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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-3233

Fred Watson
Appellant

v.

Eddie Boyd, III and City of Ferguson, Missouri
Appellees

Appeal from U.S. District Court for the
Eastern District of Missouri - St. Louis
(4:17-cv-02187-JCH)

ORDER

The motion to stay the mandate is denied.

December 05, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

_____
/s/ Maureen W. Gornik

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-3233

Fred Watson
Plaintiff - Appellant

v.

Eddie Boyd, III; City of Ferguson, Missouri
Defendants - Appellees

Appeal from U.S. District Court for the
Eastern District of Missouri - St. Louis

(4:17-cv-02187-JCH)

JUDGMENT

Before SMITH, Chief Judge, GRUENDER, and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in part and remanded to the district court for proceedings consistent with the opinion of

this court.

October 21, 2024

Order Entered in Accordance with Opinion:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

_____
/s/ Maureen W. Gornik
United States Court of Appeals For the Eighth Circuit

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 22-3233

Fred Watson
Plaintiff - Appellant

v.

Eddie Boyd, III; City of Ferguson, Missouri
Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis

Submitted: January 10, 2024
Filed: October 21, 2024

Before SMITH, Chief Judge,[1] GRUENDER, and SHEPHERD, Circuit Judges.

SMITH, Chief Judge.

Following a police interaction between Fred Watson and Officer Eddie Boyd, III, at a Ferguson, Missouri park, Watson filed suit against the City of

[1] Judge Smith completed his term as chief judge of the circuit on March 10, 2024. *See* 28 U.S.C. § 45(a)(3)(A).

Ferguson, Missouri (City), and Officer Boyd for violation of his civil rights. *See* 42 U.S.C. § 1983. Against Officer Boyd, Watson alleged unlawful search and seizure, in violation of the Fourth and Fourteenth Amendments (Count I); unlawful retaliation, in violation of the First Amendment (Count II); and malicious prosecution, in violation of the Fourth and Fourteenth Amendments (Count III). Watson also alleged a municipal liability claim against the City (Count IV). The district court granted summary judgment to the defendants. Watson appeals. We affirm on all but the district court's grant of summary judgment on Watson's First Amendment use-of-force retaliation claim because a disputed question of fact remains as to that claim.

I. *Background*[2]

A. *Underlying Facts*

On August 1, 2012, Watson returned to his parked car after playing basketball at a City park. Watson rested in the running vehicle, with the air conditioner on and the driver's side window partially down.

Officer Boyd, at that time, was patrolling the park. He maintains that "a spate of recent car break-ins" had occurred. R. Doc. 100, at 1. According to

[2] We recite the facts in the light most favorable to Watson as the non-movant. *See Smith-Dandridge v. Geanolous*, 97 F.4th 569, 575 (8th Cir. 2024).

Officer Boyd, at approximately 8:17 p.m., he saw a parked vehicle with excessively tinted windows and no front license plate idling with its headlights on near an area where children were playing. "Both Missouri law and the Ferguson City Code of Ordinances ('City Code') restrict vision-reducing material applied to the windows and windshield of a car." *Watson v. City of Ferguson*, No. 4:17-cv-2187 JCH, 2022 WL 16569365, at *5 (E.D. Mo. Sept. 26, 2022) (citing Mo. Rev. Stat. § 307.173; City Code § 44-404). Missouri law also "requires, with certain exceptions not relevant here, that license plates be fastened to the front and rear of motor vehicles." *Id.* (citing Mo. Rev. Stat. § 301.130.5). Officer Boyd parked his car near the vehicle and approached on foot.[3]

As he walked toward the vehicle, Officer Boyd unsnapped his gun holster. Watson "lower[ed] the window more as [Officer Boyd] approached the car so [they could] have an exchange" and so Officer Boyd could "see" Watson. R. Doc. 187-2, at 12.[4] Officer Boyd asked Watson, "[D]o you know why I pulled you over, do you know why I stopped you"? *Id.* Watson responded, "Sir, you didn't pull me over, you didn't

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[3] Officer Boyd asserts that he pulled his police cruiser adjacent to Watson's car; Watson maintains that Officer Boyd parked directly in front of his car, thereby blocking it.

[4] Officer Boyd contends that the vehicle's windows were so dark that he was unsure whether the car was occupied until he approached and saw movement inside. Officer Boyd further maintains that he was able to see only that Watson was not wearing his seatbelt.

stop me, I've been sitting here 10, 15 minutes in the park." *Id.* Officer Boyd then directed Watson to state his Social Security number. Watson refused. Officer Boyd responded with a series of "hypotheticals" to justify his request, including that Watson "could be a pedophile." *Id.* at 13.

"At some point[,] [Watson] asked [Officer Boyd for] his name and his badge number, [but] he refused . . . ." *Id.* at 15. Officer Boyd became "visibly upset" and told Watson, "[N]o, you don't need that, it will be on your ticket." *Id.* at 29. Watson replied, "[W]hat ticket[?] I have not broken any law." *Id.* Officer Boyd responded, "I think your tint is too dark[,] and I could give you a ticket for that." *Id.* Watson replied, "[S]ir, that's fine." *Id.* During this exchange, Watson's hands were on the steering wheel. After Officer Boyd informed Watson about the ticket, Watson removed his right hand from the steering wheel to reach for his phone located "next to the steering wheel . . . where the . . . navigation system [was]." *Id.* at 29. Officer Boyd then yelled, "[P]ut your f***ing phone down and put your hands on the steering wheel." *Id.* He told Watson, "[B]ecause of police safety[,] don't start reaching around grabbing stuff." *Id.* at 16. Watson complied and "put it down." *Id.* Watson returned his hands to the steering wheel. Officer Boyd called for backup. Officer Boyd then "pulled his gun" and said, "I can shoot you right here" "[a]nd nobody will give a s**t." *Id.* at 18.

Officer Boyd ordered Watson to "throw the keys out of the car." *Id.* at 18. He also asked for Watson's driver's license and registration. In his deposition,

Watson agreed that he "refused [Officer Boyd's] request to throw the keys out" of the car. *Id.* at 17. Watson replied that he could not throw the keys out of the window or retrieve the driver's license because his key fob[5] and driver's license were in a pair of pants folded up on the back seat. Watson told Officer Boyd that his registration was in the glove compartment. Officer Boyd ordered Watson to exit the vehicle, and "Watson admits that he did not exit the vehicle before backup came, for fear of his life." R. Doc. 194, at 8.

At some point, Officer Boyd asked Watson his name. *See id.* at 14 ("[Officer Boyd] asked me [Watson] about my name . . . This was after the pedophile [comment], this is after [he stated,] ['I can write you a ticket for tint . . . .']"); *see also id.* ("[Q.] All right. But now you recall him asking your name, is that right? Before he asked you to throw the keys out of the window, is that accurate? [A.] I [Watson] don't recall the sequence of those two things."). Watson replied, "Fred Watson." *Id.* at 14. Watson's legal name is "Freddie Watson"; however, he goes by "Fred Watson." *Id.* at 15. Officer Boyd also asked for Watson's address. Watson gave a Florida address but was actually living in Illinois at the time of the stop. According to Officer Boyd, he tried to locate the name "Fred Watson" in REJIS, a computer system that law enforcement agencies use to identify individuals, including locating their driver's license information. He could not locate "Fred Watson" in the database.

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[5] Watson's car started remotely with the key fob.

Once backup arrived, Watson exited the vehicle with his hands raised. After exiting, Watson closed the door with his foot because he did not want the police to search his vehicle. Officer "Boyd handcuffed Watson, squeezing the cuffs . . . , and placed [him] in the back of [Officer] Boyd's police car." R. Doc. 137, at 6 (Sealed). He then searched Watson's vehicle and the items therein, including a book bag, pants, the glove compartment, and the center console. According to the police report, Officer Boyd conducted the search incident to arrest. Officer Boyd located documentation indicating that Watson's legal name was "Freddie Watson," not "Fred Watson."[6] Officer Boyd located "Freddie Watson" in REJIS. The REJIS search indicated that Watson had "an expired operator's license through Missouri that had not been surrendered to another state." R. Doc. 187-1, at 31. Specifically, the search revealed that "Freddie D[.]" "Watson" had a "resident address" in "St[.] Louis, MO," where he had a "valid expired" Missouri driver's license that was never "surrendered." *Id.* at 37 (all caps omitted). The REJIS report listed a "current address" for Watson in "Fairview Hts[.], IL." *Id.* (all caps omitted). Another REJIS search completed shortly thereafter indicated that Watson's vehicle was registered and insured in Florida. *See id.* at 38. "It is undisputed that Watson's vehicle had a Florida license plate, and [it] did not have an inspection sticker."

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[6] Watson testified that he took pictures of the belongings that were in his car after the search. He said that he "point[ed] out [his] driver's license [on] the floor" and his "registration." R. Doc. 196-3, at 52. Watson further confirmed that his "current driver's license" was "issued out of . . . Florida." *Id.* at 79–80.

Watson, 2022 WL 16569365, at *2.

Officer Boyd issued Watson seven tickets: "no operator's license in possession; no proof of insurance; vision reducing material applied to windshield[7]; expired state operator's license; no seat belt; failure to register an out[-]of[-]state motor vehicle within 30 days of residence; and no vehicle inspection." *Id.* at *3. Additionally, Watson was charged with two more offenses written on complaints instead of tickets: making a false statement and failure to obey the orders of a police officer. Watson learned of these additional charges when his attorney received the complaints from the prosecutor.

Watson contested the charges. He subsequently received notice that the tickets were either stayed or paid off, despite Watson never pleading guilty to any of the charges or paying the fines. The City ultimately dismissed all the charges.

B. *Procedural History*

Watson filed suit in federal court. He brought the following claims against Officer Boyd under § 1983: (1) violation of his Fourth and Fourteenth Amendment rights to be free from unlawful searches, seizures, and force (Count I); (2) violation of his First Amendment right to be free from retaliation for

[7] "Although Officer Boyd had a device that measured tint on windows, he did not use the device to measure whether Watson's windows or windshield were tinted." *Id.* at *3 n.13.

requesting Officer Boyd's name and badge number (Count II); and (3) violation of his Fourth and Fourteenth Amendment right to be free from malicious prosecution (Count III). He also brought *Monell*[8] claims under § 1983 (Count IV) against the City for the following: (1) maintaining a custom of unconstitutional conduct by police officers; (2) failing to adequately screen Officer Boyd during the hiring process; (3) inadequately training Officer Boyd; and (4) failing to supervise or discipline Officer Boyd.

Officer Boyd and the City (collectively, "defendants") jointly moved for summary judgment. The district court concluded that Officer Boyd was not entitled to qualified immunity on Watson's claims of unlawful seizure, search, force, and retaliation because the parties disputed the facts in their entirety and a reasonable jury could find in favor of Watson. The district court granted summary judgment based on qualified immunity to Officer Boyd on Watson's malicious-prosecution claim. The court reasoned that the Eighth Circuit had not yet recognized such a claim under § 1983. Finally, the district court generally denied the City's motion for summary judgment on Watson's *Monell* claims based on its finding that Officer Boyd was not entitled to qualified immunity for the underlying conduct. Although the court granted summary judgment to the City on Watson's inadequate-training claim, it concluded that a reasonable jury could find that the City had maintained a custom of unconstitutional conduct,

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[8] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

failed to screen Officer Boyd, and failed to supervise or discipline Officer Boyd. As a result, it denied the City's request for summary judgment on those claims.

Officer Boyd and the City filed an interlocutory appeal of the district court's denial of qualified immunity and summary judgment. On appeal, we "pass[ed] no judgment on whether Officer Boyd is entitled to qualified immunity because the district court failed to undertake the necessary analysis." *Watson v. Boyd*, 2 F.4th 1106, 1114 (8th Cir. 2021). As a result, "we vacate[d] the district court's order and remand[ed] the case for a more detailed consideration and explanation of the validity, or not, of Officer Boyd's claim to qualified immunity in a manner consistent with [our] opinion." *Id.* We dismissed the City's appeal for lack of jurisdiction. *Id.*

On remand, the defendants filed a new motion for summary judgment based on qualified immunity and Watson's failure to establish constitutional violations. The district court granted the motion on all counts.

1. *Unlawful Search and Seizure (Count I)*

In Count I, Watson asserted that Officer Boyd is liable for an unlawful search and seizure. He asserted that Officer Boyd violated his Fourth Amendment rights by (1) stopping and arresting him without probable cause; (2) seizing him unreasonably by pointing a gun at his head at close range; (3) seizing him unreasonably by initiating charges against him; and (4) conducting an illegal search by ransacking

Watson's car after having unlawfully arrested him.

a. *Stop Without Probable Cause*

The district court assumed that a fact question remained as to whether Watson's front windshield was excessively tinted. But it found that fact question immaterial because no dispute existed that Watson's car lacked a front license plate. *See* Mo. Rev. Stat. § 307.173; City Code § 44-404. As a result, it granted summary judgment to the defendants on this issue.

b. *Arrest Without Probable Cause*

Officer Boyd asserted that he "had probable cause, or at least arguable probable cause, to believe that Watson had committed numerous offenses, any one or all of which justified his arrest." *Watson*, 2022 WL 16569365, at *6. The district court agreed and granted summary judgment on this issue. It analyzed the offenses as follows.

i. *Failure to Provide Driver's License and Proof of Insurance*

Officer Boyd argued that "he had probable cause or arguable probable cause to cite and arrest Watson both for failure to provide a driver's license and for failure to provide proof of insurance." *Id.* The court found it "undisputed that Officer Boyd asked Watson to provide his driver's license and proof of insurance, and that Watson failed to provide either." *Id.* Based on Watson's failure to provide this information, the court concluded that "Officer Boyd had at least arguable

probable cause to arrest Watson and issue the two citations." *Id.*

ii. *Windshield*

Officer Boyd claimed he had probable cause or arguable probable cause to arrest Watson based on his heavily tinted windows. The court found it "undisputed that Watson's vehicle windows contained tint." *Id.* at *7. Missouri law prohibits excessive tint on windows. The court reasoned that "even if Officer Boyd ultimately was wrong, . . . he still possessed at least arguable probable cause to issue the citation." *Id.*

iii. *Expired Driver's License*

Officer Boyd asserted that "he had probable cause or arguable probable cause to cite and arrest Watson for operating a vehicle under an expired state driver's license, because the REJIS system indicated that Watson's Missouri driver's license was expired and had not been surrendered to another state." *Id.* The court concluded that Officer Boyd had at least arguable probable cause to arrest Watson for an expired driver's license based on (1) his "determin[ation] that Watson's Missouri license had never been surrendered"—"as required to obtain a license in another state"—and had expired, and (2) Officer Boyd's inability "to locate a driver's license for Watson in any other state." *Id.*

iv. *Seat Belt*

Officer Boyd maintained that he had probable

cause or arguable probable cause to arrest Watson for "not wearing his seatbelt" while he was "sitting in his running vehicle, in a public park." *Id.* at *8. The court concluded that Officer Boyd had at least arguable probable cause to cite and arrest Wilson based on these undisputed facts.

v. *Vehicle Registration/Inspection Sticker*

Officer Boyd argued that "he had probable cause, or at least arguable probable cause, to believe that Watson's vehicle was required to be registered in the state of Missouri based on the information located in REJIS" "that Watson was a Missouri resident [with an expired Missouri driver's license] who had failed to register his vehicle under Missouri law." *Id.* at *9. Furthermore, he asserted "he had probable cause to believe Watson was in violation of [Missouri] law for failure to have an inspection approval sticker." *Id.* The court concluded that "Officer Boyd had ample evidence that any alleged Florida registration was invalid, as Watson's car should have been registered in Missouri." *Id.*

vi. *Failure to Obey*

Officer Boyd claimed that he had probable cause to arrest Watson for his refusal to comply with Officer Boyd's command "to throw his keys out of the window and exit his vehicle." *Id.* The court concluded "that Officer Boyd had at least arguable probable cause to believe Watson was disobeying his order" based on the undisputed fact that "Watson refused to comply with his demands." *Id.*

vii. *False Statement*

Officer Boyd argued that he had probable cause or arguable probable cause to arrest Watson for making two material false statements: "identif[ying] himself as 'Fred Watson' rather than 'Freddie Watson'" and "provid[ing] a false Florida address, when Watson knew he did not reside in Florida." *Id.* at *10. The court concluded that Officer Boyd had at least arguable probable cause to issue the citation to Watson for providing a false statement based on the undisputed facts. According to the court, although a fact issue may exist "as to whether Watson's answers were willfully or knowingly deceitful, that question does not affect whether Officer Boyd had at least arguable probable cause to believe Watson uttered at least one false declaration" based on the undisputed facts. *Id.*

c. *Excessive Force*

Watson alleged that when "he moved his hand from the top of the steering wheel to the console above the radio, in an effort to reach his phone and call the police[,] . . . . Officer Boyd directed Watson not to use the phone and to keep his hands on the steering wheel, allegedly for officer safety purposes." *Id.* Watson further alleged that Officer Boyd pulled his gun on Watson "after Watson put his phone back down." *Id.* at *11. Watson claimed that when Officer Boyd pulled his gun and pointed it at Watson for ten seconds, Officer Boyd told Watson that "he could shoot Watson right then and nobody would give a damn." *Id.* at *10.

The court concluded that Officer Boyd had "an objectively reasonable concern for officer safety or suspicion of danger" when he pulled his gun because he "was facing a non-compliant occupant of a vehicle who made a movement within the vehicle." *Id.* at *11. Alternatively, the court determined "that even if Officer Boyd did violate Watson's constitutional rights," "it was not clearly established that Officer Boyd's alleged act of pulling his gun for ten seconds on a non-compliant suspect constituted an unreasonable seizure under the Fourth Amendment." *Id.* at *11–12.

d. *Search*

Officer Boyd claimed his warrantless search of Watson's vehicle was lawful as a search incident to arrest or under the automobile exception. The court concluded that Officer Boyd's "warrantless search of Watson's vehicle was lawful as a search incident to arrest" because "Officer Boyd had probable cause or arguable probable cause to arrest Watson for, *inter alia*, . . . no operator's license in possession, no proof of insurance, and providing false declarations." *Id.* at *12. Alternatively, the court concluded that any violation of a constitutional right was not clearly established.

2. *Unlawful Retaliation (Count II)*

In Count II, Watson asserted "two distinct claims" for First Amendment retaliation. Appellant's Br. at 22. First, he asserted that Officer "Boyd unconstitutionally used force by pointing his gun at him and threatening to shoot him in retaliation for ...

Watson questioning him." *Id.* (citing R. Doc. 35, at 18; R. Doc. 196-1, at 36). Second, he asserted that Officer "Boyd cited [him] for violating several municipal ordinances without probable cause in retaliation for [his] questioning [of Officer Boyd] and [his] attempt[] to report the encounter." *Id.*

The district court did not address the retaliatory use-of-force claim; instead, it addressed only the retaliatory-arrest claim. Officer Boyd argued that "Watson's claim for First Amendment retaliation fails because Officer Boyd had probable cause to arrest and charge Watson." *Watson*, 2022 WL 16569365, at *13. The district court agreed and granted summary judgment to Officer Boyd.

3. Monell *Claims (Count IV)*

Based on its prior conclusions that Watson failed to state claims under § 1983 for unlawful search and seizure and unlawful retaliation, the court concluded that there could be no *Monell* liability on the part of the City.

II. *Discussion*

On appeal, Watson argues that the district court erroneously granted summary judgment to the defendants on his First Amendment retaliation claim in Count II, his Fourth Amendment unreasonable search claim in Count I, and his *Monell* claim in Count IV.

"Viewing the facts in the light most favorable to

the non-moving party, we review the district court's grants of summary judgment de novo." *Smith-Dandridge*, 97 F.4th at 575 (internal quotation marks omitted). "Whether a given set of facts entitles the official to summary judgment on qualified immunity grounds is a question of law. But if there is a genuine dispute concerning predicate facts material to the qualified immunity issue, there can be no summary judgment." *Francisco v. Corizon Health, Inc.*, 108 F.4th 1072, 1077 (8th Cir. 2024) (internal quotation marks omitted). "To decide whether an official is entitled to qualified immunity, we conduct a two-step inquiry: (1) whether the facts, viewed in the light most favorable to the plaintiff, demonstrate a constitutional or statutory deprivation; and (2) whether the right was clearly established at the time." *Nieters v. Holtan*, 83 F.4th 1099, 1105 (8th Cir. 2023) (internal quotation marks omitted), *cert. denied*, 144 S. Ct. 1349 (2024). We may "consider [these steps] in either order." *Presson v. Reed*, 65 F.4th 357, 365 (8th Cir. 2023) (internal quotation marks omitted). A right is clearly established if "the contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right. While prior cases need not have expressly determined that the action in question is unlawful, in the light of pre-existing law the unlawfulness must be apparent." *Id.* (internal quotation marks omitted).

A. *First Amendment Retaliation*

Watson alleges that Officer Boyd unlawfully retaliated against him in violation of his First Amendment rights after Watson requested Officer

Boyd's name and badge number. On appeal, he argues that the district court erroneously granted summary judgment in favor of the defendants on this claim by (1) erroneously concluding that probable cause existed to justify his arrest on his retaliatory-arrest claim and (2) failing to address his retaliatory use-of-force claim.

"Criticism of public officials lies at the very core of speech protected by the First Amendment." *Peterson v. Kopp*, 754 F.3d 594, 602 (8th Cir. 2014) (cleaned up), *abrogated on other grounds by Laney v. City of St. Louis*, 56 F.4th 1153, 1157 n.2 (8th Cir. 2023). "Official reprisal for protected speech offends the Constitution because it threatens to inhibit exercise of the protected right, and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (cleaned up).

> To succeed on a First Amendment retaliation claim [Watson] must demonstrate: (1) he engaged in protected First Amendment activity; (2) Officer [Boyd] took an adverse action that would chill a person of ordinary firmness from continuing in that protected activity; and (3) there was a but-for causal connection between [Watson's] injury and Officer [Boyd's] retaliatory animus.

Nieters, 83 F.4th at 1110. As to the third element, "a plaintiff must establish a 'causal connection' between the government defendant's 'retaliatory animus' and

the plaintiff's 'subsequent injury.'" *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (quoting *Hartman*, 547 U.S. at 259). "[T]he motive must *cause* the injury. Specifically, it must be a 'but-for' cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive." *Id.* at 398–99 (quoting *Hartman*, 547 U.S. at 260).[9]

1. *Retaliatory Arrest*

We will first address Watson's retaliatory-arrest claim. Watson argues that the district court erroneously granted summary judgment on this claim because Officer Boyd lacked arguable probable cause for five of the nine citations that he issued to Watson: (1) driving without a driver's license in his possession; (2) failing to register his vehicle; (3) failing to have an inspection sticker; (4) failing to obey; and (5) making a false statement.[10]

"For a number of retaliation claims, establishing the causal connection between a defendant's animus and a plaintiff's injury is straightforward." *Nieves*, 587 U.S. at 399. But "in other types of retaliation cases,"

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[9] "To the extent *Peterson* suggests that a *substantial factor* is enough, even in the absence of but-for causation, it is inconsistent with *Nieves* and no longer good law." *Laney*, 56 F.4th at 1157 n.2 (emphasis added) (cleaned up).

[10] Watson does not challenge the district court's conclusion that Officer Boyd had probable cause to issue him citations for violating the financial-responsibility ordinance, applying vision-reducing materials to his windshield, not wearing a seatbelt, and having an expired driver's license.

"the consideration of causation is not so straightforward." *Id.* "[R]etaliatory arrest claims involve causal complexities . . . ." *Id.* at 401. "[A]s a general rule, a plaintiff bringing a retaliatory-arrest claim 'must plead and prove the absence of probable cause for the arrest.'" *Gonzalez v. Trevino*, 144 S. Ct. 1663, 1665 (2024) (per curiam) (quoting *Nieves*, 587 U.S. at 402).

"Probable cause exists when the totality of the circumstances at the time of the arrest are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense." *Brown v. City of St. Louis*, 40 F.4th 895, 900 (8th Cir. 2022) (internal quotation marks omitted). Courts "determine whether an officer had probable cause for an arrest" by "examin[ing] the events leading up to the arrest, and then decid[ing] whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause." *Id.* (internal quotation marks omitted). Whether probable cause exists to effectuate an arrest "depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer *at the time of the arrest*." *Id.* (internal quotation marks omitted). Probable cause "is an objective standard requiring that we afford officers substantial latitude in interpreting and drawing inferences from factual circumstances." *Id.* (cleaned up). The question is whether the "facts and circumstances [were] sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense." *Id.* (cleaned up). "[We] have assigned consideration of *actual* probable cause to our constitutional violation prong analysis . . . ." *Id.*

at 901.

Distinct from the legal concept of "probable cause" is "arguable probable cause." *Id.* (recognizing that the terms "are not interchangeable"). "*[A]rguable* probable cause exists" "where the officers act on a mistaken belief that probable cause exists, if that mistake is objectively reasonable." *Id.* at 900–01 (internal quotation marks omitted). We consider whether arguable probable cause exists as "part of the resolution of qualified immunity's second prong, the clearly established prong." *Id.* at 901; *see also id.* ("[W]e have . . . reserv[ed] any consideration of *arguable* probable cause for our clearly established prong analysis."). "[N]o arguable probable cause" exists when "the state of the law at the time of the arrests was clearly established such that a reasonable person would have known there was no probable cause to arrest the plaintiffs." *Id.* (cleaned up).

"In sum, even if an officer arrests an individual without *actual* probable cause—in violation of the Constitution—he has not violated that individual's clearly established rights for qualified immunity purposes if he nevertheless had *arguable* probable cause to make the arrest." *Id.* (internal quotation marks omitted). Here, Watson argues that Officer Boyd lacked even *arguable* probable cause to issue the challenged citations. We disagree and affirm the district court's grant of summary judgment on the retaliatory-arrest claim.

a. *Driver's License*

Watson first asserts that Officer Boyd lacked arguable probable cause to issue the "suspended license citation" because Officer "Boyd had ample information that proved . . . Watson had a valid and current Florida driver's license." Appellant's Br. at 30. Specifically, Watson points to Officer Boyd's (1) REJIS search showing that Watson had a valid Florida driver's license, and (2) discovery of Watson's Florida driver's license during his search of Watson's car. *Id.*

As a threshold matter, Watson was not charged with having a suspended license but instead with driving without a driver's license in his possession. *See* R. Doc. 196-11, at 2. City Code § 44-81(a) provides that "[i]t shall be unlawful for any person to drive any motor vehicle . . . in the city unless such person shall have a driver's license . . . as required by state law, and shall have such license in possession at all times while so driving on the streets of the city." R. Doc. 187-4, at 5. Further, City Code § 44-81(c) provides that "[f]ailure to produce a driver's . . . license upon lawful demand shall give a police officer probable cause to arrest the driver." *Id.*

"[W]e have held that asking for [a] driver's license and registration papers is a reasonable part of the investigation following a justifiable traffic stop." *United States v. Smart*, 393 F.3d 767, 771 (8th Cir. 2005) (citing *United States v. Clayborn*, 339 F.3d 700, 702 (8th Cir. 2003) ("We have consistently held that a reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration." (cleaned up)); *United States v. Jones*, 275 F.3d 673, 680 (8th Cir. 2001) ("Once a car is lawfully

stopped, the police may request the driver's license and registration.")).

As the district court recognized, "It is undisputed that Officer Boyd asked Watson to provide his driver's license and proof of insurance, and that Watson failed to provide either." *Watson*, 2022 WL 16569365, at *6; *see also* R. Doc. 187-2, at 18 (stating that when Officer Boyd asked for Watson's "[driver's] license and registration," Watson kept his hands on the steering wheel and "told him it's in the back, [the] license is in [the] pants in the back [of the car]"). It was only during the search of Watson's vehicle that Officer Boyd located documentation with Watson's legal name on it. With this name, Officer Boyd was able to locate Watson in REJIS. Results showed that Watson had an valid expired Missouri driver's license.

Watson argues that, during the search, Officer Boyd found Watson's Florida driver's license. He contends that because Officer Boyd knew that Watson had a Florida driver's license, Officer Boyd lacked probable cause to cite him for *not* having a valid driver's license. But, based on the undisputed facts, Officer Boyd at least had arguable probable cause to believe that Watson's Florida driver's license was *not* valid. A REJIS search completed at 9:04 p.m. revealed that "Freddie D[.]" "Watson" had a "resident address" in "St[.] Louis, MO," where he had a "valid expired" Missouri driver's license that was never "surrendered." R. Doc. 187-1, at 37 (all caps omitted). The REJIS report listed a "current address" for Watson in "Fairview Hts[.], IL." *Id.* (all caps omitted). Another REJIS search completed at 9:46 p.m. indicated that

Watson's vehicle was registered and insured in Florida. *See id.* at 38. But it also listed Watson's Illinois address. *See id*. Officer Boyd, who stopped Watson in Missouri, testified that because Watson "had an expired [Missouri driver's] license," he "believed that [Watson] was a Missouri resident." R. Doc. 187-1, at 21. The REJIS searches supported this belief. As the defendants correctly note, "Had Officer Boyd been correct [that Watson was a Missouri resident], Watson would not have had a valid [Florida] driver's license because he was not a resident of Florida." Appellee's Br. at 22 (citing Mo. Rev. Stat. § 302.080(2) (providing that "[a] *nonresident* who is at least sixteen years of age and who has in his immediate possession a valid [driver's] license issued to him in his home state or country" is "exempt" from Missouri's license law (emphasis added)).[11]

As a result, we conclude that at least arguable probable cause existed for driving without a driver's license.

b. *Vehicle Registration/Inspection Sticker*

Watson next argues that Officer "Boyd . . .

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[11] In fact, the record shows that Watson was neither a resident of Missouri *nor* Florida at the time of the encounter; he resided in Illinois. *See* R. Doc. 187-2, at 28. Watson had not resided in Florida since 2005. *See id.* at 6. Under Illinois law, new residents have 90 days to obtain an Illinois driver's license, at which time their out-of-state license is no longer valid. 625 Ill. Comp. Stat. § 5/6-102(7). Thus, Watson's Florida driver's license would not have been valid at the time of the event.

lacked arguable probable cause to charge [him] with not having a Missouri inspection or registration, as he . . . had ample information that proved [his] car was lawfully registered in Florida, and had no information that suggested the car had to be registered and inspected in Missouri." Appellant's Br. at 31. Specifically, he asserts that REJIS shows that his "car was lawfully registered and insured and Florida," he "had a valid Florida license plate," he "provided his Florida address to [Officer] Boyd upon request," and Officer "Boyd found [Watson's] valid Florida registration when . . . searching his car." *Id.*

Under Missouri law, "[a]pplication for registration of a motor vehicle not previously registered in Missouri . . . and previously registered in another state shall be made within thirty days after the owner of such motor vehicle has become a resident of this state." Mo. Rev. Stat. § 301.100.3. Additionally, City Code § 44-387 provides that "[i]t shall be unlawful for any person to operate or park a motor vehicle on any roadway in this city unless there is an unexpired, valid state license plate . . . registered to that vehicle and displayed on such vehicle in accordance with state law." R. Doc. 187-4, at 5.

Missouri law also requires that the owner of every vehicle required to be registered in Missouri "shall submit such vehicles to a biennial inspection of their mechanism and equipment . . . and obtain a certificate of inspection and approval and a sticker." Mo. Rev. Stat. § 307.350.1; City Code § 44-406(b) likewise requires "[a]ll motor vehicles . . . [to] display current inspection stickers as required by state law."

R. Doc. 187-4, at 9.

It is undisputed that, at the time he was stopped, Watson was driving a car in Missouri that had a Florida license plate. Watson told Officer Boyd that his name was "Fred Watson" instead of "Freddie Watson" and provided a Florida address. Officer Boyd was unable to locate "Fred Watson" in REJIS. After searching the vehicle and learning Watson's legal name, Officer Boyd again searched REJIS and learned that Watson had an expired Missouri driver's license that he had never surrendered. *See* R. Doc. 187-1, at 31. Watson's "resident address" was listed as "St[.] Louis, MO." *Id.* at 37 (all caps omitted). This search also showed a "current address" for Watson in "Fairview Hts[.], IL." *Id.* (all caps omitted). Finally, a subsequent REJIS search indicated that Watson's vehicle was registered and insured in Florida. *See id.* at 38. "It is undisputed that Watson's vehicle . . . did not have an inspection sticker." *Watson*, 2022 WL 16569365, at *2.

Given this conflicting information—Watson's resident address of St. Louis, Missouri, with an expired, non-surrendered Missouri driver's license; his current address of Fairview Heights, Illinois; and his vehicle registration in Florida—Officer Boyd had at least arguable probable cause to believe that Watson was a Missouri resident who failed to properly register his vehicle, in violation of Mo. Rev. Stat. § 301.100.1 and City Code § 44-387. For the same reasons, Officer Boyd had at least arguable probable cause to cite Watson for failing to have an inspection sticker, in violation of Mo. Rev. Stat. 307.350.1 and City Code §

44-406.

c. *Failure to Obey*

It is undisputed that Officer Boyd instructed Watson to "throw the keys out of the car," R. Doc. 187-2, at 18, and "exit the vehicle," R. Doc. 194, at 8, but Watson failed to do so. Section 29-16 of the City Code makes it unlawful for any person "to *willfully and knowingly* obstruct, resist, oppose or fail to obey a lawful command of any police officer or city official charged with enforcement of this Code." R. Doc. 187-4, at 3 (emphasis added).

On appeal, Watson argues that a fact question remains as to whether he "willfully and knowingly" disobeyed Officer Boyd. He asserts that the reason he failed to comply with Officer Body's commands is because Officer "Boyd had *just* ordered him to keep his hands on the steering wheel *under the threat of being shot*, and therefore his orders were conflicting and . . . Watson was complying with the earlier order out of fear for his life." Appellant's Br. at 38–39.

As the district court explained, Watson's subjective state of mind is irrelevant to the arguable probable cause analysis. *See Ehlers v. City of Rapid City*, 846 F.3d 1002, 1011 (8th Cir. 2017) ("[The officer] provided two warnings before executing the takedown procedure. Even accepting [the plaintiff's] account that he did not hear [the officer's] instructions, an arrestee's subjective motive does not bear on how reasonable officers would have interpreted his behavior."). Watson admittedly did not obey Officer

Boyd's commands. Thus, Officer Boyd had at least arguable probable cause to issue the citation for failure to obey.[12]

d. *False Statement*

Watson argues that Officer Boyd lacked arguable probable cause to charge him with making a false statement. Specifically, he argues that (1) the district court failed to recognize that he was charged with "false reports" instead of "false statements," (2) no reasonable officer would have believed that Watson was making a false statement by identifying himself as "Fred Watson" instead of "Freddie Watson," and (3) he

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[12] Watson alternatively argues that even if arguable probable cause exists for his arrest for failure to obey, "the 'narrow' exception to the probable cause requirement [applies]: 'where officers have probable cause to make arrests, but typically exercise their discretion not to do so.'" Appellant's Br. at 40 (quoting *Nieves*, 587 U.S. at 406). Under the *Nieves* exception, "[t]he existence of probable cause does not defeat a plaintiff's claim if he produces 'objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been.'" *Gonzalez v. Trevino*, 144 S. Ct. 1663, 1665–66 (2024) (per curiam) (quoting *Nieves*, 587 U.S. at 407). Here, Watson has produced no such objective evidence. *Cf. id.* at 1667 (holding former city council member's survey of past decade's misdemeanor and felony data for the county in which city was located, which purportedly showed that Texas's anti-tampering statute had never been used in the county to criminally charge someone for trying to steal a nonbinding or expressive document, was a permissible type of objective evidence for the council member to produce to show that the existence of probable cause to arrest did not defeat her First Amendment retaliation claim).

did not knowingly make a false statement.

We first address Watson's contention that a fact dispute remains over whether he was charged with making a false statement or a false report. The record shows that on the date of Watson's arrest—August 1, 2012—Officer Boyd submitted an "Offense/Incident Report." R. Doc. 194-3, at 1. It lists the "Type of Incident" as "Failure to obey, obstructing, resisting, etc. [a] city official." *Id.* (all caps omitted). The report states, in relevant part:

> [Watson] refused to exit the vehicle and after the 5th time of instructing him to exit the vehicle he was advised he was under arrest for "Fail[ure] to Obey an Officer" and that if he didn't exit the vehicle he would be tased. He raised his window up and moments later reluctantly exited the vehicle where he was taken into custody and all resisting ceased. After placing him into handcuffs he kicked his driver's door closed in an attempt to lock it as if he were trying to conceal something. The door did not lock and a *search incident to arrest revealed his real name was: Freddie Watson* . . . .
>
> *Watson was additional[ly] charged with making a ["]False Statement[."]* It should be noted a REJIS computer check of Freddy [sic] Watson revealed no record of an operator's license through Florida, Illinois, or Missouri.

> A REJIS check of Freddie Watson revealed an ["]Expired Operators License["] through Missouri that had not been surrendered to another state.

Id. at 2–3 (emphases added) (spacing altered).

Like the report, the complaint for the false statement charge is dated "8/1/12" in the upper right-hand corner. R. Doc. 196-13, at 2. In the complaint, Officer Boyd wrote: "False Statement—Watson gave a false name after advising he did not have his identification on him. He later said his military ID was in the vehicle he tried to secure before being taken into custody." *Id.* And the bond form dated "8-2-12" that Watson admitted receiving when he was released lists all nine of the citations, including the false statement charge. R. Doc. 205-2, at 21.[13]

A "Municipal Division Filing Memorandum" dated July 5, 2013, likewise states that Watson was charged with "False Declaration" in violation of City Code § 29-16. R. Doc. 205-8, at 11 (all caps omitted).

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[13] Contrary to the record, Watson argues that Officer "Boyd did not *charge* [him] with false statements until . . . *a day after [his] arrest*," Appellant's Br. at 43 (first emphasis added). In actuality, Watson did not *learn of* the charges of making a false statement and failure to comply until later. *See* R. Doc. 196-3, at 58 ("Well, I wasn't given [the] tickets [for making a false statement and failure to comply] up front and when I went to complain I found out about them later when I got a lawyer and that's again when I first found out about those two tickets." (emphasis added)).

Stephanie Karr, the City's prosecuting attorney, testified that "false statement" and "false declaration" are interchangeable. R. Doc. 205-8, at 4 ("It's sometimes referred to as false declaration or something.")

The Ferguson Municipal Court's criminal case docket, printed on May 31, 2016, is the only record that shows Watson was charged with "False Reports," in violation of City Code § 29.21. R. Doc. 197-14, at 2 (all caps omitted). Watson faults the district court for not analyzing whether Officer Boyd would have had probable cause to issue a citation to him under this provision.

We discern no error. First, the record shows that *Officer Boyd* listed the charge as "false statement" in both his report and the complaint. Watson has produced no evidence that *Officer Boyd* had control over the listing of the charges on the criminal case docket. Second, the relevant documents are the *charging* documents. In her deposition, Karr confirmed that Watson was "charged" with "false declaration." *See* R. Doc. 205-8, at 4. As a result, there is no genuine dispute of material fact as to whether *Officer Boyd* arrested Watson for, *inter alia*, making a "false statement."

Next, we consider whether a reasonable officer would have believed that Watson was making a false statement by identifying himself as "Fred Watson" instead of "Freddie Watson." Consistent with Officer Boyd's report and complaint listing the offense as "false statement," the Municipal Division Filing

Memorandum lists the offense as "False Declaration" in violation of City Code § 29-16. R. Doc. 205-8, at 11. As previously discussed, City Code § 29-16 makes it unlawful for any person "to willfully and knowingly obstruct, resist, oppose or fail to obey a lawful command of any police officer or city official charged with enforcement of this Code." R. Doc. 187-4, at 3.

There is no dispute that Officer Boyd asked for Watson's name and address and that, in response, Watson told Officer Boyd that his name was "Fred Watson"—as opposed to "Freddie Watson"—and gave him a Florida address. Watson did not provide Officer Boyd with an alternative name. Watson was unable to locate "Fred Watson" in REJIS. Only after conducting the vehicle search and finding Watson's documentation did Officer Boyd learn that Watson's legal name was "Freddie Watson," not "Fred Watson." Thereafter, Officer Boyd conducted another REJIS search with this name and was able to retrieve Watson's information. That search showed that "Freddie Watson" did not have a Florida address but instead had a "resident address" in "St[.] Louis, MO," and a "current address" in "Fairview Hts[.], IL." R. Doc. 187-1, at 37 (all caps omitted). Based on this conflicting information, Officer Boyd had arguable probable cause to believe that Watson did not obey his command to provide him with his name and address but instead attempted to mislead Officer Boyd by providing his non-legal name and address that was not his resident address or current address.

Finally, we can easily dispense of Watson's argument that a fact dispute remains over whether he

knowingly made a false statement when he provided Officer Watson with his commonly used name of "Fred Watson" instead of his legal name of "Freddie Watson." As explained *supra*, Watson's subjective state of mind is irrelevant in analyzing arguable probable cause. *See Ehlers*, 846 F.3d at 1011.

2. *Retaliatory Use of Force*

Watson argues that the district court ignored his use-of-force retaliation claim and that he provided sufficient evidence to withstand summary judgment on this claim. The defendants respond that "[a]lthough the [d]istrict [c]ourt did not explicitly address Watson's claim for retaliatory use of force, the [d]istrict [c]ourt correctly found in favor of Officer Boyd on Count II, and that decision should be affirmed." Appellees' Br. at ii.

Because the district court did not consider Watson's retaliatory use-of-force claim, we consider whether Watson produced sufficient evidence to withstand summary judgment on the claim.

> To establish a violation of the First Amendment based on the retaliatory use of force, a plaintiff must show that (1) []he engaged in protected activity, (2) the officer used force that would chill a person of ordinary firmness from continuing the protected activity, and (3) the use of force was motivated by the exercise of the protected activity.

Welch v. Dempsey, 51 F.4th 809, 811 (8th Cir. 2022).

"[C]riticizing a police officer and asking for his badge number is protected speech under the First Amendment" and therefore satisfies the first element of a retaliatory use-of-force claim. *Peterson*, 754 F.3d at 602. Here, Watson "asked [Officer Boyd for] his name and his badge number, [but] he refused." R. Doc. 187-2, at 15. The first element of a retaliatory use-of-force claim is satisfied.

The second element of a retaliatory use-of-force claim is "[t]he ordinary-firmness test." *Garcia v. City of Trenton*, 348 F.3d 726, 728 (8th Cir. 2003). "The test is an objective one, not subjective." *Id.* at 729. It "is well established in the case law, and is designed to weed out trivial matters from those deserving the time of the courts as real and substantial violations of the First Amendment." *Id.* at 728 (citing *Bart v. Telford*, 677 F.2d 622 (7th Cir. 1982)). "In applying this 'test,'" we remain "mindful" that "[t]he effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights it need not be great in order to be actionable." *Id.* at 729 (quoting *Bart*, 677 F.2d at 625). Construing the facts in the light most favorable to Watson, he has raised a genuine issue of material fact as to whether Officer Boyd's actions chilled Watson's speech. Under Watson's account of the events, Officer Boyd's action of pulling a gun on Watson and telling him that he could "shoot you right here" "[a]nd nobody will give a s**t" easily satisfies the ordinary firmness test. *See, e.g.*, *Peterson*, 754 F.3d at 602 ("[The defendants] . . . do not deny that pepper spraying someone in the face would

chill a person of ordinary firmness." (internal quotation marks omitted)); *Garcia*, 348 F.3d at 729 (holding that receiving several parking tickets totaling just $35.00 would chill a person of ordinary firmness); *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002) (holding plaintiff stated a retaliation claim that would chill a person of ordinary firmness with allegations that officers stopped his car and detained him for an unreasonable time, "allegedly with their guns drawn during part of the traffic stop, and ultimately issued only a minor traffic citation that was later dismissed").

To satisfy the final element of a retaliatory use-of-force claim, Watson must produce evidence that Officer Boyd's use of force was motivated by Watson's exercise of his constitutional rights. *See Welch*, 51 F.4th at 811. Viewing the facts in the light most favorable to Watson, he has raised a genuine issue of material fact as to retaliatory motive. Watson testified that he asked Officer Boyd for his name and badge number, but Officer Boyd refused to provide the information. He described Officer Boyd as "visibly upset" in response to Watson's question. R. Doc. 187-2, at 29. After Watson removed his hands from his steering wheel to reach for his cell phone and Officer Boyd instructed him to put the phone down and place his hands back on the steering wheel, Watson complied. Crucially, according to Watson's testimony, it was *after* he had already complied with Officer Boyd's command that Officer Boyd "pulled his gun" and said, "I could shoot you right here" "[a]nd nobody will give a s**t." *Id.* at 18. Based on these facts, a reasonable factfinder could conclude that retaliation was a but-for cause of Officer Boyd pulling his weapon

on Watson. *See Peterson*, 754 F.3d at 603 ("Moments before [the officer] used the pepper spray, [the plaintiff] had asked for [the officer's] badge number. Temporal proximity is relevant but not dispositive. Here, [the plaintiff] went beyond the timing of events, explaining that [the officer] engaged in a conversation with him about his badge number. [The officer] refused to give [the plaintiff] his badge number . . . ." (cleaned up)).

The defendants point out that "Watson [has] not challenge[d] the [d]istrict [c]ourt's ruling that Officer Boyd was entitled to qualified immunity on Watson's Fourth Amendment use of force claim, wherein the court found that the pulling of a gun for ten seconds on a non-compliant suspect did not constitute an unreasonable use of force." Appellees' Br. at 34. As a result, the defendants argue that Watson has failed to prove that the law was clearly established at the time of event "because this [c]ourt has never recognized a First Amendment right to be free from retaliatory use of force when that use of force is objectively reasonable under the circumstances." *Id.* at 37. They assert that a reasonable officer in Officer Boyd's position "could easily have concluded that just as having probable cause shields the officer from [a] First Amendment claim for retaliatory arrest or retaliatory charges, an objectively reasonable use of force shields the officer from a First Amendment retaliatory use of force claim." *Id.* at 38.

We have previously considered cases in which the plaintiff brought both a Fourth Amendment excessive force claim and a First Amendment

retaliatory use-of-force claim. *See Dreith v. City of St. Louis*, 55 F.4th 1145, 1148 (8th Cir. 2022) ("[The plaintiff] filed suit in federal district court, claiming that [the officer] had violated her Fourth Amendment right to be free from excessive force and that he had pepper-sprayed her in retaliation for the exercise of her First Amendment rights."); *Peterson*, 754 F.3d at 596 ("[The plaintiff] asserts that [the officer] arrested him without probable cause, used excessive force, and did so in retaliation for engaging in protected speech."). In *Dreith* and *Peterson*, the district court granted summary judgment to the officers on the Fourth Amendment excessive force claim. *See Dreith*, 55 F.4th at 1148 (affirming district court's grant of summary judgment on excessive force claim); *Peterson*, 754 F.3d at 60 (involving officer's interlocutory appeal of denial of qualified immunity on First Amendment retaliatory use-of-force claim wherein district court had also granted summary judgment to officer on Fourth Amendment excessive force claim). In both cases, we also held that the First Amendment retaliatory use-of-force claim survived summary judgment even when the Fourth Amendment excessive force claim did not.[14]

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[14] *See Dreith*, 55 F.4th at 1149 ("[The officer] contends that at the time he pepper-sprayed [the plaintiff], it was 'not clearly established that a use of force that does not violate the Fourth Amendment violates the First Amendment.' . . . [T]he argument does not undermine the district court's conclusion that [the plaintiff's] right to be free from a retaliatory use of force was clearly established at the time of the incident." (citation omitted)); *Peterson*, 754 F.3d at 602–03 ("We agree that [the officer] is entitled to qualified immunity on [the plaintiff's] retaliatory arrest

In this particular claim, Watson is "alleging retaliatory *use of force* in violation of the First Amendment." *Welch*, 51 F.4th at 812 (emphasis added). This type of claim is distinguishable from cases involving "a claim of retaliatory *arrest* under the First Amendment and an allegation of unreasonable seizure under the Fourth Amendment," which "concern seizures." *Id.* (first citing *Justice v. City of St. Louis*, 7 F.4th 761, 768–69 (8th Cir. 2021), then citing *Peterson*, 754 F.3d at 598). We acknowledge that "a First Amendment retaliatory *arrest* claim should not turn solely on the personal motive of the arresting officer" because "subjective intent" is not relevant "[i]n the Fourth Amendment context." *Id.* at 812–13 (alteration in original) (quoting *Nieves*, 587 U.S. at 403). "But if there is an argument for extending the *Nieves* no-probable-cause requirement beyond a claim of retaliatory Fourth Amendment seizure, . . . then [the defendants] ha[ve] not presented it." *Id.* at 813.[15]

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claim because, as detailed above, [the officer] had at least arguable probable cause for the arrest. However, [the plaintiff] also claims that [the officer] pepper sprayed him in retaliation for criticizing [the officer] and asking for his badge number. . . . Taking the evidence in the light most favorable to [the plaintiff], as we must for this summary judgment analysis, [the plaintiff] has presented affirmative evidence that [the officer] pepper sprayed him in retaliation for criticizing him and asking for his badge number.").

[15] The defendants note that we have declined to decide whether "arguable probable cause is an absolute defense to a First Amendment retaliation claim." *Molina v. City of St. Louis*, 59 F.4th 334, 354 (8th Cir. 2023). As Watson points out, "[t]hat is a distinct question from the one raised here." Appellant's Reply Br.

In summary, the district court erred in failing to address Watson's retaliatory use-of-force claim. Watson has presented sufficient evidence on this claim to withstand summary judgment.

B. *Unreasonable Search and Seizure*

Watson argues that "the district court erroneously held that [Officer] Boyd's warrantless search of [his] car was lawful when the evidence showed that . . . Watson was arrested for traffic offenses, and Supreme Court precedent establishes that arrests for traffic offenses cannot justify warrantless vehicle searches." Appellant's Br. at 20.

Warrantless searches "are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (internal quotation marks omitted). "[A] search incident to a lawful arrest" is one of those "exceptions to the warrant requirement" and "derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Id.* "Police may search a vehicle incident to a recent occupant's arrest *only* if [(1)] the arrestee is within reaching distance of the passenger compartment at the time of the search or [(2)] it is reasonable to believe the vehicle contains evidence from the offense of arrest." *Id.* at 351 (emphasis added).

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at 6 n.4. We need only decide whether Watson's retaliatory use-of-force claim survives summary judgment.

It is undisputed that Watson was handcuffed in the back of the patrol car at the time of the search; therefore, we need only address whether Officer Boyd reasonably believed that the vehicle contained evidence from the offense of arrest. "Under the second *Gant* exception, officers may conduct a warrantless search of a vehicle incident to arrest—even after the arrestee is restrained in the back of a patrol vehicle—when officers have a reasonable basis to believe the vehicle contains evidence related to the crime of arrest." *United States v. Stegall*, 850 F.3d 981, 984 (8th Cir. 2017); *see also Riley v. California*, 573 U.S. 373, 385 (2014) ("*Gant* added . . . an independent exception for a warrantless search of a vehicle's passenger compartment when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (internal quotation marks omitted)). "A permissible search incident to arrest may extend to the passenger compartment, including containers in the passenger compartment." *United States v. Campbell-Martin*, 17 F.4th 807, 815 (8th Cir. 2021).

"In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence." *Gant*, 556 U.S. at 343. In *Gant*, the Supreme "Court refused to apply the [search-incident-to-arrest] exception to the offense of driving with a suspended license." *Campbell-Martin*, 17 F.4th at 816 (citing *Gant*, 556 U.S. at 344).

> The *Gant* [C]ourt held that searching a car to find evidence of driving with a

> suspended license did not fall within the exception "[b]ecause police could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein."

Id. (quoting *Gant*, 556 U.S. at 344); *see also United States v. Hambrick*, 630 F.3d 742, 747 (8th Cir. 2011) ("[L]ike the defendant in *Gant*, Hambrick was arrested for driving with a suspended license, and therefore the second prong of *Gant* would not allow the officers to search the vehicle for evidence of the offense of arrest.").

We distinguished *Gant* in *Campbell-Martin*. There, an officer requested the identification of a vehicle's occupants. *Campbell-Martin*, 17 F.4th at 812. The driver and front seat passenger provided their names but denied having any identification. *Id.* at 812. The officer ran the name of the front seat passenger and learned that it was a false name, so the officer arrested him "for providing false identification information." *Id.* Another officer arrived to assist and asked the back seat passenger to look for the driver's identification in a purse located in the back seat. *Id.* From that identification, the officer learned that the driver had given a false name and arrested her "for providing false identification information." *Id.* The police performed a search incident to arrest "and found a backpack on the floor of the front-seat passenger area" containing drugs, cash, and paperwork addressed to the defendants. *Id.* After conditionally

pleading guilty, the defendants appealed the denial of their suppression motion challenging the search. *Id.* at 812–13. On appeal, they challenged, among other things, the legality of the police's warrantless search of the backpack. *Id.* at 815. They "d[id] not challenge the basis for or the legality of their arrest." *Id.* at 816 n.2.

The case was distinguishable from *Gant* based on "the offense of arrest—the offense of providing false identification information." *Id.* at 816. We held that "it was reasonable to believe that the vehicle and the backpack contained evidence of the offense of providing false identification information." *Id.* While the officers already knew that the defendants provided false identification prior to the search, we noted that the officers lacked the front seat passenger's "actual identification, which would help prove that [he] provided false identification." *Id.*; *see also id.* ("'[I]t [was] reasonable to believe the vehicle contain[ed] evidence of the offense of arrest' because police could have found evidence in the car and in the backpack relevant to the occupants providing false identification information, even though the officer already knew their real names." (second and third alterations in original) (quoting *Gant*, 556 U.S. at 351)). We determined that "[i]t was reasonable to think that his identification would be in the car because he had not given the officers any identification even after he was arrested." *Id.* The backpack was positioned at the front seat passenger's feet; thus, it "was a logical place to look for identification such as a driver's license, mail, receipts, credit cards, or checks." *Id.* We found "[n]othing in *Gant* prohibit[ing] the police from

searching for additional evidence of an offense." *Id.* (citing *Gant*, 556 U.S. at 343–44). "Considering the totality of the circumstances, we conclude[d] that the officers were permitted to search the car and the backpack as a search incident to arrest." *Id.* at 817.

Watson attempts to distinguish *Campbell-Martin* from his case on two bases. First, he asserts that "it is clear what crime justified the search in *Campbell-Martin*." Appellant's Br. at 47. By contrast, a genuine issue of material fact exists in this case as to which offense of arrest justified Officer Boyd's search of his vehicle. *See United States v. Webster*, 625 F.3d 439, 445 (8th Cir. 2010) ("[T]he record evinces a dispute regarding the nature of Webster's arrest, which impacts whether the officers had reason to believe the vehicle contained evidence of the *offense of arrest*." (internal quotation marks omitted)).

The district court "held that Officer Boyd had probable cause or arguable probable cause to arrest Watson for, *inter alia*, the following offenses: no operator's license in possession, no proof of insurance, and providing false declarations (for identifying himself as 'Fred Watson' rather than 'Freddie Watson' and providing a false Florida address)." *Watson*, 2022 WL 16569365, at *12. Watson argues that "no reasonable officer would believe [his] vehicle contained evidence related to the first two offenses, and therefore those could not be the bases for the search." Appellant's Br. at 43. He further argues that "if the third offense was the basis for the search, then that necessarily fails too because [Officer] Boyd did not charge [him] with false statements until *after* [he] had

attempted to lodge a complaint against [Officer] Boyd *a day after [his] arrest*." *Id.*

We will examine the record to determine whether the district court correctly concluded that Officer Boyd conducted the search incident to arrest based on, *inter alia*, Watson making a false statement. As explained *supra*, Officer Boyd's report— dated on the arrest date—provides that Watson was also charged with making a false statement. *See* R. Doc. 194-3 at 2–3. The complaint for the false statement charge—also dated on the arrest date—charges Watson with making a false statement; specifically, Watson giving Officer Boyd a "false name" after stating he did not have his identification. Based on the record, there is no genuine dispute of material fact as to the offenses for which Watson was arrested. All the contemporaneous documents from the day of the incident list nine charges, including the false-statement charge.[16]

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[16] Watson also argues that Officer Boyd was not searching the vehicle for the purpose of finding evidence to support the false-statement charge. But Officer Boyd's subjective state is irrelevant in evaluating whether the search-incident-to-arrest exception applies. *Cf. Bond v. United States*, 529 U.S. 334, 338, n.2 (2000) ("The parties properly agree that the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment. . . . [T]he issue is not his state of mind, but the objective effect of his actions."); *Arkansas v. Sullivan*, 532 U.S. 769, 771–72 (2001) (per curiam) (holding that a custodial arrest for a traffic violation and search incident to arrest do not violate the Fourth Amendment just because an officer had a subjective pretextual motivation for making the stop).

Second, Watson argues that *Campbell-Martin* is distinguishable because "it is clear *why* in *Campbell-Martin* the crime of false identification would justify a search incident to arrest"—"the officer had probable cause to believe that the suspects were lying about not having identification as they were trying to be purposefully evasive." Appellant's Br. at 47. By contrast, Watson maintains that he provided his "real name" to Officer Boyd and that Officer "Boyd found Mr. Watson in the REJIS database based on that name, with the only deviation being that Mr. Watson was listed as Freddie and not Fred." *Id.* (citations omitted).

There is no dispute that Watson told Officer Boyd that his name was "Fred Watson"—as opposed to "Freddie Watson"—prior to the search. Watson could not locate "Fred Watson" in REJIS. Officer Boyd then conducted the search, located Watson's documentation, and learned that his legal name was "Freddie Watson," not "Fred Watson." Thereafter, Officer Boyd conducted another REJIS search with this name and was able to retrieve Watson's information. Even if Officer Boyd had already determined from the first REJIS search that Watson provided him with a false name because it did not appear in REJIS, he still lacked Watson's "actual identification, which would help prove that [Watson gave a false name]." *Campbell- Martin*, 17 F.4th at 816.

Accordingly, we affirm the district court's dismissal of Watson's unreasonable search claim.

C. Monell *Claim*

The district court granted summary judgment to the City on Watson's *Monell* claim based on its conclusion that Officer Boyd did not violate any of Watson's constitutional rights. But we have determined that a genuine issue of material fact exists as to whether Officer Boyd used force against Watson for exercising his First Amendment right to request Officer Boyd's name and badge number. *See supra* Part II.A.2.

The defendants nonetheless assert that "*even if* Officer Boyd's actions did violate Watson's constitutional rights, Officer Boyd is still entitled to qualified immunity because those claimed rights were not 'clearly established.'" Appellee's Br. at 46. "As a result," the City argues, it "is entitled to summary judgment on its *Monell* claims because where a right is not clearly established, Watson cannot show the City's fault rose to the level of deliberate indifference." *Id.* at 46–47.

We disagree. It was clearly established at the time of the event that "the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (cleaned up). As a result, we reverse the grant of summary judgment on Watson's *Monell* claim.

III. *Conclusion*

Accordingly, we affirm the district court's grant of summary judgment on all claims except Watson's First Amendment retaliatory use-of-force claim and

remand for further proceedings on that claim.

GRUENDER, Circuit Judge, concurring in part and dissenting in part.

I respectfully dissent from Part II.A.2, which denies qualified immunity to Officer Eddie Boyd on Fred Watson's use-of-force retaliation claim, as well as Part II.C, which denies summary judgment to the City of Ferguson ("City") on Watson's *Monell* claim. I would affirm the district court's judgment in its entirety.

Officer Boyd is entitled to qualified immunity, unless Watson shows that a genuine dispute of material fact exists on whether (1) he engaged in protected activity, (2) Officer Boyd took adverse action against him that would chill a person of ordinary firmness from continuing in the activity, and (3) that there was a but-for causal connection between his injury and Officer Boyd's alleged retaliatory animus. *See Nieters v. Holtan*, 83 F.4th 1099, 1110 (8th Cir. 2023). If there exists an "obvious alternative explanation" for Officer Boyd's use of force, causation is missing. *Auer v. City of Minot*, 896 F.3d 854, 861 (8th Cir. 2018); *Laney v. City of St. Louis*, 56 F.4th 1153, 1158 (8th Cir. 2023). I agree with the court's analysis on (1) and (2). However, as to (3), the court believes that Officer Boyd is not entitled to qualified immunity because a reasonable factfinder could conclude that there exists a but-for causal connection between Watson's request for Officer Boyd's name and badge number and Officer Boyd's pointing of his firearm at Watson. *Ante*, at 26-27. In my view, there is no genuine dispute of material fact on the issue of

causation.

Causation is missing because there exists an "obvious alternative explanation" for Officer Boyd's use of force. *Auer*, 896 F.3d at 861. Watson testified that his hands were placed on his car's steering wheel when he asked for Officer Boyd's name and badge number. After Officer Boyd refused to provide Watson with this information, Watson removed his hands from the steering wheel and grabbed his phone, which was on the "console above the radio." According to Watson, Officer Boyd began "yelling and screaming [for Watson to] put the phone down" "because of police safety." Officer Boyd then called for backup and pointed his firearm at Watson. Thus, the "obvious alternative explanation" for Officer Boyd's use of force was the intervening act where Watson reached for his phone.

The court glosses over the existence of this intervening act, concluding that a genuine dispute of material fact exists because Watson had already returned his hands to the steering wheel by the time Officer Boyd pointed his firearm at him. *Ante*, at 26. However, this single act by Watson does not negate the rapid sequence of events that occurred prior to it. Watson admitted that Officer Boyd did not point his firearm at him immediately after he asked for Officer Boyd's name and badge number. It was only subsequent to that—after Officer Boyd observed Watson's aggressive hand motion for his phone—that Officer Boyd called for backup and pointed his firearm at Watson. The court does not properly consider this entire sequence of events and therefore takes a narrow view of the entire encounter. In doing so, the court

holds Officer Boyd to a higher standard than is required to obtain qualified immunity. *See District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018) (stating that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law").

The court also suggests that the temporal proximity between Watson's request for Officer Boyd's name and badge number and Officer Boyd's subsequent display of force creates a genuine dispute of material fact on causation. *Ante*, at 26-27. As an initial matter, temporal proximity, without more, does not allow for an inference of a retaliatory motive. *See Wilson v. Northcutt*, 441 F.3d 586, 592 (8th Cir. 2006) ("Temporal proximity is relevant but not dispositive."). But, even more importantly, the court focuses on the temporal proximity between Watson's request and Officer Boyd's subsequent display of force while simultaneously ignoring that Watson's act of reaching for his phone occurred even closer in time to that display of force. The entire sequence of events dispositively shows that Officer Boyd pointed his firearm at Watson due to Watson having reached for his phone. A reasonable factfinder could not conclude otherwise.

Officer Boyd was required to make a "split-second judgment[]" in a "tense, uncertain, and rapidly evolving" circumstance. *Shelton v. Stevens*, 964 F.3d 747, 752 (8th Cir. 2020). Because Officer Boyd's use of force was justified by the existence of the intervening act (Watson reaching for his phone), Officer Boyd is entitled to qualified immunity on Watson's use-of-force retaliation claim. Accordingly, there is also no basis to

hold the City liable on *Monell*. *See Edwards v. City of Florissant*, 58 F.4th 372, 376 (8th Cir. 2023) ("Absent a constitutional violation by a city employee, there can be no § 1983 or *Monell* liability for the City."). For these reasons, I respectfully dissent as to Parts II.A.2 and II.C of the court's opinion.

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FRED WATSON,
Plaintiff,

v. No. 4:17CV2187 JCH

CITY OF FERGUSON, MISSOURI, et al.,
Defendants.

JUDGMENT

In accordance with the Memorandum and Order entered this day and incorporated herein,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Defendants' Joint Motion for Summary Judgment is **GRANTED**, and Plaintiff's First Amended Complaint is **DISMISSED** with prejudice.

Dated this 26th Day of September, 2022.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FRED WATSON,
Plaintiff,

vs. Case No. 4:17CV2187 JCH

CITY OF FERGUSON, MISSOURI, et al.,
Defendants.

FILED UNDER SEAL
MEMORANDUM AND ORDER

This matter is before the Court on Defendants' Joint Motion for Summary Judgment, filed November 22, 2021. (ECF No. 185). The motion is fully briefed and ready for disposition.

BACKGROUND[1]

On August 1, 2012, Plaintiff Fred Watson

[1] In his Memorandum and Order addressing Defendants' initial Joint Motion for Summary Judgment, Judge Ronnie L. White of this Court granted Defendants' motion to strike from consideration allegations of Officer Boyd's misconduct after August, 2012, and the Department of Justice Report. (*See* ECF No. 158, PP. 6-7, 11-12). Watson has not asked the Court to reconsider this ruling, and the Court declines to do so at this time.

("Watson"), a Navy veteran, was sitting in his vehicle at Forestwood Park in Ferguson, Missouri, after playing basketball. (Plaintiff Fred Watson's Statement of Additional Material Facts in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment ("Watson's Additional Facts"), ¶¶ 1, 2). Watson was living in Illinois at the time, and had lived there since at least 2009, but previously had lived in Florida for several years. (*Id.*, ¶ 2 and Defendants' response thereto). While Watson claims the vehicle was lawfully registered in Florida, and Watson possessed a Florida driver's license, Defendants counter that the registration and license were invalid because Watson admittedly had not resided in Florida since 2005. (*Id.*, ¶ 5 and Defendants' response thereto). The vehicle was running, with the air conditioning on and the driver's side window at least part-way down. (*Id.*, ¶ 4 and Defendants' response thereto). The car further had tinted windows, and while Watson claims the tint was legal in Florida, he admits he did not know if the tint violated Missouri law. (*Id.*, ¶ 6 and Defendants' response thereto).

On that day Defendant Eddie Boyd III ("Officer Boyd") was patrolling at Forestwood Park, where there had been at least one recent car break-in. (Defendants' Joint Statement of Undisputed Material Facts ("Defendants' Facts"), ¶ 2).[2] According to Defendants, at approximately 8:17 p.m. Officer Boyd observed a

[2] In his police report, Officer Boyd claimed that there had been several break-ins by a black vehicle with tinted windows. (Watson's Additional Facts, ¶ 7).

vehicle with excessively tinted windows and no front license plate, backed into a parking space against a tree line, idling, headlights on, near a playground where children were playing. (*Id.*, ¶ 3).[3] He parked his car near Watson's vehicle, and approached on foot. (*Id.*, ¶ 4).[4] Defendants maintain the windows on Watson's car were so dark that Officer Boyd was unsure whether the car was occupied until he approached and saw movement inside. (*Id.*, ¶ 5).[5] According to Watson, Officer Boyd unsnapped the holster to his gun as he approached, while asking Watson if he knew why he had been pulled over. (Watson's Additional Facts, ¶ 17).

Watson rolled his window down further in order to speak with Officer Boyd. (Watson's Additional Facts, ¶ 19). While Watson maintains Officer Boyd

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[3] Watson counters by claiming that Officer Boyd did not notice the tint until well into his conversation with Watson, and that his windows were not excessively tinted, but rather legally tinted in the state of Florida where the car was registered. (Watson's response to Defendants' Facts, ¶ 3). Further, while Watson denies there was a playground in the immediate vicinity of his car, he admits there were families playing in the area. (Watson's Additional Facts, ¶ 12).

[4] While Defendants maintain Officer Boyd merely pulled his police cruiser adjacent to Watson's car, Watson claims he parked directly in front, thereby blocking Watson's car. (Defendants' Facts, ¶ 4; Watson's Additional Facts, ¶¶ 14, 15).

[5] Watson admits that he obtained tinted windows in an effort to reduce racial profiling. (Watson's response to Defendants' Facts, ¶ 5).

could then see into his vehicle, Defendants maintain he was able to see only that Watson was not wearing a seatbelt. (*Id.*, ¶ 20 and Defendants' response thereto). Officer Boyd requested that Watson provide his pedigree information, including his name and address, driver's license and proof of insurance. (Defendants' Facts, ¶ 8).[6] Although Watson never provided his driver's license or proof of insurance, he claims it was because he feared for his life and therefore kept his hands on the steering wheel. (*Id.*, ¶¶ 9, 10 and Watson's response thereto). Watson told Officer Boyd his name was "Fred Watson", and provided a Florida address, the one on his driver's license and vehicle registration, even though he currently was living in Illinois. (*Id.*, ¶¶ 11, 12 and Watson's response thereto).[7] Officer Boyd then asked that Watson provide his social security number, which Watson declined to do. (Watson's Additional Facts, ¶ 21). Defendants assert Officer Boyd attempted to locate Watson's name in REJIS, a computer system used by law enforcement agencies to identify individuals, including locating their driver's license information, but was unable to locate an individual named "Fred Watson" with the information provided

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[6] In his police report, Officer Boyd stated that Watson became enraged as he attempted to retrieve his pedigree information. (Watson's Additional Facts, ¶ 16 and Defendants' response thereto).

[7] Again, according to Defendants Watson had not lived in Florida since 2005. (Defendants' Facts, ¶ 12).

by Watson. (Defendants' Facts, ¶¶ 13, 14).[8] Officer Boyd eventually informed Watson he could and would be cited for having illegally tinted windows. (Watson's Additional Facts, ¶ 24 and Defendants' response thereto).

Watson claims he then asked Officer Boyd for his name and badge number, which Officer Boyd refused to provide. (Watson's Additional Facts, ¶ 30). Officer Boyd allegedly informed Watson that the information would be on Watson's tickets. (*Id.*, ¶ 31). Watson alleges that due to this harassment, he moved his hand from the top of the steering wheel to the console above the radio, in an effort to reach his phone and call the police. (*Id.*, ¶¶ 32, 33). Officer Boyd directed Watson not to use the phone and to keep his hands on the steering wheel, allegedly for officer safety purposes. (Defendants' Facts, ¶ 18). While Watson claims that at this time Officer Boyd pulled out his gun and pointed it at Watson for ten seconds or so before re-holstering it, Officer Boyd denies ever pulling a gun on Watson. (*Id.*, ¶ 19). Watson further claims Officer Boyd said he could shoot Watson right then and nobody would give a damn. (Watson's Additional Facts, ¶ 41).

Officer Boyd then directed Watson to throw his keys out of the car window. (Defendants' Facts, ¶ 20;

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[8] According to Defendants, Freddie Watson is Watson's legal name, while Fred Watson is a nonlegal name that Watson knew would not appear in the system. (*See* Defendants' response to Watson's Additional Facts, ¶ 25).

Watson's Additional Facts, ¶ 42). The parties agree Watson did not comply with this directive, but Watson claims it was because his keys were in the backseat of his car and he did not want to remove his hands from the steering wheel because he feared for his life. (Defendants' Facts, ¶ 20; Watson's Additional Facts, ¶¶ 43, 44). Officer Boyd claims Watson also refused to follow his order to exit his vehicle without explanation. (Defendants' Facts, ¶ 21).[9] Officer Boyd eventually called for backup, and two Ferguson officers arrived on the scene. (*Id.*, ¶ 22).

Once the backup officers were present, Watson exited his vehicle. (Defendants' Facts, ¶ 23; Watson's Additional Facts, ¶ 52). As he did so, Watson closed the door with his foot because he did not want the police to search his vehicle. (Watson's Additional Facts, ¶ 53).[10] Officer Boyd handcuffed Watson, allegedly squeezing the cuffs to cause pain, and placed him in the back of Officer Boyd's police car. (*Id.*, ¶ 55). He then entered Watson's vehicle and searched his book bag, pants, glove compartment, and center console. (Defendants' Facts, ¶ 25).[11] During the search, Officer Boyd located documentation indicating that

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[9] Again, Watson claims he refused to exit his car out of fear for his safety. (Watson's response to Defendants' Facts, ¶ 21).

[10] Officer Boyd testified that he interpreted Watson's movement as an attempt to conceal something in the vehicle. (Defendants' Facts, ¶ 24).

[11] Officer Boyd's police report states that he conducted the search incident to arrest. (Watson's Additional Facts, ¶ 54).

Watson's legal name was Freddie Watson, not Fred Watson. (*Id.*, ¶ 27). With this name Officer Boyd was able to locate Watson in REJIS, although the parties dispute the contents of the information he found. (*Id.*, ¶ 28). While Officer Boyd asserts REJIS records indicated Watson was a Missouri resident, and had never surrendered his Missouri license, which was expired[12], Watson claims the search identified his Illinois address, his Florida residency, and the lawful registration and insurance of his vehicle in Florida. (*Id.*; Watson's Additional Facts, ¶ 57). It is undisputed that Watson's vehicle had a Florida license plate, and did not have an inspection sticker. (Watson's Additional Facts, ¶ 72; Defendants' Facts, ¶ 30).

When Watson was released, he was given seven municipal tickets from the City of Ferguson, as follows: no operator's license in possession; no proof of insurance; vision reducing material applied to windshield[13]; expired state operator's license; no seat belt; failure to register an out of state motor vehicle within 30 days of residence; and no vehicle inspection. (Watson's Additional Facts, ¶ 80). According to Watson, a scrawled signature is illegible in the

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[12] Officer Boyd claims he was not able to locate a valid driver's license for Watson in Missouri, Illinois or Florida, although the car was registered in Florida. (Defendants' Facts, ¶ 29).

[13] Although Officer Boyd had a device that measured tint on windows, he did not use the device to measure whether Watson's windows or windshield were tinted. (Watson's Additional Facts, ¶ 81).

"Officer" entry of each of the tickets. (*Id.*, ¶ 76). Further, for six of the seven tickets the "Badge" entry is blank on Watson's yellow carbon copy of the tickets, and for the seventh the badge number appears to have been scribbled out. (*Id.*, ¶¶ 77, 78).[14] He ultimately was charged with two additional offenses, that were written on complaints rather than tickets. (*Id.*, ¶¶ 82, 83). The first, for false statement, alleged that "Watson gave a false name after advising he did not have his identification on him. He later said his military ID was in the vehicle he tried to secure before being taken into custody." (*Id.*, ¶ 84). The second, for failure to obey the orders of an officer, stated that "Watson refused to provide pedigree information when asked. Then refused to exit his vehicle when advised he was under arrest." (*Id.*, ¶ 83).

Watson filed his original Complaint in this matter against Defendants Boyd and the City of Ferguson on July 31, 2017. In his First Amended Complaint, filed September 26, 2018, Watson asserts the following claims under 42 U.S.C. §§ 1983: unlawful search and seizure in violation of the Fourth and Fourteenth Amendments against Defendant Boyd (Count I); unlawful retaliation in violation of the First Amendment against Defendant Boyd (Count II); malicious prosecution in violation of the Fourth and Fourteenth Amendments against Defendant Boyd

[14] Watson asserts Officer Boyd's badge number is clearly legible on the white Ferguson copies of the tickets. (Watson's Additional Facts, ¶ 79).

(Count III)[15]; and municipal liability against the City of Ferguson (Count IV).

As noted above, Defendants filed the instant Joint Motion for Summary Judgment on November 22, 2021, claiming there exist no genuine issues of material fact and they are entitled to judgment as a matter of law. (ECF No. 185).

SUMMARY JUDGMENT STANDARD

The Court may grant a motion for summary judgment if, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The substantive law determines which facts are critical and which are irrelevant. Only disputes over facts that might affect the outcome will properly preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is not proper if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id*.

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[15] In his Memorandum and Order addressing Defendants' initial Joint Motion for Summary Judgment, Judge White granted Defendants' Motion for Summary Judgment on Watson's malicious prosecution claim. (*See* ECF No. 158, PP. 33-35). Watson has not asked the Court to reconsider this ruling, and the Court declines to do so at this time.

A moving party always bears the burden of informing the Court of the basis of its motion. *Celotex*, 477 U.S. at 323. Once the moving party discharges this burden, the nonmoving party must set forth specific facts demonstrating that there is a dispute as to a genuine issue of material fact, not the "mere existence of some alleged factual dispute." Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 247. The nonmoving party may not rest upon mere allegations or denials of its pleadings. *Anderson*, 477 U.S. at 256.

In passing on a motion for summary judgment, the Court must view the facts in the light most favorable to the nonmoving party, and all justifiable inferences are to be drawn in its favor. *Anderson*, 477 U.S. at 255. The Court's function is not to weigh the evidence, but to determine whether there is a genuine issue for trial. *Id*. at 249.

DISCUSSION

I. Qualified Immunity

United States District Judge Rodney W. Sippel of this Court recently provided a detailed analysis of the doctrine of qualified immunity, which the Court quotes at length here:

> Qualified immunity protects a government official from liability "unless the official's conduct violated a clearly established constitutional or statutory right of which a reasonable person would have known." *Henderson v. Munn*, 439

F.3d 497, 501 (8th Cir. 2006) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The standard "gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Walker v. City of Pine Bluff*, 414 F.3d 989, 992 (8th Cir. 2005) (quoting *Hunter v. Bryant*, 502 U.S. 224, 229 (1991)).

To determine whether an official is entitled to qualified immunity, the Court asks the following two-part question: (1) whether the facts alleged, viewed in the light most favorable to the plaintiff, show that the defendant violated a constitutional or statutory right, and (2) whether the right at issue was clearly established at the time of the offending conduct. *Brown v City of Golden Valley*, 574 F.3d 491, 496 (8th Cir. 2009) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). The Court may decide which determination to make first, *Pearson v. Callahan*, 555 U.S. 223, 235-36 (2009), and "the defendants are entitled to qualified immunity unless the answer to both of these questions is yes." *McCaster v. Clausen*, 684 F.3d 740, 746 (8th Cir. 2012).

"A right is clearly established when the contours of the right are sufficiently clear that a reasonable official would

> understand that what he is doing violates that right." *Mathers v. Wright*, 636 F.3d 396, 399 (8th Cir. 2011) (internal quotation marks and citation omitted). "A general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the very action in question has not previously been held unlawful." *Winslow v. Smith*, 696 F.3d 716, 738 (8th Cir. 2012) (internal quotations marks and citation omitted). "The unlawfulness must merely be apparent in light of preexisting law, and officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Nelson v. Correctional Medical Services*, 583 F.3d 522, 531 (8th Cir. 2009) (internal quotation marks and citation omitted).

Smalley v. Gamache, No. 4:10CV319 RWS, 2013 WL 1149146, at *2 (E.D. Mo. Mar. 19, 2013).

A. Unlawful Search And Seizure (Count I)

As noted above, in Count I of his First Amended Complaint Watson asserts Officer Boyd is liable for an unlawful search and seizure. Specifically, he maintains Officer Boyd stopped and arrested him without probable cause; seized him unreasonably, by pointing a gun at his head at close range; seized him unreasonably by initiating charges against him; and

conducted an illegal search, by ransacking Plaintiff's car after having unlawfully arrested him. The Court addresses Watson's claims in turn.

i. Stop Without Probable Cause

The Fourth Amendment protects the right of people to be secure "against unreasonable searches and seizures." U.S. Const. amend. IV. Under the Fourth Amendment, a traffic stop constitutes a seizure. *United States v. $45,000.00 in U.S. Currency*, 749 F.3d 709, 715 (8th Cir. 2014). Nonetheless, a traffic stop is reasonable under the Fourth Amendment "if it is supported by either probable cause or an articulable and reasonable suspicion that a traffic violation has occurred." *United States v. Green*, 946 F.3d 433, 438 (8th Cir. 2019) (internal quotation marks and citation omitted). Thus, in general, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810 (1996) (citations omitted). *See also United States v. Williams*, 929 F.3d 539, 544 (8th Cir. 2019) (internal quotation marks and citation omitted) ("A law enforcement officer has reasonable suspicion [to conduct an investigatory stop] when the officer is aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed."). To that end, any traffic violation, no matter how minor, provides probable cause for a traffic stop. *United States v. Bloomfield*, 40 F.3d 910, 915 (8th Cir. 1994). *See also United States v. Harris*, 617 F.3d 977, 979 (8th Cir. 2010) (citation omitted) ("Even a

minor traffic violation provides probable cause for a traffic stop"). Furthermore, "[m]istakes of law or fact, if objectively reasonable, may still justify a valid stop." *Williams*, 929 F.3d at 544 (internal quotation marks and citation omitted).

In the instant case, as noted above Defendants maintain Officer Boyd observed a vehicle with excessively tinted windows and no front license plate, backed into a parking space against a tree line, idling, headlights on, near a playground where children were playing. Both Missouri law and the Ferguson City Code of Ordinances ("City Code") restrict vision-reducing material applied to the windows and windshield of a car. *See* R.S.Mo. § 307.173; City Code 44-404.[16] Further, Missouri law requires, with certain exceptions not relevant here, that license plates be fastened to the front and rear of motor vehicles. *See* R.S.Mo. § 301.130.5. Defendants maintain Officer Boyd therefore parked his car near Watson's vehicle and approached on foot, as the windows on Watson's car were so dark that Officer Boyd was unsure

[16] "Any person may operate a motor vehicle with front sidewing vents or windows located immediately to the left and right of the driver that have a sun screening device, in conjunction with safety glazing material, that has a light transmission of thirty-five percent or more plus or minus three percent and a luminous reflectance of thirty-five percent or less plus or minus three percent. Except as provided in subsection 5 of this section, any sun screening device applied to front sidewing vents or windows located immediately to the left and right of the driver in excess of the requirements of this section shall be prohibited without a permit pursuant to a physician's prescription as described below." R.S. Mo. §307.173.1.

whether the car was occupied until he advanced and saw movement inside. Defendants thus maintain Officer Boyd's traffic stop was reasonable under the Fourth Amendment, as it was supported by either probable cause or an articulable and reasonable suspicion that one or more traffic violations had occurred, even in the absence of any tint meter reading. (*See* Defendants' Memorandum in Support of their Joint Motion for Summary Judgment ("Defendants' Memo in Support"), P. 13, citing cases from various jurisdictions to the effect that a tint meter reading is not required to establish probable cause for a stop due to a belief that windows were unlawfully tinted).

Watson attempts to counter the above by asserting that reasonable suspicion is limited to those situations where the officer is aware of particularized objective facts which reasonably warrant suspicion of crime, and must be determined by what the officer knew before he conducted the search or seizure. Watson does not dispute an officer's knowledge or suspicion of unlawful tint can justify a detention. Instead, he maintains that what is in dispute here is what Officer Boyd actually knew and/or observed before detaining Watson. According to Watson, that fact is a material one that must be presented to a jury for a credibility determination.

Upon consideration the Court finds that, even assuming a question of fact remains as to whether Watson's front windshield was tinted and/or whether Officer Boyd believed it to be tinted, said question is immaterial in light of other undisputed facts. Most

importantly, Watson does not dispute that his car lacked a front license plate. Further, while Watson takes issue with whether his windshield was tinted, and/or whether Officer Boyd believed it to be tinted, as noted above he does not dispute that he possessed tinted windows in an effort to reduce racial profiling, and Missouri law and the City Code restrict the use of vision-reducing tint on windows as well.[17] Watson's speculation that Officer Boyd invented these violations after the fact to provide justification for the stop is insufficient to convert the issue into a credibility determination for the jury. The Court thus finds Officer Boyd did not violate Watson's constitutional rights when he approached Watson's vehicle, and so he is entitled to summary judgment on this issue.

ii. Arrest Without Probable Cause

With respect to arrest, "[i]t is well established that a warrantless arrest without probable cause violates an individual's constitutional rights under the Fourth and Fourteenth Amendments." *Joseph v. Allen*, 712 F.3d 1222, 1226 (8th Cir. 2013) (internal quotation marks and citations omitted). However, "a false arrest claim under § 1983 fails as a matter of law where the officer had probable cause to make the arrest." *Kurtz v. City of Shrewsbury*, 245 F.3d 753, 758 (8th Cir. 2001). Probable cause exists where there are facts and

[17] While Officer Boyd ticketed Watson only for having vision reducing material applied to his windshield, he noted the presence of tinted windows in his police report. (*See* ECF No. 196-4).

circumstances within a law enforcement officer's knowledge that are sufficient to lead a person of reasonable caution to believe that a suspect has committed or is committing a crime. *Galarnyk v. Fraser*, 687 F.3d 1070, 1074 (8th Cir. 2012). *See also Borgman v. Kedley*, 646 F.3d 518, 523 (8th Cir. 2011) (internal quotation marks and citation omitted) ("An officer has probable cause to make a warrantless arrest when the totality of the circumstances at the time of the arrest are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense"). "The existence of probable cause is based on the facts available to the officers at the moment [an] arrest [i]s made, and is determined from the standpoint of an objectively reasonable police officer." *Walz v. Randall*, 2 F.4th 1091, 1100 (8th Cir. 2021).

Furthermore, "[a]n officer…is entitled to qualified immunity for a warrantless arrest if the arrest was supported by at least 'arguable probable cause.'…Arguable probable cause exists even where an officer mistakenly arrests a suspect believing it is based on probable cause if the mistake is objectively reasonable." *Joseph*, 712 F.3d at 1226 (internal quotation marks and citations omitted). "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001).

Probable cause can still exist even when an officer mistakenly arrests a suspect, as long as the

mistake is objectively reasonable. *Amrine v. Brooks*, 522 F.3d 823, 832 (8th Cir. 2008). Similarly, the fact that a suspect arrested by law enforcement is later found to be innocent is not material. *Just v. City of St. Louis, Missouri*, 7 F.4th 761, 767 (8th Cir. 2021). "Whether a law enforcement officer had probable cause at the time of arrest is a question of law." *Joseph*, 712 F.3d at 1226-27 (citations omitted).

In their Motion for Summary Judgment, Defendants claim Officer Boyd had probable cause, or at least arguable probable cause, to believe that Watson had committed numerous offenses, any one or all of which justified his arrest. (*See* Defendants' Memo in Support, P. 12). Watson denies committing any offenses, and so the Court addresses Defendants' assertions in turn.

a. No Operators License In Possession And No Proof Of Insurance

City Code 44-81(a) provides that "[i]t shall be unlawful for any person to drive any motor vehicle . . . in the city unless such person shall have a driver's license . . . as required by state law, and shall have such license in possession at all times while so driving on the streets of the city." (Defendants' Facts, ¶ 33). Further, City Code 44-81(c) specifically provides that "[f]ailure to produce a driver's . . . license upon lawful demand shall give a police officer probable cause to arrest the driver . . . ." (*Id.*).

Missouri law also provides that "[n]o owner of a

motor vehicle registered in this state, or required to be registered in this state, shall operate, register or maintain registration of a motor vehicle . . . unless the owner maintains the financial responsibility which conforms to the requirements of the laws of this state." R.S.Mo. §303.025.1. City Code 44-66(e) states that "[t]he operator of the motor vehicle shall exhibit the proof of financial responsibility on the demand of any police officer who lawfully stops such operator while that officer is engaged in the performance of the duties of his/her office." (Defendants' Facts, ¶ 35).

Officer Boyd contends he had probable cause or arguable probable cause to cite and arrest Watson both for failure to provide a driver's license and for failure to provide proof of insurance. It is undisputed that Officer Boyd asked Watson to provide his driver's license and proof of insurance, and that Watson failed to provide either. Watson claims he declined to do so because he feared for his life, and therefore kept his hands on the steering wheel. This unstated rationale (even if true) does not detract from the fact that from Officer Boyd's perspective, Watson refused to provide his license and proof of insurance upon request. Under these circumstances, the Court finds Officer Boyd had at least arguable probable cause to arrest Watson and issue the two citations. This portion of Defendants' Motion for Summary Judgment must therefore be granted.

b. Vision Reducing Material Applied To Windshield

Officer Boyd claims it is undisputed that

Watson's car windows were heavily tinted at the time of his stop and arrest. (Defendants' Memo in Support, P. 12, citing Defendants' Facts, ¶¶ 3, 5). As noted above, both Missouri law and the City Code restrict vision reducing material applied to the windows and windshield of a car. (*See* R.S. Mo. §307.173; City Code 44-404; Defendants' Facts, ¶ 32). Officer Boyd argues that even if he was mistaken as to whether the tint was dark enough to be illegal, he did not violate Watson's constitutional rights because he had arguable probable cause to arrest Watson based on his belief that Watson's tinted windows violated both Missouri law and the City Code. (Defendants' Memo in Support, P. 14 (citing *Loch v. City of Litchfield*, 689 F.3d 961, 966 (8th Cir. 2012) ("An act taken based on a mistaken perception or belief, if objectively reasonable, does not violate the Fourth Amendment."; *United States v. Mendez*, 2006 WL 852376, at *3 (E.D. Mo. 2006) (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979) ("'The validity of an arrest does not depend on whether the suspect actually committed the crime…'"); *Moore v. City of Desloge, Mo.*, 647 F.3d 841, 846 (8th Cir. 2011) (internal quotation marks and citations omitted) ("Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines.")).

Upon consideration, the Court finds Officer Boyd had probable cause or arguable probable cause to arrest Watson based on the alleged unlawful tint. In other words, while there may be an issue of fact as to whether the windshield itself was tinted, it is undisputed that Watson's vehicle windows contained tint, which Watson applied to reduce racial profiling.

As noted above, in Missouri excessive tint is prohibited on windows as well, absent a prescription from a physician. Thus, even if Officer Boyd ultimately was wrong, either with respect to the tint being excessive on the windshield and/or the windows, or with respect to in which state the car was registered, he still possessed at least arguable probable cause to issue the citation. *See Joseph*, 712 F.3d at 1226-27 (holding that arguable probable cause exists even if the officer was mistaken, as long as the mistake was reasonable).[18]

c. Expired State Operator's License

Missouri law provides that "it shall be unlawful for any person . . . to . . . [o]perate any vehicle upon any highway in this state unless the person has a valid license." R.S.Mo. § 302.020.1(1). Similarly, City Code 44-81(a) provides that "[i]t shall be unlawful for any person to drive any motor vehicle . . . in the city unless such person shall have a driver's license . . . as required by state law, and shall have such license in possession at all times while so driving on the streets of the city." (Defendants' Facts, ¶ 33).

Officer Boyd maintains he had probable cause or arguable probable cause to cite and arrest Watson for operating a vehicle under an expired state driver's

[18] Watson's assertions to the contrary, with respect to both the windshield not being tinted and the window tint's alleged legality in Florida, may be relevant in an effort to fight the charge or prove innocence. They do not, however, affect the Court's arguable probable cause analysis.

license, because the REJIS system indicated that Watson's Missouri driver's license was expired and had not been surrendered to another state. Missouri law provides that "[t]he licensing authority in the state where application is made shall not issue a license to drive to the applicant if:...(3) The applicant is a holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license." R.S.Mo. § 302.600. In this case, Officer Boyd determined that Watson's Missouri license had never been surrendered and was expired. Because he was unable to locate a driver's license for Watson in any other state[19] and Watson's Missouri license was never surrendered (as required to obtain a license in another state), Officer Boyd contends he reasonably believed that Watson had no valid driver's license. He thus contends that "[a]fter conducting these searches in REJIS, Officer Boyd had probable cause, or at least arguable probable cause, to believe that Watson was driving with an expired driver's license." (Defendants' Memo in Support, P. 17).

Watson counters that taking the facts in the light most favorable to him, there was no probable cause for this charge because there existed ample, available information to indicate that Watson had a valid and current Florida driver's license, including the presence of his license in the vehicle, database results showing he had a Florida driver's license, and the fact that Watson provided a Florida address to Officer

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[19] As noted above, Officer Boyd was unable to locate a valid driver's license for Watson in Missouri, Florida or Illinois.

Boyd. (Plaintiff's Response in Opposition to Defendants' Joint Motion for Summary Judgment ("Watson's Opp."), P. 28).

Upon consideration, the Court again finds that although Watson offers alternative explanations and/or disputes Defendants' assertions, said offerings do not go to the question of whether Officer Boyd had probable cause or arguable probable cause to arrest Watson and issue the citation. Instead, Watson's claims represent potential defenses to the charge, and go to whether the citation ultimately would hold up in Court. *See Amrine*, 522 F.3d at 832 ("Probable cause can still exist even when an officer mistakenly arrests a suspect, as long as the mistake is objectively reasonable."); *Just*, 7 F.4th at 767 (holding immaterial the fact that a suspect arrested by law enforcement is later found innocent). This portion of Defendants' Joint Motion for Summary Judgment must therefore be granted.

d. No Seat Belt

State and local law require that "[e]ach driver...of a passenger car...operated on a street or highway in this [state or city] shall wear a properly adjusted and fastened safety belt...." R.S.Mo. § 307.178.2; City Code 44-402. A "street or highway" is defined to include "every way or place open for vehicular travel by the public and regardless of whether it has been legally established by constituted authority or used for the statutory period of time as a public highway." City Code 44-1. The Missouri Supreme Court has held that "[o]nce the key is in the

ignition, and the engine is running, an officer may have probable cause to believe that the person sitting behind the steering wheel is operating the vehicle." *Cox v. Director of Revenue*, 98 S.W.3d 548, 550 (Mo. banc 2003) (citations omitted). The Eighth Circuit likewise has found that a driver may be operating a vehicle while parked with the keys in the ignition. *See Williams v. Decker*, 767 F.3d 734, 739 (8th Cir. 2014) (affirming application of qualified immunity where suspect was detained and questioned in parked, idling vehicle, based on the suspicion he was "operating" the vehicle while intoxicated).

In the instant case it is undisputed that Watson was sitting in his running vehicle, in a public park, and was not wearing his seatbelt. (Defendants' Facts, ¶¶ 2, 3, 7). Officer Boyd asserts these facts afforded him probable cause or arguable probable cause to cite and arrest Watson. (Defendants' Memo in Support, P. 21). He further maintains that even if he was mistaken, he is entitled to qualified immunity because the mistake was objectively reasonable. (*Id.* at 21-22).

Watson counters that a reasonable jury could find that he did not violate the statute by sitting in a parked car in a parking lot while the car was idling, as in doing so he was not "operating" the vehicle. Again, while this assertion may eventually have provided a defense to the underlying charge, the Court finds it does not negate the existence of at least arguable probable cause on Officer Boyd's part, especially in light of the above cited case law. This portion of Defendants' Joint Motion for Summary Judgment will therefore be granted.

e. Failure To Register An Out Of State Vehicle And No Vehicle Inspection

Missouri law provides that "[a]pplication for registration of a motor vehicle not previously registered in Missouri . . . and previously registered in another state shall be made within thirty days after the owner of such motor vehicle has become a resident of this state." R.S.Mo. § 301.100.3. As previously discussed, Officer Boyd claims Watson gave him an incorrect name ("Fred Watson") and an incorrect address (Florida). After performing a revised REJIS search, Officer Boyd found a "Freddie Watson" with an expired Missouri license that had never been surrendered. Officer Boyd claims that this new information provided him with at least arguable probable cause to believe that Watson was a Missouri resident who had failed to register his vehicle under Missouri law.

Similarly, Missouri law requires that the owner of every vehicle required to be registered in Missouri "shall submit such vehicles to a biennial inspection of their mechanism and equipment...and obtain a certificate of inspection and approval and a sticker . . . ." R.S.Mo. § 307.350.1.[20] Officer Boyd argues he had probable cause, or at least arguable probable cause, to believe that Watson's vehicle was required to be registered in the state of Missouri based on the information located in REJIS. Based on that suspicion,

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[20] So too does City Code 44-406. (Defendants' Facts, ¶ 37).

he further claims he had probable cause to believe Watson was in violation of the law for failure to have an inspection approval sticker.

Watson counters that Officer Boyd lacked probable cause for both charges, because the evidence in his possession clearly showed that Watson's car was lawfully registered in Florida rather than Missouri. While it is true that an officer is not permitted to ignore plainly exculpatory evidence (*see Kuehl v. Burtis*, 173 F.3d 646, 650 (8th Cir. 1999), the Court finds that Officer Boyd had ample evidence that any alleged Florida registration was invalid, as Watson's car should have been registered in Missouri. Said evidence was sufficient to provide at least arguable probable cause to cite and arrest Watson for these violations, and so Defendant's Joint Motion for Summary Judgment on this issue must be granted.

f. Failure To Obey Orders Of Officer

Section 29-16 of the City Code provides that it shall be unlawful for any person "to willfully and knowingly obstruct, resist, oppose or fail to obey a lawful command of any police officer or city official charged with enforcement of this Code. . ." (Defendants' Facts, ¶ 34). Officer Boyd states that he ordered Watson to throw his keys out of the window and exit his vehicle, but Watson repeatedly refused. (Defendants' Memo in Support, P. 17). Because Watson refused to comply with his demands, Officer Boyd contends he had probable cause to arrest Watson.

Watson counters that the City Code makes it unlawful only for a person to "*willfully and knowingly* obstruct, resist, oppose, or fail to obey a *lawful* command of any police officer…" (Watson's Opp., P. 20). He maintains a fact issue remains with respect to whether his alleged failure to comply was *willful* or *knowing*. In other words, Watson asserts a jury could find his decision to remain in his car with his hands on the steering wheel was reasonable, in light of the fact that he faced an enraged and erratic police officer pointing a gun at him.

Upon consideration, the Court again finds Watson's claims go to the sustainability of the charge, and not to whether Officer Boyd had probable cause to issue the citation in the first place. In other words, while there may be an issue of fact as to whether Watson's refusal to throw his keys out of the window or exit the vehicle was willful or knowing, in light of Officer Boyd's allegedly threatening behavior, that question does not affect the fact that Officer Boyd had at least arguable probable cause to believe Watson was disobeying his order. This portion of Defendants' Joint Motion for Summary Judgment will therefore be granted.

g. Providing False Statements

Officer Boyd also maintains he had probable cause to arrest and cite Watson for providing a false statement, in violation of City Code 29-16. (Defendants' Memo in Support, P. 18). It is undisputed that in response to Officer Boyd's request for Watson's name, Watson identified himself as "Fred Watson"

rather than "Freddie Watson". (Defendants' Facts, ¶ 11). Officer Boyd claims Watson also provided a false Florida address, when Watson knew he did not reside in Florida. (*Id.*, ¶ 12). Officer Boyd asserts these two false declarations were "material" because they hindered Officer Boyd in determining Watson's true identity.[21] Therefore, Officer Boyd claims he had probable cause or arguable probable cause to cite and arrest Watson.

Watson counters Defendants' contention by asserting Officer Boyd only asked for his name, not his full name, and he commonly uses the name "Fred" rather than his birth name, "Freddy". He thus contests whether he was willfully or knowingly attempting to deceive Officer Boyd with his response, as required to violate the statute.

Upon consideration, the Court again finds Watson's claims go to the sustainability of the charge, and not to whether Officer Boyd had probable cause to issue the citation in the first place. In other words, while there may be an issue of fact as to whether Watson's answers were willfully or knowingly deceitful, that question does not affect whether Officer Boyd had at least arguable probable cause to believe Watson uttered at least one false declaration. Officer Boyd therefore did not violate Watson's rights by arresting him on this basis and issuing the citation,

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[21] As noted above, Officer Boyd's search for "Fred Watson" did not yield any results in REJIS. (Defendants' Facts, ¶ 14).

and so this portion of Defendants' Motion for Summary Judgment must be granted.

iii. 4th Amendment: Use of Weapon

In Count I of his First Amended Complaint, Watson further alleges that Officer Boyd violated the Fourth Amendment, as his use of force was objectively unreasonable and excessive. In order to establish a Fourth Amendment violation, "the claimant must demonstrate a seizure occurred and the seizure was unreasonable." *Quraishi v. St. Charles County, Missouri*, 986 F.3d 831, 839 (8th Cir. 2021) (internal quotation marks and citation omitted). "A Fourth Amendment seizure occurs when an officer restrains the liberty of an individual through physical force or show of authority." *Id.* (internal quotation marks and citations omitted).

"The Supreme Court has long recognized an officer's right to conduct an investigatory stop inherently includes the right to use some degree of physical force or threat to effect the stop." *El-Ghazzawy v. Berthiaume*, 636 F.3d 452, 457 (8th Cir. 2011) (citing *Graham v. Connor,* 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)). *See United States v. Newell,* 596 F.3d 876, 879 (8th Cir. 2010) (internal quotation marks and citation omitted) ("Officers must use the least intrusive means of detention and investigation, in terms of scope and duration, that are reasonably necessary to achieve the purpose of the *Terry* stop."). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather

than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396 (citation omitted). It further must account "for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 397. Finally, the officer's "underlying intent or motivation" is irrelevant to the reasonableness inquiry. *Id.*

In the instant case, Watson alleges that due to the harassment he faced from Officer Boyd, he moved his hand from the top of the steering wheel to the console above the radio, in an effort to reach his phone and call the police. Officer Boyd directed Watson not to use the phone and to keep his hands on the steering wheel, allegedly for officer safety purposes. Watson claims Officer Boyd then pulled out his gun and pointed it at Watson for ten seconds or so before reholstering it, stating he could shoot Watson right then and nobody would give a damn.

Although Officer Boyd denies ever pulling a gun on Watson, he maintains that even if he did, the use of his weapon in response to Watson's perceived threat was not objectively unreasonable. (Defendants' Memo in Support, P. 23). Specifically, Officer Boyd claims his alleged use of force would have been reasonable under the circumstances, because he was confronted with a non-compliant occupant of a vehicle with heavily tinted windows that obstructed his view, and Watson made a sudden movement within the vehicle. (*Id.*).

Watson counters that when he reached for his

phone, it was on the dashboard in plain sight. (Watson's Opp., P. 14). He further asserts he remained calm throughout his interaction with Officer Boyd, and thus gave Officer Boyd no reason to fear for his safety. Finally, Watson maintains Officer Boyd did not pull his gun until after Watson put his phone back down, suggesting that he was not concerned for his safety at the time. Taken together, Watson states these facts raise the inference that Officer Boyd's use of his weapon was not reasonably related to safety, but instead stemmed from a desire to intimidate Watson and prevent him from reporting Officer Boyd's actions.

"It is well established…that when officers are presented with serious danger in the course of carrying out an investigative detention, they may brandish weapons…in order to control the scene and protect their safety." *Williams v. Decker*, 767 F.3d 734, 740 (8th Cir. 2014) (internal quotation marks and citations omitted). "In discerning whether [the officer's] actions met the Fourth Amendment's standard of reasonableness, the issue is whether the officer has an objectively reasonable concern for officer safety or suspicion of danger." *Id.* (internal quotation marks and citation omitted).

Upon consideration, the Court finds an objectively reasonable concern for officer safety or suspicion of danger existed. *Id.* Officer Boyd was facing a non-compliant occupant of a vehicle who made a movement within the vehicle. "These circumstances are sufficient to create an objectively reasonable concern for officer safety or suspicion of danger." *Id.* at 740-41 (citations omitted). Importantly, Officer Boyd

testified he was afraid Watson was going to use the phone to call someone to ambush him, and Watson himself testified that Officer Boyd instructed him to put his phone down for safety reasons. (*See* Boyd Dep., attached to Watson's Additional Facts as Exh. 3 at 204:12-19; Watson Dep., attached to Defendants' Facts as Exh. 2 at 107:3-6). The Court thus finds Officer Boyd is entitled to qualified immunity, as he did not violate Watson's constitutional rights even if he drew his gun for ten seconds, as Watson alleges.

As further support for its ruling, the Court finds that even if Officer Boyd did violate Watson's constitutional rights, said right was not clearly established at the time of the incident. *Shelton v. Stevens*, 964 F.3d 747, 753 (8th Cir. 2020). "Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law." *Id.* (internal quotation marks and citation omitted). Thus, "[e]ven where an officer's action is deemed unreasonable under the Fourth Amendment, he is entitled to qualified immunity if a reasonable officer could have believed, mistakenly, that the use of force was permissible…" *Id.* (citation omitted). "Use of excessive force is an area of the law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue." *Id.* (internal quotation marks and citation omitted). "While there does not have to be a case directly on point, existing precedent must place the lawfulness of the particular action beyond debate." *Id.* (internal quotation marks and citation omitted). "A plaintiff need not show that the very action in question

has previously been held unlawful, but he must establish that the unlawfulness was apparent in light of preexisting law." *Ellison v. Lesher*, 796 F.3d 910, 914 (8th Cir. 2015) (internal quotation marks and citation omitted).

Here, the Court finds it was not clearly established that Officer Boyd's alleged act of pulling his gun for ten seconds on a non-compliant suspect constituted an unreasonable seizure under the Fourth Amendment. Again, "[r]easonableness must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Shelton*, 964 F.3d at 752 (internal quotation marks and citation omitted). Further, "[t]he determination whether the force used to effect a seizure was reasonable ultimately requires a case-specific balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Chambers v. Pennycook*, 641 F.3d 898, 906 (8th Cir. 2011) (internal quotation marks and citations omitted). In performing the required analysis, the Court finds the contours of the constitutional right allegedly violated were not sufficiently clear that a reasonable officer would have understood Officer Boyd's action to have violated said right. *Mathers*, 636 F.3d at 399. This portion of Defendants' Joint Motion for Summary Judgment must therefore be granted.

iv. Searches

Officer Boyd claims his warrantless search of Watson's vehicle was legal either as a search incident

to arrest, or pursuant to the automobile exception. (Defendants' Memo in Support, P. 24). Specifically, Officer Boyd asserts that after he stopped Watson based on, *inter alia*, the vehicle's tinted windows and absence of a front license plate, Watson was noncompliant with Officer's Boyd's commands to provide his license and registration, and gave untruthful answers when asked for his name and address. (*Id.*, P. 25). Officer Boyd maintains these facts gave him probable cause, or at least arguable probable cause, to believe Watson was engaged in criminal activity, and thus he properly searched Watson's vehicle to obtain additional evidence of any crimes. (*Id.*).

In a recent opinion, the Eighth Circuit Court of Appeals considered the legality of a warrantless search incident to arrest in an attempt to locate evidence of the offense of providing false identification information. *See United States v. Campbell-Martin*, 17 F.4th 807 (8th Cir. 2021). The Court first stated the general rule that "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search *or it is reasonable to believe the vehicle contains evidence of the offense of arrest*." *Id.* at 815 (emphasis added) (internal quotation marks and citation omitted). The Court concluded that "it [wa]s reasonable to believe that the vehicle contain[ed] evidence of the offense [of providing false identification information]." *Id.* at 816 (internal quotation marks and citation omitted). This was so even though the officers already knew the occupants had provided false identification, as they did

not yet possess their true identification and it was reasonable to think that information would be in the car. *Id. See also United States v. Edwards*, 769 F.3d 509, 515 (7th Cir. 2014) (holding the search-incident-to-arrest exception applied to the offense of driving without the owner's consent, when officers were searching for evidence of the car's ownership even though the defendant had already admitted that someone else owned the car)

This Court previously has held that Officer Boyd had probable cause or arguable probable cause to arrest Watson for, *inter alia*, the following offenses: no operator's license in possession, no proof of insurance, and providing false declarations (for identifying himself as "Fred Watson" rather than "Freddie Watson" and providing a false Florida address). Thus, pursuant to the reasoning in *Campbell-Martin*, the Court now finds his warrantless search of Watson's vehicle was lawful as a search incident to arrest. Furthermore, even if the search did violate Watson's constitutional rights, in light of *Campbell-Martin* the Court cannot find such right was clearly established at the time of the search. This portion of Defendants' Joint Motion for Summary Judgment must therefore be granted.[22]

B. Unlawful Retaliation (Count II)

[22] In light of the Court's ruling that the search was a valid search incident to arrest, it need not reach the question of whether it was valid pursuant to the automobile exception.

As noted above, in Count II of his First Amended Complaint Watson asserts a claim for unlawful retaliation by Officer Boyd, in violation of the First Amendment. Specifically, Watson claims he engaged in lawful First Amendment conduct when he, *inter alia*, asked that Officer Boyd provide his name and badge number, and that in retaliation for this exercise Officer Boyd arrested and initiated charges against him.

"[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions" for engaging in protected speech. *Hartman v. Moore*, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006); *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722, 204 L.Ed.2d 1 (2019). If an official takes adverse action against someone based on that forbidden motive, and "non-retaliatory grounds are in fact insufficient to provoke the adverse consequences," the injured person may generally seek relief by bringing a First Amendment claim. *Id.* (citing *Crawford-El v. Britton*, 523 U.S. 574, 593, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998); *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 283–284, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977)).

"'To establish a First Amendment retaliation claim under 42 U.S.C. § 1983, the plaintiff must show (1) he engaged in a protected activity, (2) the government official took adverse action against him that would chill a person of ordinary firmness from continuing in the activity, and (3) the adverse action was motivated at least in part by the exercise of the protected activity.'" *Peterson v. Kopp*, 754 F.3d 594,

602 (8th Cir. 2014) (quoting *Revels v. Vincenz,* 382 F.3d 870, 876 (8th Cir.2004)). To prevail on such a claim, a plaintiff must establish a "causal connection" between the government defendant's "retaliatory animus" and the plaintiff's "subsequent injury." *Hartman*, 547 U.S. at 259; *Nieves*, 139 S. Ct. at 1722. It is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must *cause* the injury. Specifically, it must be a "but-for" cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive. *Id.* at 260 (recognizing that although it "may be dishonorable to act with an unconstitutional motive," an official's "action colored by some degree of bad motive does not amount to a constitutional tort if that action would have been taken anyway"). Thus a "plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest." *Nieves*, 139 S. Ct. at 1724. *See also Watson v. Boyd*, 2 F.4th 1106, 1112 (8th Cir. 2021) (quoting *Nieves*, 139 S.Ct. at 1724) ("Similarly, a First Amendment retaliation claim turns on 'the presence or absence of probable cause for the arrest.'"); *Williams v. City of Carl Junction, Missouri*, 480 F.3d 871, 875 (8th Cir. 2007) (holding that a First Amendment retaliation claim requires a plaintiff to "plead and prove a lack of probable cause for the underlying charge"); *Peterson*, 754 F.3d at 602 ("We agree that [the officer] is entitled to qualified immunity on [plaintiff's] retaliatory arrest claim because, as detailed above, [the officer] had at least arguable probable cause for the arrest.").

Defendants maintain Watson's claim for First

Amendment retaliation fails because Officer Boyd had probable cause to arrest and charge Watson. (Defendants' Memo in Support, P. 26). This Court previously has held Officer Boyd did possess probable cause for the arrest and charges. Under these circumstances Watson's claim for First Amendment retaliation cannot stand, and so this portion of Defendants' Motion for Summary Judgment must be granted. *See Peterson*, 754 F.3d at 599 (an alleged retaliatory motive for an arrest and citation "cannot vitiate an otherwise lawful arrest"); *Nieves*, 139 S.Ct. at 1725 (citation omitted) ("[The plaintiff's] purely subjective approach would undermine that precedent by allowing even doubtful retaliatory arrest suits to proceed based solely on allegations about an arresting officer's mental state.").

II. *Monell*[23] Municipal Liability (Count IV) Against The City Of Ferguson

For § 1983 liability for a constitutional violation to attach to a governmental entity, the plaintiff must show that a constitutional violation resulted from (1) an official policy, (2) an unofficial custom, or (3) a deliberately indifferent failure to train or supervise. *Mick v. Raines*, 883 F.3d 1075, 1079 (8th Cir. 2018). Municipal liability under § 1983 may also attach where "a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with

[23] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

As discussed *supra*, Watson fails to state claims under § 1983 for unlawful search and seizure or unlawful retaliation, based on the conduct of Officer Boyd. Pursuant to *Monell*, "[s]ection 1983 liability for a constitutional violation may attach to a municipality if the violation resulted from...an 'official municipal policy.'" *Corwin v. City of Independence, Mo.*, 829 F.3d 695, 699 (8th Cir. 2016) (quoting *Monell*, 436 U.S. at 691). It follows that, absent a constitutional violation by a city employee, there can be no § 1983 or *Monell* liability for the City. *See Malone v. Hinman*, 847 F.3d 949, 955 (8th Cir. 2017) ('Because we conclude that Officer Hinman did not violate Malone's constitutional rights, there can be no § 1983 or *Monell* liability on the part of Chief Thomas and the City.'); *Sitzes v. City of West Memphis, Ark.*, 606 F.3d 461, 470 (8th Cir. 2010) (agreeing with the district court that plaintiffs' claims "could not be sustained absent an underlying constitutional violation by the officer"); *Sanders v. City of Minneapolis*, 474 F.3d 523, 527 (8th Cir. 2007) ("Without a constitutional violation by the individual officers, there can be no § 1983 or *Monell* . ..municipal liability."); *Whitney v. City of St. Louis, Mo.*, 887 F.3d 857, 860-61 (8th Cir. 2018) (same). Accordingly, the Court will grant Defendants' Joint Motion for Summary Judgment on Watson's Count IV *Monell* claims against the City.

CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that Defendants' Joint Motion for Summary Judgment (ECF No. 185) is **GRANTED**, and Watson's First Amended Complaint is **DISMISSED** with prejudice. An appropriate Judgment will accompany this Memorandum and Order.

Dated this 26th Day of September, 2022.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 22-3233

Fred Watson
Appellant

v.

Eddie Boyd, III and City of Ferguson, Missouri
Appellees

Appeal from U.S. District Court
for the Eastern District of Missouri - St. Louis
(4:17-cv-02187-JCH)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

November 26, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

_____
/s/ Maureen W. Gornik