim. App.), *aff'd*, 574 So. 2d 859 (Ala. 1990) (stating an arrestee's performance on the field sobriety tests, which included the nystagmus, walk-and-turn, and one-legged stand, provided the officer "with probable cause to believe he was under the influence of alcohol, and the defendant

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[15] Nystagmus is an involuntary jerking or bouncing of the eyeball that occurs when there is a disturbance of the vestibular (inner ear) system or the oculomotor control of the eye. The "horizontal gaze nystagmus" test measures the extent to which a person's eyes jerk as they follow an object moving from one side of the persons field of vision to the other. The test is premised on the understanding that, whereas everyone's eyes exhibit some jerking while turning to the side, when the subject is intoxicated the onset of the jerking occurs after fewer degrees of turning, and the jerking at more extreme angles becomes more distinct. As the degree of impairment becomes greater, the jerking or bouncing, i.e. the nystagmus, becomes more pronounced.

Babers v. City of Tallassee, Ala., 152 F. Supp. 2d 1298, 1302 (M.D. Ala. 2001) (internal citations omitted).

was then properly arrested for DUI and taken into custody"). Accordingly, the results of the field sobriety tests provided Deputy Hurst with probable cause to arrest Stallworth for DUI.

3. Stallworth failed to point to any deprivation of liberty, other than her arrest, as the basis for her malicious prosecution claim.

Regarding the malicious prosecution claim, the district court concluded that "[e]ven assuming [Stallworth] could meet the first two elements of a malicious prosecution-like Fourth Amendment claims, [her] failure to produce evidence on the third element dooms [her] chances for success." (Doc. 76 – Pg. 26.) Given that the second element of a malicious prosecution claim involves whether an unlawful seizure occurred, the district court conclusion makes it clear that Stallworth failed to create a genuine issue regarding whether Deputy Hurst had probable cause to arrest her for driving under the influence. Indeed, the district court, earlier in its opinion stated, if Deputy Hurst acted with probable cause, then he did not violate Stallworth's Fourth Amendment rights and cites *Kjellsen v. Mills*, 517 F.3d 1232, 1237 (11th Cir. 2008), for the proposition that the existence of probable cause acts as a bar to malicious prosecution. (Doc. 76 – Pg. 13.) Thus, the district court's conclusion that the malicious prosecution claim failed on the third element was an alternative holding.

Additionally, the district court did not err in granting summary judgment on Stallworth's failure to meet the third element of a malicious prosecution claim. "[C]ourts are permitted – indeed, obligated – to conduct their own research on legal issues before it." *Guice v. Postmaster Gen., U.S. Postal Serv.*, 718 F. App'x 792, 795 (11th Cir. 2017) (citing, *e.g.*, *United States v. Davis*, 183 F.3d 231, 252-53 (3d Cir. 1999)) ("[T]he trial court cannot leave everything to the lawyers. The judge has an immanent obligation to research the law. . . .").

B. Deputy Hurst's actions did not violate clearly established law.

Under the circumstances of this case, Deputy Hurst is entitled to qualified immunity because it would not have been clear to every reasonable officer that probable cause was insufficient to arrest Stallworth under Ala. Code § 32-5A-191(a)(5). A constitutional right is clearly established only if its contours are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Because Deputy Hurst raised the defense of qualified immunity, Stallworth bears the burden of demonstrating a violation of clearly established law by pointing to a case with materially similar facts holding that the conduct engaged in was illegal. *Storck v. City of Coral Springs*, 354 F.3d 1307, 1317 (11th Cir. 2003) "In this circuit, the law can be 'clearly established' for qualified immunity purposes only by decisions of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the

highest court of the state where the case arose," here, the Alabama Supreme Court. *Jenkins v. Talladega Bd. of Educ.*, 115 F.3d 821, 827 (11th Cir. 1997) (en banc) (citations omitted). In the absence of case law, a plaintiff must demonstrate that a pertinent federal statute or constitutional provision is specific enough to demonstrate their conduct was illegal. *Storck*, 354 F.3d at 1317. The Eleventh Circuit has identified this method as an "obvious clarity" case. *Vinyard v. Wilson*, 311 F.3d 1340, 1350 (11th Cir. 2002). Under this test, the law is clearly established, and qualified immunity overcome, only if the body of then-existing law would "inevitably lead every reasonable officer in [the defendant's] position to conclude that the force was unlawful." *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 926 (11th Cir. 2000).

Generally, "if case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant." *Smith v. Mattox*, 127 F.3d 1416, 1419 (11th Cir. 1997). While there is no requirement that a plaintiff find a case precisely on point, the Eleventh Circuit has stated that "a clearly established right is one that is sufficiently clear that *every reasonable official* would have understood that what he is doing violates that right." *Young v. Borders*, 850 F.3d 1274, 1282 (11th Cir. 2017) (emphasis in original). "Unless a government agent's act is so obviously wrong, in the light of pre-existing law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit." *Storck*, 354

F.3d at 1318. Indeed, the Supreme Court has recently cautioned courts to avoid defining clearly established law at a "high level of generality" and that "[i]t is not enough that the rule is suggested by then-existing precedent." *District of Columbia v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 590 (2018). Instead, "[t]he precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Wesby*, 138 S. Ct. at 590.

In her briefs to the Eleventh Circuit and the district court, Stallworth never pointed to a case, statute, or constitutional provision providing sufficient clarity for a reasonable officer to know that arresting her would violate a clearly established constitutional right. Indeed, the only mention of clearly established law Stallworth made were generalized statements that genuine issues of fact existed regarding whether Deputy Hurst lacked probable cause, or arguable probable cause, which would result in a violation of her clearly established rights under the Fourth Amendment. (Appellant's Br. at 26, 35, 40.) Such generalized statements are insufficient to meet Stallworth's burden of demonstrating a violation of clearly established law. Moreover, Stallworth never challenged the doctrine of qualified immunity prior to filing her petition for certiorari with this Court. Thus, Stallworth has improperly raised the issue with this Court.

CONCLUSION

For the aforementioned reasons, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

FRED L. CLEMENTS, JR.
WEBB MCNEILL WALKER PC
One Commerce Street, Ste. 700
Montgomery, Alabama 36104
(334) 262-1850 T
(334) 262-1772 F
fclements@wmwfirm.com
Counsel for Respondent