APPENDIX

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Appendix A
[DO NOT PUBLISH]

**In the
United States Court of Appeals
For the Eleventh Circuit**

No. 19-13181

ROSS M. JACKSON,

Plaintiff-Appellant

versus

SGT GLENN COWAN,
University of Georgia Police Department

SPO K DORSEY,
University of Georgia Police Department

OFC HUTCHINS,
University of Georgia Police Department

Defendants-Appellees,

KEATON WILLIAM LAW, et. al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 3:17-cv-00145-CDL

Before JORDAN, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Ross Jackson preaches Biblical Christianity in public places. While he was delivering a sermon at the University of Georgia, he was arrested for simple battery of a student who was countering his message.

Mr. Jackson filed suit against several UGA police officers—Sergeant Glenn Cowan, Officer Kevin Dorsey, and Officer Oksana Hutchins—alleging claims under 42 U.S.C. § 1983 for violations of the First, Fourth, and Fourteenth Amendments and a claim under 42 U.S.C. § 1985(3). The officers moved for summary judgment based on qualified immunity. After concluding that the officers were entitled to qualified immunity, the district court entered summary judgment in their favor. After reviewing the record and with the benefit of oral argument, we affirm.

I[1]

On October 10, 2016, Mr. Jackson, who is black, and three white preachers delivered sermons on UGA's Tate Lawn, a designated free expression area on UGA's campus. A free expression area at UGA is an area for individuals to exercise their First

[1] The record evidence in this case includes the body camera video recordings of Officer Dorsey and Sergeant Cowan, which captured the events that transpired on October 10 and October 11, 2016, respectively, on UGA's Tate Lawn.

Amendment rights without obtaining a permit from UGA.

Mr. Jackson preached first for approximately thirty to sixty minutes, followed by the three white preachers. In delivering their sermons, the preachers expressed controversial religious views, and a large crowd of students surrounded the preachers. After arriving on the scene, UGA police officers, including the officers sued here, stood behind the crowd of students, monitored the situation, and answered questions from the students. In response to student questions about how to silence the preachers, the officers repeatedly explained that they could not intervene because the preachers had the constitutional right to freedom of speech.

After the UGA officers had been on the scene for approximately forty-two minutes, the crowd of students audibly reacted to one of the white preachers. The officers moved into the crowd, and Officer Dorsey asked, "What just happened? Did someone touch him?" A small group of students was up close to a preacher, with some students holding each other back. The officers asked the students to move away from the preacher and back into the crowd. One student remained close to the preacher, however, and the officers physically moved her back. Officer Dorsey informed one student that the preachers' goal was to "upset" them and said not to touch them.[2]

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[2] This was not the first time that the crowd audibly reacted, but it was the first time shown in the video where the reaction led officers to move into the crowd.

The officers then remained in the front of the crowd for approximately eight minutes. During this time, several students got close to the preacher, but the officers did not intervene. They continued to explain to students that the preacher had freedom of speech under the First Amendment so long as "he doesn't threaten someone or put his hands on someone." Officer Dorsey told a student that the officers' "whole goal is to make sure that no one touches him and he doesn't touch anyone else and he doesn't threaten someone." At one point, the student who was previously moved away from the preacher came up and spoke with the officers. The officers explained to her that she could "say whatever [she] want[s],…just don't threaten him." Shortly after, the officers went back behind the crowd of students.

A few minutes later, there was another reaction from the crowd, and the officers moved back into the crowd. They spoke to a student who [sic] the preacher had insulted, with Officer Dorsey saying, "We just wanted to make sure you were okay." Then, the officers went back behind the crowd. About six minutes later, the officers moved back in and broke up a group of students surrounding the preacher. Officer Dorsey explained to a student that "they can say whatever they want," but if the preacher "attacks someone, touches someone, or threatens someone, like their safety, then that's an issue, then we can step in." The student asked, "Really?" and Officer Dorsey responded, "Just like you could say anything you want. I mean, as long as you don't touch him, as long as you don't like threaten him or anything. . . . As long as everyone just maintains their distance and doesn't threaten them or anything, then it's okay." At that point, a woman started aggressively engaging with

one of the preachers; officers stepped between them and created distance but allowed the woman to continue to engage while the officer stood between them. After she moved back, an officer stopped and spoke to her. This woman continued to interact with the preachers for the next half hour without further police intervention.

The officers briefly moved back, but then returned to the front of the crowd. The officers made no further physical interventions, although some students held or moved each other back. When a student was upset at a preacher's comments that "all Muslims are a cancer," Officer Dorsey once again explained, "He can say whatever he wants. You can say whatever you want as well, as long as you don't touch him or threaten him. And that's the First Amendment." The video evidence does not show any further police intervention that day.[3]

Mr. Jackson returned to Tate Lawn the next day. When Sergeant Cowan arrived at the scene on the second day, the crowd gathered around Mr. Jackson was significantly sparser than it was the day before.

UGA students Keaton Law and Lechandt Opperman were aggressively engaging with Mr. Jackson. Sergeant Cowan stood back and monitored the situation for about twelve minutes. At that point, Officer Dorsey arrived and started to separate Mr.

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[3] We note, however, that the video ends as new officers arrive, while the crowd was still gathered and the preachers were still preaching.

Law, but Sergeant Cowan called Officer Dorsey back. Mr. Law told the officers, "I promise not to touch him at all," to which Sergeant Cowan responded, "I know." Officer Dorsey said to Sergeant Cowan that "it just kind of looked like [Mr. Law] was all up in [Mr. Jackson's] face." Sergeant Cowan responded that "they're countering what he's saying" and that Officer Dorsey should not say anything and should refer all questions to him.

Sergeant Cowan said that Mr. Law and Mr. Opperman were "doing a really good job" countering Mr. Jackson's speech. Officer Dorsey apologized and said that he "didn't know [Sergeant Cowan] had already talked to" Mr. Law and Mr. Opperman. Sergeant Cowan later testified that he remembered explaining to a group of students, including Mr. Law, the day before that they could engage in counter-speech and that they had the same rights as the preachers.

Mr. Jackson, Mr. Law, and Mr. Opperman continued their heated exchange for about seven minutes. During this period, Sergeant Cowan stood behind the sparser crowd and responded to student questions. For example, he told a student that Mr. Jackson's preaching was to get somebody to react to him, e.g., by striking him, and was "not real religion."

At one point during his exchange with Mr. Law, Mr. Jackson "felt [Mr. Law's] spit touch" him when Mr. Law shouted in his ear. Mr. Jackson then approached the officers, who were responding to student questions, and asked if it was okay for the students to "put his mouth right up on his ear and yell." Cowan brushed off the question, and the

students and Mr. Jackson returned to the center of the circle. Mr. Jackson and Mr. Law continued to yell at each other, sometimes in each other's faces and sometimes farther apart. On several occasions, Mr. Jackson raised his arms while holding a Bible and yelled at Mr. Law to "back up." According to Mr. Jackson, Mr. Law "chest-bumped" him as the exchange escalated. From the video footage, Mr. Jackson and Mr. Law were positioned very close to one another during this point of the exchange; the video depicts Mr. Law moving his chest closely to Mr. Jackson's chest but does not clearly depict whether the two bumped chests.

The exchange continued, and when they were close together, Mr. Jackson backed up from Mr. Law and told him, "You need a breath mint." Mr. Law responded, "I do, and I hope it smells," while walking toward Mr. Jackson. Mr. Jackson raised his arms while holding his Bible like he had done in the minutes before.

At the same time, Mr. Law moved even closer and stepped to Mr. Jackson's left side. Mr. Jackson lifted his left arm across his own body and made contact with Mr. Law's face. After touching Mr. Law, Mr. Jackson continued moving him to the side, saying, "Out of my face." Officer Dorsey said, "He just pushed him," and the officers moved in and arrested Mr. Jackson for simple battery. Sergeant Cowan told Mr. Jackson that he was under arrest for simple battery and asked Mr. Jackson if he understood. Mr. Jackson responded that he did not "make any intentional physical conduct," but Sergeant Cowan stated that was what he and the other officers observed and recorded.

Later, when Sergeant Cowan was briefing an investigating officer on the incident, he stated that Mr. Jackson was "berating" Mr. Law, that Mr. Law at one point came around to Mr. Jackson's side, that Mr. Jackson hit the side of Mr. Law's shoulder and head, and that "at that point [they] took him down." Sergeant Cowan concluded the briefing by stating, "Crowd went crazy. I think we hit a home run."

The state declined to prosecute Mr. Jackson. Prosecutors concluded that while "there was sufficient probable cause to arrest [him], the evidence is not sufficient to prove guilt beyond a reasonable doubt."

Mr. Jackson filed suit against the officers, Mr. Law, and Mr. Opperman, asserting claims under § 1983 for violations of the First, Fourth, and Fourteenth Amendments, and a claim under § 1985(3). The officers moved for summary judgment, arguing that Mr. Jack- son's claims failed as a matter of law and that they were entitled to qualified immunity.

The district court granted summary judgment in favor of the officers. The district court concluded that the claims of false arrest under the Fourth Amendment and retaliatory arrest under the First Amendment failed because there was probable cause to arrest Mr. Jackson for simple battery, which is an absolute bar to challenging an arrest. The district court reasoned that an objective officer could reasonably conclude that Mr. Jackson's physical contact with Mr. Law was "intentional and insulting or of a provoking nature" so as to constitute simple battery under Georgia law. *See* Ga. Code Ann. § 16-5-

23(a)(1) (2016). The district court therefore ruled that the officers were entitled to qualified immunity on those claims.

As to Mr. Jackson's claim that the officers failed to intervene to protect his First Amendment rights, the district court concluded that the officers did nothing to impede his speech prior to his arrest and that there was no clearly established law requiring officers to prevent third parties from obstructing speech. The district court also rejected Mr. Jackson's claim under the Fourteenth Amendment that the officers were more protective of the white preachers on the first day than they were of him on the second day. The two days of preaching were not similar in all relevant respects, as there were material differences in crowd size and how the students in the crowd behaved on each day. The district court thus ruled that the officers were entitled to qualified immunity on Mr. Jackson's Equal Protection claim.

Finally, the district court concluded that Mr. Jackson's § 1985(3) conspiracy claim failed because there was no evidence that the officers were motivated by race- or class-based animus. And it explained that the officers were likely protected from this claim by qualified immunity as well.

This appeal ensued.

II

We review de novo summary judgment decisions based on qualified immunity. *See Glasscox v. City of Argo*, 903 F.3d 1207, 1212 (11th Cir. 2018).

"When considering a motion for summary judgment, including one asserting qualified immunity, 'courts must construe the facts and draw all inferences in the light most favorable to the nonmoving party and when conflicts arise between the facts evidenced by the parties, they must credit the non-moving party's version.'" *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1252 (11th Cir. 2013) (alteration adopted) (quoting *Davis v. Williams*, 451 F.3d 759, 763 (11th Cir. 2006)). "Summary judgment is appropriate only when the moving party demonstrates that no disputed issue of material fact exists," and that it is entitled to judgment as a matter of law. *See Carter v. Butts Cnty.*, 821 F.3d 1310, 1318 (11th Cir. 2016). If there is video evidence that "obviously contradicts [the plaintiff's] version of the facts, we accept the video's depiction instead of [the plaintiff's] account." *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1315 (11th Cir. 2010).

III

On appeal, Mr. Jackson contends that the district court erred in granting summary judgment in favor of the officers on all his claims. To recap, Mr. Jackson asserted four claims under 42 U.S.C. § 1983, arguing that the officers violated his constitutional rights (1) under the Fourth Amendment, by arresting him without probable cause; (2) under the First Amendment, by arresting him because of the content of his speech; (3) under the First Amendment, by failing to intervene to protect him while he was exercising his right to free speech; and (4) under the Fourteenth Amendment's Equal Protection Clause, by offering him less protection on the second day than they offered the white preachers on the first day. Mr.

Jackson also brought a claim under 42 U.S.C. § 1985(3), contending that the officers conspired with Mr. Law and Mr. Opperman to deprive him "of his equal protection of the law and equal privileges and immunities." We first discuss the relevant legal principles governing qualified immunity before turning to Mr. Jackson's claims.

A

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Id.* "[Q]ualified immunity is a privilege that provides 'an *immunity from suit* rather than a mere defense to liability.'" *Case v. Eslinger*, 555 F.3d 1317, 1325 (11th Cir. 2009) (alteration and emphasis in original) (quoting *Bates v. Harvey*, 518 F.3d 1233, 1242 (11th Cir. 2008)).

In order to be entitled to qualified immunity, an officer must first show that he was acting within his discretionary authority. *See Manners v. Cannella*, 891 F.3d 959, 967 (11th Cir. 2018). Because that threshold question is undisputed here, "the burden shifts to [Mr. Jackson] to establish that qualified immunity is not appropriate by showing that (1) the

facts alleged make out a violation of a constitutional right and (2) the constitutional right at issue was clearly established at the time of the alleged misconduct." *Gates v. Khokhar*, 884 F.3d 1290, 1297 (11th Cir. 2018). We have "discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson*, 555 U.S. at 236.

In determining whether a principle of law is clearly established, "[w]e do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). The "salient question" in a qualified immunity analysis is whether officers had "fair warning" that their conduct was unlawful. *See Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (rejecting requirement that plaintiffs must identify a case with "fundamentally" or "materially similar" facts to show that the law is clearly established because "officials can still be on notice that their conduct violates established law even in novel factual circumstances"). Accordingly, a plaintiff may demonstrate clearly established law in one of three ways. *See Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005). "First, he can show that a materially similar case has already been decided." *Id.* Second, he can "show that a broader, clearly established principle should control the novel facts" of his case. *Id.* Third, "he [can] show that [his] case fits within the exception of conduct which so obviously violates [the] [C]onstitution that prior case law is unnecessary." *Id.*

B

Mr. Jackson contends that he was arrested without probable cause in violation of the Fourth Amendment. "[I]t is well established that '[a] warrantless arrest without probable cause violates the Fourth Amendment and forms the basis for a [§] 1983 claim.'" *Carter*, 821 F.3d at 1319 (second alteration in original) (quoting *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir. 1996)). "[B]ut the existence of probable cause at the time of arrest is an absolute bar to a subsequent constitutional challenge to the arrest." *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010). Moreover, "[t]o receive qualified immunity, an officer need not have actual probable cause, but only arguable probable cause," meaning "reasonable officers in the same circumstances and possessing the same knowledge as the [d]efendants could have believed that probable cause existed to arrest [the] [p]laintiff." *Id.* (quotation marks omitted).

"For probable cause to exist, . . . an arrest must be objectively reasonable based on the totality of the circumstances." *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002). Although an officer "'is not required to explore and eliminate every theoretically plausible claim of innocence before making an arrest,'" the officer "may not choose to ignore information that has been offered to him or her . . . or elect not to obtain easily discoverable facts." *Kingsland v. City of Miami*, 382 F.3d 1220, 1229 (11th Cir. 2004) (quoting *Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 128 (2d Cir. 1997)), *abrogated on other grounds by Williams v. Aguirre*, 965 F.3d 1147 (11th Cir. 2020). "[W]e apply this objective reasonableness standard to the facts as

they relate to the elements of the alleged crime for which the plaintiff was arrested." *Carter*, 821 F.3d at 1320; *see also Crosby v. Monroe Cnty.*, 394 F.3d 1328, 1333 (11th Cir. 2004) ("Whether a particular set of facts gives rise to probable cause or arguable probable cause to justify an arrest for a particular crime depends, of course, on the elements of the crime.").

Although arguable probable cause does not "require proving every element of a crime," qualified immunity is not appropriate when a reasonable officer, based on readily available information, would have known that the plaintiff's conduct did not satisfy an element of the offense. *See Brown*, 608 F.3d at 735; *Carter*, 821 F.3d at 1321. Our decision in *Carter* provides a good example of how these concepts work.

In *Carter*, an officer arrested maintenance workers who were clearing out his abandoned, foreclosed-upon house after being authorized to do by their company. *See* 821 F.3d at 1315–18. The officer argued that he had probable cause to arrest the workers for burglary, criminal trespass, and theft by taking. *Id.* at 1320. We analyzed the elements of the relevant statutes and explained that "[t]he common thread running through all of these offenses is a lack of authority," i.e., a lack of authority to be at or inside a property or a lack of authority to remove a property's contents. *See id.* Therefore, whether the officer had arguable probable cause to arrest the workers "necessarily focuse[d] on whether a reasonable officer in [the defendant officer's] position should have known that [the workers] were authorized to prepare the [p]roperty for sale following the foreclosure." *Id.* at 1320–21. We held that the officer "lacked even arguable probable cause" because "a reasonable

officer should have known both that [the p]laintiffs were authorized to enter the [p]roperty and . . . to remove its contents." *Id.* at 1321. Indeed, the officer was aware that the resale company was authorized to enter and clean out his property before and at the time of the workers' arrests. *Id.* We explained that the officer's refusal to look at authorization documentation did not "excuse any ignorance" he claimed to have, as "[a] police officer may not conduct an investigation in a biased fashion[,] . . . elect not to obtain easily discoverable facts,'" nor "choose to ignore information that has been offered to him or her." *Id.* (quotation marks omitted). A jury, we said, could reasonably conclude that the officer arrested the workers to retaliate against them for the lawful foreclosure against his abandoned property. *See id.* at 1322.

Here Mr. Jackson was arrested for simple battery. Georgia's simple battery statute provides that "[a] person commits the offense of simple battery when he or she either: (1) Intentionally makes physical contact of an insulting or provoking nature with the person of another; or (2) Intentionally causes physical harm to another." Ga. Code Ann. § 16-5-23(a) (2016). As the unambiguous text of the statute makes clear, accidental or unintentional conduct cannot form the basis of a charge of simple battery. Indeed, the Georgia Supreme has noted that "[i]f the jury believed that an accident occurred, no battery was committed" under § 16-5-23(a). *See Moore v. State*, 656 S.E.2d 796, 799–800 (Ga. 2008). Moreover, in considering this same statute, we held in *United States v. Griffith*, 455 F.3d 1339 (11th Cir. 2006), that § 16-5-23(a)(1) is a predicate offense under 18 U.S.C. § 922(g)(9), which prohibits someone who has been convicted of "a

misdemeanor crime of domestic violence" from possessing firearms. We explained that Georgia's simple battery statute has an element of "'physical contact of an insulting or provoking nature'" and that "[a] person cannot make physical contact—particularly of an insulting or provoking nature—with another without exerting some level of physical force." *Griffith*, 455 F.3d at 1342 (quoting § 16-5-23(a)(1)).

Even considering the facts in the light most favorable to Mr. Jackson—as we must at the summary judgment stage—the officers were entitled to qualified immunity. As we explain, the officers had arguable probable cause to arrest Mr. Jackson for simple battery.

The video evidence shows Mr. Jackson repeatedly raising his arms while holding a Bible without making physical contact with Mr. Law. But when Mr. Law moved toward Mr. Jackson's side while Mr. Jackson was simultaneously raising his arms with his Bible in hand, physical contact took place. Under those circumstances, we acknowledge that it was not crystal-clear that Mr. Jackson acted intentionally or in an insulting or provoking way. But given the confrontation and animosity between Mr. Jackson and Mr. Law, a reasonable officer objectively "could have believed" that Mr. Jackson acted intentionally or in an insulting or provoking manner by touching Mr. Law's face with his arm. And that is all that is required for arguable probable cause to exist. *See Brown*, 608 F.3d at 734.

After the arrest, Sergeant Cowan explained to an investigating officer that Mr. Jackson had

"brushed his arm up against" Mr. Law. This characterization of the touching, however, does not negate the existence of arguable probable cause or create an issue of material fact. For example, the following exchange—captured on video—occurred during Mr. Jackson's arrest:

> COWAN: You're under arrest for simple battery, do you understand?
> . . .
> COWAN: You cannot make intentional physical con- tact with anybody. Do you understand that?
> JACKSON: I didn't make any intentional physical contact.
> COWAN: Yes, sir, but that's what we observed and that's what we have recorded, sir. Okay.

Taking Sergeant Cowan's contemporaneous and post-arrest statements together, and viewing them in the light most favorable to Mr. Jackson, our conclusion about arguable probable cause remains the same. As we and some of our sister circuits have explained, officers are given latitude when making on-the-spot determinations about a suspect's intent or mens rea. *See Jordan v. Mosley*, 487 F.3d 1350, 1355 (11th Cir. 2007); *Cox v. Hainey*, 391 F.3d 25, 34 (1st Cir. 2004); *Paff v. Kaltenbach*, 204 F.3d 425, 437 (3d Cir. 2000). "The concept of arguable probable cause . . . allows for the possibility that an officer might 'reasonably but mistakenly conclude that probable cause is present,'" and "'does not require proving every element of a crime.'" *Gates*, 884 F.3d at 1298–1300 (citations omitted). *See also District of Columbia v. Wesby*, 138 S. Ct. 577, 591 (2018) ("Even assuming the officers lacked actual probable cause to arrest the partygoers,

the officers are entitled to qualified immunity because they 'reasonably but mistakenly conclude[d] that probable cause [wa]s present.'") (citation omitted).[4]

C

Mr. Jackson contends that the officers violated the First Amendment by arresting him based on the content of his speech. As an initial matter, we agree with the district court's determination that, at the time of Mr. Jackson's arrest, it was the law of this circuit that the existence of probable cause barred a First Amendment retaliatory arrest claim. *See Dahl v. Holley*, 312 F.3d 1228, 1236 (11th Cir. 2002) ("[T]he existence of probable cause defeats [a] First Amendment [retaliation] claim."), *abrogated by Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018); *Gates*, 884 F.3d at 1297–98 (probable cause defeats a false arrest claim). Subsequently, in *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019), the Supreme Court held that though generally a "plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest," there is an exception to "the no-probable-cause requirement . . . when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." *Id.* at 1724, 1727. Because this exception was announced when *Nieves* was decided, it

[4] Even if we were to consider Mr. Jackson's post-arrest denial of intentional contact, an officer is not required to accept a suspect's protestations of innocence. *See Wesby*, 138 S. Ct. at 587–88.

was not clearly established law in this circuit at the time of Mr. Jackson's arrest.

As previously discussed, the officers had arguable probable cause to arrest Mr. Jackson for simple battery. Given the law of our circuit at the time, the officers are entitled to qualified immunity for the First Amendment claim. Mr. Jackson argues that, because the Supreme Court applied the probable cause exception retroactively in *Nieves*, we should do so here. He fails to note, however, that in the Ninth Circuit prior to *Nieves* "a plaintiff [could] prevail on a First Amendment retaliatory arrest claim even in the face of probable cause for the arrest." *Nieves*, 139 S. Ct. at 1721. That was not the law in this circuit. Indeed, the Supreme Court in *Nieves* rejected the Ninth Circuit's approach, holding that "[a]bsent . . . a showing [of no probable cause], a retaliatory arrest claim fails," subject only to the "narrow qualification" discussed above. *Id.* at 1725, 1727.

Additionally, *Lozman*—the other case Mr. Jackson relies on for his retroactivity argument—was similarly decided after his arrest. In any event, in *Lozman* the Supreme Court explicitly limited its holding to suits against governmental entities, which are not entitled to qualified immunity. *See* 138 S. Ct. at 1954–55 (noting that because the defendant was a city rather than a governmental officer, the plaintiff was required to "prove the existence and enforcement of an official policy motivated by retaliation," which "separate[d] [the plaintiff's] claim from the typical retaliatory arrest claim," and declining to "address the elements required to prove a retaliatory arrest claim in other contexts").

D

Mr. Jackson asserts that the officers had a duty to intervene to prevent Mr. Law and Mr. Opperman from drowning out his speech. He argues that the officers encouraged the obstruction, effectively subjecting him to a heckler's veto.

A heckler's veto occurs when unpopular speakers are "convicted upon evidence which show[s] no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection." *Edwards v. South Carolina*, 372 U.S. 229, 237 (1963). Such convictions "may not stand." *Id.* at 238 (quoting *Terminiello v. Chicago*, 337 U.S. 1, 5 (1949)); *see also Gregory v. City of Chicago*, 394 U.S. 111, 111–12 (1969) (reversing convictions of peaceful protestors for disorderly conduct after "onlookers became unruly" and "police, to prevent what they regarded as an impending civil disorder, demanded that the demonstrators, upon pain of arrest, disperse"); *Cox v. Louisiana*, 379 U.S. 536, 545–51 (1965) (reversing convictions for breach of the peace where officers ordered peaceful protestors to disperse because "violence was about to erupt" from counter-protestors).

In each of these heckler's veto cases, police ordered unpopular, but peaceful, protestors to disperse because they were concerned that counter-protestors were about to become violent. When the peaceful protestors refused to disperse, they were arrested.

The heckler's veto principle prohibits police from arresting peaceful protestors, or ordering them to disperse, in acquiescence to unruly counter-protestors. Some circuits have held or suggested that police officers have a duty to take reasonable actions to protect, against violence, persons exercising their First Amendment rights. *See*, *e.g.*, *Bible Believers v. Wayne County*, *Mich.*, 805 F.3d 228, 252–53 (6th Cir. 2015) (en banc); *Phelps-Roper v. Ricketts*, 867 F.3d 883, 900–01 (8th Cir. 2017). Others, however, have concluded that officers can ask speakers to move to another location in order to prevent violence as long as their actions are not based on the content of the speech. *See Startzell v. City of Philadelphia*, 533 F.3d 183, 200–01 (3d Cir. 2008). As far as we can tell, however, no court has ruled that the heckler's veto principle requires officers to protect a speaker from counter speech. Here, Mr. Jackson was never ordered to disperse, and the basis for his arrest was not the students' reaction to his unpopular speech, but rather the physical contact between himself and Mr. Law. This is therefore not a heckler's veto case. Accordingly, we affirm the district court's rejection of this claim on qualified immunity grounds.[5]

[5] Mr. Jackson asserts that internal UGA policies required the officers to intervene. The relevant question under § 1983, however, is whether the officers violated Mr. Jackson's First Amendment rights, not internal policies. *See Davis v. Scherer*, 468 U.S. 183, 194 (1984) ("Officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision.").

E

Mr. Jackson's fourth and final § 1983 claim was brought under the Fourteenth Amendment's Equal Protection Clause. Mr. Jackson argues that the officers engaged in racial discrimination because they provided more protection to the white preachers on the first day than they provided to him on the second day.

"[T]he Equal Protection Clause requires government entities to treat similarly situated people alike." *Campbell v. Rainbow City*, 434 F.3d 1306, 1313 (11th Cir. 2006). "To prevail on [a] traditional type of equal protection claim, basically a selective enforcement claim, . . . [a plaintiff] must show that [he was] treated differently from other similarly situated individuals." *Id.* at 1314. "[D]ifferent treatment of dissimilarly situated persons does not violate the equal protection clause." *Id.* (quoting *E&T Realty v. Strickland*, 830 F.2d 1107, 1109 (11th Cir. 1987)).

Here, the district court correctly identified several material differences between the first day and the second day that preclude Mr. Jackson's race discrimination claim. Two are particularly compelling. First, on the first day, the crowd of students was significantly larger and blocked the officers' view. The officers intervened when they heard the crowd react but could not see what was going on inside the circle. On the second day, the officers had better visibility, and there was less crowd reaction. Second, on the first day, the officers separated several students from the preachers; the officers had not yet explained to those students that they could engage in counter-speech but could not

touch the preachers. Notably, after the officers had a conversation with a woman who was aggressively debating a white preacher, they allowed her to continue to engage without further police intervention. On the second day, Sergeant Cowan remembered that he had already explained this to Mr. Law, and video evidence shows Mr. Law promising the officers that he would not touch Mr. Jackson.

In short, the conditions on the first day differed from those of the second day such that the first day is not an adequate comparator. The officers' treatment of Mr. Jackson and handling of the students may not have been optimal, but he has failed to show that it was based on race discrimination. We therefore affirm the district court's rejection of this claim on qualified immunity grounds.

F

Mr. Jackson claimed that the officers engaged in a conspiracy in violation of § 1985(3). That provision prohibits "two or more persons" from "conspir[ing] . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protections of the laws."[6]

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[6] Previously in this circuit, qualified immunity was not available as a defense to § 1985(3) claims. *See Burrell v. Bd. of Trs. of Ga. Mil. Coll.*, 970 F.2d 785, 794 (11th Cir. 1992). Subsequently, however, the Supreme Court has applied qualified immunity to § 1985(3) claims. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1869 (2017) ("Petitioners are entitled to qualified immunity with respect to the claims under 42 U.S.C. § 1985(3)."); *see also Chua v. Ekonomou*, 1 F.4th 948, 956 (11th Cir. 2021) (recognizing that the Supreme Court in *Ziglar* abrogated *Burrell*'s holding that

> To prevail on a § 1985(3) claim, a plaintiff must show:
>
> (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protections of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

United Brotherhood of Carpenters & Joiners of Am. v. Scott, 463 U.S. 825, 828–29 (1983).

The first element of a § 1985(3) claim is a conspiracy, i.e., "an agreement between 'two or more persons' to deprive him of his civil rights." *Dickerson v. Alachua Cnty. Comm'n*, 200 F.3d 761, 767 (11th Cir. 2000) (quoting § 1985(3)). For example, in *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–59 (1970), the Supreme Court concluded that, based on "unexplained gaps in the materials submitted" at the summary judgment stage, the respondent failed to demonstrate that no policeman was in the store, which was a "critical element" in determining whether a conspiracy to refuse service occurred.

"qualified immunity does not apply to a claim brought under [§] 1985(3)").

Only one of Mr. Jackson's allegations could plausibly indicate such an agreement—that "[Mr.] Law asked [Dean Janice] Barham the day before how to shut Mr. Jackson down, and [Mr.] Law then spoke with [Sergeant] Cowan." But the record evidence does not support this allegation. Dean Barham testified that on the first day of preaching, Mr. Law was "engaging in conversation, the same questions that most of our students were asking, 'Why are they able to be here? What are they doing? How do we shut this down?'" Dean Barham was generalizing the questions that most students were asking, not directly quoting Mr. Law. Furthermore, the video footage demonstrates that when students did ask questions—along the lines of "how do we shut this down"—the officers responded that they could not interfere with the preachers' freedom of speech and that the best course of action was for students to walk away or engage in counter-speech.

Sergeant Cowan also testified that he did not speak directly to Mr. Law. Rather, Mr. Law was standing in a group of students, and Sergeant Cowan spoke with other members of the group. Our review of the video indicates that Sergeant Cowan did not come to an agreement or understanding with any of the students but simply informed them of their right to engage in counter-speech. Mr. Jackson did not present any evidence that contradicts Dean Barham's or Sergeant Cowan's testimony on these issues. And, unlike *Adickes*, there are no "unexplained gaps" in the evidence here. *See* 398 U.S. at 158.

After reviewing all the video footage and the extensive deposition testimony, there is simply no evidence that the officers reached an agreement with

their co-defendants to deprive Mr. Jack- son of his rights. We therefore affirm the dismissal of Mr. Jackson's § 1985(3) claim for failure to establish a factual dispute as to whether a conspiracy existed.

IV

We affirm the district court's summary judgment order. **AFFIRMED.**

19-13181 LAGOA, J., Concurring in Part, Dissenting in Part

LAGOA, Circuit Judge, Concurring in Part and Dissenting in Part:

I concur with the majority's rulings to affirm the district court's denial of Ross Jackson's claims against Appellees for: (1) failing to intervene to protect Jackson while he was exercising his right to free speech; (2) engaging in racial discrimination in violation of the Fourteenth Amendment's Equal Protection Clause by providing more protection to white preachers on the first day of preaching than him on the second day; and (3) conspiracy in violation of 42 U.S.C. § 1985(3).

However, I part ways with the majority's affirmance of the district court's denial of Jackson's 42 U.S.C. § 1983 claims for false arrest under the Fourth Amendment and retaliatory arrest under the First Amendment. In my view, when viewing the record evidence in the light most favorable to Jackson—as we must at the summary judgment stage—no reasonable officer with the same knowledge as Appellees would have concluded that Jackson's contact with Keaton Law was intentional such that Appellees had probable cause or arguable probable cause to arrest Jackson for simple battery. Therefore, I would reverse the district court's determination that Appellees are entitled to qualified immunity as to Jackson's false arrest and retaliatory arrest claims. And, as to the substance of Jackson's retaliatory arrest claim, I would conclude that the evidence, when viewed in the light most favorable to Jackson, shows that Appellees had a disparate reaction to similar

levels of aggression from Jackson and Law such that a genuine dispute of material fact exists as to whether Jackson's arrest was motivated by Appellees' animosity toward the content of his speech.

I. Qualified Immunity Principles

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they per-form their duties reasonably." Id. "[Q]ualified immunity is a privilege that provides 'an *immunity from suit* rather than a mere defense to liability.'" *Case v. Eslinger*, 555 F.3d 1317, 1325 (11th Cir. 2009) (alteration and emphasis in original) (quoting *Bates v. Harvey*, 518 F.3d 1233, 1239 (11th Cir. 2008)).

In order to be entitled to qualified immunity, an officer must first show that he was acting within his discretionary authority. *Manners v. Cannella*, 891 F.3d 959, 967 (11th Cir. 2018). Because that threshold question is undisputed here, "the burden shifts to the plaintiff to establish that qualified immunity is not appropriate by showing that (1) the facts alleged make out a violation of a constitutional right and (2) the constitutional right at issue was clearly established at the time of the alleged misconduct."

Gates v. Khokhar, 884 F.3d 1290, 1297 (11th Cir. 2018). This Court has "discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson*, 555 U.S. at 236.

In determining whether a law is clearly established, this Court does "not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). The "salient question" in a qualified immunity analysis is whether officers had "fair warning" that their conduct was unlawful. See *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (rejecting requirement that plain-tiffs must identify a case with "fundamentally" or "materially similar" facts to show that a law is clearly established because "officials can still be on notice that their conduct violates established law even in novel factual circumstances"). Accordingly, a plaintiff in this Circuit may demonstrate clearly established law in one of three ways. *See Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005). "First, he can show that a materially similar case has already been decided." *Id.* Second, he can "show that a broader, clearly established principle should control the novel facts" of his case. *Id.* Third, "he could show that [his] case fits within the exception of conduct which so obviously violates [the] [C]onstitution that prior case law is unnecessary." *Id.*

II. False Arrest Claim

On appeal, Jackson contends that he was arrested without probable cause in violation of the

Fourth Amendment. "[I]t is well established that '[a] warrantless arrest without probable cause violates the Fourth Amendment and forms the basis for a section 1983 claim.'" *Carter*, 821 F.3d at 1319 (second alteration in original) (quoting *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir. 1996)); accord *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010). "[B]ut the existence of probable cause at the time of arrest is an absolute bar to a subsequent constitutional challenge to the arrest." Brown, 608 F.3d at 734. Moreover, "[t]o receive qualified immunity, an officer need not have actual probable cause, but only 'arguable' probable cause," meaning "reasonable officers in the same circumstances and possessing the same knowledge as the Defendants could have believed that probable cause existed to arrest [the] Plaintiff." *Id.* (quoting *Kingsland v. City of Miami*, 382 F.3d 1220, 1232 (11th Cir. 2004)).

"For probable cause to exist, . . . an arrest must be objectively reasonable based on the totality of the circumstances." *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002). While an officer "is not required to explore and eliminate every theoretically plausible claim of innocence before making an arrest," the officer "may not choose to ignore information that has been offered to him or her . . . or elect not to obtain easily discoverable facts." Kingsland, 382 F.3d at 1229 (quoting *Ricciuti v. N.Y.C. Transit Auth.*, 124 F.3d 123, 128 (2d Cir. 1997)), *abrogated on other grounds by Williams v. Aguirre*, 965 F.3d 1147 (11th Cir. 2020). This Court applies "this objective reasonableness standard to the facts as they relate to the elements of the alleged crime for which the plaintiff was arrested." *Carter*, 821 F.3d at 1320; *see also Crosby v. Monroe County*, 394 F.3d 1328, 1333

(11th Cir. 2004) ("Whether a particular set of facts gives rise to probable or arguable probable cause to justify an arrest for a particular crime depends, of course, on the elements of the crime.").

Although probable cause does not "require proving every element of a crime," qualified immunity is not appropriate when a reasonable officer, based on readily available information, would have known that the plaintiff's conduct did not satisfy an element of the offense. See *Brown*, 608 F.3d at 735; *Carter*, 821 F.3d at 1321. For example, in *Carter*, an officer arrested maintenance workers who were clearing out the officer's abandoned, foreclosed-upon house after being authorized to do by their company. See 821 F.3d at 1315–18. The officer argued that he had probable cause to arrest the workers for burglary, criminal trespass, and theft by taking. *Id.* at 1320. This Court analyzed the elements of the relevant statutes and explained that "[t]he common thread running through all of these offenses is a lack of authority," i.e., a lack of authority to be at or inside a property or a lack of authority to remove a property's contents. Id. Therefore, whether the officer had arguable probable cause to arrest the workers "necessarily focuse[d] on whether a rea-sonable officer in [the defendant officer's] position should have known that [the workers] were authorized to prepare the Property for sale following the foreclosure." *Id.* at 1320–21. This Court held that the officer "lacked even arguable probable cause" because "a reasonable officer should have known both that Plaintiffs were authorized to enter the Property and . . . to remove its contents." *Id.* at 1321. Indeed, the officer was aware that the resale company was authorized to enter and clean out the officer's property before and at the time of the

workers' arrests. Id. This Court explained that the officer's refusal to look at authorization documentation did not "excuse any ignorance" he claimed to have, as "[a] police officer may not 'conduct an investigation in a biased fashion[,] . . . elect not to obtain easily discoverable facts," nor "choose to ignore in-formation that has been offered to him or her." Id. (quoting *Kingsland*, 382 F.3d at 1229). And this Court explained that a jury could reasonably conclude that the officer arrested the workers to retaliate against them for the lawful foreclosure against the officer's abandoned property. *See id*. at 1322.

Turning to this case, Jackson was arrested for simple battery. Georgia's simple battery statute provides that "[a] person commits the offense of simple battery when he or she either: (1) Intentionally makes physical contact of an insulting or provoking nature with the person of another; or (2) Intentionally causes physical harm to another." Ga. Code Ann. § 16-5-23(a) (2016). As the unambiguous text of the statute makes clear, accidental or unintentional conduct cannot form the basis of a charge of simple battery. Indeed, the Georgia Supreme has noted that "[i]f the jury believed that an accident occurred, no battery was committed" under section 16-5-23(a). See *Moore v. State*, 656 S.E.2d 796, 799–800 (Ga. 2008). Moreover, in considering this same statute, this Court in *United States v. Griffith*, 455 F.3d 1339, 1340–46 (11th Cir. 2006), held that section 16-5-23(a)(1) is a predicate offense under 18 U.S.C. § 922(g)(9), which prohibits someone who has been convicted of "a misdemeanor crime of domestic violence" from possessing fire-arms. This Court explained that Georgia's simple battery statute "has an element [of] 'physical contact of an insulting

nature'" and that "[a] person cannot make physical contact—particularly of an insulting or provoking nature—with another without exerting some level of physical force." *Griffith*, 455 F.3d at 1342 (quoting § 16-5-23(a)(1)).

Considering the facts in the light most favorable to Jackson—as we must at the summary judgment stage—Jackson did not intentionally use physical force of an insulting or a provoking nature against Law. The video evidence shows Jackson repeatedly raising his arms while holding a Bible without making physical contact with Law. Only when Law moved toward Jackson's side while Jackson was simultaneous [sic] raising his arms with his Bible in hand did physical contact occur. Under those circumstances, it was not reasonable to conclude that Jackson intentionally made physical contact of an insulting or provoking nature with Law. Rather, as the video evidence shows, Jackson was raising his Bible, as he had done multiple times before, when Law—who was already close to Jackson—moved even closer to Jackson's side such that physical contact between the two occurred. Further, Appellees' own contemporaneous words, when viewed in the light most favorable to Jackson, further confirm that Appellees perceived the contact as slight and unintentional. Specifically, on video after the arrest, Sergeant Cowan explained to an investigating officer that Jackson "brushed his arm up against" Law. Significantly, Sergeant Cowan knew that the law required an intentional touching as an element for an arrest of simple battery.

No reasonable officer with the same knowledge as Appellees would have concluded that Jackson's

contact with Law was intentional. I therefore conclude that on this summary judgement record Jackson has established a violation of the Fourth Amendment, as Appellees lacked probable cause or arguable probable cause to arrest Jackson for simple battery.

I now turn to the clearly established prong of the qualified immunity inquiry. This Court has repeatedly stated that officers must consider the totality of the circumstances—and particularly, the elements of the offense—in deciding whether to make an arrest. See, e.g., *Carter*, 821 F.3d at 1319–20; *Lee*, 284 F.3d at 1195. And the Georgia statute at issue is clear on its face that contact must be intentional and insulting or provoking to qualify as simple battery. § 16-5-23(a)(1); see also *Moore*, 656 S.E.2d at 799–800. Indeed, as previously noted, Sergeant Cowan knew at the time of Jackson's arrest that the law required an intentional touching as an element for simple battery.

Simple battery as codified in section 16-5-23(a)(1) does not require subjective, criminal intent. Rather, the intent element at issue here is simpler: the touching itself must be intentional. This is not to say that officers will always be able to discern whether a touching was intentional, and of course, officers need not prove intent before making an arrest for simple battery. Viewed in the light most favorable to Jackson, the record before this Court—specifically the video evidence and the officers' own words in evaluating Jackson's intent from a reasonable officer's perspective—demonstrates that an objectively reasonable officer would not have believed that Jackson intentionally touched Law. I therefore would

reverse the district court's denial of Jackson's Fourth Amendment false arrest claim.

III. Retaliatory Arrest Claim

Jackson also argues that Appellees violated the First Amendment by arresting him based on the content of his speech. As the majority notes, at the time of Jackson's arrest, it was the law of this Circuit that the existence of probable cause barred a First Amendment retaliatory arrest claim. See *Dahl v. Holley*, 312 F.3d 1228, 1236 (11th Cir. 2002) ("[T]he existence of probable cause . . . defeats [a] First Amendment [retaliation] claim."), *abrogated by Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018); *Gates*, 884 F.3d at 1297–98. Subsequently, in *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019), the Supreme Court held that while generally, a "plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest," there is an exception to "the no-probable-cause requirement . . . when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." *Id.* at 1724, 1727. Because this exception applies to conduct taking place after *Nieves* was decided, it was not clearly established law in this Circuit at the time of Jackson's arrest. As previously discussed, however, the summary judgment record at issue here does not support a finding of probable cause or arguable probable cause for Jackson's arrest on simple battery. Because the existence of probable cause or arguable probable cause is lacking, I therefore proceed to the substance of Jackson's § 1983 retaliatory arrest claim.

"To state a § 1983 First Amendment retaliation claim, a plaintiff generally must show: (1) [he] engaged in constitutionally protected speech . . . ; (2) the defendant's retaliatory conduct adversely affected that protected speech . . . ; and (3) a causal connection exists between the defendant's retaliatory conduct and the adverse effect on the plaintiff's speech." *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019); *accord Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005). Here, it is undisputed that Jackson's speech in a designated free speech area was protected by the First Amendment, see *Redd v. City of Enter.*, 140 F.3d 1378, 1383 (11th Cir. 1998), and that being placed under arrest had an adverse effect on his speech. The questions that remain before us to determine are whether Appellees displayed "retaliatory conduct" towards Jackson and whether that retaliatory conduct was the but-for cause of Jackson's arrest.

Appellees repeatedly expressed disdain and animosity for the preachers' religious speech. Sergeant Cowan told students that there was "very little religion involved" and that "[t]his is not real religion." He further described Jackson's speech as "an ongoing problem" with the purpose to "inflame the group." He additionally stated that Jackson's "whole thing is to either to get [the officers] to respond to cause a First Amendment violation or to get somebody to strike him and then sue that person." And, in reporting the arrest to an investigative officer, Sergeant Cowan said, "Crowd went crazy. I think we hit a home run."

As to whether this animosity was the cause of Jackson's arrest, the officers' treatment of Law

captured on video provides an instructive comparison. Just a few minutes before Appellees arrested Jackson for simple battery, Jackson informed the officers that Law had yelled directly in Jackson's ear. Jackson later testified that Law shouted so close to Jackson's ear that Jackson "felt [Law's] spit touch him." Jackson further testified that Law chest bumped him at one point during their exchange. Law's actions of repeatedly following Jackson and yelling in his face and ear could qualify as assault or disorderly conduct under Georgia law.[7] Notably, when Officer Dorsey first arrived, he attempted to intervene, noting that it "looked like [Law] was all up in [Jackson's] face," but Sergeant Cowan called him back. The officers also ignored Jackson's question about Law putting his mouth directly on his ear and yelling. Indeed, as captured on video, a student in the background yells at Jackson after Officer Cowan ignored the question that "not even the cops listen to you." In his report to the investigative officer, Sergeant Cowan admitted that he heard Jackson's complaint about Law shouting in his ear and waved it off.

Viewed in the light most favorable to Jackson, as is proper at this stage, Appellees had a disparate reaction to similar levels of aggression from Jackson

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[7] "A person commits the offense of simple assault when he or she . . . [c]ommits an act which places another in reasonable apprehension of immediately receiving a violent injury." Ga. Code Ann. § 16-5-20(a)(2) (2016). "A person commits the offense of disorderly conduct when such person . . . [a]cts in a violent or tumultuous manner toward another person whereby such person is placed in reasonable fear of the safety of such person's life, limb, or health." *Id.* § 16-11-39(a)(1).

and Law, and a genuine dispute of material fact exists as to whether Jackson's arrest was motivated by Appellees' animosity toward the content of his speech. I therefore would reverse the district court's dismissal of Jackson's First Amendment retaliatory arrest claim.

* * * *

For the foregoing reasons, I concur with the majority's affirmance of the rejection of Jackson's claims for failure to intervene, racial discrimination, and conspiracy in violation of § 1985(3). But I respectfully dissent as to the majority's affirmance of the denial of Jackson's claims for false arrest under the Fourth Amendment and retaliatory arrest under the First Amendment.

Appendix B
In the United States District Court
for the Middle District of Georgia
Athens Division

ROSS M. JACKSON,	*	
Plaintiff	*	
vs.		
	*	CASE NO. 3:17-CV-145 (CDL)
SGT. GLENN COWN, SPO K. DORSEY, OFC HUTCHINS, KEATON WILLIAM LAW, and LECHANDT OPPERMAN,	*	
	*	
Defendants.		
	*	

ORDER

Itinerant sidewalk preachers have the right to spread the gospel in public places, but the First Amendment does not guarantee that they receive the same accommodations they would enjoy delivering sermons from the comfort of a protected indoor sanctuary. This method of preaching to strangers certainly has the potential to create tension. Ross Jackson maintains that, on October 11, 2016, this tension rose to the level of interfering with his right to deliver his message, and law enforcement officers present at the scene should have done more to curtail the interference. Indeed, the tension escalated to the

point that officers believed Jackson struck a member of the crowd during a heated exchange and, therefore, arrested him, allegedly without probable cause, for simple battery.

It appears that the only thing reaped from Jackson's sowing of his message on this occasion was the present lawsuit, which he filed against three of the officers who he claims violated his constitutional rights by not subduing the protesting students and by arresting him. He also brings claims against two of the students, who allegedly harassed him. The three officers moved for summary judgment, claiming that they are entitled to qualified immunity. The two students have not filed a motion for summary judgment. Because the officers' conduct did not violate clearly established law and they are otherwise entitled to summary judgment, the officers' motion (ECF No. 32) is granted.

STANDARD

The officers seek summary judgment on their qualified immunity defense.[1] Thus, the question is whether they are entitled to qualified immunity based on the evidence viewed in the light most favorable to Jackson, with all reasonable inferences drawn in Jackson's favor. *See Perez v. Suszczynski*, 809 F.3d 1213, 1217 (11th Cir. 2016) (explaining that the court "must review the evidence in this manner 'because the issues…concern not which facts the parties might be able to prove, but, rather, whether or not certain given facts show[] a violation of clearly established law'"

[1] They also seek summary judgment on Jackson's 42 U.S.C. § 1985 (3) claim independent of qualified immunity.

(quoting *Lee v. Ferraro*, 284 F.3d 1188, 1190 (11th Cir. 2002))). If, taking the evidence in the light most favorable to Jackson, the officers' conduct would not amount to a violation of clearly established law, then summary judgment must be granted in the officers' favor based on qualified immunity. *See Lee*, 284 F.3d at 1194 (emphasizing that the plaintiff must show the violation of a constitutional right "under the *plaintiff's* version of the facts").

FACTUAL BACKGROUND

Viewed in the light most favorable to Jackson, the record, which includes video recordings of the events in question, reveals the following.[2] Ross M. Jackson preaches Biblical Christianity" in public places. On October 10 and October 11, 2016, he chose Tate lawn at UGA for his pulpit. UGA designated this area of campus for expressive activity. Thus, Jackson had the right to be there.

I. First Day of Preaching

On October 10, 2016, Jackson, who is black, was joined by three white preachers on the Tate lawn. Jackson preached first for approximately thirty to sixty minutes. The three other preachers followed with similar messages. In the crowd that day were the three Defendant officers—Cowan, Dorsey, and Hutchins—

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[2] In cases in which the record includes a video recording of relevant events, the Court must view "the facts in the light depicted by the videotape" and may not adopt a version of the facts that is utterly discredited" by the video. *Scott v. Harris*, 550 U.S. 372, 380-81 (2007).

who were accompanied by the UGA police chief. The officers occupied a position behind a large crowd of students who encircled the preachers. *See generally* Dorsey Clip #1, Docket Remark (June 14, 2019);[3] Williamson Dep. 22:19-23:6, ECF No. 32-3. After about forty-two minutes, the crowd audibly reacted to what seemed to be an altercation. Dorsey Clip #2 at 12:40, Docket Remark (June 14, 2019). As the officers responded, they noticed students physically restraining each other from advancing on the preachers. *Id.* at 12:58, 13:14-24. The officers testified that they were not sure what had occurred but were concerned for the safety of those in attendance. Cowan Decl. ¶ 7, ECF No. 32-6. Therefore, the officers moved several individuals away from the preachers. Dorsey Clip #2 at 13:18-14:09.

Afterwards, the officers retreated to the back of the crowd where they remained until they heard another disturbance. They again moved into the crowd, *id.* at 23:58-24:00, where they spoke with a student who appeared to be restrained by his peers from advancing on the preachers. *Id.* at 24:00-24:35. After speaking to the student, the officers retreated to their position near the back of the crowd. *Id.* at 25:00-30:00.

The situation remained tense, and the officers entered the crowd one more time after observing multiple students surrounding a preacher and screaming at him. Dorsey Clip #3 at 00:55-1:22, Docket Remark (June 14, 2019). The officers ended up also separating a female who appeared agitated around this time. Id. at 2:33-2:38. After calming the tension on this

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[3] The Defendant officers submitted a copy of their body cam videos on a disc to the Court. Those videos are being held in the Clerk's office.

occasion, the officers did not intervene the rest of the day as students continued to speak with the preachers.

II. Second Day of Preaching

On October 11, 2016, Jackson returned to the Tate lawn as the lone preacher. The record does not reveal whether his solo appearance was planned from the beginning or whether the other preachers simply experienced enough southern hospitality the day before. In addition to fewer preachers, there was also a smaller crowd. *See generally* Cowan Clip #1, Docket Remark (June 7, 2019).

The Defendant officers returned to the scene on this second day. Initially, they observed a single student engaged in a heated debate with Jackson. *Id.* at 2:09. One of the officers recognized the student from the day before because the officer had specifically explained the parameters of what could be done under the First Amendment to him and a group of students. Cowan Dep. 167:23-168:16, ECF No. 32-6. One of the students in the group the day before asked if they could "do the same thing and say what [they] want," and the officer confirmed that they could exercise their right to free speech as well. *Id.* at 168:6-9. Because of this, the officer believed that the student who was engaged in the heated discussion with Jackson on this second day was simply engaging in a counter debate. *Id.* at 168:11-16. The officer communicated this belief to another officer. Cowan Clip #1 at 13:41-14:13.

Shortly after observing this heated conversation between one of the students and Jackson, another student joined in to counter

Jackson. The debate between those two students and Jackson became heated at times. At one point, one of the students shouted in Jackson's ear, and Jackson felt spittle fall on him as a result. Jackson Dep. 87:19-23, ECF No. 32-2. Eventually, Jackson and the two students approached the officers. Jackson asked the officers if it was legal for the two students to get near his ear and yell; and the two students asked if they could get close to Jackson as long as they did not touch him. Cowan Clip #1 at 22:27-22:40. One of the officers confirmed that the two students could get close to Jackson as long as they did not touch him. *Id.* Emboldened by the officer's "permission," Jackson contends the two students subsequently got face-to-face with him, chest bumped him, and asked if he wanted them to kiss him. As one of the students began walking toward him, Jackson stuck out his arm and made physical contact with the student. *Id.* at 25:18. Witnessing this contact, the officers arrested Jackson for simple battery and removed him from campus.

DISCUSSION

I. Section 1983 Claims

The Defendant officers seek qualified immunity from Jackson's § 1983 claims. While qualified immunity principles are well settled by now, it is helpful to be reminded of them. "Qualified immunity is total immunity from suit[.]" *Manners v. Cannella*, 891 F.3d 959, 967 (11th Cir. 2018). This "immunity allows government officials to 'carry out their discretionary duties without the fear of personal liability or harassing litigation.'" *Id.* (quoting *Oliver v. Fiorino*, 586 F.3d 898, 904 (11th Cir. 2009)). To be entitled to qualified immunity, "officers first must

establish that they were acting within their discretionary authority during the incident." *Id.* Here, there is no dispute that the officers acted within their discretionary authority when they decided not to intervene more aggressively as the two students engaged with Jackson during his preaching; the officers also acted within their discretionary authority when they arrested Jackson. "Once the defendant[s] establish[] that [they were] acting within [their] discretionary authority, the burden shifts to the plaintiff to show that qualified immunity is not appropriate." *Id.* at 968 (quoting *Lee*, 284 F.3d at 1194).

"The qualified immunity inquiry articulated by the Supreme Court provides immunity for law enforcement officers 'unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was "clearly established at the time."'" *Id.* (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018)). "These two components may be analyzed in any order." *Id.* "To be clearly established, a right must be well-established enough 'that every reasonable official would have understood that what he is doing violates that right.'" *Gates v. Khokhar*, 884 F.3d 1290, 1296 (11th Cir. 2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). "In other words, 'existing precedent must have placed the statutory or constitutional question beyond debate' and thus given the official fair warning that his conduct violated the law." *Id.* (quoting *Reichle*, 566 U.S. at 664).

In the Eleventh Circuit, "[f]air warning is most commonly provided by materially similar precedent from the Supreme Court, [the Eleventh Circuit], or

the highest state court in which the case arose." *Id.* But, "[a]uthoritative judicial decusions may [also] 'establish broad principles of law' that are clearly applicable to the conduct at issue." *Id.* (quoting *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1209 (11th Cir. 2007)). "And occasionally, albeit not very often, it may be obvious from 'explicit statutory or constitutional statements' that conduct is unconstitutional." *Id.* at 1296-97 (quoting *Griffin Indus., Inc.*, 496 F.3d at 1209). "In all of these circumstances, qualified immunity will be denied only if the preexisting law by case law or otherwise 'make[s] it obvious that the defendant's acts violated the plaintiff's rights in the specific set of circumstances at issue." *Id.* at 1297 (alteration in original) (quoting *Youmans v. Gagnon*, 626 F.3d 557, 563 (11th Cir. 2010)).

Jackson's first claim is straight-forward. He argues that the officers violated his First and Fourth Amendment rights by arresting him without probable cause and based on the content of his speech. His second claim suggests that the officers restricted his opportunity to engage in free speech by allowing the students to harass him and inhibit his ability to preach. Finally, he claims that the officers' failure to intervene was motivated by racial animus. As to Jackson's first claim, the Court acknowledges that the evidence of simple battery seems a little slim and that a jury could easily find reasonable doubt. But that is not the qualified immunity standard. The qualified immunity standard is arguable probable cause, and the officers certainly had that. As to Jackson's claim that the officers should have been more aggressive in their intervention, perhaps that is so. But the Constitution did not require it. The Constitution does

not impose a duty upon law enforcement officers to make the exercise of the First Amendment easy or free from tension. Moreover, there was nothing at the time to put these officers on notice that their failure to intervene more actively would subject them to liability. Qualified immunity protects such officers even if an after-the-fact evaluation suggests they could have done more to ease the tension. Finally, as to Jackson's racial discrimination claim, no evidence exists that any of the officers were motivated by racial animus. Acting differently under different circumstances cannot be distorted into a claim of race discrimination. For all of these reasons and as explained more fully in the remainder of this Order, the Defendant officers are entitled to qualified immunity on all of Jackson's § 1983 claims.[4]

A. Jackson's § 1983 Claims Stemming from His Arrest

Jackson claims that the officers arrested him without probable cause while he was publicly speaking, thereby violating his First and Fourth Amendment rights. "It is true that a warrantless arrest lacking probable cause violates the Constitution, and such an arrest can therefore

[4] The Court rejects Jackson's substantive Due Process claims because they are duplicative of his other constitutional claims. *See Albright v. Oliver*, 510 U.S. 266, 273 (1994) ("Where a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims.'" (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989))).

potentially underpin a § 1983 claim." *Gates*, 884 F.3d at 1297. "The converse is also true, which means that 'the existence of probable cause at the time of arrest is an absolute bar to a subsequent constitutional challenge to the arrest.'" *Id.* (quoting *Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 734 (11th Cir. 2010)). At the time of Jackson's arrest in 2016, a showing of probable cause barred not only an arrestee's Fourth Amendment_false arrest and imprisonment claims, but also his First Amendment claims stemming from the arrest.[5] *See id.* at 1298 (noting that arguable probable cause entitles an officer to qualified immunity on a plaintiff's false arrest and First Amendment claims stemming from the arrest); *Atterbury v. City of Miami Police Dep't*, 322 F. App'x 724, 727 (11th Cir. 2009) (per curiam) (noting that probable cause to make an arrest bars a plaintiff from bringing a § 1983 false imprisonment claim based on a detention pursuant to the arrest).

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[5] This rule has since changed. In 2018 and 2019, the Supreme Court ruled that probable cause would not bar a First Amendment retaliatory arrest claim in certain circumstances. *See Lozman v. City of Riviera Beach*, 138 S. Ct. 1945, 1952 (2018); *Nieves v. Bartlett*, 139 S. Ct. 1715, 1727 (2019). But, at the time of Jackson's arrest, it was not clearly established that an arrest supported by probable cause could nevertheless violate the First Amendment. *See, e.g.*, *Reichle v. Howards*, 566 U.S. 658, 664-65 (2012) (noting the Supreme Court had "never recognized a First Amendment right to be free from a retaliatory arrest that is supported by probable cause"); *Gates*, 884 F.3d at 1297-98 (stating that arguable probable cause would defeat a First Amendment claim stemming from an arrest). Therefore, the Court applies the law as it existed at the time of Jackson's arrest for the purpose of qualified immunity.

"Probable cause to arrest exists when law enforcement officials have facts and circumstances within their knowledge sufficient to warrant a reasonable belief that the suspect had committed or was committing a crime." *Case v. Eslinger*, 555 F.3d 1317, 1327 (11th Cir. 2009) (quoting *United States v. Gonzalez*, 969 F.2d 999, 1002 (11th Cir. 1992)). And, even "[a]bsent probable cause, an officer is still entitled to qualified immunity if arguable probable cause existed," i.e., if "reasonable officers in the same circumstances and possessing the same knowledge as the Defendant could have believed that probable cause existed to arrest." *Id.* (quoting *Lee*, 284 F.3d at 1195).

Here, the officers claim they had probable cause to believe that Jackson committed the offense of simple battery, which a person commits when he "[i]ntentionally makes physical contact of an insulting or provoking nature with the person of another." O.C.G.A. § 16-5-23(a)(1). It is undisputed that the officers saw Jackson's arm make physical contact with one of the students. Nevertheless, Jackson argues that no reasonable officer could believe the physical contact was insulting or of a provoking nature because the student was the aggressor and could have avoided the physical contact. This argument may be persuasive in a closing jury argument regarding the existence of reasonable doubt. But, to overcome qualified immunity, Jackson must demonstrate that the law at the time of the incident clearly established that physical contact does not constitute simple battery merely because the batterer was not the first aggressor and the battered individual could have avoided physical contact if he ducked out of the way.

He has not made this showing. From the video, it appears that Jackson's hand made contact with the student after the two engaged in a drawn-out, heated debate. An objective officer could reasonably conclude that this physical contact was intentional and insulting or of a provoking nature. They certainly had arguable probable cause to arrest Jackson for simple battery.

Jackson also argues that, when determining probable cause, the officers were required to take into account Jackson's potential affirmative defenses based on Georgia's self-defense and stand-your-ground statutes. He points to an unpublished, non-binding Eleventh Circuit opinion which found that officers might not have probable cause to arrest an individual if they knew facts that "conclusively establish[ed] an affirmative defense" at the time. *See Williams v. Sirmons*, 307 F. App'x 354, 358 (11th Cir. 2009) (per curiam). But, subsequent cases from the Eleventh Circuit decided before Jackson's arrest found that *Williams* did not clearly establish that officers must consider an affirmative defense in the probable cause analysis. *See Sada v. City of Altamonte Springs*, 434 F. App'x 845, 851 (11th Cir. 2011) (per curiam) ("[G]iven the absence of binding precedent holding that affirmative defenses must be considered in a probable cause determination, we cannot say that the law regarding affirmative defenses was so clearly established as to provide fair warning to the Defendants that their actions were unconstitutional."); *Elmore v. Fulton Cty. Sch. Dist.*, 605 F. App'x 906, 914 (11th Cir. 2015) (per curiam) (same). Jackson points to no other authority clearly establishing the officers were required to consider his affirmative defenses in making a probable cause

determination. Therefore, his alleged affirmative defenses do not defeat the officers' arguable probable cause for purposes of qualified immunity.

Without pointing to any evidence, Jackson summarily argues that his arrest was motivated in part by racial animus. As explained later in this order, Jackson's race had nothing to do with what transpired during his two days of preaching, including his arrest. He cannot bolster his position with the unsubstantiated declaration of race discrimination.

Because the officers had arguable probable cause to arrest Jackson, they are entitled to qualified immunity on Jackson's § 1983 claims stemming from the arrest.

B. Jackson's § 1983 Claims Stemming from the Officers' Failure to Intervene

Jackson makes the interesting argument that the Defendant officers violated his right to preach his message by not stopping students from making his preaching more difficult. While one could speculate about circumstances in which a government officer's failure to protect a citizen's free speech rights could amount to culpable conduct, the Defendant officers here were certainly not on notice from existing law that their conduct would violate clearly established law. Jackson also argues the Defendant officers' failure to intervene violated his right to equal protection under the law, but there is no evidence that the officers acted as they did because of racial animus. Accordingly, as discussed more fully below, the Defendant officers are entitled to qualified immunity on Jackson's failure to intervene claims.

1. First Amendment

Jackson argues that the officers violated the First Amendment because their failure to intervene was based on their disagreement with the content of Jackson's speech. But, evidence that an officer disagreed with a speaker's message, alone, is not enough to establish a First Amendment violation. There must also be evidence that the officer did something to impede a speaker's exercise of speech based on this disagreement. *See, e.g.*, *Cox v. Louisiana*, 379 U.S. 536, 543-44, 550-51 (1965) (finding a violation of the First Amendment when officers told peaceful protesters to disperse and arrested them for breach of the peace out of fear of the crowd's violent reaction to the protester's message). Here, the officers did not take any action to impede Jackson's speech rights prior to his arrest. They merely monitored the situation when the students exercised their own rights to engage in a counter debate. Jackson argues for a more expansive interpretation of the First Amendment that entails more than simply a prohibition against interference with a speaker's speech rights; he argues that the First Amendment also requires officers to take affirmative steps to silence a speaker's third-party opponents when their conduct is designed to interfere, interrupt, and drown out the speaker's speech. Jackson's argument has some theoretical appeal, and it may be the law depending on the circumstances. But, he points to no law from the Supreme Court, Eleventh Circuit, or Georgia Supreme Court clearly

establishing this principle.[6] And consequently, the officers were not on notice that their failure to intervene more aggressively violated the Constitution. Whether they violated Jackson's constitutional rights is not the qualified immunity standard. Jackson may not hold them liable in their individual capacity without showing that they violated clearly established law. And he has irrefutably failed to do that. Accordingly, the Defendant officers are entitled to qualified immunity on this claim.

2. Equal Protection Claim

Jackson also argues that the officers acted differently on the second day of his preaching when he was alone than they did on the first day when he was accompanied by white preachers. He attributes this

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[6] Jackson cites cases from the Sixth Circuit and the Northern District of New York to support his position. See *Bible Believers v. Wayne Cty.*, 805 F.3d 228 (6th Cir. 2015); *Deferio v. Syracuse*, 306 F. Supp. 3d 492 (N.D.N.Y. 2018). But, the rulings of those courts are not binding on this Court and cannot show the officers were on notice of clearly established law for purposes of qualified immunity in this case. He also argues that police department and UGA policy required the officers to separate the students from Jackson under the circumstances that existed on the second day of his preaching. While a violation of their employer's policy could subject the officers to discipline from their employer, those policies do not create clearly established law for qualified immunity purposes; the mere violation of a state law or policy does not give rise to a § 1983 claim. *See Knight v. Jacobson*, 300 F.3d 1272, 1276 (11th Cir. 2002) ("While the violation of state law may (or may not) give rise to a state tort claim, it is not enough by itself to support a claim under section 1983."

difference in treatment to the absence of the white preachers on the second day. He claims that when the white preachers were present on the first day, the Defendant officers were more aggressive in their intervention to separate the students from the preachers. But when Jackson faced off against the students alone, they mysteriously became timid. "In order to prevail on a racial discrimination claim, a plaintiff must prove, among other things, that the state's actions were racially motivated." *Hill v. Orange Cty. Sheriff*, 666 F. App'x 836, 840 (11th Cir. 2016) (per curiam). He can show this by pointing to evidence that an official treated similarly-situated individuals of different races differently. *See, e.g.*, *United States v. Armstrong*, 517 U.S. 456, 465 (1996) (noting this "similarly situated" analysis is an ordinary equal protection standard and applying it to an equal protection selective prosecution claim). But, to make this showing, "a plaintiff must [demonstrate] that [he] and [his] comparators are 'similarly situated in all material respects.'" *Lewis v. Union City*, 918 F.3d 1213, 1224 (11th Cir. 2019). "[D]ifferent treatment of dissimilarly situated persons does not violate the equal protection clause." *Campbell v. Rainbow City*, 434 F.3d 1306, 1314 (11th Cir. 2006) (quoting *E&T Realty v. Strickland*, 830 F.2d 1107, 1109 (11th Cir. 1987)).

Lower courts have been cautioned against taking a broad-brush approach to comparative discrimination analysis. The circumstances must be similar in all material respects. And they simply are not here. Material differences existed in the circumstances surrounding the preachers' interactions with the students on day one compared to day two. For example, the crowd on day two was

smaller and did not tightly encircle Jackson as the crowd did on day one, making visibility easier for the officers. The officers stood more toward the front of the crowd on day two and could, therefore, better monitor the situation. With the exception of one girl, only the two Defendant students directly communicated and advanced toward Jackson on day two, and the officers knew that one of them had been instructed on what was permitted under the First Amendment. Also, unlike on day one, the officers on day two did not see students holding each other back from advancing on the preachers. The circumstances on the two days were simply not sufficiently comparable to support any inference that Jackson's race had anything to do with the officers' conduct in failing to intervene more aggressively on day two. The officers certainly were not on notice that their conduct on day two under these disparate circumstances violated clearly established law. Accordingly, the Defendant officers are entitled to qualified immunity on Jackson's Equal Protection claim.

II. Section 1985 Conspiracy Claim

Jackson also asserts a § 1985(3) conspiracy claim against the officers and the two students that challenged him during his preaching. To prevail on his § 1985(3) claim, Jackson must show that the officers entered into a conspiracy with the two students with "some 'racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.'" *Nassar v. Fla. Dep't of Agric.*, 754 F. App'x 903, 907 (11th Cir. 2018) (per curiam) (quoting *Childree v. UAP/GA AG CHEM, Inc.*, 92 F.3d 1140, 1147 (11th Cir. 1996)). As previously explained, Jackson failed to point to any

evidence that the officers were motivated by racial or class-based animus. Thus, the officers are entitled to summary judgment because of Jackson's failure to create a factual dispute on whether a violation of § 1985(3) occurred. Moreover, the officers are also likely protected from this claim by qualified immunity. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1865-69 (2017) (finding that defendants were entitled to qualified immunity on a § 1985(3) conspiracy claim).[7]

CONCLUSION

For these reasons, the Court finds that Defendants Cowan, Dorsey, and Hutchins are entitled to qualified immunity as to all of Jackson's claims, and additionally, they are entitled to summary judgment on Jackson's § 1985(3) claim even if qualified immunity does not apply to that claim. Accordingly, their motion for summary judgment

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[7] The Court acknowledges that the Eleventh Circuit has previously held that qualified immunity does not apply to § 1985(3) claims. *See Burrell v. Bd. of Trs. of Ga. Military Coll.*, 970 F.2d 785, 794 (11th Cir. 1992); *accord Johnson v. City of Fort Lauderdale*, 126 F.3d 1372, 1379 (11th Cir. 1997). Although this precedent has not been overruled by the Eleventh Circuit, it is irreconcilable with the Supreme Court's recent recognition in *Ziglar* of qualified immunity as a defense to these types of claims. Thus, it appears that this Eleventh Circuit precedent has been overruled implicitly by the Supreme Court. It is above the undersigned's pay grade, however, to rest its ruling today on that foundation. Therefore, the Court makes it clear that its *holding* is that the officers are entitled to summary judgment on this claim because Jackson points to no evidence of the conspirators' racial or class-based discriminatory animus.

(ECF No. 32) is granted.[8] The student Defendants did not seek to have the claims against them dismissed. Thus, this action remains pending as to those claims.

IT IS SO ORDERED, this 17th day of June, 2019.

S/ Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

[8] Because the Court grants summary judgement on Jackson's claims against the officers, the Court terminates Jackson's motion to require individual representation of the officers as moot (ECF No. 39).

In the United States Court of Appeals for the Eleventh Circuit

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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November 07, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 19-13181-DD
Case Style: Ross Jackson v. Glenn Cowan, et al
District Court Docket No: 3:17-cv-00145-CDL

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rules 41-1 for information regarding insurance and stay of mandate.

Sincerely,

David J. Smith, Clerk of Court

Reply to: Bradly Wallace Holland, DD/lt
Phone #: 404-335-6181

REHG-1 Ltr Order Petition Rehearing

In the United States Court of Appeals for the Eleventh Circuit

ROSS M. JACKSON,
Plaintiff-Appellant,

v.

SGT. GLENN COWAN, SPK K DORSEY, and OFC HUTCHINS,
Defendents-Appellees.

Appeal from the United States District Court for the Middle of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC BEFORE: JORDAN, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

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

Appendix D
IN THE STATE COURT OF ATHENS-CLARKE COUNTY STATE OF GEORGIA

STATE OF GEORGIA	:	
	:	
vs.		CASE NO.: ST-16-CR-2100
	:	
ROSS JACKSON	:	
Defendant	:	

ENTRY OF NOLLE PROSEQUI

COMES NOW the State of Georgia, by and through Assistant Solicitor-General Ethan Makin, and hereby enters a nolle prosequi in the above-captioned case against Ross Jackson, upon the grounds set forth as follows:

The underlying case against the Defendant is based upon an incident that occurred at approximately 1:05 p.m. on October 11, 2016 on the University of Georgia campus. The State's evidence will show that at that time, a moderately sized crowd had gathered in a circle around a male later identified as Ross Jackson in a designated UGA Free Speech area. Mr. Jackson was espousing religious views but making inflammatory remarks regarding various subjects. None of the comments rose to the level of physical threats. Also inside the circle were the named victim and another male subject. The named victim made counterarguments to many of Mr. Jackson's points during the court of their encounter.

At one point, the named victim removed his sweatshirt and continued to verbally engage with Mr. Jackson. A few minutes later, the named victim positioned himself directly in front of Mr. Jackson and shouted loudly in very close proximity to his face. Mr. Jackson then raised his left arm and made contact with the named victim in order to move him away. Mr. Jackson's arm made contact with the named victim's face, but the video evidence demonstrates that his motion was more consistent with a push than a strike. In a statement given to UGA police on the day of the event in question, the victim also characterized this action as a push. UGA police officers approached Mr. Jackson and placed him under arrest. The named victim then appeared to celebrate the arrest by both fist pumping and hugging a friend.

The State's review of the video evidence in this case has led to the conclusion that Mr. Jackson was justified in using the amount of force that he did in order to move the named victim away from him personal space pursuant to O.C.G.A. § 16-3-20. Although there was sufficient probable cause to arrest the Defendant, the evidence is not sufficient to prove guilt beyond a reasonable double.

As a result, the State files this nolle prosequi and terminates the prosecution of this case.

Respectfully submitted this 23rd day of February, 2017. [handwritten and initialed by judge:] Restrictable

/s/ Ethan Makin
Ethan Makin
Ga. Bar. No. 156666
Assistant Solicitor-General
State Court of Athens-Clarke County

CONSENT OF COURT

State of Georgia having filed a nolle prosequi in the above-captioned matter, and it being made to appear that there is reasonable cuase for such action, the Court hereby consents to entry of said nolle prosequi.

This 23 day of February, 2017.

/s/ Charles E. Auslander III
Charles E. Auslander II
Judge
State Court of Athens-Clarke County

Appendix E
10-11-Cowan.Clip1

(0:03)

Jackson: I believe that every homosexual man should find a nice, decent lesbian, come together, get married, and have children. You homosexuals can get married. You cannot [inaudible].

Law: [inaudible] … 'cause, unlike you, I am productive member of society.

Jackson: You're not productive.

Law: Then what the hell are you doing speaking today, standing here.

Jan: [to Cowan] Hi, Glenn. [Laughter] Did we not get enough of this yesterday?

Cowan: No, apparently not. Right now, it's just him. I don't know where the rest of the group is.

Jan: I heard that one of them was over at ____ House giving out flyers.

Cowan: Oh, really?

Jan: Yeah, that's what the food services guy told me.

Cowan: Uh huh.

(1:04)

Jan: So, this student has proclaimed himself to be the defender of ____.

Cowan: I see that. He seems to be doing a pretty good job.

Jan: Uh huh. He keeps talking over him trying to keep him --

Cowan: Yeah, yeah.

Jan: -- just started pulling up an article saying he gave his name as St. Timothy -- no, St. Kent. Hold on, I'll tell you.

Cowan: Called himself St. Kent? Really, hmm.

Jan: I'll look it up.

Jackson: You guys think every student on campus is an immature, wicked, violent --

Jan: No. St. Ross Jackson. This is where he was at -- James Madison University, where they actually barred him from campus for taunting students. This was – what year was this? 2014.

Cowan: Hmm.

Jan: I can e-mail this to you if you want.

Cowan: Yeah, if you don't mind.

Jan: I don't. I can pull it up right here. Once you see that [inaudible]. [To White male student] Hi, how can we help?

Cowan: How are you doing?

(2:20)

White Male Student: Hi, I just have a question.

Jan: Sure.

White Male Student: It's like, it's obviously been like a thing that's been, like, troublesome for, for years, when people like just, "freedom of speech" slash, like, disturb the peace, but it's, like, I know it's, like, constitutional. But, like, at what point does it become disturbing the peace? Like, isn't there a certain point in time --

Cowan: The, the line drawn is when somebody starts actually threatening physical violence.

White Male Student: Yeah, and his intention is to get someone to strike him, so he can sue the university? Okay.

Cowan: Yes, or the individual who strikes him.

White Male Student: But there's no, but there's no, like, actual verbal point at which this becomes disturbing the peace?

Cowan: I just told you.

White Male Student: Oh, just, right, when it becomes physical?

Cowan: Yeah, it is, you're dealing with issues associated with the First Amendment protections and First Amendment is probably one of the biggest and most sacred. Yes, you have that, freedom to assemble, and --

White Male Student: So, you can't take them out -- yeah. It's, it's crazy. It's just like a crazy situation.

Cowan: It is but --

White Male Student: But you can't break it up, obviously.

Cowan: Nope. Nope. He, he is in the designated free speech area, so he's allowed to stay there and say what he wants as long as he does not make actual physical aggression, physical violence.

White Male Student: Physical aggression. Uh, all right, well --

Cowan: Actual physical violence.

White Male Student: Um**,** all right. Well, I appreciate you being here and making sure no one, no one, uh, gets tricked by his crap. So, yeah, thanks.

Cowan: All right, take care, bud. [to Jan] E-mail address is G, as in golf, Cowan, c-o-w-a-n, at police.uga.edu.

(4:04)

White Male Student 2: You UGA police?

Cowan: Yes, sir.

White Male Student 2: I just filed a request against Jackson with officers. He's just trying to egg people on to fight him. That's why he's wearing that Go camera.

Cowan: Yes. Yes. We know. We understand what is going on. Unfortunately, it is --

White Male Student 2: I know there's not a whole lot you can do.

Cowan: He's protected under the First Amendment, and up to a certain point he can pretty much say anything he wants. His whole purpose is to inflame the crowd. And that's what we're trying to do, is make sure that he -- yeah. Yeah. So --

White Male Student 2: [inaudible] Yeah.

(5:00)

White Male Student 2: Yeah, I know this is a grey area.

Cowan: No, it's not, it's not grey.

White Male Student 2: Well, it's just really messed up.

Cowan: He's allowed to say anything he wants, and his whole purpose is to inflame the crowd. Or inflame certain individuals to do certain actions.

White Male Student 2: Isn't that some sort of intent, at all?

Cowan: No, unfortunately, no. And there is nothing that is off limits to him. They were out here yesterday.

10-11-Cowan.Clip2

(0:04)

White Female Student: So, are we sinning, or promoting the word of God? I'm confused.

Cowan: There's no confusion here. They're, um, basically it's a group that goes up, goes around inciting the crowd trying to get them to react so that they can sue either the university or the people involved.

White Female Student: Oh.

Cowan: This is very little religion involved, and it's mostly about --

White Female Student: That guy yelling is actually trying to fluster people enough to --

Cowan: He's got a camera.

White Female Student: -- so he can charge them?

Cowan: See, he's got a camera on his chest.

White Female Student: And you can't do anything unless --

Cowan: Unless that crosses --

White Female Student: An altercation occurs?

Cowan: Yes, because of the, uh, freedom of speech. Freedom to assemble. And they're in a free speech

zone on a university campus. So we just kind of monitor to make sure there's no issues.

10-11-Cowan.Clip4

(0:09)

Jackson: A good girl --

Law: Why don't you define what that is?

[Dorsey intervenes between Law and Jackson]

Law: You keep yelling at these women! No!

Cowan: Dorsey! Dorsey! Dorsey!

Law: [to Dorsey] I'm not going to touch him. I promise.

Jackson: A good girl is a girl that you can bring home to mama. A good girl is a girl that doesn't give it up.

Cowan: Dorsey. Dorsey.

Law: [to Cowan and Dorsey] I promise not to touch him at all.

Cowan: I know. I know.

Jackson: A good girl is a girl that is STD free.

Cowan: [to Dorsey] I was going to tell you there's a couple of them that are over here that already kind of doing that. They know, they understand what their stance is and they're kind of countering.

Dorsey: Okay, it just kind of looked like he was all up in his face.

Cowan: Yeah, they're countering what he's saying.

Dorsey: Okay, I got you. I got you.

(0:47)

Cowan: All right, here's the ground rule. Don't say nothing to nobody. If anybody has a question refer them to me.

Dorsey: Okay.

Cowan: And definitely no comment to any media.

Dorsey: Okay.

Cowan: But these two [pointing to Law and Opperman] are doing really good. I don't know about the guy in the red shirt. He just walked up.

Dorsey: Okay.

Cowan: But these two are really good about countering.

Dorsey: The striped shirt and the black shirt?

Cowan: Yeah. And, apparently, behind me on my, uh, eight o'clock is his wife and kids he brought out here. His name is Ross Jackson. Apparently, he's the one that, he got barred from MIT for the same behavior.

Dorsey: Oh, okay.

Cowan: Yeah, so. These guys are doing a really good job.

(1:29)

Dorsey: Okay, cool.

Cowan: Okay, I don't know about the wild card that just showed up 'cause, right now, he's uh--

Dorsey: Okay.

Cowan: I don't know if he understands the context. These two --

Dorsey: Okay, sorry. I didn't know you had already talked to them. Cool, cool.

Cowan: Yeah. Gotta go for a run-in.

Dorsey: Yeah, I saw that.

(2:12)

[Law approaches Dorsey and Cowan]

White Male Student: Can I ask a question? Is this guy --

Cowan: Does this guy what?

White Male Student: Does this man come often?

Cowan: I can't understand.

White Male Student: Uh, this man, does he come often?

Dorsey: Often? Does he come often?

White Male Student: Or is this the first time he's been here?

Cowan: No, it's an ongoing problem. The whole purpose is to inflame the group.

White Male Student: Yeah, well he's doing a good job.

Cowan: Yeah, I know.

White Male Student: Well, y'all have a good day.

Cowan: Yeah, you too.

10-11-Cowan.Clip5

(0:03)

Cowan: [speaking to two female students] This is the University of Georgia campus. He's in what's called a designated free speech area. And the First Amendment allows him, basically, to say pretty much whatever he wants to, up to the point of threatening physical violence against somebody. That's where the line gets drawn. The whole purpose of him being here is to inflame the crowd to get somebody to react.

Female student 1: Yeah.

Cowan: This is not real religion.

Female Student 1: No, I know what's going on.

Cowan: What he's trying to do is, is, he knows, he's got a camera mounted on him.

Female Student 1: Uh huh.

Cowan: His whole thing is either to get us to respond to cause a First Amendment violation or to get somebody to strike him and then sue that person, as well as others.

(0:40)

Female Student 1: Is there, like --

Cowan: Huh?

Female Student 1: Is there, like, a way they can restrict this area from being a free speech area?

Cowan: No, we can't, we, nope. That's the problem. It's a free speech area on campus so anybody can come over here and say whatever they want and, if we, if we try to cordon it off, then we start violating the freedom of assembly. So, it's -- they know what they're doing, and they get right up to the line, but they don't ever cross it. So --

Female Student 1: Is it this, is it the sidewalk line?

Cowan: No, no, what I'm talking about is the line of free speech.

Female Student 1: Oh, okay. Yeah, yeah, yeah.

Cowan: They take it right up to the line and understand that nothing is protected from them. They'll talk about it: race, color, religion, sexual orientation, all this stuff, whatever it is, is trying to get somebody to respond.

Female Student 2: So that's what they're waiting for?

Cowan: Yes, that's exactly what it's about.

Female Student 2: Okay. And that's when you would have to step in and do something about it?

Cowan: Yes.

Female Student 2: I was just wondering.

Cowan: Yes.

Female Student 2: Okay.

Cowan: Yes, but as long as --

Female Student 2: Thank you.

Cowan: Yes, ma'am. But, as long as they're just talking, uh, there's not anything we can do about it. Unless they cross that line of physically, or threaten physical violence at somebody, and they know that. And they'll say, they'll call people anything they want to, and unfortunately, people kind of have to take it.

White Male Student: So, if they threaten any type of physical violence, then that's when y'all can intervene?

Cowan: Yes.

Female Student 2: Okay, well thanks so much for being out here.

Cowan: Yes, ma'am.

10-11-Cowan.Clip6

(0:00)

White Male Student 1: …allowed to be on campus in the public --

Cowan: So, two things. One, this is designated UGA free speech zone, so he can come here and do this. But they, and they know that they can go up to --

Jackson: [speaking to Cowan] Is it, is it a crime for him to get right up in my ear and yell?

Cowan: [to students] They know that they can get right up to a certain point --

Jackson: Is that a crime? I'm asking you.

Law: As long as I don't threaten him?

Jackson: Can he, can he put his mouth right in my ear and yell?

Law: [to Jackson] Was it on your ear?

Cowan: [to students] Anyway --

Law: [to Jackson] I was pretty far away from your ear.

Cowan: [to students] -- they understand what the rules are and how far they can go. And they push it right up to…

Jackson: [to Law, shouting] Back up!! Pervert! Back up!! Pervert! Get out of my face! Back up! Back! Get out of my face! You're nothing but a pervert. You're nothing but a sissy. Pervert. Pervert. You're just a pervert. Nothing but a pervert. Back up, pervert.

Law: I don't care.

Jackson: Back up. You're nothing but a punk. That's what you are. Sissy. You're a sissy going straight to hell. I said you're going straight to hell….

[inaudible responses as Law and Opperman follow Jackson when he turns around]

Jackson: I'll show you a real Christian. I am a real man.

Cowan: [to students] The problem is you can't, they have the, they have the freedom of speech. As long as there is no physical contact, they can say up to a certain point. And they know where that line is, and they have not crossed that line, and they won't. The whole purpose is to get somebody to respond.

White Student 1: Well, they were here yesterday.

Cowan: By taking that action, this gentleman showed a lot of restraint.

(1:44)

Jackson: Bend over. No, bend down. Reach down.

[Law and students start singing the Hokey Pokey song]

(2:30)

Jackson: All you racists are going to be in hell with, uh, Dr. Martin Luther King, Jr.

[Jackson with Law and Opperman following move around the circle]

Jackson: [to Law and Opperman] Hey. Hey, you guys. Hey, you guys are very -- you, you need a breath mint.

(3:03)

[Jackson raises hands up and touches Law; crowd reacts]

Jackson: Out of my face.

Dorsey: He just pushed him.

[Cowan, Dorsey, and Hutchins move towards center of circle; Cowan handcuffs Jackson; crowd cheering]

Dorsey: [to Hutchins] Here, do you wanna grab the, the Bible.

Jackson: [to wife] Just record, just record it.

Cowan: Do you understand you're under arrest for simple battery? Do you understand? You're under arrest for simple battery. Do you understand? Do you understand?

Male Student: I hope you get raped in jail.

Cowan: Do you understand why you're being under arrest?

Jackson: He just assaulted my wife, too. Yes, he did. He just assaulted my wife.

Cowan: Step forward. Step forward, please, sir. There's a transport unit over here, please. You're under arrest for simple battery, do you understand?

Another Male Student: Do you think your children are proud of this moment, sir? They don't look very proud.

(4:14)

Cowan: You cannot make intentional physical contact with anybody. Do you understand that?

Another Male Student: Can I, can I have an answer, sir?

Jackson: [to Cowan] I didn't make any intentional physical contact.

Cowan: Yes, sir, but that's what we observed and that's what we have recorded, sir. Okay?

Jackson: Yeah, well, I have, I believe I have something different.

Cowan: That's fine.

10-11-Cowan.Clip9

(0:08)

Cowan: [to investigating officers] Okay, so. Here we go. The gentleman right here, the blond-haired guy, with the red and white striped tank top, he is the primary victim. He was basically, the guy -- I don't know if you're familiar with his group, but there was one guy, Ross Jackson, he's the suspect, yeah -- come around over here. These are all witnesses. Yeah. Oh, yeah. All right, so. Basically, this group was out here yesterday inflaming everybody. Today, one of them, Ross Jackson, was out here. He was the first one who came out, and he had the group kind of already fired up. The victim, this gentleman right here, and --

Investigating Officer: Striped tank top?

Cowan: -- yeah, and the gentleman right here with the black T-shirt on, basically were in the group, and every time he'd say something, they would counter it.

Investigating Officer: Uh huh.

Cowan: Um, they'd try, and they never got, I mean they'd get real close to each other, but never made physical contact. They understood the rules.

Investigating Officer: Right.

Cowan: Well, at one point they were face to face and then the guy stepped off, and, when he did, Ross Jackson grabbed, took his arm and just kind of brushed it against his head like that.

Investigating Officer: Uh huh.

Cowan: And that's when we came in and took him and arrested him. Um, because they're not supposed to have any physical contact.

Investigating Officer: That guy? The blond?

Cowan: Yeah, this is the victim. This is the one that he brushed his arm up against trying to push him away from him. Um, and at one point they were literally face to face and Ross Jackson was calling him all kinds of names, but the guy just stood right in front of him and just kinda took whatever.

10-10-Dorsey.Clip7

(0:04)

Dorsey: Uh oh. What just happened? Did someone touch him?

[Moves forward into crowd]

Preacher: That's what the Koran tells him to do.

[Crowd boo's, students cheering and saying "oh my god"]

(0:30)

[Cowan and Williamson ahead of Dorsey and move into circle]

Preacher: I have read the Koran, I have read the Koran, I have read the Hadith.

Dorsey: [speaking to students] Hey y'all, let's go back into the crowd, okay? You don't want to get arrested.

Preacher: And Mohammad was a child molesting pervert. Yes, your prophet was a pedophile.

[Crowds shouting, Cowan, Williamson, and Hutchins intervene in front of Muslim woman]

Preacher: Mohammad married, Mohammad married a 6-year-old girl…

(1:10)

Dorsey: He's, he's trying to upset y'all. His whole goal is just to upset you and get you to overreact. Just don't, don't touch him, ok?

White Male Student: I'm definitely not going to touch him.

Dorsey: Don't touch him.

Preacher: If you support Islam you support pedophilia.

Unknown Student: No one agrees with you.

Unknown Student: Let him speak to himself, it doesn't matter if he speaks to himself.

Unknown Student: Everyone clear out.

Preacher: You don't belong in the country. Go back to Europe.

Preacher: All the women…

[Inaudible conversation between Williamson and white male student]

(2:30)

White Male Student: (Baseball cap) How is this helpful, how does this help their…

Dorsey: I have no idea, I have no idea…

Williamson: Buddy, the Constitution of the United States, the First Amendment gives them every right.

White Male Student: So, if I come out here and…. [inaudible]

Williamson: Yeah, you can say anything you want. You can say whatever you want. First Amendment protects anybody.

Preacher: Kill the infidels…

Williamson: Even if you don't like his content, doesn't mean he can't say it. You just don't agree with him. We're here not to censor. Those the young ladies over there getting with him, he was baiting them in. Watch all those guys with him in the green, and where's the other one.

Unknown Person: You don't belong in this country, go back to Europe.

Unknown Student: Hey, let the woman talk.

(3:25)

Williamson: Yes, see behind him, see what happens is, if we tried to, if you were going to act on him and touch him, then you violate his rights and we have to protect him…. What do you think? He's been here long enough, these strangers, and he's trying to get people agitated. He's been talking about everything.

Student in Crowd: You don't know shit about Islam.

Williamson: He even double talks. If you stand here long enough and listen, he's trying to push your

buttons and get you fired up. And as soon as he does that, these people get right up in his face.

White Male Student: [inaudible response]

Williamson: You and I are standing here talking, these people are going up to him…

Dorsey: (to another student) Yes?

White Female Student: I know that it probably -- I just want to ask, why haven't you gone up there yet? I'm just wondering.

Dorsey: I know, I know it might be frustrating, but it is freedom of speech. He can say anything he wants, even if it's really hurtful to people, as long as he's not, if he doesn't threaten someone or put his hands on someone. Everything he's saying is protected under the First Amendment.

White Female Student: Why was, why was that Muslim girl taken out of here?

Dorsey: Because, because she was getting up in his face, and the way these people work is they try to get people to go up and get in their face and attack him, and if we don't stop that, then they try to sue the university for that. And then if we were to go up and stop him, then they would sue us for stopping him. So he's trying to get someone to go up and confront him. So our whole goal is to make sure that no one touches him and he doesn't touch anyone else and he doesn't threaten someone. If he actually got up in someone's face, that would be a different story. But saying inflammatory things that really hurt people, that, as

terrible as it is, is still protected under the First Amendment. So, I mean, I know it, I know it sounds awful, but the main thing is, if everyone would just get up and leave, then he would have nothing. Like, the only thing that's giving him all this power is the fact that people are standing around buying into this. So, if everyone would just leave, then there would be nothing going on. So, does that make sense?

White Female Student: Yeah, thank you.

Dorsey: Oh no, you're okay, yes ma'am.

(5:50)

Preacher: You guys are very judgmental.

[Crowd laughs]

Dorsey: Am I in your way?

Preacher: You know pretty soon this is going to become the Islamic State of Georgia. And you women are going to be ones that suffer the most. If you were to dress like that in Saudi Arabia, you would be put to death.

Woman in Crowd: I don't suffer at all.

Preacher: Most women on this campus wear sex shorts. [Crowd reacts] I have an announcement, if you are not a product of Kentucky Fried Chicken, I don't want to see any thighs or legs.

(6:40)

Muslim Female Student: [to Williamson] I know, but then why can't I say what I want to say?

Williamson: He wants you, he wants you to react, he wants you to get arrested. The best thing to do is just walk away.

Dorsey: We're, we're trying to keep you from getting in trouble.

Muslim Female Student: Yeah, I understand.

Dorsey: We're protecting you.

Muslim Female Student: I can say whatever I want.

Dorsey: You can say whatever you want as long as you…

Muslim Female Student: Ok, thank you so much. I appreciate it.

Dorsey: … just don't threaten him. As long as you don't say anything threatening, you can say whatever you want.

10-10-Dorsey.Clip8

(0:17)

[Cowan, Hutchins and Dorsey move into circle and bring back Asian(?) Male]

Preacher: Now if we're going to distinguish what a real man is, let's go over what a real man is not.

White Male Student: If you guys aren't allowed to say anything, do you have like a bullhorn or something?

Dorsey: [laughter] We don't have any, I'm sorry.

Preacher: A real man does not watch cartoons …. If you can sing the SpongeBob song, you're not a real man. I can't hear you.

[Crowd singing/chanting SpongeBob Square Pants]

Cowan: Don't let him get to you. That's all he's trying to do.

Dorsey: Yes, yes sir. We just want to make sure you're okay.

Asian Student: Yeah.

[Police move back outside circle]

10-10-Dorsey.Clip10

(0:15)

[Hutchins, Cowan, and Dorsey move into center of circle]

Preacher: Order in the courtroom.

Dorsey: Hey, y'all, it's okay.

[Cowan moves white female away from preacher]

Preacher: Order in the courtroom.

Dorsey (to student)**:** Yeah?

Black Male Student: Uh, is their goal just to create a hostile environment?

Dorsey: They're trying to get people to get upset; they're trying to get people to come up and challenge them. And their whole goal is – if you notice they change topics constantly, just to try to upset people. Everything they see that they can use to try to upset people, they try to use that, and it's protected under free speech. They can say whatever they want.

Black Male Student: So, this is legal?

Dorsey: Yes, it is, they can. If he touches someone, if he, like, attacks someone, touches someone or threatens someone, uh, like their safety, then that's an issue. Then we can step in. But he can say anything he wants, even if its hurtful, even if it's, uh, inflammatory, to, like --

Black Male Student: Really? Okay.

Dorsey: Just like you could say anything you want, I mean as long as you don't touch him, as long as you don't, like, threaten him or anything, then you can --

Black Male Student: No!! No… [pointing to preacher] Wait, hold on one sec.

[Hutchins pulling back black female from preacher]

Dorsey: Look, as long everyone just maintains their distance and doesn't threaten them or anything, then it's okay. Hey ma'am, it's okay, ma'am.

Black Female: I'm talking about my want to, it's my prerogative, I don't shut up, I throw up, I will make you get on your knees like a doggy, lick it up.

[Cowan moves her back from preacher]

Preacher 1: Good thing I ain't like what I used to be, or I'd say while you're down there…

Preacher 2: You're in time out, while you're in time out…

Black Female: God, get Satan out of here!

10-10-Dorsey.Clip11

(0:07)

Preacher: They don't have the same God that we have.

Dorsey: (to white male student approaching him) He can say whatever he wants. I know it's really ridiculous, but he does have freedom of speech, and as long as he doesn't actually touch someone or threaten them, he can say whatever he wants. The best thing for people to do, to not give him power, is just to leave. You're welcome to stay and listen if you want, but if it's upsetting you, then you can just leave.

White Male Student: Hey, man, come on [pointing to preacher]

Preacher: Your heart is black. You've got a black heart. Don't you know. If it ain't wrong, it ain't right.

Black Female Student: You got a white heart. You got a white heart.

10-10-Dorsey.Clip12

(0:02)

Dorsey: What?

White Male Student: [inaudible]

Dorsey: I didn't hear what he just said.

Preacher: Every real Muslim is a jihadist. That's true.

White Male Student: He said all Muslims are jihadists.

Dorsey: He can say whatever he wants. You can say whatever you want as well, as long as you don't touch him or threaten him. And that's the First Amendment. I know, I know it seems ridiculous. That is the First Amendment, though. I know, I know exactly, I mean, I hear you, I definitely do.

White Male Student: I mean, how can he be doing this? Right here?

Dorsey: This is a free speech area. It's a public campus, public area.

White Male Student: He says something about homosexuals, Muslims, people who go to college.

Dorsey: I definitely hear you.

White Male Student: I don't know why you guys don't just step in.

Dorsey: Because if we were to step in and he didn't actually threaten anyone or touch anyone, then we'd be infringing on his constitutional rights. They, they understand their rights, and they know exactly what we can and can't do, and they know what they can and can't say, and so that's what they're doing.

10-10-Dorsey.Clip14

(0:02)

Dorsey: Yup, if everyone would just leave, then --

Jan: I keep telling the students that. Just please tell your people.

Dorsey: Yeah, well people will get in the center and tell people to leave and like a few people will leave, but then more people will walk up and don't know what's going on because not everyone leaves. So, if everyone would just leave, then problem solved. So –

Jan: Part of what I was gonna talk with y'all about is, I think the circle needs to get bigger again to make more room 'cause this makes it, the people more hostile.

Dorsey: Yeah, yeah. That's true, that's true.

Jan: That's what I keep trying to do up here. This group keeps getting tighter and tighter.

Dorsey: Okay, okay. That's a good point.

10-11-Dorsey.Clip18

(0:07)

Dorsey: Well, if you want an explanation of what's going on, this officer is explaining it to everyone, so he'd be happy to explain it to you. Um. So --

Hutchins: [inaudible]

Dorsey: Pretty much, but, um, don't tell anyone anything. Anyone just refer them to him. Obviously, no comment to the media. And these two guys up here -- the black shirt and the striped shirt guy -- they're just, they're, they already know what's going on. They're just doing a good job of covering him up. But they know not to touch him or threaten him or anything. So, uh, they, they're alright. So, they know what they're doing. So.

10-11-Dorsey.Clip19

Jackson: [to Cowan] Is it, is it a crime for him to get right up in my ear and yell?

Law: That's not a crime.

Jackson: I'm asking it. I'm asking.

Law: [to Dorsey, Hutchins, and Cowan] As long as I don't threaten him?

Jackson: Can he, can he put his mouth right in my ear and yell?

Cowan: [to students] Anyway.

Jackson: Back up!! Pervert! Back up!! Pervert! Get out of my face. Back up! Back up! Get out of my face! You're nothing but a pervert. You're nothing but a sissy. Pervert. Pervert. You're just a pervert. Nothing but a pervert. Back up, pervert. Back up. You're nothing but a punk. That's what you are. Sissy. You're a sissy going straight to hell. I said you're going straight to hell–

[inaudible responses as Law and Opperman follow Jackson when he turns around]

Jackson: A real Christian. I am a real man. So, I want to see–

White Male Student: So, uh, these things often?

Dorsey: Well, they were here yesterday.

White Male Student: Yeah, I saw that. I feel like it's kind of an entertaining day, though.

(1:42)

Jackson: Bend over. No, bend down. Reach down.

[Students start singing the Hokey Pokey song]

Jackson: All you racist are going to be in hell with, uh, Dr. Martin Luther King, Jr.

[Jackson and students move around the circle]

Jackson: Hey. Hey, you guys. Hey, you guys are very, you, you need a breath mint.

(3:03)

[Jackson raises hands up and touches Law across the face; crowd reacts]

Jackson: Out of my face.

Dorsey: He just pushed him.

[Cowan and Dorsey move towards center of circle and begin handcuffing Jackson; crowd cheering]

Dorsey: Don't, don't touch him.

Jackson: [to wife] Honey! Honey! Come over here. Come over here.

Dorsey: [to students] Hey y'all. Don't get up, don't get up close. [speaking to Hutchins] Do you want to

grab his Bible? Grab his, yeah.

Jackson: [to wife] Just record, just record.

[Students in the crowd shouting bye and cheering as Cowan walks him out]

Unknown Student: I hope you get raped in jail.

Jackson: He just assaulted my wife, too. Yes, he did. He just assaulted my wife.

Dorsey: [inaudible]

Cowan: There's a transport van and escort unit --

Dorsey: Five, one, university. We need a transport unit over at the intersection of Baxter at Lumpkin.

(4:20)

Unknown Student: [to Jackson] Do you think your children are proud of this moment, sir? They don't look very proud. Cowan: [to Jackson] You cannot make intentional physical contact with anybody, understand?

Unknown Student: Can I, can I have an answer, sir?

Jackson: [to Cowan] I didn't make any intentional physical contact.

Cowan: Yes, sir. That's what we observed and that's what we have recorded, sir. Okay?

Jackson: Okay, well, I believe I have something different.

Cowan: That's fine. We cannot have that activity. Can you –

Jackson: My wife and my children --

Dorsey: [in handheld mic] Ten, four. The individual who was preaching out here. He made, uh, intentional physical contact with one of the people, that was, uh, near him. And, uh, he's currently, ten ninety-five.

Cowan: [to Dorsey] Can you get that guy's name?

Dorsey: Uh, yeah. Yeah.

10-11-Dorsey.Clip20

(0:03)

Dorsey: I just wanted to verify. He did actually touch you, right?

Law: Yeah, he did. He struck me across the face.

Dorsey: Okay, okay. Just wanted to make sure.

10-11-Dorsey.Clip22

(0:00)

Cowan: All right, you need a quick brief or–

Investigating Officer: Yeah.

Cowan: All right, so, same group from yesterday was out here stirring the pot. Except this time there as one guy, the suspect Ross Jackson. Uh, he was, every, nothing was off limits and he was picking on everybody, um, but didn't cross the line.

This gentleman over here, who's wearing the red, white and blue tank top, is the victim. So is the young man with the black shirt on.

Basically, what was happening is, Ross was in the circle, they were in the circle with him. And every time he would say something, they would say something to counter it. But, when I talked to them, they knew that they were not allowed to touch him, and they would get right up to him, but they wouldn't touch him. And at one point, the guy was talking in his ear, and Ross comes over and says, "Hey, is this illegal for him to be doing in somebody's ears?" and I just kind of did one of these numbers [waves hands].

Well, it got to a point where Ross and the victim were, like, this, close as he comes [puts hands up close together]. Ross was just berating the guy, and every now and then the guy would respond, but there was no physical contact. A couple minutes later they separate. The guy comes around to Ross' side and when he does, Ross does one of these numbers

[gestures moving arm back] and hits the side of his shoulder and head. Then at that point we took him down.

Crowd went crazy. I think we hit a home run.

10-10-Hutchins.Clip4

(0:11)

[Dorsey, Hutchins and Cowan moving in towards the circle]

Hutchins: I can't even see.

Preacher: That's what the Koran tells them to do.

Male Student: No, it doesn't.

[Crowd boos, students cheering and saying, "Oh, my god"]

[Cowan and Williamson ahead of Dorsey and move into circle]

Preacher: I have read the Koran. I have read the Koran. I have read the Hadith. And Mohammad was a child-molesting pervert.

Dorsey: [speaking to white male student] Hey y'all, let's go back into the crowd, okay? You don't want to get arrested.

Hutchins: [to students inside circle] Hey, come back. Hey, you guys.

Preacher: Yes, your prophet was a pedophile.

[Cowan, Williamson, and Hutchins approach Muslim female student and bring her back away from preacher]

Williamson: [to Muslim female student] Listen, you're going to get arrested. You can't do that. He's baiting you in. Stop.
Preacher: Mohammad married a 6-year-old girl and had sex with her when she was 9.

White Male Student: I'm not calm, but I'm definitely [inaudible].

Preacher: If you support Islam you support pedophilia. Why are we feeling this way?

Unknown person: Donald Trump can be part Muslim.

Preacher: All the women and all the hijabs you need.

Unknown person: Let him speak to himself. It doesn't matter if he speaks by himself.

10-10-Hutchins.Clip7

(0:04)

Preacher 1: Are you a sinner?

[Cowan moves into center of circle, Hutchins follows, Cowan moves Black female student away from preacher]

Cowan: [to Black female student while moving her away from preacher] Please, please, please, please.

Preacher 1: Order in the courtroom.

Black Female Student: Y'all ain't in the courtroom, you out here. And he ain't gonna get out of there.

Hutchins: Ma'am. He's just trying to get you riled up. Don't get into it, okay?

Black Female Student: Oh, I ain't gonna hit him, I'm just trying to be funny.

Hutchins: No, I know, I just said don't feed into it. Don't get riled up just 'cause he did.

Black female student: Okay.

Preacher 1: Obviously, you're not receiving my message very well. I think it's time we introduce Brother John Williams from Cincinnati. [Preacher claps] Give it up.

Black Female Student: How about give up. Go home. Move Satan out of here. Move Satan out of

here. Move Satan out of here. Get him away. Move Satan out of here.

Preacher 1: John Williams is a lot nicer than I am.

Black female student: I said, "Go, Satan, get away."

Williams: [pointing to Black female student] First thing, you need to shut up.

[Black female student moves toward preacher, Cowan and Hutchins intervene]

Hutchins: Hey, hey, hey, hey, hey, ma'am. Ma'am. Ma'am.

Black Female Student: I'm talking if I want to. I'm a grown up, and I'm talking when I want to.

Hutchins: Ma'am. Ma'am.

[Dorsey and Cowan approach Black female student]

Black Female Student: I'm talking about my want to, it's my prerogative. I don't shut up, I throw up. [to Williams] I will make you get on your knees like a doggy, lick it up.

Williams: Good thing I ain't like what I used to be, or I'd say, "While you're down there –"

[Cowan moving back Black female student]

Williams: You're in time out. While you're in time out [inaudible].

Black Female Student: Go on, get Satan out of here! Get him out of here! That's the devil, Father, get him out of here, Father.

10-11-Hutchins.Clip12

(0:16)

Law: I can do this all day long.

Jackson: No, no, no, no. You can, you can --

Jackson: [to officers] Is it, is it a crime for him to get right up in my ear and yell?

Opperman: That's not a crime. No.

Jackson: I'm asking it. I'm asking.

Unknown Voice: Yes.

Law: That's not a crime, no. Am I allowed to get close to him without touching him?

Unknown Voice: Yes.

Law: As long as I don't threaten him?

Jackson: No, no. Can he put his mouth right in my ear and yell?

Opperman: Is it on your ear?

Cowan: Anyway.

Law: I was pretty far away from his ear.

Jackson: Back up!! Pervert! Punk! Back up! Back up! Get out of my face! Back up! Back up! Get out of my face! You're nothing but a punk! You're nothing

but a sissy! Pervert! Pervert! You're just a perverted fool. You're just a pervert. Back up, pervert!

Law: I don't care.

(1:04)

Jackson: You're nothing but a punk. That's all you are. You're a sissy. You're a sissy. You're a sissy going straight to hell. Yes, you're going straight to hell.

Law: I don't care. I don't care.

Jackson: Yes, fool. Yes, fool.

[Jackson moves around inside the circle; Law and Opperman follow]

Jackson: … A real Christian. I am a real man. So, I want to see, I want to see if I can do –

Dorsey: They were here yesterday.

Unknown Student: Yeah, I saw that. It was really kind of an entertaining day, though.

Jackson: Bend over. No, bend down. Reach down.

[Law and students start singing the Hokey Pokey song]

Jackson: Catholics. Catholics. Catholics are going straight to hell with Mother Teresa.

Law: I don't care.

(2:31)

Unknown Student 1: Uh, that's me.

Unknown Student 2: Wait, what'd he say?

Unknown Student 1: "Catholics are going to hell with Mother Teresa."

[inaudible conversation between students]

Jackson: Buddhist's are going to be in hell with Ghandi. All these racists are going to be in hell with, uh, Dr. Martin Luther King, Jr.

[Law and Opperman continue to follow Jackson around inside the circle]

Jackson: Hey, you guys. Hey, you guys are very -- you, you need a breath mint.

(3:15)

[Jackson raises hands up and touches Law; crowd reacts; Cowan, Dorsey, and Hutchins move towards center of circle; Cowan handcuffs Jackson; crowd cheering]

Jackson: Honey, honey. Come over here. Come over here.

Hutchins: [to student in front of Jackson's camera] Get back. Get back.

Dorsey: [to Hutchins] Here, do you wanna grab the, the Bible.

(4:00)

Jackson: [to wife] Just record, just record it.

[crowd cheering as they begin to exit the circle]

Male Student: I hope you get raped in jail.

Jackson: He just assaulted my wife, too. Yes, he did. He just assaulted my wife.

Unknown Voice: She hit me.

Cowan: There's a transport van –

Male Student 2: Do you think your children are proud of this moment? Do you think your children are proud of this moment, sir? They don't look very proud.

Cowan: You cannot make intentional physical contact with anybody. Do you understand that?

Male Student 2: Can I, Can I have an answer, sir?

Jackson: [to Cowan] I didn't make any intentional physical contact.

Cowan: Yes, sir, but that's what we observed and that's what we have recorded, sir. Okay?

Jackson: Yeah, well, I have, I believe I have something different.

Cowan: That's fine.

Jackson: Can you, uh – get my wife to take my car keys.

Dorsey: [into radio] it was the individual who --

10-11-Jackson.Clip1

(0:05)

Jackson: Real quick. Okay, okay. Real quick. If you follow me around in my face, I'm going to ignore you for the entire day. Hold on, hold on. I know, I know you can do whatever you want. No, you can do whatever you want. I'm just letting you know. I would love to answer questions and argue and debate with you and have a good time today, but if you -- I'm just, I'm just telling you -- if you just give me at least 3 to 5 feet and you raise your hand and don't yell in my face, I will answer your questions the entire day.

Opperman: Answer my question. I have a question for you, sir.

Jackson: Ok, what's your question.

10-11-Jackson.Clip3

(0:00)

Law: Why specifically are they going to hell?

Jackson: Fake. Fake.

Opperman: You get sent to hell! You just said that.

Jackson: [to crowd] Can somebody remind these two that I told them that, if they follow me around, I'm gonna ignore them. Can somebody remind them of that?

Law: Why are we gonna go to hell? Did they just break?

Opperman: If anything, all these people remind you --

Law: -- are these sinners because they wear their hat backwards? And now you're going to hell. You just said, "I'm perfect. I'm a saint. I don't sin."

Jackson: Now, Brother Ross used to be a sinner, okay?

Law: You're such a terrible person. How do you stand out here --

Jackson: I used to walk like -- well, not quite like.

Law: -- taking this abuse all day!

Jackson: I used to, I used to --

Law: I can do this all day long. Oh, my god.

Jackson: I used to listen to Biggie Small.

10-11-Jackson.Clip4

(0:00)

Jackson: When I got saved, I realized –

Law: You got saved? You got saved?

Jackson: -- that the Jay-Z music was of the devil.

Law: Oh, my god. Jay-Z makes some pretty awesome things.

Jackson: I stopped. When I got saved, I stopped listening to –

Law: I can do this all day long.

Jackson: -- don't yell in my ear, please!

Law: No! I will!

Jackson: All right. Excuse me –

Law: I will yell at you.

Jackson: -- excuse me. Excuse me. Excuse me. Don't yell in my ear.

Law: I will yell at you all day long.

Jackson: Excuse me. Excuse me.

Law: I have nowhere to be. I will yell at you all day long.

Jackson: No, no, no, no. You can -- no, no, no, you can --

Law: I can yell at you all day long.

Jackson: [to Cowan] Is it, is it a crime for him to get right up in my ear and yell?

Unknown student: That's not a crime.

Jackson: I'm asking it. I'm asking.

Opperman: That's not a crime, no.

Law: Am I allowed to get close to him without touching him?

Opperman: He's getting you the answer right now, sir.

Cowan: [to Law] Yeah.

Law: As long as I don't threaten him.

(0:44)

Jackson: No. Can he, can he put his mouth right in my ear and yell?

Law: [to Jackson] Was it on your ear?

Cowan: [to students] Anyway --

Law: [to Jackson] I was pretty far away from your ear.

Unknown Student: Not even the cops want to listen to you.

Jackson: Back up!! Pervert! Punk! Back up!! Back up! Get out of my face. Back up! Back up! Get out of my face!

Law: Law: No. No. No. This is my campus.

Jackson: You're nothing but a punk. You're nothing but a sissy.

Law: I will stand here!

Jackson: Pervert.

Opperman: You're nothing but a bigot.

Law: I will stand my ground.

Jackson: Pervert. You're just a perverted fool. Nothing but a pervert. Back up, pervert. Back up. You're nothing but a punk. That's what you are.

Law: No! I don't care. No. I will not back up. I will stand my ground.

Jackson: Sissy. You're a sissy going straight to hell. You're going straight to hell. You're soft. You're soft. You're soft.

Law: I don't care. Do you want me to kiss you? You're a little close. I'm not soft. I'm pretty hard.

Opperman: You are nothing but garbage.

Law: No, I'm hard from looking at that fine ass. Right there. It's looking pretty nice.

Jackson: So, Brother Ross is what you call a real Christian.

Law: You're standing on my campus!

Jackson: I am a real man.

Opperman: You're not a real man at all.

10-11-Jackson.Clip5

(0:02)

Law: Hey! Maybe you should say his full name? Reverend --

Jackson: You guys.

Law: -- Doctor Martin --

Jackson: Hey!

Law: – Luther King, Jr. Reverend.

Jackson: Hey! You guys.

Law: Unlike your ass who just goes to church --

Jackson: Hey, you guys ever very --

Law: I will yell at you --

Jackson: You need, you need a breath mint.

Law: I do. And I hope it smells terrible.

Jackson: Out of my face, please! Out of my face.

(0:20)

[Jackson touches Law across the face; crowd reacts; Cowan, Dorsey, and Hutchins approach Jackson and handcuff him]

Dorsey: [to another student] Don't, don't touch him --

Jackson: [to wife] Honey! Honey! Come over here.

Another Student: I won't, I won't touch him, sir.

[waving and doing faces into the camera]

Jackson: [to wife] Just record. Just record it.

Cowan: Yes, sir. Do you understand you're under arrest for simply battery?

Jackson: No, no. I'm talking to her.

Cowan: Do you, you're under arrest for simple battery. You cannot make intentional physical contact. Do you understand? Yes or no? Do you understand why you're being under arrest?

[student waving hand in front of wife's handheld camera; wife pushes his arm out of the way]

Jackson: He just assaulted my wife, too.

Unknown Student: I didn't. She just hit me.

Jackson: Yes, you did. He just assaulted my wife, too.

Cowan: Step forward, sir. There's a transport van over here –

Unknown Student: Do you think your children are proud of this moment, sir?

Dorsey: [into handheld radio] Five, one, University. We need a transport unit over at the intersection of Baxter at Lumpkin.

Cowan: You're under arrest for simple battery. Do you understand?

Unknown Student: Do you think your children are proud of this moment, sir? They don't look very proud.

Cowan: You cannot make intentional physical contact with anybody. Do you understand that?

Unknown Student: Can I, can I have an answer, sir?

Jackson: [to Cowan] I didn't make any intentional physical contact.

Cowan: Yes, sir, but that's what we observed and that's what we have recorded, sir. Okay?

Jackson: Okay, well I have, I believe I have something different.

Cowan: That's fine.

10-10-Preacher.Clip2

(0:02)

Muslim Female Student: Have you read the Koran?

Preacher: Yes, I have read the Koran. I have read the Koran. I have read the Hadith. And Mohammad was a child-molesting pervert. Yes, your prophet was a pedophile.

Muslim Female Student: Excuse me, you do not get to --

[Cowan and Williamson intervene and move Muslim female student back]

Preacher: That's the truth. That's what your Koran teaches. How old was Ayesha?

Muslim Female Student: No, it does not.

Preacher: How old was Ayesha?

Muslim Female Student: That is not --

Preacher: How old was Ayesha? Mohammad married, Mohammad married a six-year-old girl and had sex with her when she was nine.

Appendix F

Janie Davis Barham
October 31, 2018

[page 7]

Q A young lady. What is your current position?

A I serve as associate dean of students and director of the Tate Student Center.

Q How long have you held those positions?

A I was put into that role as interim in fall of 2010 and was hired full time in the position in spring of 2011.

Q And so both those positions, associate dean and director, you have held continuously since – on an interim basis, from 2010 to 2011 and from 2011 to the present?

A That is correct.

[page 57]

Q Okay. So you finished reading the transcript. Let's look at – well, we will start at 56 seconds and go from there. (The video playing.) At 1:02, it looks like Mr. Jackson has been joined in the middle by another person. Correct?

A It appears to be the case, yes.

Q Okay. That person is Keaton Law.

A Okay.

Q Okay? He initially wears kind of a red sweatshirt, but then is in a red-and-white striped shirt, horizontally-striped

shirt. And I think you make reference to him shortly. (The video playing.) So this student has proclaimed himself to be the defender of trust. Okay?

A Does it say "truth"? I just couldn't hear.

Q All right. Let's try it again. (The video playing.) That's what I heard.

[page 58]

A "Defender of students."

Q "Students"?

A Yes.

Q Okay. And you are referring to Mr. Keaton. Correct?

A Yes, who was there the prior day as well.

Q You remember seeing Mr. Keaton the –

A I do remember seeing him the previous day.

Q Okay. Do you recall what he was doing the previous day?

A Not specifically. I just remember him engaging in conversation, the same questions that most of our students were asking, "Why are they able to be here? What are they doing? How do we shut this down?" All of which we were talking about. "This is freedom of expression policy. This allows for the engaging of expressive activity."

[page 167]

Q Well, I'm just using your words here. But you say, "They understand what their stance is." What did you intend by that?

A I believe I was referring to Mr. Law and Mr. Opperman understanding the situation involving these people exercising their freedom of speech and the position that they represent.

Q Okay.

A And that Mr. Law and Mr. Opperman are offering counter opinions to everything that's being said.

Q Okay. Now, had you spoken directly with Mr. Law and Mr. Opperman prior to this time?

A Yes. Not directly, no.

Q All right. In some other way?

A Yes.

Q When did that occur?

A On the 10th, the day before.

Q All right. And was a – did you speak indirectly with Mr. Law or Mr. Opperman or both?

A I know Mr. Law was there. I don't remember if Mr. Opperman was. And the conversation was not directly with him. It was – he was standing amongst a group of other

individuals when they were having discussion about the First Amendment, what could be done. And the question brought up was, "So we can say what we want to," or something. I'm paraphrasing.

[page 168]

Q Right.

A "So we can do the same thing and say what we want?" I was like, "You still have the same rights that he does."

Q Okay.

A So when he got here this day and I saw him out there and I recognized him from the day before, I was like, "Okay." And then when Ms. Barham made the comment that they were kind of doing the counter preaching, I'm like, "Yeah. Okay. That makes sense now."

Oksana Kay Hutchins
October 30, 2018

[page 53]

Q (By Mr. Davids) All right. We're starting again on clip 4, replaying it about on the second – 46 seconds into it. On the left, that appears to be the chief; is that right?

[page 54]

A Yes, sir.

Q All right. And in the center going right by the drain is – is that Officer Dorsey?

A Sergeant Cowan.

Q Sergeant Cowan, okay. And what are they doing; are they approaching students?

A Yes, sir.

Q And they are students that are in the square; correct?

A Yes, sir.

Q All right. At this point in time, we've seen this already once, were any of the students breaching the peace in your opinion?

A No, sir.

Q Why, why don't you reach that conclusion?

A They were just standing there.

Q Yeah, they were talking, but they didn't look like any breach of peace was imminent; correct?

A Correct.

[page 60]

Q Was there ever any imminent breach of the peace in your opinion between the woman in the headdress and the preacher?

A No, sir.

Q Okay. But there was intervention by the chief as well as Sergeant Cowan and they moved her away from the preacher; correct?

A Yes, sir.

(Video playing.)

Q Okay. And now again on 1:17, 1:18, it looked like Sergeant Cowan was moving her off to the side of the Tate Center, removing her away from the preacher, and now there appears to be a young man in a – looks like a Republican shirt, at least with an elephant on it, but he also apparently has blue shorts, and he is interacting with Officer Dorsey; correct?

A Yes, sir.

Q Okay. And that's at 1:18.

(Video playing.)

Q Did you see what the – what the young man in the shirt said, did you hear that?

A No, sir.

Q Okay. I think he said I'm calm. Let's see that again.

[page 61]

(Video playing.)

Q No; he said I'm not calm. All right. The white male student, I'm not calm, but I'm definitely, and then something inaudible. Okay? Now, when the white male said he's not calm and he's inside the circle but he's far removed from the preacher, do you think that he was in imminent breach of peace?

A No, sir.

Q All right. Let's move on.

(Video playing.)

Q Back up a little bit.

(Video playing.)

Q All right. At page – I'm sorry, 1:39, this again is in view toward the preacher, there's the cameraman that's off to the right of the preacher, but it's a fairly open area; correct?

A Yes, sir.

Q Now, compared to what it used to be when the students were there and after the chief and Sergeant Cowan and Officer Dorsey came and moved everybody away back to the sidelines, it's now a relatively open area for the preacher to speak; correct?

A Yes, sir.

[page 65]

Q But those women that stepped into – or at least that one woman who stepped into the circle a couple of strides and then started going in the direction of the officers – in your opinion there was no imminent breach of the peace with respect to her, was there?

A No, sir.

Q No. She didn't make any threatening move against the preacher, though, did she?

A No, sir.

Q All right.

[page 98]

Q So Mr. Law goes directly in front of him; correct?

A No, sir. The way I'm looking at it from where I was –

Q Okay.

A – it appears to me that Mr. Jackson was the one that did the approach when he had his hands up. He said, back up, back up, and then he called him, you know, a pervert.

Q Right.

A Mr. Law, and then Mr. Law does not move. Mr. Jackson, you could tell he was – he made the – he made the movement at Mr. Law, is that I have interpreted.

Q Was there an imminent breach of the peace there?

A In that particular instant I would say so.

Q Yeah. Because they're in each other's face; correct?

MS. CUSIMANO: I'm sorry, I'm going to – breach of peace by whom?

MR. DAVIDS: Oh, I –

[page 99]

THE WITNESS: By Mr. Jackson.

Q (By Mr. Davids) Okay. So an imminent breach of peace by Mr. Jackson, but they're in each other's face; correct?

A Mr. Jackson is the one that keeps making those forward movements towards Mr. Law.

Q Okay. Doesn't the policy say that if there's an imminent breach of the peace and two people are in each other's face, what you do is go there and break them apart? It's not quite exactly that it says. Let's find out correctly what it says. Here it is. It says, again, under speak but don't touch, getting in a person's face in a manner that leads you to believe a breach of peace is imminent. That's what's happening here, isn't it? There's a breach of peace. You're thinking that Mr. Jackson is in imminent breach of peace by getting closer to Mr. Law; is that right?

A Yes, sir.

Q Okay. Well, doesn't it then say that that's not acceptable and probably requires our intervention?

A Yes, sir.

Q Didn't you intervene the previous day with the African-American woman who was a lot further away from Mr. Williams than Mr. Law was from Mr. Jackson?

[page 100]

MS. CUSIMANO: Objection to form.

A I – yes, sir.

Q Okay. But you didn't intervene here, did you?

A No, sir.

Q And the reason why you didn't intervene is because you were told by Dorsey beforehand not to interfere what the guy in the black shirt and the guy in the striped shirt were doing that day; right?

MS. CUSIMANO: Objection to form.

A Yes, sir.

Q Yeah, they knew what they were doing, Dorsey had told you earlier, they know what they were doing, they knew not to touch him; right?

A Yes, sir.

Q And you were doing what your superior, your supervisor told you to do; correct?

A Yes, sir, I was acting under.

[page 122]

Q Would it be fair to say that because you're unsure whether the act by Mr. Jackson was intentional or an accident, that if you were by yourself that day and did not have Sergeant Cowan or Officer Dorsey there, you would not have arrested Mr. Jackson?

MS: CUSIMANO: Objection, calls for speculation.

A That day I was just acting under by supervisor's instructions, so –

Q Yeah, yeah.

A – I cannot say what I would or would not have done.

Appendix G
UNIVERSITY OF GEORGIA POLICE DEPARTMENT

INCIDENT REPORT CASE NUMBER: 16-3277

. . . .

Notes/Narrative

Narrative

On October 11, 2016 at approximately 13:05 hours I was in the area of the University of Georgia Tate Student Center observing a moderate sized crowd gathered around a black male later identified as Ross M. Jackson exercising his free speech as a preacher in a designated UGA Free Speech area. While observing the activities, I observed Mr. Jackson strike another white male later identified as Keaton Law about the shoulder and neck area of Mr. Law with a swiping arm motion with the back elbow area of Mr. Jackson's left arm in an attempt to push Mr. Law away from Mr. Jackson. Mr. Law did not retaliate to Mr. Jackson's action and merely walked away from the immediate location of Mr. Jackson.

Upon observing the physical contact upon the person of Mr. Law, SPO Dorsey (#851), OFC Hutchins (#871) and I moved in and arrested Mr. Jackson for Simple Battery in violation of OCGA 16-5-23. Mr. Jackson was handcuffed behind his back, checked for tightness and double locked. Due to the size of the crowd, we attempted to move Mr. Jackson from the area of the crowd and requested a transport unit to meet at the intersection of Lumpkin Street and Baxter Street.

Mr. Jackson was escorted near the intersection where the crowd was not as prominent and a search of his person incident to arrest was conducted. No contraband was observed on the person of Mr. Jackson. Mr. Jackson had a portable video camera (GoPro) strapped to a harness and hanging in his chest area. In order to remove the camera, the device was unsnapped and Mr. Jackson's handcuffs had to be removed momentarily to remove the shoulder harness. Mr. Jackson was then handcuffed again behind his back, checked for tightness and double locked again. Mr. Jackson was accompanied by his spouse and the majority of his property, to include the video camera, was relinquished to her custody at his request. At approximately 13:15 hours CPL Lynn (#837) arrived on scene to transport Mr. Jackson away from the scene. Mr. Jackson was transported to the UGA Police Department to be interviewed by UGA Investigators however no statement was provided by Mr. Jackson.

Mr. Law received no visible injuries associated with the assault and had no complaint of injury.

UGA CID Investigators were summoned to the scene to assist with interviewing Mr. Law and several other witnesses to the incident. Several witnesses provided names of OFC Hutchins and SPO Dorsey but were unable to remain for the arrival of Investigtors.

UGA CID Detectives Raboud, Det. Green, Det Humphries and Det. Baughns arrived on scene and were briefed on the incident. Det. Raboud interviewed Mr. Law. Det. Green interviewed another witness identified as Lechandt Opperman that was with the victim at the time of the physical

contact. Other spectator witnesses were interviewed by Det. Baughns and Det. Humphries.

Pursuant to this incident, Mr. Jackson was issued a Criminal Trespass warning for 90 days to All Univeristy of Georgia Property and UGA Transit by Det. J. Gagliano. Mr. Jackson refused to sign the UGA barring notice.

Prior to the observation of physical contact between Mr. Jackson and Mr. Law, Mr. Jackson was espousing religious free speech but making inflammatory remarks regarding the various subjects of the crowd. Comments included views against race, color, religion, sexual orientation and other inflammatory comments. None of the comments rose to the level of physical threats directly however there were numerous derogatory comments directed toward the attendees. Mr. Jackson was standing inside a circle of spectators making comments. Also inside the circle was Mr. Law and Mr. Opperman and every time Mr. Jackson would make derogatory comments, Mr. Law and Mr. Opperman would make counter statements in an exercise of the right to free speech. At one point Mr. Jackson and Mr. Law were within 1 inch of each other and Mr. Jackson repeatedly called Mr. Law several derogatory comments. The interaction was so close that whenever Mr. Jackson would shout at Mr. Law, the front of Mr. Law's hair would rise. Mr. Law's only reaction to Mr. Jackson's verbal assault was a verbal rebuttal. After approximately one minutes of this exchange, the 2 subjects separated. A few minutes later, Mr. Law was standing directly in front of Mr. Jackson and Mr. Jackson declared that Mr. Law needed a breath mint. Mr. Law then stepped to the left of Mr. Jackson and stood in close proximity to

Mr. Jackson. It was at this time that Mr. Jackson raised his left arm and struck Mr. Law in an attempt to move Mr. Law away from Mr. Jackson. The crowd that gathered was between 150-200 subjects observing the activities. Most of the crowd dispersed shortly after the physical contact however officers were able to identified several witnesses prior to their departure.

This incident was recorded on department issues Flex Cam. Flex cam video footage was also captured on the cameras of SPO Dorsey and OFC Hutchins.

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CONTINUATION

[EMPTY]

Reporting Officer (810370465 G COWAN	Approving Supervisor (810005806) D GREGORY	
Printed By (810085915) B DELLINGER	Date/Time 10/12/2016	Page 6 of 11

Appendix H
2016 Policy Version

Standard Operating Procedure
Chapter 16.04 – Patrol Functions; Managing Disputes

I. Introduction

The role of law enforcement officers in non-criminal, civil disputes is that of an impartial keeper of the peace.

. . . .

D. Free Speech Policy – The University of Georgia policy on free speech may be found by following the link to Appendix DH.

Appendix DH

No rights are more highly regarded at the University of Georgia than the First Amendment guarantees of freedom of speech, freedom of expression, and the right to assemble peaceably. Such opportunities must be provided on an equal basis and adhere to the basic principle of the University's being neutral to the content and viewpoint of any expression. In order to achieve this objective, while at the same time ensuring that the University fulfills its educational mission, the University may regulate the time, place, and manner of expression as outlined in this policy. Through such regulation, the University can assure equal opportunity for all persons, preserve order within the University community, protect and preserve University property, and provide a secure

environment to individuals exercising freedom of expression.

. . . .

D. Additional Provisions. The following provisions apply to both reservation requests and spontaneous expressive activities.

. . . .

7. When assessing a reservation request or when informed of spontaneous expressive activities on campus, University personnel must not consider the content or viewpoint of the expression or the possible reaction to that expression, except to the extent such factors are relevant to assessing appropriate security measures. University personnel may not impose restrictions on individuals or organizations engaged in expressive activities due to the content or viewpoint of their expression or the possible reaction to that expression. In the event that other persons react negatively to this expression, University personnel (including University Police) shall take all necessary steps to ensure public safety while allowing the expressive activity to continue. University Police maintain ultimate discretion to end any activity if it is deemed to be a threat to campus safety.

. . . .

Appendix I

UNIVERSITY OF GEORGIA POLICE DEPARTMENT
BUREAU OF FIELD OPERATIONS TRAINING BULLETIN
The University of Georgia Police Department is committed to protect and provide Professional and Dedicated public service to the University Community with Courage, Dependability and Integrity

Police Response to Free Speech Issues 4/10/2015

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion; or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Law enforcement personnel should continually review constitutional issues that impact our profession. One of those constitutional issues involves police response to First Amendment freedom of speech situations. The U.S. Supreme Court has made it quite clear that it firmly supports an individual or group's right to exercise free speech[i]. The purpose of this training bulletin is to explore the police response to free speech issues on the University of Georgia campus by examining issues and policies pertaining to freedom of speech for police personnel and supervisors.

GENERAL ISSUES

- **Message doesn't matter:** There can be many different motivations for people wishing to exercise their freedom of speech openly in a public forum. US Supreme Court Justice Breenan [sic] said, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."[ii] As police officers, we must be impartial, putting all personal feelings aside when dealing with such issues. Any attempts at censorship will likely be considered infringement on First Amendment rights. Remember, we address the actions of the messenger not the message itself.

- **We have a duty to protect also:** As the police, we have a dual legal duty to preserve all individuals' right to freedom of speech and to protect the welfare and safety of those involved in an expression of free speech. This extends to the safety of the speaker as well as the safety of those listening to the message.

- **Speak but don't touch:** While people can exercise freedom of expression, they don't get freedom of touch. Some actions, up to and including criminal conduct, are not acceptable and infringe on others' rights. Touching, impeding a person's free movement through an area or on a sidewalk, and getting in person's face (in a matter that leads you to believe a breach of peace is imminent) are not acceptable and probably require our intervention. The same can be said about threats of violence directed at a specific person that place that

person in fear for their safety. Remember, the First Amendment guarantees freedom of expression, not freedom to infringe upon another person's rights.

- **Act as if you are on camera, because you probably are:** It is not at all unusual for a person exercising his or her freedom of speech publicly to have another personal filming the speaker (often with professional video equipment). This footage can be used to publicize the speaker, or in many cases, to film the government's reaction to the speaker. If the government (i.e. law enforcement) interacts improperly with the speaker, that video can be used as detrimental evidence in a Federal lawsuit or as negative publicity against the police. Remember, be professional, be reasonable, and try as much as possible to be accommodating within policy to those wishing to exercise their freedom of expression.

- **Know, know, know the policy:** Information is often your best defense against any claims of First Amendment rights violations. If you know the policies of the University of Georgia, then explaining your action or inaction becomes much easier. Rest assured, the people exercising their free speech rights will intimately know our policy, so should you.

- **Involve a supervisor:** Most all free speech issues that arise for the UGA Police Department should be complaint generated rather than officer initiated. If a free speech issue does arise, a supervisor should always be

involved. This provides the officer with more support and helps ensure that a consistent message involving free speech issues gets disseminated. Free speech issues have a very high potential for litigation and often require a higher level of police command involvement than other incidents. In any situations where police action is eminent, supervisors will be following their chain of command prior to taking any action (absent any exigent circumstances that warrant immediate intervention).

UGA POLICE POLICY

Our policy regarding freedom of speech, freedom of expression and the right to assemble peaceably is outlined in UGA Police Standard Operating Procedures section 16-3, subsection D. See our SOP for specific language of the policy[iii]. Our policy also mirrors the University of Georgia Freedom of Expression policy[iv].

- **Designated Free Expression Areas:** Generally all public areas at the University of Georgia are free speech areas. The Tate Student Center Plaza and the Memorial Hall Plaza have specifically been designated as such and are available for reservation for anyone wishing to exercise freedom of expression. Use of those areas is scheduled through the Department of Student Activities. A reservation is not required.

. . . .

SUPERVISORS: DISCUSS WITH YOUR TEAMS

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[i] *Synder v. Phelps*, 562 U.S. (2011)
[ii] *Texas v. Johnson*, 491 U.S. 397 (1989)
[iii] UGA SOP – Chapter 16.04
[iv] UGA Freedom of Expression Policy (http://dos.uga.edu /policies/expression.html)

Appendix J
Red & Black

BREAKING: Preacher on UGA Campus arrested after reportedly elbowing student in the face

Charlotte Norsworthy @cfnorsworthy Oct 11, 2016

A man calling himself a saint was arrested Tuesday after elbowing a student while preaching outside of the Tate Student Center at the University of Georgia.

The man, his wife and two children preached outside of the Tate Student Center near Lumpkin Street, holding signs reading "You deserve hell" and reportedly telling passing students they were "sinners" and "whores."

The student who was hit, Keaton Law, said it was his "personal mission" to remove the preachers from campus.

"This man came to our campus yesterday with a couple of his buddies claiming to be saints, and they were just preaching hate," Law said. "And I don't think that's acceptable. We shouldn't be subjected to that kind of verbal abuse all day."

Law said since he only had one class today, he wanted to ensure the preachers were removed.

"I made it my mission. I said 'I'm going to drown them out. I'm going to talk over them,'" he said. "Eventually it just became too much for him and he elbowed me in the face and it pushed me."

Law said he plans to press charges.

“At that point he had broken the law,” he said. “And my mission was complete.”

The wife and two children collected their signs and began to walk up Lumpkin Street towards the Tate Student Center parking lot. The man’s wife declined to comment on the incident.

The Red & Black is in the process of obtaining a police report of the incident.