No. 22-

IN THE

# Supreme Court of the United States

DANIEL CAMERON WILKEY (22-5083) AND TYLER SHANE MCRAE (22-5084), INDIVIDUALLY AND IN THEIR CAPACITIES AS DEPUTY SHERIFFS FOR HAMILTON COUNTY, TENNESSEE,

*Petitioners,*

*v.*

WILLIAM EUGENE KLAVER,

*Respondent.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

Petitioners Wilkey and McRae are police deputies who allegedly violated Respondent Klaver's Fourth Amendment rights by unnecessarily extending a traffic stop. The district court denied the Deputies' motion for summary judgment on their qualified immunity defense. The following questions are presented:

1. This Court has repeatedly instructed the lower courts that in determining whether a right is clearly established for purposes of qualified immunity prior decisions must have defined the right with a high degree of specificity. Here, the Sixth Circuit identified the controlling rule to be that officers "may not detain a driver for longer than necessary to complete a traffic stop simply because they want to investigate other crimes." Did the Sixth Circuit define the right at too high a level of generality?

2. As part of a lawful traffic stop, Deputies Wilkey and McRae observed that Klaver had unlawfully tinted windows, unlawfully placed a sticker on his license plate, was visibly shaking, refused to explain why he was shaking, and was generally uncooperative. In denying qualified immunity, the Sixth Circuit did not cite a case with comparable facts. Did the Sixth Circuit err in holding that

Deputies Wilkey and McRae are not entitled to qualified immunity?

## RULE 14(B) STATEMENT

The parties in the Court of Appeals for the Sixth Circuit were petitioners Deputy Daniel Wilkey and Deputy Tyler McRae and respondent William Eugene Klaver. Hamilton County is a party to the original case; however, it was not a party to the appeal. Deputies Wilkey and McRae were sued individually and in their official capacities as deputy sheriffs. The following is a list of all directly related proceedings:

- *Klaver v. Hamilton Cnty., Tenn.*, Nos. 22-5083/5084 (6th Cir.) (opinion issued and judgment entered November 3, 2022).
- *Klaver v. Hamilton Cnty., Tenn.*, No. 1:19-cv-198 (E.D. Tenn.) (opinion issued and judgment entered February 2, 2022).

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Constitutional Provisions**



**Statutes**

## PETITION FOR A WRIT OF CERTIORARI

Deputies Wilkey and McRae respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

## OPINIONS BELOW

The unpublished opinion of the Court of Appeals for the Sixth Circuit (Pet. App. 1a-19a) is available at 2022 WL 16647970. The district court's opinion (Pet. App. 20a-56a) is available at 2022 WL 16731735.

## JURISDICTION

Deputies Wilkey and McRae invoke this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari within ninety days of the Sixth Circuit's judgment, which was entered on November 3, 2022.

## PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

Klaver brought a civil action for damages under 42 U.S.C. § 1983 for an alleged violation of his Fourth Amendment rights.

Section 1983 provides: "[e]very 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

The Fourth Amendment to the United States Constitution provides: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

## STATEMENT OF THE CASE

On April 17, 2019, two deputy sheriffs, Daniel Wilkey and Tyler McRae, performed a traffic stop on William Klaver to issue a citation for excessively tinted windows. During the early stages of the stop, the deputies noticed that Klaver unlawfully had a Marine Corps sticker on his license plate and that he was shaking intensely. Klaver refused to answer the

deputies' questions about the shaking and was otherwise generally uncooperative during the stop.

Suspecting that Klaver might possess illegal drugs, the deputies requested a canine unit to the scene. Deputy Wilkey filled out the citation as they waited. Once the dog arrived, Deputy Wilkey discussed the citation with Klaver as the dog sniffed around Klaver's vehicle. The dog alerted, but a search by the deputies revealed nothing. Free to leave, Klaver signed the citation, told the deputies he had muscular dystrophy, and drove away.

Klaver sued Deputies Wilkey and McRae, among others, claiming that the deputies' conduct during the traffic stop violated his Fourth Amendment rights. Deputies Wilkey and McRae moved for summary judgment on the grounds both that they had not violated the Fourth Amendment and that they were entitled to qualified immunity. The district court denied the motions, holding that under clearly established Fourth Amendment law the deputies prolonged the stop beyond the time necessary to issue a citation. The court further held that under clearly established law the deputies did not have a basis for reasonable suspicion of other illegal activity justifying a longer stop. The Sixth Circuit affirmed, holding that the deputies violated Klaver's clearly established Fourth Amendment rights by prolonging the traffic stop without reasonable suspicion.

## I. Factual Background

Because this case is on review from summary judgment, the facts are stated in the light most favorable to Klaver.

On April 17, 2019, Hamilton County Deputy Sheriff Daniel Wilkey initiated a traffic stop of William Klaver for excessively tinted windows. Pet. App. 21a. The stop began at 8:10 p.m., and shortly thereafter, Tyler McRae—another Hamilton County deputy sheriff—arrived on the scene. *Id.*

Deputy Wilkey approached Klaver's driver-side window and told Klaver that his window tint was "way too dark." *Id.* Deputy Wilkey asked for Klaver's license and asked Klaver where he was headed. Klaver refused to respond. *Id.* Deputy Wilkey then asked, "You okay?" before requesting the license again. Pet. App. 3a. Klaver deflected the questions and asked if he was being detained. *Id.* Deputy Wilkey told Klaver that he was being detained for the window-tint violation. *Id.* Klaver then handed his license to Deputy Wilkey. As Deputies Wilkey and McRae returned to Deputy Wilkey's patrol vehicle, Deputy Wilkey stated that he believed Klaver to be a sovereign citizen. *Id.*

Back in Deputy Wilkey's patrol vehicle, Deputy Wilkey remarked to Deputy McRae that Klaver had unlawfully placed a Marine Corps sticker on his license plate. He also remarked that he had seen Klaver "shaking like crazy" when he spoke with him.

*Id*. The deputies suspected Klaver might possess illegal drugs and would not consent to a search if asked, so they agreed it might be prudent to call a drug-sniffing dog to the scene. *Id.*

At about 8:15 p.m., the deputies returned to Klaver's van to request his registration and insurance card and to tell Klaver that the sticker on his license plate constituted an additional violation. Pet. App. 4a. Deputy Wilkey also asked Klaver whether he had ever been arrested; Klaver responded that he had not. Pet. App. 3a-4a. Deputy Wilkey told Klaver that he noticed Klaver's severe shaking, and he asked Klaver whether he was on medication, to which Klaver said he was not. Pet. App. 4a. Deputy Wilkey also asked if Klaver had a disability that might cause the shaking. *Id.* When Klaver protested that Deputy Wilkey was not permitted to ask these questions, Deputy Wilkey explained that he was trying to figure out the cause of the shaking. *Id.* Deputy Wilkey then asked Klaver whether he was shaking because he might be "hiding something" like "drugs." *Id.* Klaver denied that he was in possession of any drugs. *Id.*

About one minute later, Deputy Wilkey asked if Klaver had any "weapons" or "anything illegal" in the van, and Klaver again said he did not. *Id.* Deputy Wilkey asked to search the van, and Klaver refused permission. *Id.* Deputy Wilkey again asked Klaver, "Is there any reason why you're shaking so bad?" *Id.* Klaver again did not answer the question and instead responded by telling Deputy Wilkey that he was

"illegally pulled over." *Id.* Deputy Wilkey repeated that he had stopped Klaver for the window-tint violation and that the sticker on his license plate was an additional violation. *Id.*

At 8:18 p.m., the deputies returned to Deputy Wilkey's patrol vehicle so Deputy Wilkey could write the citation. Pet. App. 4a-5a. Deputy Wilkey needed to manually enter the following information to complete the citation: Klaver's name, date of birth, social security number, phone number, make and model of his van, and the vehicle identification number. Further, Deputy Wilkey needed to find a court date and the Tennessee Code sections for the two violations and add that information to the citation. JA, Wilkey Dec. ¶ 33, R. 233-1, PageID # 2212; Br. Appellant McRae.

Upon entering his vehicle to begin this process, Deputy Wilkey requested a canine unit. Pet. App. 4a. At 8:20 p.m., dispatch replied that a canine officer was en route with a dog. Pet. App. 5a. In the meantime, Deputy Wilkey completed paperwork for the citation. *Id.* He also discussed the situation with Deputy McRae, remarking that the tint on Klaver's windows was so dark that no one could "see anything" through them, even the driver. *Id.* He told Deputy McRae that he believed Klaver had "done that for a reason." *Id.*

While Deputy Wilkey continued to manually fill out the citation, Deputy McRae approached Klaver's van again to thank Klaver for his service in the Marines, noting the sticker on his plate. Klaver told

Deputy McRae that he would not "answer any more questions" and asserted that the deputies did not have a basis to detain him any longer. *Id.* Deputy McRae explained that Deputy Wilkey was preparing a citation for the window-tint and license-plate violations. *Id.*

Deputy Wilkey continued working on the citation until the canine unit arrived at 8:32 p.m. *Id.* He told the canine officer that he believed Klaver to be a "sovereign citizen" who was "being combative" and "trying to conceal himself" with the window tint. *Id.* Deputy Wilkey then asked the canine officer to wait to deploy the dog until he finished writing the citation, which he did a short while later. *Id.* Deputy Wilkey returned to Klaver's van and asked him to step out so that he could explain the citation to Klaver while the dog circled the van. Pet. App. 5a-6a.

At 8:40 p.m., Deputy McRae told Deputy Wilkey and Klaver that the dog had alerted to the presence of drugs in the van. Pet. App. 6a. The two deputies searched the van for drugs for five minutes, but they did not find anything. *Id.* Deputy Wilkey again asked Klaver whether he had any illegal drugs in his possession. *Id.* Klaver said he did not. *Id.* Deputy Wilkey then handed Klaver the completed citation for Klaver to sign. *Id.* As Klaver did so, he told the deputies he had muscular dystrophy. *Id.* Klaver drove away at 8:50 p.m. *Id.*

## II. Procedural Background

Klaver filed a *pro se* suit against Deputies Wilkey and McRae and Hamilton County, Tennessee, alleging a slew of federal and state claims. Pet. App. 6a. Among other things, he brought claims under 42 U.S.C. § 1983, alleging that Deputies Wilkey and McRae violated his Fourth Amendment rights by unreasonably prolonging the traffic stop. *Id.*

Deputies Wilkey and McRae moved for summary judgment on that claim, arguing that the stop complied with the Fourth Amendment and that at a minimum they were entitled to qualified immunity. *Id.* The district court denied the motion, ruling that, under the facts viewed in the light most favorable to Klaver, the deputies unreasonably prolonged the stop without reasonable suspicion and that they violated clearly established law by doing so. *Id.*

The Sixth Circuit affirmed. It agreed with the district court that the deputies unnecessarily prolonged the initial stop for the tinted windows. The court stated that, although officers can reasonably ask questions related to the purpose of a traffic stop, they cannot ask about unrelated activities if doing so prolongs the traffic stop. According to the Sixth Circuit, Deputies Wilkey and McRae violated this prohibition by asking questions related to Klaver's criminal past and by waiting for the canine unit to arrive to perform the dog sniff. Although acknowledging that Deputies Wilkey and McRae were

still in the process of issuing the citation while the dog sniff occurred, the court concluded that the deputies "slow walk[ed]" the citation writing process.

The court also ruled that Deputies Wilkey and McRae were not entitled to qualified immunity on this claim. It stated that, in *Rodriguez v. United States*, 575 U.S. 348, 354–57 (2015), this "Court adopted a 'bright-line rule' that officers may not detain a driver for longer than necessary to complete a traffic stop simply because they want to investigate other crimes" and that Deputies Wilkey and McRae violated this clearly established rule by prolonging the stop. Pet. App. 11a (quoting *Hernandez v. Boles*, 949 F.3d 251, 256 (6th Cir. 2020)).

The Sixth Circuit also rejected Deputies Wilkey's and McRae's argument that they developed reasonable suspicion during the stop to detain Klaver longer. The court reasoned that Klaver's shaking, his uncooperativeness, and Deputy Wilkey's conclusion that Klaver might be a sovereign citizen did not support a reasonable suspicion that Klaver might be engaged in other illegal activity. Pet. App. at 5a.

On this point, the Sixth Circuit also concluded that Deputies Wilkey and McRae were not entitled to qualified immunity. It reasoned that its "caselaw would have left no doubt for any reasonable officer that Klaver's nervousness and reluctance to cooperate did not create reasonable suspicion" warranting further detention. Pet. App. 18a.

## REASONS FOR GRANTING THE WRIT

The Sixth Circuit's decision below decided an important issue of federal law in a way that conflicts with decisions of this Court.

The methodology the Sixth Circuit employed to determine whether Deputies Wilkey and McRae are entitled to qualified immunity directly conflicts with this Court's instructions regarding how to make that determination. Instead of defining the right allegedly violated with a high degree of specificity as required by this Court's precedents, the Sixth Circuit defined it at a high level of generality.

Moreover, the Sixth Circuit's decision was wrong. Deputies Wilkey and McRae did not violate the Fourth Amendment; at a minimum, they are entitled to qualified immunity because there was no precedent involving remotely comparable facts that would have put all reasonable officers in Deputies Wilkey's and McRae's shoes on notice that their actions here were unlawful.

Accordingly, the Court should grant the petition and summarily reverse or, alternatively, grant review.

## I. The Sixth Circuit's decision conflicts with this Court's precedents establishing how to determine what constitutes clearly established law and this Court's precedents governing traffic stops.

This Court has repeatedly instructed that, in determining whether a right is clearly established for purposes of qualified immunity, a court must define the right with a high degree of specificity. Here, the Sixth Circuit directly violated this Court's instructions by defining the right at a high level of generality instead of with specificity.

Moreover, the Sixth Circuit's decision was wrong. On the specific facts of this case, Deputies Wilkey and McRae did not violate the Fourth Amendment; at a minimum, they are entitled to qualified immunity.

A. Qualified immunity shields public officials from suit unless their actions violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The purpose of the qualified-immunity doctrine is to protect public officials from liability where they make reasonable decisions in the course of performing their duties, even if those decisions are later determined to have been unlawful.

Consistent with this purpose, this Court has held that an official's actions violate a clearly established

right only if "every 'reasonable official would have understood that what he is doing violates that right.'" *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). Thus, qualified immunity is a broad principle that "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

This Court has repeatedly instructed the lower courts to assess whether a right is clearly established "not as a broad general proposition . . . but in a particularized sense." *Reichle v. Howards*, 566 U.S. 658, 665 (2012) (citation and internal quotation marks omitted). Just last Term, this Court reiterated that admonition in *City of Tahlequah, Okla. v. Bond*, 142 S. Ct. 9 (2021) (per curiam), reminding courts that they should not "define clearly established law at too high a level of generality." *Id.* at 11 (citing *al-Kidd*, 563 U.S. at 742). This Court has emphasized that the inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition.". *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam) (internal quotation marks omitted).

Making a determination whether law is clearly established necessarily requires a "high degree of specificity," *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018) (quoting *Mullenix v. Luna*, 577 U.S. 7, 13 (2015)), particularly in the Fourth Amendment context, where it can be "difficult for an officer to

determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts," *Bond*, 142 S. Ct. at 11–12 (quoting *Mullenix*, 577 U.S. at 12). Although precedent with *identical* facts is not necessary, existing precedent must place the question "beyond debate" for the law to be clearly established. *al-Kidd*, 563 U.S. at 741 (citing *Anderson*, 483 U.S. at 640).

*Brosseau* illustrates well the rule against framing clearly established law "at a high level of generality." There, the Ninth Circuit denied qualified immunity to an officer who shot a suspect in the back as he was fleeing in a vehicle. *Brosseau*, 543 U.S. at 199. In doing so, the Ninth Circuit relied on this Court's decision in *Tennessee v. Garner*, 471 U.S. 1 (1985), which held that deadly force cannot be used against an unarmed person who "poses no immediate threat to the officer and no threat to others." *Id.* at 11. According to the Ninth Circuit, *Garner* clearly established the rule that "deadly force is only permissible where 'the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others'" and the officers were not entitled to qualified immunity because they violated that clearly established rule. *Haugen v. Brosseau*, 339 F.3d 857, 873 (9th Cir. 2003) (quoting *Garner*, 471 U.S. at 11).

This Court reversed, holding that the "general test[]" set out by *Garner* was cast at too high a level of generality to clearly establish that the officer's actions

were unconstitutional. *Brosseau*, 543 U.S. at 199. Instead, for qualified immunity to be denied, there must be a prior decision with similar facts establishing the law in a more "'particularized' sense." *Id.* at 199–200. Because the Ninth Circuit was unable to point to any such similar prior decision, *id.* at 201, it erred in holding that the officer was not entitled to qualified immunity.

B. The Sixth Circuit directly violated this Court's instructions by assessing qualified immunity at far too high a level of generality.

In denying qualified immunity, the Sixth Circuit cited this Court's decision in *Rodriguez* as clearly establishing the "'bright-line rule' that officers may not detain a driver for longer than necessary to complete a traffic stop simply because they want to investigate other crimes." Pet. App. 11a. It then held that Deputies Wilkey and McRae violated this clearly established rule by unnecessarily extending the traffic stop.

The Sixth Circuit's approach is irreconcilable with this Court's repeated holding that, in determining whether a right is clearly established for purposes of qualified immunity, courts must define the right with a "high degree of specificity." *Wesby*, 138 S. Ct. at 590 (quoting *Mullenix*, 577 U.S. at 13). The proposition that "officers may not detain a driver for longer than necessary to complete a traffic stop simply because they want to investigate other crimes" is on its face the broadest kind of general principle untied to

specific facts.[1] That general principle does not define whether extending a stop under specific factual circumstances violates the rule. Indeed, it provides no more guidance to police officers regarding what is required in a specific circumstance than does the rule against "unreasonable" searches and seizures. Other than for extreme circumstances about which no reasonable person could differ, judicial decisions applying the broad principle to specific factual circumstances are needed to put meat on the bones of the broad general principle. For purposes of qualified immunity, the critical question is that more granular

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[1] Compounding the Sixth Circuit's error is that it misstated the rule established by *Rodriguez*. That case does not hold that all unnecessary extensions of a stop render it unlawful; rather, it holds that unreasonable extensions are unlawful. *Rodriguez*, 575 U.S. at 350–51. Thus, for example, no one would think that an officer unlawfully extends a stop when he chooses to walk slowly instead of hustling from his patrol vehicle to a suspect or is friendly and talkative in interacting with a motorist instead of phrasing questions succinctly. Likewise, an officer conducting a stop in the dead of winter does not violate the Fourth Amendment by pausing to blow on his hands or to take a sip of coffee.

An officer violates the law only when she *unreasonably* prolongs a stop, a determination that necessarily involves the exercise of judgment. *Rodriguez*, 575 U.S. at 354–55 ("[A] traffic stop 'can become unlawful if it is prolonged beyond the time reasonably required to complete the mission' of issuing a warning ticket." (quoting *Illinois v. Caballes*, 543 U.S. 405, 407, (2005))). The Sixth Circuit failed to acknowledge this meaningful "reasonableness" limitation on the principle that an officer may not unnecessarily extend a stop.

one, namely whether under clearly established law a *particular* extension was unnecessary.

As with all other inquiries under the Fourth Amendment, that assessment must occur on a case-by-case basis, *see Bond*, 142 S. Ct. at 11–12; an officer is entitled to qualified immunity unless clearly established precedent involving substantially similar circumstances places "beyond debate" that the officer's conduct was unlawful, *al-Kidd*, 563 U.S. at 741 (citing *Anderson*, 483 U.S. at 640). The Sixth Circuit never evaluated that more granular question and indeed did not cite a single case with facts similar to those here.

Under the rationale of the Sixth Circuit's decision in this case, no officer who is later determined to have unnecessarily extended a stop would ever be entitled to qualified immunity. That is because the Sixth Circuit conflated the test for whether an officer acted unlawfully (whether the officer unnecessarily extended the stop on the specific facts of the case) with the test for whether the officer is entitled to qualified immunity (whether any reasonable officer would have known that he unnecessarily extended the stop under the specific facts of the case).

In other words, under the Sixth Circuit's approach, the determination that the officer violated the Fourth Amendment by unnecessarily extending a stop would automatically subject the officer to liability; qualified immunity would provide no additional defense. That is not the law. *See Anderson*, 483 U.S. at 639–40.

Therefore, the methodology the Sixth Circuit employed to apply the rule directly violated this Court's instructions as to how to determine whether an officer is entitled to qualified immunity.

## II. Review is also warranted because the conduct of Deputies Wilkey and McRae did not violate the Fourth Amendment or, at a minimum, did not violate clearly established law.

Review is also warranted because Deputies Wilkey and McRae did not violate the Fourth Amendment. At a minimum, they are entitled to qualified immunity because there was no clearly established law that would put all reasonable officers on notice that extending the stop as Deputies Wilkey and McRae did was unlawful.

A. The Fourth Amendment bars "unreasonable" "seizures." U.S. Const. amend. IV. This prohibition applies to stops for traffic violations, limiting the duration of traffic stops to a reasonable time necessary to investigate and issue a citation for the traffic violation. *Rodriguez*, 575 U.S. at 354–55 ("[A] traffic stop 'can become unlawful if it is prolonged beyond the time reasonably required to complete the mission' of issuing a . . . ticket." (quoting *Caballes*, 543 U.S. at 407)). Thus, unless an officer has reasonable suspicion of another crime warranting further detention and investigation, authority for a traffic stop ends when the tasks "tied to the traffic infraction

are—or reasonably should have been—completed." *Rodriguez*, 575 U.S. at 354 (citing *United States v. Sharpe*, 460 U.S. 675, 686 (1985)).

Whether the length of a traffic stop is reasonable depends on the reason for the stop and any safety concerns the officers encounter during the stop. *Id.* ("The tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, . . . and attend to related safety concerns[.]" (internal citations omitted)).

When a stop is for a typical traffic violation, an officer reasonably may conduct the usual investigation associated with a traffic stop, such as "checking the driver's license, determining whether there are outstanding warrants against the driver, . . . inspecting the automobile's registration and proof of insurance," and conducting other inquiries aimed at ensuring that "vehicles on the road are operated safely and responsibly." *Id.* at 355 (internal citations omitted).

In addition, an officer may investigate other crimes unrelated to the stop, so long as that investigation does not prolong the stop beyond the time "reasonably required" to complete the initial stop. *Id.* at 354 (quoting *Caballes*, 543 U.S. at 407).

B. Under these principles, Deputies Wilkey and McRae complied with the Fourth Amendment in conducting the initial traffic stop. They stopped

Klaver's vehicle based on a window-tint violation and then followed the typical procedure for a traffic stop of that sort. Deputy Wilkey approached Klaver's vehicle; told Klaver the reason for the stop; requested Klaver's license and, a few minutes later, also requested Klaver's registration and insurance card; and asked standard questions, such as where Klaver was going. Deputy Wilkey subsequently returned to his patrol vehicle.

The entire length of the stop was about forty minutes, and at least three circumstances justified a longer stop than otherwise might have been necessary. First, during the stop, Deputy Wilkey noticed that Klaver was committing another traffic violation by having a sticker on his license plate. That additional violation required additional inquiry and more time to complete the citation.

Second, during the stop, Deputy Wilkey observed Klaver noticeably shaking, so much so that Deputy Wilkey asked Klaver whether he had a disability or was taking medication. Klaver said he was not taking medication and refused to answer the disability question. These circumstances—both the extreme shaking and the refusal to provide an explanation—gave rise to a reasonable inference that allowing Klaver to continue to drive might pose a threat to the safety of others on the road. It also led to the stop taking longer as Deputy Wilkey repeatedly inquired into the reason for Klaver's shaking. *See* Pet. App. 3a (recounting Deputy Wilkey asking Klaver, "You

Okay?"); Pet. App. 4a (asking about the shaking and medication); *Id.* (recounting Deputy Wilkey asking Klaver, "Is there any reason why you're shaking so bad?").

Third, Klaver refused to cooperate with the investigation. He persistently refused to answer Deputy Wilkey's questions about where he was going, whether he was okay, and whether he had a disability. Indeed, at one point during the stop, Klaver said that he would not "answer any more questions." Pet. App. 5a. Klaver also inaccurately insisted that Deputy Wilkey had "illegally pulled [him] over . . ." Pet. App. 4a. This uncooperative behavior itself extended the length of the stop. It also gave rise to the reasonable concern that Klaver might be combative, and therefore, that the stop had to be performed more cautiously.

In concluding that Deputies Wilkey and McRae unnecessarily prolonged the stop, the Sixth Circuit pointed to the several minutes the deputies took asking about Klaver's past criminal history and possible contraband in the car. This line of questioning, the court of appeals said, was unrelated to the reason for the traffic stop.

But that is not accurate. Although the questions inquired into possible unrelated crimes, they also were related to the traffic stop because they were relevant to determine whether Klaver was safe to drive. Those questions could reveal, for instance, whether Klaver's extreme shaking was due to a

disability, or a side effect of medication or impairment, not just nervousness. When he asked those questions, Deputy Wilkey did not know if Klaver's shaking was due to a disability that could impair his driving or some other cause.

The court of appeals also noted that Deputy Wilkey had specifically called for a canine search and that, while filling out the citation, he asked whether the canine unit had arrived, apparently inferring that by asking that question Deputy Wilkey was acknowledging that he was unnecessarily extending the search to allow time for the canine unit to arrive. But investigation into unrelated crimes is permitted so long as it does not extend the search. Having called for the canine unit, it was entirely reasonable for Deputy Wilkey to ask if the unit had arrived; asking that question does not mean that the length of time taken to complete the citation was unnecessarily long.

The entire process of completing the citation took about 14 minutes. That length of time was hardly unreasonable given that Deputy Wilkey was manually inputting a large amount of information for two infractions and had his attention divided with other matters, such as considering the reason for Klaver's shaking and discussing with Deputy McRae the opacity of the window tint and the possible reasons Klaver might have for such dark tinting. Pet. App. 5a.

Perhaps Deputies Wilkey and McRae could have completed the stop more quickly. For example, Deputy Wilkey could have skipped asking detailed

questions about Klaver's shaking. Of course, had he taken that approach, and had Klaver thereafter been involved in an accident injuring other people, the deputies would have been subject to second-guessing for not following up adequately on what appeared to be a red flag. Deputies Wilkey and McRae made a reasonable judgment to pursue such questioning and therefore did not violate the Fourth Amendment.

C. Even if the deputies did unreasonably prolong the traffic stop, they are nevertheless entitled to qualified immunity. At the time of the stop, no decision of this Court or of the Sixth Circuit had held that an officer's conduct under any remotely similar circumstance was unlawful.

The specific facts of *Rodriguez* do not provide any meaningful guidance as to how the general rule applies on these facts. In *Rodriguez*, this Court held that officers who pulled a person over for a traffic offense violated the Fourth Amendment by continuing to detain that person after completing the initial traffic stop by handing him the ticket. *See Rodriguez*, 575 U.S. at 350 ("This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop."). In this case, by contrast, the Sixth Circuit determined that the deputies unlawfully extended the stop by taking actions that prolonged the stop *before* issuing the citation that would complete the stop.

Needless to say, *Rodriguez*'s conclusions about what the Fourth Amendment requires officers to do

*after* completing a traffic stop provides virtually no insight into what the Fourth Amendment requires *before* an officer completes a stop by issuing a citation.

Nor did the Sixth Circuit identify any other case with facts remotely similar to those here. Three of the four cases cited by the Sixth Circuit involved extending a stop *after* a citation had been issued. *United States v. Johnson*, 482 F. App'x 137, 140–41 (6th Cir. 2012); *United States v. Winters*, 782 F.3d 289, 294 (6th Cir. 2015); *United States v. Richardson*, 385 F.3d 625, 628 (6th Cir. 2004). The fourth case, *United States v. Urrieta*, 520 F.3d 569, 572 (6th Cir. 2008), falls into the same category because the unnecessary delay involved conduct after the officer had completed the citation, the only distinction being that the officer had not yet handed the completed citation to the driver.

Like *Rodriguez*, these cases do not provide meaningful guidance about what sort of delay is permissible in the course of a stop *before* a citation has been completed, let alone put all reasonable officers on notice that the deputies' conduct after stopping Klaver and before completing the citation was unlawful.

Accordingly, under this Court's precedents, Deputies Wilkey and McRae are entitled to qualified immunity, even if the Sixth Circuit was correct that they violated the Fourth Amendment by unnecessarily extending the traffic stop.

D. Even if Deputies Wilkey and McRae prolonged the stop beyond what otherwise would have been a reasonable time, they were justified in doing so because they had reasonable suspicion of another crime, which required further investigation.

Deputies Wilkey and McRae developed reasonable suspicion during the stop that Klaver had committed another crime. Based on that reasonable suspicion, they were justified in detaining Klaver longer to investigate the additional potential criminal activity. *Rodriguez*, 575 U.S. at 354–55.

1. The test for determining whether an officer has reasonable suspicion that a crime has been committed is an objective one. Specifically, a court must ask whether, based on a totality of the circumstances, the facts "available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief" that the action taken was appropriate[.]" *Terry v. Ohio*, 392 U.S. 1, 22 (1968). In ascertaining whether that standard is met, courts must consider the "experience and specialized training" of law enforcement officers "to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

Application of these principles here establishes that Deputies Wilkey and McRae had a reasonable basis to suspect that Klaver was engaged in criminal

activity other than the traffic violations. First, Klaver had highly tinted windows. The heavy tinting suggested that Klaver was trying to conceal activities in his vehicle, as Deputy Wilkey noted in his discussions with Deputy McRae. Pet. App. 5a (recounting Deputy Wilkey's statement that the "van's windows were tinted so dark that you 'can't see anything,' not even the driver, and that Klaver had 'done that for a reason'").

Second, Klaver was visibly shaking during the stop. That trembling reasonably supported any number of inferences, ranging from that Klaver was under the influence of an illicit substance to that he was nervous about being pulled over because he was engaged in more serious criminal activity.

Third, Klaver was uncooperative during the stop. He refused to answer questions about his destination and his shaking, failed to provide his license when first asked, and maintained that he had been illegally pulled over. This hostility and lack of cooperation supported the inference that Klaver was trying to conceal criminal activity. It also led Deputy Wilkey to suspect, based on his professional experience, that Klaver viewed himself as a "sovereign citizen"—a group of citizens who think that they are not bound by the laws of the United States. *El v. AmeriCredit Fin. Servs., Inc.*, 710 F.3d 748, 750 (7th Cir. 2013) (citing Federal Bureau of Investigation, "Sovereign Citizens: An Introduction for Law Enforcement" 1 (Nov. 2010), http://info.publicintelligence.net/FBI-

SovereignCitizens.pdf. ("Sovereign citizens believe the government is operating outside of its jurisdiction and generally do not recognize federal, state, or local laws, policies, or governmental regulations.")).

Viewed as a whole, this body of evidence readily provided a reasonable basis for Deputies Wilkey and McRae to suspect that Klaver was engaged in criminal activity beyond the traffic violations. Among other things, the evidence justifies a reasonable suspicion that a nervous Klaver was transporting drugs or other contraband in his car and that he was attempting to avoid detection and apprehension by being uncooperative and tinting his windows.

2. Rather than consider the totality of all these circumstances, the Sixth Circuit evaluated each piece of evidence in isolation, concluding that none of them standing alone was sufficient to give the deputies reasonable suspicion that Klaver had committed another crime. For example, instead of asking whether Klaver's extreme shaking and lack of cooperation together could constitute reasonable suspicion, the court of appeals assessed them separately, concluding that Klaver's shaking was a "weak" indicator of a crime and that "lack of cooperation does not alone provide reasonable suspicion to believe that the suspect is committing a crime." Pet. App. 15a, 17a.

Moreover, the Sixth Circuit inappropriately second-guessed the inferences the deputies drew from the circumstances they faced. For example, the court

of appeals refused to give any credence to the deputies' suspicion that Klaver might be a "sovereign citizen," calling it no more than a "subjective hunch." Pet. App. 13a. But the deputies' conclusion was not based on a hunch; rather, it rested on Klaver's refusal to answer questions, his false assertion that the deputies did not have a basis to pull him over or detain him, his demeanor, his disregard for the rule against putting decals on license plates, and his efforts to conceal the inside of his car with the tinted windows. *Id.*

By looking at each item of evidence in isolation, the Sixth Circuit reached an erroneous conclusion. Based on the totality of the evidence, Deputies Wilkey and McRae had a reasonable suspicion that Klaver had committed crimes other than the traffic offenses and acted reasonably in taking time to investigate that possibility.

3. In any event, at a minimum, Deputies Wilkey and McRae are entitled to qualified immunity because there was no clearly established law putting all reasonable officers on notice that the circumstances of this specific stop did not provide grounds for reasonable suspicion that Klaver had committed crimes other than the traffic violations.

The Sixth Circuit stated that its "clearly established caselaw would have left no doubt for any reasonable officer that Klaver's nervousness and reluctance to cooperate did not create reasonable suspicion, absent additional evidence of criminal activity." Pet. App. 18a. In fact, however, the cases

the Sixth Circuit cited say nothing about whether the sort of extreme shaking exhibited by Klaver—shaking pronounced enough that it prompted the deputies to inquire if he had a medical condition—combined with Klaver's refusal to provide any explanation for that shaking, his general uncooperativeness, and his tinted windows, could support reasonable suspicion of a drug offense or other criminal activity.

In *United States v. Richardson*, 385 F.3d 625, 628 (6th Cir. 2004), for example, the United States appealed from a district court decision suppressing evidence seized after a traffic stop. The government pointed to three facts to support its argument that the officer had reasonable suspicion that another crime may have been committed: (1) signs of nervousness exhibited by the occupants of the car; (2) inconsistent statements to the officer about the purpose of the trip; and (3) the fact that another occupant moved to the driver's seat during the stop. *Id.* at 630.

The Sixth Circuit held that the officer did not have reasonable suspicion. *Id.* at 631. In its view, nervousness alone was not sufficient, the explanations of the trip's purpose were not inherently inconsistent, and the officer himself did not see anything suspicious about another occupant moving to the driver's seat. *Id.* at 630–31. As illustrated by its facts, *Richardson* is silent regarding whether traffic stops based on the factors involved in this case (including overly tinted windows and a sticker placed on the driver's license plate, uncooperative behavior and pronounced

unexplained shaking) support reasonable suspicion that the driver may be involved in other criminal activity.

*United States v. Winters*, 782 F.3d 289, 299 (6th Cir. 2015), another case cited by the Sixth Circuit in the decision below, likewise failed to suggest that Deputies Wilkey and McRae violated clearly established law. In *Winters*, the Sixth Circuit merely reiterated the proposition that nervousness is a generally weak indicator of criminal activity and alone should be given little weight. *Id.* But the court of appeals concluded that the nervousness combined with the other circumstances of a stop *supported* reasonable suspicion to extend the stop to permit a dog sniff of the car. *Id.* at 302. Here, as in *Winters*, Deputies Wilkey and McRae had far more reason than mere nervousness to suspect that Klaver was engaged in other criminal activity.

For similar reasons, the other cases cited are also far from sufficient to put all reasonable officers on notice that the conduct here was unlawful. In *United States v. Urrieta*, 520 F.3d 569, 577 (6th Cir. 2008), the majority of the panel held that the officer did not have reasonable suspicion. The nervousness of the passengers in the car could reasonably be attributed to the immigration-related questions the officer asked the driver. *Id.* Further, the officer's assertion that he reasonably suspected a drug crime was belied both by the questions he asked relating to immigration status and his failure to deploy a drug-sniffing dog he had

with him. *Id.* at 575. Given the significant factual differences between *Urietta* and the circumstances facing Deputies Wilkey and McRae—among other things, Klaver's shaking was not attributable to questioning—*Urrieta* provided no notice to Deputies Wilkey and McRae that their conduct might have been unlawful. That is even more so because the panel was not unanimous; Judge McKeague dissented, concluding that the circumstances were sufficient to support reasonable suspicion. *Id.* at 579–84 (McKeague, J., dissenting).

In *United States v. Johnson*, 482 F. App'x 137, 138 (6th Cir. 2012), calling it a "close question," the majority held that nervousness combined with certain other facts entirely different than those in this case (carrying degreaser in the car; not having placed clothing appropriate for the trip in the officer's view; and driving the car in states not permitted by the form rental agreement) were not sufficient to give the officer reasonable suspicion. Judge Suhrheinrich dissented, concluding that the totality of circumstances did justify reasonable suspicion. *Id.* at 148.

To the extent these cases are relevant at all, they show that determining whether police officers have reasonable suspicion that a driver who has been lawfully stopped was engaged in other criminal activity is a fact-intensive inquiry. Reasonable people can disagree about whether specific facts are sufficient to support reasonable suspicion, as

evidenced by the fact that in two of the four cases relied on by the Sixth Circuit as creating clearly established law, one of the judges on the panel dissented to disagree with the conclusion that the officers lacked reasonable suspicion. Because none of the cases involve facts similar to those here, they fall far short of putting all reasonable officers on notice that the conduct of Deputies Wilkey and McRae in this circumstance was unlawful.

## CONCLUSION

The Court should grant the petition for a writ of certiorari and summarily reverse the judgment below or, alternatively, grant review.

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February 1, 2023

# APPENDIX

## TABLE OF APPENDICES

**APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, DATED NOVEMBER 3, 2022**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 22-5083/5084

WILLIAM EUGENE KLAVER,

*Plaintiff-Appellee,*

v.

HAMILTON COUNTY, TENNESSEE,

*Defendant,*

DANIEL CAMERON WILKEY (22-5083)
AND TYLER SHANE MCRAE (22-5084),
INDIVIDUALLY AND IN THEIR CAPACITIES
AS DEPUTY SHERIFFS FOR HAMILTON
COUNTY, TENNESSEE,

*Defendants-Appellants.*

November 3, 2022, Filed

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF TENNESSEE

*Appendix A*

**OPINION**

Before: SUTTON, Chief Judge; DONALD and MURPHY, Circuit Judges.

MURPHY, Circuit Judge. Daniel Wilkey and Tyler McRae, deputy sheriffs from Hamilton County, Tennessee, stopped William Klaver for a tinted-window violation. They eventually requested a drug-sniffing dog because Klaver was shaking and refusing to say why. After the dog "alerted," the deputies searched Klaver's vehicle but found nothing illegal. Klaver then noted that he had muscular dystrophy. He now says that the officers unreasonably prolonged the stop without reasonable suspicion that he possessed drugs. When the historical facts are taken in the light most favorable to Klaver, we agree with the district court that the deputies violated clearly established Fourth Amendment law. So a jury must decide how to view those historical facts. We affirm.

I

On the evening of April 17, 2019, Klaver was traveling south toward Chattanooga. At 8:10 p.m., Wilkey pulled over Klaver's van because of its excessively tinted windows. Videos from the dash-cam on Wilkey's cruiser and from Klaver's phone captured their interactions over the next 40 minutes.

Wilkey told Klaver that he had stopped the van because its windows were "way too dark" and requested Klaver's license. Dash-Cam Video, R.233, 1:39-56. As

Klaver searched for his license, Wilkey inquired about where Klaver was headed. Klaver's failure to respond led Wilkey to ask: "Not going to talk to me?" *Id.*, 2:02-06. Around this time, McRae pulled up and approached the van's passenger side. *Id.*, 2:03-04. After several more seconds, Wilkey asked Klaver, "You okay?" and again requested his license. *Id.*, 2:18-20. Klaver responded with a question of his own: "Am I being detained?" *Id.*, 2:23-25. Wilkey replied "yes" because of the "window-tint violation," and Klaver handed over his license. *Id.*, 2:25-40. As Wilkey and McRae headed back to Wilkey's cruiser, Wilkey said the words "sovereign citizen" to McRae. *Id.*, 2:49.

The officers talked for a few minutes. Wilkey observed that the van had an "obstruction" (a Marine Corps sticker) on its license plate and noted that Klaver had been "shaking like a leaf too." *Id.*, 2:52-3:18. He opined that they should "make sure he ain't got no pot or anything" because Klaver was "shaking like crazy." *Id.*, 3:38-41. When Wilkey suggested that they call for a drug-sniffing dog, McRae agreed because Klaver would "say no to a search." *Id.*, 3:42-57. A criminal-history review of Klaver revealed only "harassing phone calls back in '04." *Id.*, 3:52.

About five minutes into the stop, the officers returned to Klaver's van and requested his registration and insurance card. *Id.*, 6:12. As Klaver looked for the documents, Wilkey expressed appreciation for his military service but added that Klaver could not have an obstruction on his license plate. *Id.*, 6:20-35. Wilkey then asked whether Klaver had "ever been arrested," to which Klaver replied "no." *Id.*,

7:08-09. Wilkey followed up: "Never ever?" *Id.*, 7:10-11. Klaver again said no. *Id.* So Wilkey turned to questioning whether Klaver was on any "kind of medication" (Klaver said no) or had "any kind of disability" (Klaver was silent). *Id.*, 7:13-18. Wilkey explained that the "reason I'm asking is 'cause you're shaking," and he inquired whether Klaver had "Parkinson's or anything like that?" *Id.*, 7:18-23. Klaver indicated that he did not think that Wilkey could ask him these questions. *Id.*, 7:25-30. Wilkey justified his questioning on the ground that Klaver's shaking might suggest that he was "hiding something" or had "drugs," so Wilkey asked, "You don't have any of that, do you?" *Id.*, 7:30-38. Klaver responded: "You know I don't." *Id.*, 7:37-38. A minute later, Wilkey again asked Klaver if he had "anything illegal in the car" like "weapons or anything like that." *Id.*, 8:11-16. Klaver again said no. *Id.*, 8:16-20.

At this point, Wilkey sought permission to search the van, but Klaver responded as anticipated: "I refuse permission for you to search my vehicle" and "there's nothing in here." *Id.*, 8:16-26. For a third time, Wilkey asked if Klaver had ever been arrested, and Klaver again replied "no." *Id.*, 8:27-30. Wilkey reiterated: "Is there any reason why you're shaking so bad?" *Id.*, 8:30-32. Klaver replied: "Sir, I'm trying to be as respectful as I can, [but] you've got me illegally pulled over." *Id.*, 8:31-39. Wilkey reiterated that he had legally stopped Klaver because of the window-tint violation and the "improper display" on the license plate. *Id.*, 8:38-54. Wilkey then confirmed that Klaver would not consent to a search. *Id.*, 8:53-55.

At 8:18 p.m., after the deputies returned to Wilkey's cruiser again, he requested a canine officer. *Id.*, 9:06-14.

Dispatch informed him two minutes later that the officer was en route. *Id.*, 10:45-54. Wilkey filled out paperwork for the traffic ticket over the next several minutes, opining to McRae that the van's windows were tinted so dark that you "can't see anything," not even the driver, and that Klaver had "done that for a reason." *Id.*, 11:38-50.

At 8:24 p.m., McRae approached Klaver. A few minutes before, Klaver started recording himself and can be seen peeling off the tint from the driver's side window. Phone Video 4, R.233, 0:55-1:08. Caught on Klaver's video, McRae asked Klaver if he had served in the Marines. *Id.*, 5:52-58. After nodding yes, Klaver noted that, while he did not mean to be "disrespectful," he would not "answer any more questions." *Id.* , 6:00-06. Klaver instead said that he would like to be "on my way" if they were not arresting him. *Id.*, 6:30-37. McRae noted that Wilkey was writing a ticket, but Klaver retorted that they needed a reason to detain him. *Id.*, 6:39-7:35. McRae once again described the window-tint and license-plate violations. *Id.*, 7:01-43. After expressing thanks for Klaver's service, he returned to Wilkey's cruiser. *Id.*, 7:45-49.

Wilkey continued filling out the ticket until the canine officer arrived at 8:32 p.m. Dash-Cam Video, R.233, 17:40-22:45. He told this officer that Klaver was likely a "sovereign citizen" who was "being combative" and "trying to conceal himself." *Id.*, 23:29-57. Wilkey added that the canine officer should let him "finish" with the ticket before deploying the dog in case Klaver "does something stupid." *Id.*, 24:00-04. After asking McRae about available court dates, Wilkey returned to the van and told Klaver to step

out for the dog sniff. *Id.*, 24:21-26:08. Wilkey patted Klaver down and discussed the citation with him as the dog circled the van. *Id.*, 26:41-29:01. During the conversation, Klaver now claimed to Wilkey that "there's no tint on my driver's side window" (since he had removed it) and asked Wilkey to "go look" for himself. *Id.*, 28:09-26.

At 8:40 p.m., McRae told Wilkey (and an incredulous Klaver) that the dog had alerted to drugs in the van. *Id.*, 31:27-45. McRae and Wilkey searched the van for five minutes, finding nothing. *Id.*, 31:57-37:34. Wilkey asked Klaver a final time whether he had drugs; Klaver told him again that he did not. *Id.*, 37:51-38:01. As Klaver signed the citation, he noted: "In case you were wondering, I have muscular dystrophy." *Id.*, 38:05-10. Wilkey replied: "That's all you had to say, sir." *Id.*, 38:10-25. Klaver drove off at 8:50 p.m. *Id.*, 40:35-41:15.

Klaver brought this pro se suit against Wilkey and McRae (among others). As relevant now, he alleged that the traffic stop violated the Fourth Amendment. Wilkey and McRae moved for summary judgment. The district court denied their motions on the ground that they had unreasonably prolonged the stop without reasonable suspicion that Klaver possessed drugs. Wilkey and McRae filed an immediate appeal on qualified-immunity grounds. We review the district court's decision de novo while construing any factual ambiguities in Klaver's favor. *See Beck v. Hamblen County*, 969 F.3d 592, 598 (6th Cir. 2020); *cf. Scott v. Harris*, 550 U.S. 372, 380-81, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

II

This qualified-immunity case has well-established ground rules. Klaver must show both that Deputies Wilkey and McRae violated the Fourth Amendment and that the existing caselaw clearly established this violation. *See Beck*, 969 F.3d at 598-99. The Fourth Amendment bars "unreasonable" "seizures." U.S. Const. amend. IV. The Supreme Court has read this phrase to prohibit officers from prolonging a traffic stop beyond the time necessary to investigate (and write a ticket for) a traffic violation unless the officers have reasonable suspicion that the stopped vehicle's occupants are engaging in other crimes. *See Rodriguez v. United States*, 575 U.S. 348, 354-56, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015). This legal rule requires us to ask two questions in Klaver's case: Did Wilkey and McRae prolong the stop beyond the time necessary to resolve the window-tint violation? If so, did they have reasonable suspicion to believe that Klaver was engaging in other crimes?

*Question 1: Did the deputies prolong the stop*? When an officer stops a vehicle for a traffic violation, the officer generally may detain the driver only for the time necessary to complete the tasks associated with the reason for the stop. *See id.* at 354; *United States v. Whitley*, 34 F.4th 522, 529-30 (6th Cir. 2022). What are the tasks associated with a typical traffic stop? The Supreme Court has provided a checklist of duties that it found connected to an ordinary stop's purpose because they are designed to ensure that drivers are operating their vehicles "safely and responsibly." *Rodriguez*, 575 U.S. at 355. Officers

usually will question a driver about the traffic infraction. They will run the driver's license and the vehicle's license plate in their computer. They will request and review the vehicle's registration and the driver's insurance. They will check for outstanding warrants. And, of course, they will write the traffic ticket if they decide to issue one. *See id.; United States v. Lott*, 954 F.3d 919, 924-25 (6th Cir. 2020). Officers also commonly question drivers about their travel plans. *See United States v. Cole*, 21 F.4th 421, 429-30 (7th Cir. 2021) (en banc) (citing cases); *see also United States v. Stepp*, 680 F.3d 651, 662 (6th Cir. 2012).

How about questions concerning whether the driver has drugs or weapons in the car? Or a walk of a drug-sniffing dog around the car to determine whether drugs might be inside? While these activities have no connection to the purpose of a typical traffic stop, the Supreme Court has nevertheless held that officers may engage in them during the time that they undertake the traffic-related tasks for the infraction that justified the stop. *See Rodriguez*, 575 U.S. at 354-55. So, for example, an officer can question a driver about drugs while the driver sorts through the glove compartment looking for an insurance card. *See Arizona v. Johnson*, 555 U.S. 323, 333, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009); *Whitley*, 34 F.4th at 530. And a canine officer may walk a dog around a car during the time that another officer completes a ticket. *See Illinois v. Caballes*, 543 U.S. 405, 406, 409, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005).

Critically, however, this type of unrelated task turns a reasonable stop into an unreasonable seizure if it

"'prolongs'—*i.e.*, adds time to—'the stop.'" *Rodriguez*, 575 U.S. at 357 (citation omitted); *see Stepp*, 680 F.3d at 663. And an officer may not avoid this rule by "slow walking" the traffic-related aspects of the stop to get more time to investigate other crimes. *See Whitley*, 34 F.4th at 531-32. Rather, once the traffic-related basis for the stop ends (or reasonably should have ended), the officer must justify any further "seizure" on a reasonable suspicion that the driver is committing those other crimes. *See Hernandez v. Boles*, 949 F.3d 251, 256 (6th Cir. 2020).

Here, then, we must ask whether Wilkey and McRae added time to the stop by investigating Klaver for drug possession. *See id.* at 256-57. Or said in the opposite way, we must ask whether their stop would have ended sooner if they had investigated Klaver only for tinted-window and license-plate infractions. This issue about what Wilkey and McRae would have done in the counterfactual world in which they had no drug-related concerns strikes us as a question about the "historical facts" that a jury should resolve when the evidence cuts both ways. *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966, 200 L. Ed. 2d 218 (2018); *see Boles*, 949 F.3d at 257-58; *United States v. Howard*, 815 F. App'x 69, 75-76 (6th Cir. 2020); *cf. Gerics v. Trevino*, 974 F.3d 798, 802-06 (6th Cir. 2020).

In this case, moreover, the evidence cuts both ways. On the one hand, Wilkey testified that writing a citation and discussing it with a driver could take 30 minutes in an average case. Wilkey Decl., R.233-1, PageID 2198. Yet well under 30 minutes had elapsed between the time of

the stop (8:10) and the arrival of the canine officer (8:32). Much of the deputies' questioning also occurred while Klaver himself delayed things by taking his time to hand over his registration and insurance card. *Cf. Howard*, 815 F. App'x at 75-76. Wilkey also continued to discuss the citation with Klaver while the canine officer took his dog around the van, which suggests that the traffic-related aspects of the stop had still not come to an end even by that point. *Cf. Lott*, 954 F.3d at 924-25.

On the other hand, Wilkey and McRae spent several minutes questioning Klaver about his criminal past and the possibility that he had drugs or weapons in his van. *Cf. Stepp*, 680 F.3d at 663. Perhaps they could have been completing the ticket during this time? The canine officer also did not just happen to drive by the stop. Rather, Wilkey called the officer precisely because he "want[ed] to make sure [that Klaver] ain't got no pot or anything"—in other words, because he was investigating criminal conduct unrelated to the traffic stop. Dash-Cam Video, R.233, 03:42. Wilkey and McRae also waited some 14 minutes for the canine unit to arrive. *Id.*, 9:14 (call), 23:15 (arrival). During this delay, Wilkey even asked McRae: "you seen [the canine officer] yet?"—a question that could suggest the deputies had been dragging things out to give this officer more time to arrive. *Id.*, 21:15-16.

Wilkey and McRae respond that they are at least entitled to qualified immunity because no clearly established legal rule gave them "fair notice" that their stop lasted too long under the circumstances. *Gambrel v. Knox County*, 25 F.4th 391, 400 (6th Cir. 2022) (quoting

*Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7, 211 L. Ed. 2d 164 (2021) (per curiam)). Yet the Supreme Court has adopted a "bright-line rule" that officers may not detain a driver for longer than necessary to complete a traffic stop simply because they want to investigate other crimes. *Boles*, 959 F.3d at 256; *see Rodriguez*, 575 U.S. at 354-57. Under Klaver's view of the facts here, Wilkey and McRae did just that. Indeed, the deputies do not really contest the "*law*": they do not dispute that if they extended the stop longer than they needed for the traffic infractions, *Rodriguez*'s rule would apply. *Gambrel*, 25 F.4th at 404. Rather, they contest the "*facts*": they claim that they did not extend the stop. *Id.* The legal defense of qualified immunity does nothing to insulate this factual dispute from the jury. *Id.* at 400 (citing *Tolan v. Cotton*, 572 U.S. 650, 656-57, 134 S. Ct. 1861, 188 L. Ed. 2d 895 (2014) (per curiam)).

McRae also criticizes the district court for failing to analyze his conduct independently of Wilkey's. McRae is correct that we may not hold him liable for Wilkey's conduct on a vicarious-liability theory; he instead must have personally participated in the allegedly illegal seizure. *See Pineda v. Hamilton County*, 977 F.3d 483, 490 (6th Cir. 2020). But a reasonable jury could find that he did. Among other evidence, McRae arrived just a minute after the stop and recommended that they run a "tag match" of the van. Dash-Cam Video, R.233, 2:52-3:03. McRae also agreed that they should call a canine officer because Klaver would "say no to a search." *Id.*, 3:47-50. And while McRae questioned Klaver alone, he reiterated that they were still properly detaining him due to the tag

obstruction and tinted windows. Phone Video 4, R.233, 7:10-37.

*Question 2: Did the officers have reasonable suspicion to prolong the stop*? Because a jury could reasonably find that Wilkey and McRae prolonged the stop, they would violate the Fourth Amendment under Klaver's version of the facts unless they had "independent reasonable suspicion" for that extended seizure. *Boles*, 959 F.3d at 256; *see United States v. Sheckles*, 996 F.3d 330, 344-45 (6th Cir. 2021). The reasonable-suspicion test is not a particularly "demanding" one. *See Kansas v. Glover*, 140 S. Ct. 1183, 1188, 206 L. Ed. 2d 412 (2020). It sets a lower standard than probable cause, which itself does not set a "high bar." *Sheckles*, 996 F.3d at 343 (citation omitted).

To have reasonable suspicion here, the deputies needed a "particularized" belief (that is, one tied to Klaver) and an "objective" belief (that is, one tied to articulable facts rather than amorphous hunches) that Klaver possessed drugs. *See Glover*, 140 S. Ct. at 1187 (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981)). We look to the totality of the circumstances available to the deputies when they acted to decide whether they met this test. *See Cortez*, 449 U.S. at 417-18. And we review the district court's ultimate reasonable-suspicion conclusion de novo, but we again must construe any underlying questions about the historical facts in Klaver's favor at this summary-judgment stage. *See Ornelas v. United States*, 517 U.S. 690, 696-99, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996).

Wilkey's and McRae's briefs identify four pieces of evidence as their grounds for reasonable suspicion to believe that Klaver possessed drugs: (1) the deputies suspected that Klaver might be a sovereign citizen; (2) Klaver removed the tint from his window and lied about doing so during the stop; (3) Klaver was shaking; and (4) he was generally uncooperative and did not respond to the officers' questions about the shaking. Wilkey Br. 19-24; McRae Br. 19. The deputies have not argued that the excessive tint or obstructed license plate could also help create a reasonable suspicion that Klaver was transporting drugs, so we need not consider those grounds. And while we must avoid a "divide-and-conquer analysis" that examines their four factors "in isolation from each other," *United States v. Arvizu*, 534 U.S. 266, 274, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002), we do not think the first two factors should go into the reasonable-suspicion calculus at all on the facts of this case.

To begin with, we may reject the deputies' first factor—Klaver's sovereign-citizen status—based solely on the conclusory fashion in which they have presented it to us. The deputies believed that Klaver might be a sovereign citizen (an individual known to be "uncooperative") because he asked if they were detaining him and hesitated before providing his license. McRae Decl., R.233, PageID 2210-11; Wilkey Decl., R.233, PageID 2197. Yet the video shows that Klaver was reasonably polite, not loudly confrontational. Unless everyone who is reluctant to speak with the police might be a "sovereign citizen," the deputies' claim appears to have rested more on a "subjective hunch" than objective facts. *Hoogland v. City of Maryville*, 2022

WL 1773416, at *7 (6th Cir. June 1, 2022). Even more critically, they do not identify a single judicial decision or evidentiary citation suggesting that a suspect's "sovereign citizen" status correlates with the *type* of criminal activity suspected here. *Cf. El v. AmeriCredit Fin. Servs., Inc.*, 710 F.3d 748, 750 (7th Cir. 2013). They have thus not shown enough for this factor to have relevance.

In addition, we may reject the deputies' second factor—that Klaver removed the window tint and lied about doing so—because it is not clear that they knew of this conduct when they allegedly decided to extend the stop. *See Florida v. J.L.*, 529 U.S. 266, 271, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000). Klaver removed the window tint around 8:20 p.m., after Wilkey had already called for the canine officer. Phone Video 4, R.233, 0:55-1:05. Klaver also engaged in this conduct outside the deputies' presence and immediately rolled his window back down, so it is not clear when the deputies even learned that he had done so (they may have learned of Klaver's actions only later after he posted his cellphone videos of the stop on YouTube). Klaver's subsequent false statements about the window tint likewise came near the end of the stop, well after the deputies had (allegedly) prolonged it. Dash-Cam Video, R.233, 28:09-26. Because we assess reasonable suspicion based on the facts that the officers knew at the time that they prolonged the seizure, these unknown facts likewise cannot go into the reasonable-suspicion calculus at this stage. *See J.L.*, 529 U.S. at 271.

These two conclusions leave only Klaver's shaking and refusal to cooperate. Wilkey and McRae noticed

immediately that Klaver was "shaking like crazy." Dash-Cam Video, R.233, 3:42. At that early point, Wilkey opined that they should "run a dog around him" to "make sure he ain't got no pot or nothing." *Id.* Yet what about Klaver's shaking suggested that he might be committing a crime? There are two ways to look at this question.

Perhaps the shaking suggested that Klaver was nervous because he "was in possession of [an] illicit substance." Wilkey Decl., R.233-1, PageID 2197. Yet many law-abiding people show their nerves in the same way when confronted by the police. *See United States v. Richardson*, 385 F.3d 625, 630-31 (6th Cir. 2004). So we have always given nervous shaking little "weight," *Howard*, 815 F. App'x at 77, and have said that it amounts to a "weak" indicator of crime, *United States v. Calvetti*, 836 F.3d 654, 665 (6th Cir. 2016); *see also United States v. Winters*, 782 F.3d 289, 299 (6th Cir. 2015); *Stepp*, 680 F.3d at 665; *United States v. Johnson*, 482 F. App'x 137, 145 (6th Cir. 2012); *United States v. Samuels*, 443 F. App'x 156, 161 (6th Cir. 2011); *United States v. Bell*, 555 F.3d 535, 540 (6th Cir. 2009); *United States v. Urrieta*, 520 F.3d 569, 577 (6th Cir. 2008); *Richardson*, 385 F.3d at 630-31. We have relied on this factor only when a suspect "was exhibiting visible signs of nervousness beyond" the usual level in traffic stops and only in combination with other more suspicious factors. *United States v. Campbell*, 511 F. App'x 424, 428 (6th Cir. 2013); *see United States v. Coker*, 648 F. App'x 541, 544 (6th Cir. 2016).

Or perhaps the shaking was so unusual that it suggested that Klaver might be an "impaired" driver

(not just a nervous one) who would threaten others on the road. Wilkey Decl., R.233-1, PageID 2197. Certainly officers may detain a driver for things like questioning or field-sobriety tests if they have a reasonable suspicion that the driver is, for example, operating a vehicle under the influence of drugs. *See, e.g., United States v. Guajardo*, 388 F. App'x 483, 488-89 (6th Cir. 2010); *see also Green v. Throckmorton*, 681 F.3d 853, 860 (6th Cir. 2012). And qualified immunity does protect officials who make mistakes of fact, such as a mistake about whether a suspect is impaired. *See Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). But Wilkey and McRae mention this theory only in passing. And they frame Klaver's shaking as giving rise to a mistake of *law*—whether Klaver was shaking so severely as to create reasonable suspicion of impairment.

We cannot answer this legal question now because of a dispute in the historical facts over the nature of the shaking. The dash-cam video did not record it. *Cf. Green*, 681 F.3d at 861-62. And the summary-judgment record contains mixed evidence over whether Klaver's shaking resembled the "trembling hand" of a nervous driver, *Richardson*, 385 F.3d at 630, or the impaired hand of an incapacitated one. Although, for example, the deputies conclusorily testified that they thought Klaver might be impaired (and he did in fact have a disease that affected his mobility), they did not require him to take field-sobriety tests or even question him about his ability to drive the van. Taking the facts in the light most favorable to Klaver, a jury could find that the deputies could have reasonably concluded only that Klaver was nervous.

Apart from his nervousness, the officers lastly highlighted Klaver's reluctance to cooperate or respond to questions, including about why he was shaking. Yet a suspect generally does not have a duty to cooperate, and so the lack of cooperation does not alone provide reasonable suspicion to believe that the suspect is committing a crime. *See Florida v. Bostick*, 501 U.S. 429, 437, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991); *Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). At the same time, we have recognized that a suspect's vague or nonresponsive answers can bolster a reasonable suspicion that primarily rests on other factors. *See United States v. Smith*, 594 F.3d 530, 541 (6th Cir. 2010). Here, however, Klaver largely cooperated. He answered most of the questions put to him—sometimes more than once—such as whether he had ever been arrested, whether he had taken any medication, and whether he had drugs or contraband in the van. In fact, he refused to answer only two questions before McRae and Wilkey called for the dog: where he was going and whether he had a disability.

In sum, when we review the evidence in the light most favorable to Klaver, Wilkey and McRae lacked reasonable suspicion that Klaver was committing other crimes. A suspect's nervousness and refusal to cooperate have played only *minor* roles in our other reasonable-suspicion decisions. *See, e.g., Calvetti*, 836 F.3d at 666-67; *Stepp*, 680 F.3d at 665. Putting the two together does not lend the deputies a *major* justification for reasonable suspicion.

That may be true, the deputies respond, but they are at least entitled to qualified immunity on this

reasonable-suspicion question. Once again, however, our clearly established caselaw would have left no doubt for any reasonable officer that Klaver's nervousness and reluctance to cooperate did not create reasonable suspicion, absent additional evidence of criminal activity. *See Gambrel*, 25 F.4th at 400. We have a mountain of caselaw indicating that heightened nerves represent weak evidence of wrongdoing and cannot be the primary justification for a stop. *See Winters*, 782 F.3d at 299 (citing cases). Consider *Richardson*. There, an officer stopped a car for a traffic violation and noticed that all of the passengers were nervous, including the driver who handed over his license with a shaking hand. 385 F.3d at 627. Yet this fact did not suffice to create a reasonable suspicion of wrongdoing, even when combined with other factors like the occupants' "conflicting explanations of their travel plans[.]" *Id.* at 630-31; *see Urrieta*, 520 F.3d at 577; *see also Johnson*, 482 F. App'x at 145.

The caselaw on which the deputies rely reinforces this point. Wilkey cites *United States v. Ellis*, 497 F.3d 606 (6th Cir. 2007). But the traffic stop there lasted "only twenty-two minutes" before the driver gave consent to a search. *Id.* at 613. And it is not clear that the traffic-related purposes for the stop in *Ellis* ever came to an end because the defendant, a passenger in the car, had given a "false alias" that the officer "was unable to confirm" before the search. *Id.* at 614. A reasonable jury in this case, by contrast, could find that the stop's traffic-related purposes would have ended well before the dog sniff if the officers had not been investigating drug crimes.

McRae cites *Lott*. In that case, however, the officer had reasonable suspicion to continue the stop because the driver admitted that he had marijuana. 954 F.3d at 922. Klaver, by contrast, adamantly and consistently denied that he possessed drugs.

We affirm.

**APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, FILED FEBRUARY 2, 2022**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

Case No. 1:19-cv-198
Judge Travis R. McDonough
Magistrate Judge Christopher H. Steger

WILLIAM EUGENE KLAVER,

*Plaintiff,*

v.

HAMILTON COUNTY, TENNESSEE, DANIEL CAMERON WILKEY, INDIVIDUALLY AND IN HIS CAPACITY AS DEPUTY SHERIFF FOR HAMILTON COUNTY, AND TYLER SHANE MCRAE, INDIVIDUALLY AND IN HIS CAPACITY AS DEPUTY SHERIFF FOR HAMILTON COUNTY,

*Defendants.*

**MEMORANDUM OPINION**

Before the Court are motions for summary judgment filed by Defendant Daniel Cameron Wilkey (Doc. 227), Defendant Tyler McRae (Doc. 229), and Defendant Hamilton County, Tennessee (Doc. 231). For the reasons explained below, Wilkey's motion (Doc. 227) will be **DENIED**, McRae's motion (Doc. 229) will be **DENIED**, and Hamilton County, Tennessee's motion (Doc. 231) will be **GRANTED IN PART**.

*Appendix B*

## I. BACKGROUND

On April 17, 2019, Defendant Wilkey, a Hamilton County Deputy Sheriff, stopped Plaintiff William Klaver's vehicle. (*See* Doc. 13, at 8-9; Doc. 223-1, at 3.) The stop occurred at 8:10 p.m. on U.S. Highway 27. (Doc. 223-1, at 8; *Wilkey Dashcam Video* at 1:18.) At 8:11 p.m., Defendant McRae, another Hamilton County Deputy Sheriff, pulled up behind Wilkey's patrol car in a separate patrol vehicle. (*McRae Dashcam Video 1* at 1:00-1:08.) Wilkey exited his patrol vehicle, approached Klaver's driver-side window, told Klaver that his window tint was "way too dark," and asked to see his license. (*Wilkey Dashcam Video* at 1:43-1:56.) While waiting for the license, Wilkey asked Klaver where he was headed, but Klaver did not answer. (*Id.* at 2:03-2:10.) During this time, McRae exited his patrol vehicle and walked toward the passenger side of Klaver's vehicle. (*Id.* at 2:03-2:07.) Wilkey again asked to see Klaver's license, prompting Klaver to ask whether he was being detained. (*Wilkey Dashcam Video*, at 2:20-2:25.) In response, Wilkey confirmed that he was detaining Klaver for a window-tint violation. (*Id.* at 2:25-2:33.) At 8:12 p.m., Wilkey and McRae returned to the patrol vehicle with Klaver's license. (*Id.* at 2:39-2:52.) While walking to the patrol vehicle, McRae made a hand gesture to Wilkey, and Wilkey indicated to McRae that Klaver could be a "sovereign citizen."[1] (*Id.* at 2:40-2:46.) Once in the car, McRae suggested they do a "tag match" based on the sovereign-citizen concerns, to which Wilkey responded,

1. The parties refer throughout the briefs to Klaver's then-suspected sovereign-citizen status without defining the term or why they suspected that Klaver was a sovereign citizen.

"Yeah." (*Id.* at 2:52-3:03.) The officers also discussed an obstruction—a marine-corps sticker—on Klaver's tag. (*Id.* at 3:03-3:09.) Additionally, Wilkey told McRae that Klaver was "shaking like a leaf" during their conversation. (*Id.* at 3:17-3:19.)

Wilkey then suggested they "make sure he ain't got no pot or anything" because Klaver was "shaking like crazy." (*Id.* at 3:37-3:42.) Wilkey said he might ask the Soddy-Daisy Police Department to bring a drug-sniffing dog to sniff Klaver's vehicle. (*Id.* at 3:42-3:45.) McRae approved of the idea, noting that Klaver "would say no to a search." (*Id.* at 3:47-3:50.) Wilkey and McRae then reviewed Klaver's criminal history, finding only that he was a suspect with regard to harassing phone calls in 2004 and was involved in a car accident. (*Id.* at 3:55-6:00.) At 8:15 p.m., both officers again approached Klaver's vehicle, and Wilkey asked for Klaver's registration and informed him of the obstruction on his tag. (*Id.* at 6:00-6:36.) Klaver asked for Wilkey's name, and Wilkey responded with his name and badge number. (*Id.* at 6:36-6:44.) Wilkey then asked for Klaver's insurance card, and Klaver told him it was on his phone. (*Id.* at 6:55-7:03.)

Wilkey then asked whether Klaver had "ever been arrested for anything." (*Id.* at 7:08-7:09.) When Klaver responded, "no," Wilkey asked, "never ever?" and Klaver again answered, "no." (*Id.* at 7:00-7:11.) Wilkey then asked whether Klaver took "any kind of medication or anything," prompting another "no" from Klaver. (*Id.* at 7:13-7:15.) Wilkey asked if he had "any kind of disability . . . like Parkinson's," indicating that he was asking due to Klaver's

shaking. (*Id.* at 7:15-7:24.) Klaver responded that he did not think Wilkey could ask him that, and Wilkey replied that he could. (*Id.* at 7:25-7:30.) Wilkey said that he was only asking to determine whether he was shaking because he was hiding something, like "drugs or anything" in the car, and asked Klaver point blank whether he "ha[d] any of that." (*Id.* at 7:30-7:35.) Klaver told Wilkey, "You know I don't," but Wilkey responded that he did not know whether Klaver had any of those things. (*Id.* at 7:36-7:43.)

After another minute, Wilkey asked whether Klaver "ha[d] anything illegal in the car," including "weapons or anything like that." (*Id.* at 8:11-8:16.) Wilkey then asked Klaver if he had a problem with Wilkey searching the car, and Klaver refused to allow the search, saying, "there's nothing in here." (*Id.* at 8:16-8:26.) Wilkey again asked whether Klaver had been arrested, and Klaver again said he had not. (*Id.* at 8:27-8:30.) Wilkey then asked if there was a reason why Klaver was shaking, and Klaver responded, "Sir, I'm trying to be as respectful as I can, [but] you've got me illegally pulled over." (*Id.* at 8:31-8:39.) Wilkey replied that the traffic stop was legal based on the window-tint violation and the tag obstruction. (*Id.* at 8:38-8:54.) Wilkey confirmed again that Klaver would not consent to a search and returned to his patrol vehicle. (*Id.* at 8:55-9:06.) McRae, who had been standing at the passenger side of Klaver's vehicle during Wilkey's questioning, also returned to the patrol vehicle. (*Id.*)

At 8:18 p.m., Wilkey called in a request for a canine officer from Soddy-Daisy. (*Id.* at 9:06-9:14.) At 8:20 p.m., dispatch informed the officers that they were sending

a canine officer. (*Id.* at 10:45-10:56.) Wilkey and McRae remained in the car filling out paperwork related to the citation. (*Id.* at 9:29-15:07.) During this time, Wilkey suggested to McRae that Klaver had made the window tint so dark "for a reason." (*Id.* at 11:39-11:49.)

At 8:24 p.m., McRae exited the patrol vehicle and walked to Klaver's driver-side window. (*Id.* at 15:08-15:17.) Once at the window, McRae asked Klaver if he had been in the Marine Corps, noting the sticker on the tag. William Klaver, *Tint Exempt Vehicle Detainment, Daniel Wilkey & Tyler McRea, Rhea County TN - HCSO April 17, 2019 v5*, YouTube (Apr. 17, 2019), https://www.youtube.com/watch?v=reYtT4MeBLA (hereinafter "*Klaver Video 5*"), at 5:52-6:00. Klaver responded that he was "not going to answer any more questions" but clarified that he did not mean to be "disrespectful," and McRae told him that he was not being disrespectful to him. *Id.* at 6:00-6:08. Immediately after, Klaver stated that he was a veteran, and McRae thanked him for his service. *Id.* at 6:08-6:15. McRae then asked whether Klaver wanted to talk about "how long [Klaver] served or anything," to which Klaver shook his head. *Id.* at 6:15-6:30. Klaver then stated that, if he was not being arrested, he would like to be "on [his] way." *Id.* at 6:30-6:37. McRae informed Klaver that Wilkey was writing him a citation, and Klaver said, "Okay." *Id.* at 6:37-6:39. When Klaver questioned him, McRae again informed Klaver of the reasons for his detention. *Id.* at 6:39-7:35. Klaver then asked McRae for his name and badge number, which McRae provided. *Id.* at 7:35-7:43. McRae again thanked Klaver for his service, told him to "have a good day," and walked away from his vehicle. *Id.* at 7:43-7:57; (*Wilkey Dashcam Video* at 17:20-17:34.)

Once back with Wilkey, McRae relayed to him that Klaver wished to leave if he was not being arrested or retained, and Wilkey responded that Klaver was still being detained. (*Wilkey Dashcam Video* at 17:35-17:45.)

A Soddy-Daisy police officer, Garrett Bull, arrived at 8:32 p.m. with the drug-sniffing dog. (*Id.* at 23:13-23:29.) Wilkey explained to him that Klaver was likely a sovereign citizen, would not disclose if he had any medical problems, was "obviously trying to conceal himself," and was "being combative" with Wilkey and McRae. (*Id.* at 23:29-23:57.) Wilkey also told Bull to wait until Wilkey finished writing the citation before starting the search. (*Id.* At 23:54-24:05.) At 8:33 p.m., Wilkey asked McRae for a court date and noted "May 6" aloud. (*Id.* at 24:22-24:42.) At 8:34 p.m., Wilkey said, "Alright," exited his patrol car, and approached Klaver's vehicle with McRae. (*Id.* at 25:24-25:49.)

Wilkey asked Klaver to step out of his vehicle to sign the ticket and to allow the dog to sniff around the vehicle. (*Id.* at 25:49-26:11.) Klaver exited the vehicle, and Wilkey and McRae walked him toward Wilkey's patrol car. (*Id.* at 26:13-26:40.) Wilkey then performed a pat down of Klaver. (*Id.* at 26:41-27:25.) When he finished, Wilkey brought the citation to Klaver for his signature. (*Id.* at 27:30-27:36.) While they were discussing the ticket, Bull walked the dog around Klaver's vehicle. (*Id.* at 27:26-29:01.) The dog circled the vehicle for about two-and-a-half minutes. (*Id.*) According to Bull's signed declaration, the dog passively alerted to the presence of narcotics by sitting down at the passenger-side door. (Doc. 233-1, at 24.)

At 8:40 p.m., McRae announced to Klaver that the dog had alerted, to which Klaver quickly replied that it had not. (*Id.* at 31:27-31:45.) McRae then took Klaver's keys, and he and Wilkey searched inside Klaver's vehicle for approximately five minutes, while the Soddy-Daisy officer and Klaver continued to disagree about whether the dog had alerted. (*Id.* at 31:57-37:34.) Wilkey and McRae found nothing illegal during the search. (*See id.*) When Wilkey returned to his patrol car where Klaver was standing, he again asked Klaver if there was "any marijuana or anything" in the vehicle, and Klaver again told him there was not. (*Id.* at 37:51-38:01.) At 8:47 p.m., Klaver finally signed the citation and informed Wilkey that he had muscular dystrophy. (*Id.* at 38:10-38:14.) Wilkey responded, "That's all you had to say, sir," explaining his concerns about the shaking. (*Id.* at 38:12-38:25.) At the end of their encounter, Klaver expressed that he was nervous because he was familiar with some Wilkeys from Rhea County in law enforcement and had a negative perception from what he had heard. (*Id.* at 39:50-40:05.) At 8:49 p.m., Klaver returned to his vehicle and drove away. (*Id.* at 40:35-40:40.)

In a signed declaration, Wilkey states that he was filling out the citation from 8:18 p.m. to 8:47 p.m. (Doc. 223-1, at 5.) He further states:

> Completing a citation requires entering in the violator's name, date of birth, social security number, phone number, make and model of the vehicle, vehicle identification number, finding a court date, and finding and writing in the Tennessee Code Annotated section(s) onto the

> citation. Depending on the circumstances and other factors, writing a citation could take at least 30 minutes for multiple violations.

(*Id.*) Wilkey does not indicate whether the circumstances of in this stop would require twenty-nine minutes to complete the citation. According to the dashcam footage, Wilkey and McRae had Klaver's license at 8:12 p.m. (*Wilkey Dashcam Video* at 2:40-2:46.) Additionally, at 8:27 p.m., Wilkey read part of the relevant Tennessee Code Annotated Section aloud to McRae while they were discussing Klaver's insistence that he was illegally pulled over. (*Id.* at 18:30-18:39.) Wilkey asked McRae for a court date at 8:33 p.m. so he could finish writing the citation before the dog began sniffing the vehicle. (*Id.* at 24:22-24:42.) At 8:38 p.m., Wilkey asked Klaver for his Social Security number, which Klaver promptly recited, and his phone number, which Klaver said was on his phone in his car. (*Id.* at 29:02-29:22.)

On September 1, 2020, Wilkey filed a motion for judgment on the pleadings (Doc. 210), which the Court granted in part and denied in part (Doc. 221). The Court granted the motion with respect to, and dismissed, the following claims against Wilkey:

1. Klaver's § 1983 claim based on violation of his Fourteenth Amendment right to due process;

2. Klaver's § 1983 claim based on the violation of his Fourth Amendment rights based on the initial traffic stop;

3. Klaver's ADA claims;

4. Klaver's claims based on alleged violations of the United States Criminal Code;

5. Klaver's other ambiguous claims.

(*Id.* at 15.) However, the Court denied the motion with respect to Klaver's § 1983 claim against Wilkey based on the detainment and search of his vehicle after the initial traffic stop. (*Id.*) McRae and Hamilton County did not move for dismissal of any claims prior to summary judgment.

On October 25, 2021, all three defendants filed motions for summary judgment. (Docs. 227, 229, 231.) Wilkey seeks judgment on the remaining § 1983 claim against him (Doc. 228, at 14), and McRae and the County seek summary judgment on all claims against them (Doc. 230, at 17; Doc. 232, at 23). These motions are ripe for review.

## II. STANDARD OF REVIEW

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court views the evidence in the light most favorable to the nonmoving party and makes all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *Nat'l Satellite Sports, Inc. v. Eliadis Inc.*, 253 F.3d 900, 907 (6th Cir. 2001).

*Appendix B*

The moving party bears the burden of demonstrating that there is no genuine dispute as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Leary v. Daeschner*, 349 F.3d 888, 897 (6th Cir. 2003). The moving party may meet this burden either by affirmatively producing evidence establishing that there is no genuine issue of material fact or by pointing out the absence of support in the record for the nonmoving party's case. *Celotex*, 477 U.S. at 325. Once the movant has discharged this burden, the nonmoving party can no longer rest upon the allegations in the pleadings; rather, it must point to specific facts supported by evidence in the record demonstrating that there is a genuine issue for trial. *Chao v. Hall Holding Co., Inc.*, 285 F.3d 415, 424 (6th Cir. 2002).

At summary judgment, the Court may not weigh the evidence; its role is limited to determining whether the record contains sufficient evidence from which a jury could reasonably find for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A mere scintilla of evidence is not enough; the Court must determine whether a fair-minded jury could return a verdict in favor of the non-movant based on the record. *Id.* at 251-52; *Lansing Dairy, Inc. v. Espy*, 39 F.3d 1339, 1347 (6th Cir. 1994). If not, the Court must grant summary judgment. *Celotex*, 477 U.S. at 323.

*Appendix B*

## III. ANALYSIS

### A. Wilkey's Motion for Summary Judgment (Doc. 227)

The only claim remaining against Wilkey is Klaver's § 1983 claim for violation of his Fourth Amendment rights based on his prolonged detention and the search of his vehicle after the initial traffic stop. (*See* Doc. 221, at 14.) 42 U.S.C. § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any . . . person . . . to the deprivation of any rights . . . secured by the Constitution and laws [of the United States], shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

To succeed on a § 1983 claim, a plaintiff must show a "deprivation of a right secured by the Constitution or laws of the United States" and that "the deprivation was caused by a person acting under color of state law." *Tahfs v. Proctor*, 316 F.3d 584, 590 (6th Cir. 2003) (quoting *Ellison v. Garbarino*, 48 F.3d 192, 194 (6th Cir.1995)). Wilkey does not dispute that he was acting under color of state law at the time of his encounter with Klaver. Instead, he argues that he is entitled to judgment on the remaining claim because the detention and search were justified by reasonable suspicion and probable cause, and thus no violation occurred, and, further, because Klaver cannot

prove damages. (Doc. 228, at 11-14.) Wilkey also argues that he is entitled to qualified immunity with regard to Klaver's remaining claim against him. (*Id.* at 8-11.)

### i. Reasonable Suspicion or Probable Cause

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "An ordinary traffic stop by a police officer is a 'seizure' within the meaning of the Fourth Amendment." *United States v. Blair*, 524 F.3d 740, 748 (6th Cir. 2008) (citing *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)). "Whether the seizure is reasonable is determined by considering first whether the officer's action was justified at its inception, and second whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *United States v. Gross*, 550 F.3d 578, 582 (6th Cir. 2008) (citations and internal quotation marks omitted); *see United States v. Everett*, 601 F.3d 484, 488 (6th Cir. 2010) ("To qualify as reasonable seizures under the Fourth Amendment, *Terry* detentions must be 'limited in [both] scope and duration.'" (quoting *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983))). The Court has already dismissed Klaver's claim that Wilkey violated his Fourth Amendment rights by initiating the traffic stop. (*See* Doc. 221, at 7-9.) The Court need only determine whether there remains a genuine issue of material fact as to whether the subsequent detention and the search of his vehicle were unreasonable.

*Appendix B*

**a. Prolonged Detention**

*Terry* stops, including traffic stops, "must . . . last no longer than is necessary to effectuate the purpose of the stop." *Everett*, 601 F.3d at 488 (quoting *Royer*, 460 U.S. at 500). "Once the purpose of the initial traffic stop is completed, an officer cannot further detain the vehicle or its occupants unless something happened *during the stop* to cause the officer to have a 'reasonable and articulable suspicion that criminal activity [is] afoot.'" *United States v. Davis*, 430 F.3d 345, 353 (6th Cir. 2005) (quoting *United States v. Hill*, 195 F.3d 258, 264 (6th Cir. 1999), *cert. denied*, 528 U.S. 1176 (2000)) (alteration in original) (additional citations omitted). Thus, "[e]ven if an initial stop is constitutionally permissible, any subsequent detention must also comply with the Constitution and may not, therefore, 'be excessively intrusive and must be reasonably related in time to the investigation.'" *See United States v. Shank*, 543 F.3d 309, 313 (6th Cir. 2008) (quoting *United States v. Wellman*, 185 F.3d 651, 656 (6th Cir. 1999)). For example, "an officer can lawfully detain the driver of a vehicle until after the officer has finished making record radio checks and issuing a citation, because this activity 'would be well within the bounds of the initial stop.'" *Wellman*, 185 F.3d at 656 (quoting *United States v. Bradshaw*, 102 F.3d 204, 212 (6th Cir. 1996)). However, to constitutionally extend the seizure beyond the time reasonably related to the purpose of the initial stop, the detaining officer must have independent reasonable suspicion to support such an extension. *See also Hernandez v. Boles*, 949 F.3d 251, 256 (6th Cir. 2020) ("[A]ny extension of a traffic stop absent independent

reasonable suspicion is improper. This is a bright-line rule.").

The Supreme Court has held that "mere police questioning does not constitute a seizure" and that officers may "generally ask questions" of an individual even if there is no basis for suspecting further criminal activity. *Muehler v. Mena*, 544 U.S. 93, 100-01, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005).[2] "An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter to something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Johnson*, 555 U.S. at 333 (citing *Muehler*, 544 U.S. at 100-01)). The Sixth Circuit declined to recognize a bright-line no-prolongation rule in the wake of *Muehler* and *Johnson*, and instead instructed district courts to "conduct a fact-bound, context dependent inquiry" into "whether the totality of the circumstances surrounding the stop indicates that the duration of the stop *as a whole*—including any prolongation due to suspicionless unrelated questioning—was reasonable." *Everett*, 601 F.3d at 493-94 (citations and internal quotation marks omitted) (emphasis in original); *see Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015) ("[T]he tolerable duration of police inquiries in the traffic-stop context is

2. *Muehler* was decided in the context of questioning during the execution of a search warrant, but the Supreme Court and Sixth Circuit have recognized that its reasoning applies with equal force to questioning incident to traffic stops. *Arizona v. Johnson*, 555 U.S. 323, 333, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009); *Everett*, 601 F.3d at 490.

determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." (citations omitted)).

One consideration in this analysis is the subject matter of the questions asked. *Everett*, 601 F.3d at 494. "Context-framing questions," such as those concerning a motorist's travel plans or authority to operate the vehicle in question, do not generally suggest a lack of diligence or unreasonable prolongation of a traffic stop. *Id.* However, questions that are "relevant only to ferreting out unrelated criminal conduct" may be evidence that the officer "definitively abandoned the prosecution of the traffic stop and embarked on another sustained course of investigation" that necessarily required independent reasonable suspicion. *Id.* at 495. The appropriateness of questioning will often turn on whether "the officer's overall course of action during a traffic stop, viewed objectively and in its totality, is reasonably directed toward the proper ends of the stop." *Id.*

Similarly, the Supreme Court has held that the use of a drug-sniffing dog during a traffic stop "generally does not implicate legitimate privacy interests," and is therefore not a search subject to Fourth Amendment protections. *Illinois v. Caballes*, 543 U.S. 405, 408-10, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005). Nevertheless, the use of a drug-sniffing dog runs afoul of the Fourth Amendment if it prolongs the seizure effected by the initial lawful traffic stop "beyond the time reasonably required to complete [the] mission [of the initial stop]." *Id.* at 407-08; *see Rodriguez*, 575 U.S. at 355 ("Lacking the same close

connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.").

In a case similar to this one, the Sixth Circuit held that six minutes of extraneous questioning "measurably prolonged the traffic stop beyond its original purposes because the topics covered more than just context-framing questions and the extraneous questions lasted not an insubstantial amount of time." *United States v. Stepp*, 680 F.3d 651, 662-63 (6th Cir. 2012). The court of appeals further held that, "[e]ven if six minutes of extraneous questioning alone did not unreasonably prolong the search, the officer's subsequent actions" in calling for a canine unit, which took an additional three and a half minutes to arrive and complete a walkaround, "undeniably did." *Id.* at 663; *cf. Everett*, 601 F.3d at 495 (holding that the delay caused by a single question concerning weapons and narcotics, lasting only "several seconds" did not constitute the bulk of the interaction between the officer and motorist and therefore "did not render the traffic stop an unreasonable seizure under the Fourth Amendment").

In this case, a reasonable jury could conclude that the questioning and call for the canine officer prolonged the stop beyond the time reasonably necessary to resolve the traffic issues. Although Wilkey says he was completing the citation for the entire duration of the stop, that is not the end of the Court's inquiry. "Authority for the seizure . . . ends when tasks tied to the traffic infraction are—*or reasonably should have been*—completed." *Rodriguez*, 575 U.S. at 354 (emphasis added). "If an officer can

complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop's mission," and "a traffic stop prolonged beyond that point is unlawful." *Id.* at 357 (cleaned up). At the very least, several minutes were spent questioning Klaver about possible drugs or weapons in the vehicle, speaking with dispatch, and waiting for the dog to arrive and complete the sniff of the vehicle. Thus, there is a genuine issue of material fact as to whether these events unnecessarily prolonged the stop for a window-tint violation that must be decided by the jury. *Cf. Hernandez*, 949 F.3d at 258 ("The district court correctly determined that the question of whether the Troopers impermissibly prolonged the traffic stop was reserved to the jury.").

Wilkey argues that, even if independent reasonable suspicion was necessary to justify the extraneous questioning and the time waiting for the Soddy-Daisy officer to arrive, he had the necessary suspicion due to Klaver's "shaking, being deliberately unresponsive, appearing as a sovereign citizen initially, and not providing any reason for his shaking." (*See* Doc. 228, at 11-12.) "Reasonable suspicion requires specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant the continued detention of a motorist after a traffic stop." *United States v. Bell*, 555 F.3d 535, 540 (6th Cir. 2009) (quoting *United States v. Smith*, 263 F.3d 571, 588 (6th Cir. 2001)). An "ill-defined hunch" does not amount to reasonable suspicion; rather, there must be "a particularized and objective basis for suspecting the particular person . . . of criminal activity." *Id.* (quoting *Smith*, 263 F.3d at 588) (alteration in original). "Whether an officer has reasonable, articulable

suspicion of criminal activity 'is based on the totality of the circumstances presented to the officer.'" *United States v. Winters*, 782 F.3d 289, 298 (6th Cir. 2015) (quoting *United States v. Jones*, 673 F.3d 497, 502 (6th Cir. 2012)). The standard is objective, and "the subjective beliefs of the officer are irrelevant." *Id.* Nevertheless, officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." *Id.* (quoting *United States v. Shank*, 543 F.3d 309, 315 (6th Cir. 2008)).

**1. Shaking and Nervousness**

Wilkey's primary basis for prolonging the stop appears to have been Klaver's nervousness and shaking during their interactions. (*See, e.g., Wilkey Dashcam Video* at 3:37-3:42 (Wilkey suggesting he and McRae "make sure he ain't got no pot or anything" because Klaver was "shaking like crazy").) Generally, however, factors relating to a detainee's nervousness are not given much weight in a reasonable-suspicion analysis. *See Bell*, 555 F.3d at 540 (collecting cases); *see also Winters*, 782 F.3d at 299 ("[A]lthough nervousness has been considered in finding reasonable suspicion in conjunction with other factors, it is an unreliable indicator, especially in the context of a traffic stop." (quoting *United States v. Richardson*, 385 F.3d 625, 630 (6th Cir. 2004)). This is because "[m]any citizens become nervous during a traffic stop, even when they have nothing to hide or fear." *Richardson*, 385 F.3d at 630-31; *see Winters*, 782 F.3d at 299 (noting that nervousness encompasses "relatively commonplace behaviors, such as engaging in a wide range of emotion,

talking excessively, apologizing to a passenger for being pulled over, pacing back and forth, or trembling while handling over a license to the police" (citations and internal quotation marks omitted)). The Court, therefore, assigns little weight to Klaver's shaking or any other nervous behavior he displayed during the stop.

### 2. Suspected Sovereign-Citizen Status

Wilkey also argues that Klaver's appearance as a sovereign citizen at the beginning of the stop is another factor leading him to reasonable suspicion to prolong the stop. (Doc. 228, at 11.) But Wilkey has not identified any articulable facts beyond his own ill-defined hunch that Klaver was a sovereign citizen. At 8:12 p.m., after only one minute of interaction with Klaver, Wilkey suggested that Klaver may be a sovereign citizen. At that point, all Wilkey knew was that Klaver had pulled over when he was blue lighted, declined to say where he was going, asked whether he was being detained, and given Wilkey his license—that is, complied with Wilkey's commands to that point. (*See Wilkey Dashcam Video*, at 1:18-2:52.) Wilkey's unfounded assumption that Klaver was a sovereign citizen does not contribute to reasonable suspicion sufficient to prolong the stop.

### 3. Failure to Answer Questions

Wilkey also argues that he had reasonable suspicion because Klaver "was not responding to questions about drugs, disabilities, his cane, hiding something,

Parkinson's, or shaking." (Doc. 228, at 12.) But Wilkey mischaracterizes the number of questions asked and left unanswered. Based on audio available from the dashcam footage, Klaver failed to respond to only two questions before the officers decided to call for the canine unit. First, Klaver did not answer Wilkey's question about where he was driving and instead asked whether he was being detained. (*Wilkey Dashcam Video* at 2:03-2:10.) Wilkey did not ask any follow-up questions and does not cite this as a basis for his suspicion. Second, when Wilkey asked whether Klaver had a disability, such as Parkinson's disease, Klaver responded that he did not think Wilkey could ask that of him. (*Id.* at 7:25-7:30.) However, Klaver answered each of Wilkey's questions concerning whether he had "ever been arrested for anything," whether he took "any kind of medication or anything," and whether he had any "drugs or anything" in his vehicle. (*Id.* at 8:11-8:30, 37:51-38:01.) In fact, Klaver answered many of Wilkey's questions more than once. (*See id.*) Further, Wilkey argues that all these questions were attempts to "verify or dispel reasonable suspicion" that he seemingly asserts was based on Klaver's shaking. (Doc. 228, at 9.) However, as the Court has already explained, nervousness merits little weight in the Court's analysis of whether there was reasonable suspicion sufficient to prolong the stop. Moreover, Klaver's refusal to say where he was driving or whether he had a disability alone is not enough to justify prolonging the stop. Although the Court may consider this in connection with other factors, "a suspect's refusal to answer or listen does not, by itself, justify a reasonable suspicion of criminal activity." *United States v. Smith*, 594 F.3d 530, 541 (6th Cir. 2010).

Wilkey has not shown that, as a matter of law, the prolongation of the traffic stop with questioning and calling the canine officer was supported by reasonable suspicion and thus constitutional. As the Sixth Circuit has explained, even several factors an officer identifies "may not together provide reasonable suspicion if they are all relatively minor and subject to significant qualification, particularly where the case lacks any of the stronger indicators of criminal activity." *Bell*, 555 F.3d at 540 (cleaned up). Accordingly, the Court will deny Wilkey's motion for summary judgment on this issue.

**b. Search of the Vehicle**

Because there is a genuine issue of material fact as to whether the traffic stop was unreasonably prolonged to allow the drug-detection dog to sniff around the vehicle, Wilkey is not entitled to judgment as a matter of law that the subsequent search of the vehicle was reasonable. *See United States v. Ward*, 400 F. App'x 991, 996 (6th Cir. 2010) (holding that an "illegal seizure taints the subsequent search and renders [any] evidence that it produced inadmissible" (citing *Royer*, 460 U.S. at 507-08)). Moreover, given Klaver's denial that the dog ever alerted, the lack of a visible alert in the dashcam videos, and the absence of drugs in the vehicle, there is a genuine dispute of material fact as to whether the search itself was justified by reasonable suspicion. Therefore, the Court will also deny Wilkey's motion for summary judgment on this issue.

**ii. Qualified Immunity**

The doctrine of qualified immunity "shields governmental officials from monetary damages as long as their actions did not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Sumpter v. Wayne Cnty.*, 868 F.3d 473, 480 (6th Cir. 2017) (internal quotation marks omitted). In deciding whether a defendant is entitled to qualified immunity at the summary-judgment stage, the Court employs a two-part test, which may be conducted in either order. *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009)). First, the Court determines whether the facts, viewed in the light most favorable to the plaintiff, show that the official violated a constitutional right. *Holzemer v. City of Memphis*, 621 F.3d 512, 519 (6th Cir. 2012). Second, if a constitutional right was violated, the Court determines whether the right was clearly established at the time the violation occurred. *Id.* The plaintiff bears the burden of "satisfy[ing] both inquiries in order to defeat the assertion of qualified immunity." *Sumpter*, 868 F.3d at 480.

Because the Court has already held that there remains a genuine issue of material fact as to whether Wilkey violated Klaver's Fourth Amendment rights, it need only determine whether the rights at issue were clearly established at the time of Klaver's stop. "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.'" *Mullenix v. Luna*, 577 U.S. 7, 11, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (quoting

*Reichle v. Howards*, 566 U.S. 658, 664, 132 S. Ct. 2088, 182 L. Ed. 2d 985 (2012)). Though there need not be "a case directly on point, . . . existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* "[T]he focus is on whether the officer had fair notice that her conduct was unlawful" at the time of the alleged violation. *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S. Ct. 596, 160 L. Ed. 2d 583 (2004).

As the Court has discussed, *Stepp*, which is factually similar to this case, was decided before these events took place. 680 F.3d at 651. In 2012, the Sixth Circuit held that "six minutes of questioning measurably prolonged the traffic stop beyond its original purposes because the topics covered more than just context-framing question and the extraneous questions lasted a not insubstantial amount of time." *Id.* at 663. In *Stepp*, the court noted that at least some of the questioning was "related to the investigation of a secondary crime and not the purpose of the initial stop." *Id.* at 662. The court went on to hold that, "[e]ven if six minutes of extraneous questioning alone did not unreasonably prolong the search," the three-and-a-half minutes it took for the canine unit to arrive did. *Id.* at 663. It accordingly held that, "unless an independent reasonable suspicion of criminal activity arose during the course of the conversation with [the officer], continuing to hold [the detainee] past that point amounted to a Fourth Amendment violation." *Id.* at 664. Furthermore, other cases decided before April 17, 2019, conclusively provide notice that nervousness and failure to answer a couple questions do not furnish reasonable suspicion, absent other factors. *See Richardson*, 385 F.3d at 630-31 (agreeing that the detainees' nervousness displayed by their trembling

and difficulty speaking was not "inherently suspicious" and not a reliable indicator of criminal activity); *United States v. Muhammad*, 316 F. App'x 429, 432 (6th Cir. 2009) ("[E]vasive behavior and refusal to answer police questions may not of themselves provide reasonable suspicion[.]" (citing *Royer*, 460 U.S. at 497-98)). Because there are fact questions as to whether Wilkey unreasonably prolonged the stop without reasonable suspicion, there are also genuine issues of material fact that prevent the Court from finding that Wilkey is entitled to qualified immunity on Klaver's § 1983 claim against him.

**iii. Damages**

Wilkey's final argument is that Klaver lacks proof of actual damages. (Doc. 228, at 12-14.) "[T]he basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights." *Farrar v. Hobby*, 506 U.S. 103, 112, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992) (quoting *Carey v. Piphus*, 435 U.S. 247, 254, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978)). Therefore, "no compensatory damages may be awarded in a § 1983 suit absent proof of actual injury." *Id.* In such cases, plaintiffs may only be entitled to an award of nominal damages. *See id.; see also Damages*, Black's Law Dictionary (11th ed. 2019) (defining "nominal damages" as "[a] trifling sum awarded when a legal injury is suffered but there is no substantial loss or injury to be compensated").

Wilkey's memorandum in support of his motion for summary judgment does not address the availability of nominal damages. (*See* Doc. 228.) Thus, even if Klaver

has failed to provide evidentiary support for his claim of compensatory damages, a jury could find that Klaver is entitled to nominal damages if his Fourth Amendment rights were violated. Moreover, the question of whether Klaver is entitled to compensatory damages for mental or emotional distress is best reserved for the jury. *See Williams v. Trader Pub. Co.*, 218 F.3d 481, 486 n.3 (5th Cir. 2000) (noting "compensatory damages for emotional distress are necessarily vague and are generally considered a fact issue for the jury"); *see also Torres v. Precision Indus., Inc.*, 437 F. Supp. 3d 623, 645-46 (W.D. Tenn. 2020), *aff'd as modified*, 995 F.3d 485 (6th Cir. 2021) (collecting cases). Accordingly, Wilkey's motion for summary judgment (Doc. 227) is **DENIED**.

### B. McRae's Motion for Summary Judgment (Doc. 229)

McRae moves for summary judgment on Klaver's § 1983 claims on the grounds that (1) the traffic stop was appropriate, was not unreasonably prolonged, and did not violate Klaver's Fourth Amendment rights, (2) Klaver has not provided proof of damages, and (3) McRae is entitled to qualified immunity as to these claims. (Doc. 230, at 7-13.) McRae also moves for summary judgment on Klaver's state-law claims against him. (*Id.* at 13-16.)

#### i. Section 1983 Claim Based on the Prolongation of the Stop

With regard to whether the stop was unreasonably prolonged, McRae raises many of the same arguments as Wilkey. (*See* Doc. 230.)

**a. Damages**

McRae raises the same arguments with respect to Klaver's lack of damages as Wilkey. (*See* Doc. 230, at 10-11.) McRae, too, fails to discuss the availability of nominal damages or case law suggesting that emotional damages are sufficiently personal and vague to be reserved to a jury. Therefore, for the same reasons set forth above, McRae is not entitled to summary judgment based on Klaver's alleged lack of compensatory damages.

**b. Reasonable Suspicion or Probable Cause**

McRae next argues that the drug sniff did not unreasonably prolong the stop because, "[w]hile Officer Bull was taking the canine around the vehicle, Deputy Wilkey was reviewing the details of the traffic citation with the Plaintiff, answering his questions regarding a court date and so forth." (Doc. 230, at 9.) But McRae fails to address whether calling and waiting nearly twenty minutes for the canine officer to arrive unreasonably extended to stop. McRae also fails to address relevant case law dictating that it is the time reasonably necessary to complete the traffic-related inquiries, not the time it actually took the officers to complete tasks related to the initial stop. *Rodriguez*, 575 U.S. at 354, 357. For the same reasons set forth above (*see supra* Section III.A.1), there is a genuine issue of material fact as to whether the officers unreasonably prolonged the stop that the jury must decide.

McRae, like Wilkey, also argues that, even if independent reasonable suspicion was necessary, Klaver's

shaking and refusal to answer questions provided the necessary suspicion. (Doc. 230, at 9.) McRae also cites Klaver's "reluctance to produce his driver's license" (*id.*), though such reluctance is not evident from the dashcam footage. (*See Wilkey Dashcam Video* at 2:20-2:39). It took Klaver approximately forty-five seconds to produce his license after being asked, and he did so without argument after Wilkey told him why he had been pulled over. (*See id.*) There is nothing suspicious about taking less than one minute to provide the license or questioning the reason for the stop before handing over the license. And as the Court has already explained (*see supra* Section III.A.1), Klaver's nervousness and refusal to answer a few of the officers' questions alone did not create reasonable suspicion that Klaver had drugs or weapons in his vehicle. Thus, for the same reasons the Court denied Wilkey's motion for summary judgment in these respects, the Court will deny McRae's motion for summary judgment as to the reasonableness of extending the stop.

**c. Qualified Immunity**

McRae also asserts that he is entitled to qualified immunity. (Doc. 330, at 12-13.) McRae does not provide any analysis of the facts in this case or the relevant case law at the time of the incident; he instead relies on Klaver's failure to meet his burden of proof as to qualified immunity. (*Id.* ("[T]he ultimate burden is on the Plaintiff in this case to show why each officer would not be entitled to qualified immunity." (citing *Wegener v. Covington*, 933 F.2d 390, 392 (6th Cir. 1991))). But McRae omits the key holding in *Wegener* that the officers "bear

the initial burden of presenting facts that[,] if true, would establish that they were acting within the scope of their discretionary authority." 933 F.2d at 392. "*Once they have done this*, the burden shifts to [the plaintiff] to establish that [the officers'] conduct violated a right so clearly established that any official in [their] positions would have clearly understood that they were under an affirmative duty to refrain from such conduct." *Id.* (citations omitted) (emphasis added). McRae has arguably made no attempt to argue—with reference to the facts of this case and other similar cases—that he did not violate a clearly established right. (*See* Doc. 330, at 12-13 (discussing the standard for qualified immunity and partially describing the relevant burden-shifting framework, but failing to cite the record or distinguish similar cases).)

Further, and as previously explained, there is a genuine issue of material fact as to whether McRae unreasonably prolonged the traffic stop, without independent reasonable suspicion, to allow for extraneous questioning and to wait for the drug-sniffing dog to arrive and complete a sniff around the vehicle, and the freedom to be free of this type of unreasonable seizure was clearly established at the time of the stop. *See Stepp*, 680 F.3d at 651; *Richardson*, 385 F.3d at 630-31; *Muhammad*, 316 F. App'x at 432. Accordingly, the Court will not grant McRae's motion for summary judgment on qualified-immunity grounds.

**ii. State-Law Claims**

**a. Negligence**

McRae also argues that he is not subject to liability under the Tennessee Governmental Tort Liability Act for any negligent actions. (Doc. 330, at 13 (citing Tenn. Code Ann. § 29-20-310).) However, it is not clear to which claims McRae is referring. Klaver does not assert a claim of negligence, nor does he allege that any actions forming the basis of his claims were taken negligently. (*See* Doc. 13, at 4-5.) Thus, this argument is no basis for dismissal of any claims against McRae.

**b. Intentional Infliction of Emotional Distress**

McRae further argues that, to the extent Klaver asserts a claim for intentional infliction of emotional distress, that claim should also be dismissed. (Doc. 330, at 14.) Such a claim is not among the many Klaver lists in his amended complaint. Accordingly, though the Court agrees that Klaver cannot support an intentional-infliction-of-emotional-distress claim, the Court will not dismiss this claim, because it does not find that Klaver asserted such a claim.

**iii. Other Claims**

Though McRae does not address them in his motion for summary judgment or memorandum in support thereof, Klaver's complaint also asserts many other claims,

including § 1983 claims based the violation of due process, a claim under the Americans with Disabilities Act, various criminal code violations, and claims for harassment and humiliation.[3] (*See* Doc. 13, at 4-5.) The Court addressed the lack of merit of these claims with respect to Wilkey's motion for judgment on the pleadings (*see* Doc. 221), but neither McRae nor the County challenged the sufficiency of these other claims at the pleadings stage. Consequently, because McRae has not asked the Court to dismiss these claims against him, they will proceed to trial. Nevertheless, the Court notes that, for the reasons explained in its previous opinion (*id.*), McRae is very likely to secure dismissal of these claims pursuant to a Rule 50 motion for judgment as a matter of law.

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3. Admittedly, Klaver does not specify which claim he intends to bring against which party or parties, and many of the claims he asserts are not connected with recognized causes of action and/or are not supported by the allegations in the amended complaint. (*See* Doc. 13.) Still, McRae and Hamilton County have not asked the Court to address whether the claims apply to them or to find that they are not cognizable as against them. Instead, they merely assume that, because these claims are not all tied to factual allegations concerning them, they do not apply to them. The Court will not make such an assumption. Rather, it would have preferred that the parties use the tools of Rule 12 motions or their motions for summary judgment to address the adequacy of Klaver's claims. Because they have not done so, these claims—untidy as they may be—will be resolved at trial.

*Appendix B*

## B. Hamilton County's Motion for Summary Judgment (Doc. 231)

### i. Section 1983 Claims

Hamilton County seeks summary judgment on the grounds that (1) it cannot be liable under *Monell v. Department of Social Services of New York*, 463 U.S. 658 (1978) because neither officer violated Klaver's constitutional rights and (2) Klaver has not otherwise presented facts that would support a claim for *Monell* liability. (Doc. 232, at 2.) Because the Court has found that genuine issues of material fact remain as to whether there was a constitutional violation, the County's first argument is unavailing. Consequently, the Court will consider only its second *Monell* argument.

The Supreme Court has held that municipalities and other local governments "can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell*, 436 U.S. at 690. *Monell* clarified that local governments can also be liable under § 1983 for "constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.* A local government entity, however, "cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."

*Id.* (emphasis in original); *see also id.* at 694 ("Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.").

According to Klaver's amended complaint, his claims against the County appear to be rooted in the theories that the County is liable as Wilkey and McRae's employer at the time of the incident and for its poor hiring practices. (*See* Doc. 13, at 6.) Because the Court has already established that Hamilton County is not liable under a theory of *respondeat superior, see Monell*, 436 U.S. at 690, it considers only whether there is a genuine issue of material fact concerning the County's liability based on its hiring policies.

Klaver has not presented any evidence of Hamilton County's hiring practices generally or otherwise offered evidence from which a reasonable jury could find that Hamilton County maintained a policy or custom of inadequate screening. Nevertheless, the Supreme Court has recognized that a § 1983 claim of *Monell* liability can be premised on a single instance inadequate screening of a prospective employee. *See Bd. of Cnty. Comm'rs of Bryan Cnty., Okla., v. Brown*, 520 U.S. 397, 409-10 (1997). However, it cautioned that, "[t]o prevent municipal liability for a hiring decision from collapsing into *respondeat superior* liability, a court must carefully test the link between the policymaker's inadequate decision and the particular injury alleged." *Id.* at 410.

> [I]t is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its *deliberate* conduct, the municipality was the "moving force" behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.

*Id.* at 404 (emphasis in original). "Where a plaintiff claims that the municipality has not directly inflicted an injury, but nonetheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee." *Id.* at 405. To succeed on such a claim, a plaintiff must show that a municipal actor was "deliberately indifferent" to the plaintiff's constitutional rights—that the actor "disregarded a known or obvious consequence of his action." *Id.* at 410. The plaintiff must show more than a generalized risk of injury based on inadequate screening practices. *Id.* at 412. He or she must demonstrate that, based on the background of the specific officer, it should have been obvious to the municipality that the officer "was highly likely to inflict the *particular* injury suffered by the plaintiff." *Id.* ("The connection between the background of the particular applicant and the specific constitutional violate alleged must be strong.").

Klaver has neither responded to the County's arguments concerning *Monell* liability nor otherwise

offered any proof that would reach the high deliberate-indifference standard set forth by the Supreme Court. Specifically, Klaver has not presented any evidence concerning the County's hiring practices or the screening process that was undertaken with respect to the officers in this case. He has failed to demonstrate either the requisite level of culpability or a causal link between the County's screening of Wilkey or McRae and the particular constitutional injury he alleges. From the evidence in the record, no reasonable jury could find that the County is liable under *Monell* for the actions of Wilkey and McRae. Accordingly, Hamilton County is entitled to judgment as a matter of law on Klaver's § 1983 claims against it, and the Court will **GRANT** its motion for summary judgment (Doc. 231) with regard to those claims.

### ii. State-Law Claims

The County next argues that any state-law claims against it fail as a matter of law pursuant to Tennessee Code Annotated §§ 8-8-302 and 29-20-201 *et seq.* (Doc. 232, at 19-23.) Section 29-20-201—the Tennessee Governmental Tort Liability Act ("GTLA")—provides, with some exceptions, that "all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary." Tenn. Code Ann. § 29-20-201. One exception to the GTLA's immunity is for an "injury proximately caused by a negligent act or omission of any employee within the scope of his employment," except when the injury arises out of certain circumstances. Tenn. Code

Ann. § 29-20-205. However, as the Court stated with regard to McRae, Klaver does not assert a claim of negligence, nor does he allege that any actions forming the basis of his claims were taken negligently. (*See* Doc. 13, at 4-5.) Thus, the Court finds the County's immunity for negligent actions, or lack thereof, irrelevant in this instance.

Section 8-8-302 provides:

> Anyone incurring any wrong, injury, loss, damage or expense resulting from any act or failure to act on the part of any deputy appointed by the sheriff may bring suit against the county in which the sheriff serves; provided, that the deputy is, at the time of such occurrence, acting by virtue of or under color of the office.

Tenn. Code Ann. § 8-8-302. Section 8-8-303 waives sovereign immunity for counties for violations of § 8-8-302. Tenn. Code Ann. § 8-8-303(a). "In interpreting this statutory scheme, the Tennessee Supreme Court has held that it applies to non-negligent conduct of deputies and that these claims are generally not barred by GTLA immunity." *Merolla v. Wilson Cnty.*, No. M2018-00919-COA-R3-CV, 2019 WL 1934829, at *6 (Tenn. Ct. App. May 1, 2019) (citing *Jenkins v. Loudon Cnty.*, 736 S.W.2d 603, 609 (Tenn. 1987), *abrogated in part by Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73 (Tenn. 2001)) (collecting additional cases). Hamilton County argues that a county is only liable under § 8-8-302 "where a deputy's action rise to the level of ***criminal*** conduct" or at the very least

a level of "official misconduct." (Doc. 232, at 20 (emphasis in original) (failing to define "official misconduct").) But none of the cases cited by the County actually hold that this standard applies. Moreover, other cases not cited by the County suggest that liability under § 8-8-302 can accrue for less than criminal conduct. *See, e.g., Swanson v. Knox Cnty.* No. E2007-00871-COA-R3-CV, 2007 WL 4117259, at *5 (Tenn. Ct. App. Nov. 20, 2007) ("The case before us does not involve a 'non-negligent' act, but rather a negligent act or omission to act, and therefore, Tenn. Code Ann. § 8-8-302 is not applicable."); *Hensley v. Fowler*, 920 S.W.2d 649, 651 (Tenn. Ct. App. 1995) ("We construe *Jenkins v. Loudon County*, 736 S.W.2d 603 (Tenn. 1987), to limit actions that arise under T.C.A. §§ 8-8-301, *et seq.*, to non-negligent causes of action,"). The fact that many cases under § 8-8-302 involve conduct otherwise qualifying as criminal does not raise the standard above what has been held by Tennessee courts. Accordingly, the Court will not grant summary judgment as to any state-law claims against the County on these grounds.

Nevertheless, for all of the County's argument concerning state-law claims, Klaver's only possible state-law claims against the County are for such invented claims as "public humiliation," "overall harassment," "entering bogus information on an official document," and "countless lies overall." (Doc. 13, at 4-5.) Klaver does not purport to assert a § 8-8-302 claim alternative to his § 1983 claims. (*See id.*) And the Court does not find that governmental immunity, even if it were applicable, would be the best basis to dismiss claims for which there is no apparent cause of action. Still, Hamilton County did not raise any

other arguments with respect to these claims, and they will therefore proceed to trial.

### iii. Other Claims

Hamilton County also fails to address Klaver's other claims in its motion for summary judgment. (*See* Doc. 232.) Even with the dismissal of any state-law claims, Klaver still purports to assert other federal claims indiscriminately against all parties. (*See* Doc. 13, at 4-5 (asserting a claim under the Americans with Disabilities Act, and various U.S. criminal code violations).) As with McRae, because Hamilton County has not asked the Court to dismiss these claims, they will proceed to trial as against it. Still, the Court notes that the County, too, is very likely to secure dismissal of these claims on a Rule 50 motion at trial.

## IV. CONCLUSION

For the foregoing reasons, Wilkey's motion for summary judgment (Doc. 227) is **DENIED**, McRae's motion for summary judgment (Doc. 229) is **DENIED**, and Hamilton County's motion for summary judgment (Doc. 231) is **GRANTED IN PART**. Klaver's § 1983 claims against Hamilton County are hereby **DISMISSED**.

**SO ORDERED**.

*/s/ Travis R. McDonough*
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE