App. A

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File Name: 25a0252p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ULYSSES LEE FEAGIN,

Plaintiff-Appellee,

v.

MANSFIELD POLICE DEPARTMENT; JORDAN MOORE; MARK BOGGS; CLAY BLAIR,

Defendants-Appellants.

No. 24-3710

Appeal from the United States District Court for the Northern District of Ohio at Cleveland.
No. 1:22-cv-01201—J. Philip Calabrese, District Judge.

Argued: May 8, 2025

Decided and Filed: September 11, 2025

Before: CLAY, THAPAR, and READLER, Circuit Judges.

COUNSEL

ARGUED: Melvin L. Lute, BAKER | DUBLIKAR, North Canton, Ohio, for Appellants. Rachael Jensen, ORRICK, HERRINGTON & SUTCLIFFE LLP, Austin, Texas, for Appellee. **ON BRIEF:** Melvin L. Lute, BAKER | DUBLIKAR, North Canton, Ohio, for Appellants. Rachael Jensen, ORRICK, HERRINGTON & SUTCLIFFE LLP, Austin, Texas, Alyssa Barnard-Yanni, Daniel A. Rubens, ORRICK, HERRINGTON & SUTCLIFFE LLP, New York, New York, Samuel Weiss, RIGHTS BEHIND BARS, Washington, D.C., for Appellee.

READLER, J., delivered the opinion of the court in which THAPAR, J., concurred. CLAY, J. (pp. 22–31), delivered a separate dissenting opinion.

OPINION

READLER, Circuit Judge. Advancing technology reaches every corner of society. The law is no exception. Consider, on this front, the advent of portable recording devices, from those attached to the body (body cams) to those placed on a vehicle's dashboard (dash cams). These innovations have dramatically changed our collective understanding of law enforcement encounters. Today, most officer interactions are captured on video. *See* Logan Seacrest & Jillian Snider, R St. Inst., *The Past, Present, and Future of Police Body Cameras* 3 (2025), https://perma.cc/2KKH-8LY3 (recognizing that over the past decade and a half police cameras have become "standard operating procedure" in the United States); *see also* Sean E. Goodison & Connor Brooks, Bureau Just. Stats., *Local Police Departments, Procedures, Policies, and Technology, 2020–Statistical Tables* 6 (2023), https://perma.cc/B8EC-TLQ4 (noting that as of 2020, 79% of local police officers worked in departments using body cams, with use ubiquitous in major urban areas). With those recordings typically available for broader viewing through public records laws and the like, body and dash cam video makes the work of law enforcement more open to public evaluation (and, invariably, debate). *See, e.g.*, Ohio Rev. Code § 149.43(A)(1)(jj) (generally subjecting body cam and dash cam videos to public release).

The court system has especially benefitted from these advancements. Whereas encounters with law enforcement historically had to be understood through witness recollections alone, video now captures key aspects of the engagement, if not the entire event itself. According to one recent study, video evidence has resulted in cases being "decided more quickly, with fewer disputed facts." *See* Seacrest & Snider, *supra* at 3 (discussing how "body camera footage began to make its way from police stations to courtrooms"). For judges in particular, video evidence makes us far better equipped to evaluate claims tied to an officer's conduct. Especially so in the interlocutory posture in which we review qualified immunity appeals, where we must measure that conduct against constitutional norms. In the past, it could be tempting to leave untouched a district court's assessment of the evidence, as our review was limited to a paper record. *See Johnson v. Jones*, 515 U.S. 304, 307–09 (1995) (refusing to

resolve factual dispute centered on dueling affidavits at summary judgment). But today, where video allows us in effect to witness the critical events at issue, we are equipped to assess for ourselves both the factual and legal questions underlying an officer encounter without reflexively deferring to the district court. After all, while we well appreciate the vital role district courts play in assessing live testimony or a complex record, we are on more equal footing in reviewing video evidence. *See Johnson v. Rogers*, 944 F.3d 966, 969 (7th Cir. 2019) (observing that a "conclusive video allows [an appellate] court to know what happened and decide the legal consequences").

Our jurisprudence over interlocutory qualified immunity appeals bears out these developments. In the increasingly rare excessive force case where the underlying record contains no video or audio record, and instead consists entirely of conflicting witness testimony, we have understood our role to be limited. Namely, it is for the jury, not us, to settle any underlying material factual disputes. *Gambrel v. Knox County*, 25 F.4th 391, 404–05 (6th Cir. 2022). But when presented with video footage that "accurately depicts most of the relevant events," we may utilize that footage to "ensure [that] the district court properly constructed the factual record" and assessed the legal questions in line with that record. *Heeter v. Bowers*, 99 F.4th 900, 910 (6th Cir. 2024); *Rudlaff v. Gillispie*, 791 F.3d 638, 639 (6th Cir. 2015) (using video evidence when it captures the material facts); *Hayden v. Green*, 640 F.3d 150, 152 (6th Cir. 2011) (similar). Put another way, rather than "clos[ing] our eyes to the evidence presented" through dash or body cam, we instead "assess [that evidence] in the light depicted by the videotapes." *Moore v. Oakland County*, 126 F.4th 1163, 1167 (6th Cir. 2025) (citation modified). This approach is now the rule more than the exception, with fewer and fewer police interactions occurring outside the scope of a camera's lens.

Today's case is emblematic, with dash cam video vividly telling the tale of Ulysses Feagin's most recent encounter with law enforcement officers. Now a prisoner, Feagin sued the officers under 42 U.S.C. § 1983, raising both excessive force and deliberate indifference claims tied to the officers' deployment of a taser and pepper spray to effectuate Feagin's arrest. The district court granted summary judgment to defendants on all but two claims: an excessive force claim related to the use of a taser, and a deliberate indifference claim stemming from the officers

not tending to Feagin's medical needs after he was pepper sprayed. Those remaining issues are now before us as part of the officers' interlocutory appeal. As explained next, we reverse the district court's denial of qualified immunity as to the excessive force claim, dismiss the appeal of the deliberate indifference claim for lack of jurisdiction, and remand to the district court for further proceedings.

I.

A settled evidentiary hierarchy governs the factual landscape in this interlocutory appeal. We start with the available dash cam footage, which largely captures the incident in question and leaves few facts in dispute. *See Scott v. Harris*, 550 U.S. 372, 380 (2007). For those moments where the footage does not aid our understanding, we fill in the blanks by considering disputed evidence in a light most favorable to Feagin, completing the story with any uncontested factual assertions the officers proffer. *See Berryman v. Rieger*, 150 F.3d 561, 563 (6th Cir. 1998); *Heeter*, 99 F.4th at 910.

Consider what occurred on July 6, 2020, informed, again, largely by police cruiser dash cam video. Two marked police cars—one driven by Officer Mark Boggs and one driven by Officer Jordan Moore—were proceeding down a residential street. In the opposite direction, Ulysses Feagin and a passenger were "cruising around in a black Lincoln SUV" with all its windows rolled down, "drinking liquor and smoking marijuana." *State v. Feagin*, No. 2021-CA-0084, 2022 WL 6949422, at *1 (Ohio Ct. App. Oct. 12, 2022). Barreling down the middle of the road and veering to the left, Feagin encountered Boggs's vehicle, forcing Boggs to swerve into a ditch, narrowly avoiding a head-on collision. Moore and Boggs both performed U-turns to follow Feagin. With Moore in the lead, the officers pursued Feagin for roughly half a minute. About 20 seconds into the pursuit, and with officers activating their vehicles' flashers and sirens, Feagin turned into a crowded parking lot in an apartment complex. Officers could now see the apparently shot out back window of Feagin's SUV.

After Feagin parked his SUV, Moore approached the vehicle. With Moore directly outside the driver's side door, Feagin began rolling up the car's windows. Feagin then reached toward the center console of the vehicle. Moore knocked on the window and thrice commanded

Feagin to "get out of the car." When Feagin refused, Moore attempted to open the driver's door. Suddenly, the car began rolling backwards. Moore frantically smashed his fist against the driver's side window, prompting Feagin to put the car into park.

With the car at rest, Feagin opened the door. As the door opened, Moore grabbed Feagin's arm, causing Feagin's body to move limply away from the front seat. While Feagin's left leg was now out of the car, he kept his right leg inside the vehicle. Feagin stiffened his body and moved slightly back to his car seat. At this point, Boggs joined Moore at the side of the SUV. As the officers tussled to remove Feagin from the vehicle, they witnessed bullets fall from Feagin's pocket.

"[W]ithin seconds" of Feagin's removal from the SUV, Feagin later explained, Moore tased him. Feagin Affidavit, R. 61-2, PageID#452. At that exact moment, Boggs attempted to grab Feagin's left arm, while Moore had a partial hold on Feagin's torso, with Feagin's right arm free and flailing against the SUV. Following the tasing, the officers managed to grab Feagin's right arm, handcuff him, and place him in the backseat of the police cruiser.

While in the cruiser, Feagin remained uncooperative, refusing to keep his legs in the police car and later repeatedly kicking the car's window. Moore warned Feagin that continuing with this behavior risked the deployment of pepper spray. When Feagin ignored that command, Moore rolled down the window of his cruiser, sprayed Feagin, and then rolled the window back up. Several minutes later, officers transferred Feagin to a different police cruiser, eventually driving him to a police station. An inventory search of the SUV unearthed a large bag of marijuana; additional bags of cocaine, crack, THC, and heroin; a bevy of pills, including Xanax, Desyrel, Klonopin, Percocet, Valium, and Ultracet; and two handguns on the passenger side floorboard (including a stolen police gun).

These events culminated in Feagin being convicted for a host of firearm and drug trafficking offenses. He received a multiyear sentence that will keep him in the state penitentiary until at least the end of the decade. While incarcerated, Feagin sued several entities and individuals, including Moore. Emphasizing that he was tased and maced during his arrest, Feagin alleged claims of "excessive force" and the denial of "adequate medical care" in violation

of the Fourth and Eighth Amendments. Following discovery, defendants jointly moved for summary judgment on qualified immunity grounds, which Feagin opposed.

The district court granted the motion in part and denied it in part. Turning first to the excessive force claim tied to Moore's use of a taser, the district court concluded that a genuine dispute over a material fact existed between the parties, and thus denied defendants' motion. In so doing, the district court found dispositive the fact that Feagin's conduct, based on the video evidence, "f[ell] in the gray area between active and passive resistance." Order Den. and Granting Defs.' Mots. Summ. J., R. 70, PageID#608. But as to the excessive force claim related to Moore's use of pepper spray once Feagin was detained, the district court granted summary judgment to defendants. To the district court's mind, the undisputed evidence showed that Feagin repeatedly disregarded instructions to stop kicking the window and, in so doing, "interfere[d] with the officers' efforts to arrest . . . Feagin and safely transport him." *Id.* at PageID#610. With respect to the deliberate indifference claims, the district court recognized that defendants' summary judgment motion did not address those claims, and thus set them for trial.

Defendants filed a timely notice of appeal. Before us, they challenge the district court's treatment of both the excessive force and deliberate indifference claims. We review the district court's decision de novo, resolving all genuine factual disputes in a light most favorable to Feagin. *Lawler ex rel. Lawler v. Hardeman County*, 93 F.4th 919, 925 (6th Cir. 2024).

II.

A.1. We begin with the excessive force claim based on Moore's tasing of Feagin. The ground rules here are familiar. To overcome Moore's qualified immunity defense, Feagin needs to show both that Moore committed a constitutional violation and that any reasonable officer in Moore's position would have known that his conduct exceeded constitutional bounds. *See Plumhoff v. Rickard*, 572 U.S. 765, 778–79 (2014). As to the first prong, whether a use of force qualifies as excessive and therefore an unreasonable seizure under the Fourth Amendment depends on the "facts and circumstances of each particular case" measured "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Embedded in this reasonableness calculus is the

understanding that "police officers are often forced to make split-second judgments" that we, as jurists, have no right to second guess from the "peace of [our] chambers." *Id.* at 396–97 (citation modified). Relevant to our inquiry are the "severity of the crime" at issue, the nature of Moore's conduct, and the nature of Feagin's conduct, including the threat Feagin posed and whether he was actively resisting an officer. *Barnes v. Felix*, 145 S. Ct. 1353, 1358 (2025) (citation modified).

With respect to the second prong, Feagin must show that Moore's use of a taser violated "clearly established" law, meaning that Moore had "fair notice" that his conduct was unlawful. *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7 (2021) (per curiam). Because qualified immunity covers mistakes in judgment, both of fact and law, the summary judgment record must show that Moore "knew or reasonably should have known" that his conduct was unlawful in light of the information he possessed. *Hicks v. Scott*, 958 F.3d 421, 434 (6th Cir. 2020) (citation modified). Accordingly, it is Feagin's burden to identify a closely analogous precedent with "facts like the ones at issue here" that placed the constitutional question beyond debate, *Rivas-Villegas*, 142 S. Ct. at 8; *Cunningham v. Shelby County*, 994 F.3d 761, 764 (6th Cir. 2021), in other words, "on-point caselaw that would bind a panel of this court," *Moore*, 126 F.4th at 1167 (citation modified). The combination of these two inquiries—the Fourth Amendment's reasonable officer test and qualified immunity's fair notice test—impose two significant hurdles for plaintiffs alleging excessive force claims. *See Browning v. Edmonson County*, 18 F.4th 516, 537 (6th Cir. 2021) (Murphy, J., concurring in part and dissenting in part). After all, to prevail, a plaintiff must show the officer was doubly unreasonable—unreasonable in using force and unreasonable in his assessment of the facts and law—leaving "all but the plainly incompetent or those who knowingly violate the law" shielded from liability. *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

This framework is evident in our decisions addressing taser usage. We impose liability on individual officers only in the rare instance where an officer tases a suspect who posed no danger and was fully compliant with officer commands or had completely ceased resisting at the time of the tasing. *See Hagans v. Franklin Cnty. Sheriff's Off.*, 695 F.3d 505, 509 (6th Cir. 2012); *Wright v. City of Euclid*, 962 F.3d 852, 867 (6th Cir. 2020). Otherwise, we allow the deployment of tasers, typically non-lethal force, even if a more lethal weapon (for instance, a

gun) could not be utilized in the same instance. *Brown v. Giles*, 95 F.4th 436, 440 (6th Cir. 2024); *Hagans*, 695 F.3d at 510 (recognizing the low risk of injury posed by tasers). Tasing is a reasonable response, for instance, to subdue a suspect who poses a threat to officers. *See Shanaberg v. Licking County*, 936 F.3d 453, 456 (6th Cir. 2019); *Kent v. Oakland County*, 810 F.3d 384, 391 (6th Cir. 2016) (acknowledging tasing is appropriate where an individual is armed, makes an evasive movement to suggest that he had a weapon, or is otherwise violent toward officers). Tasing is likewise appropriate for subduing a suspect who "actively resists" arrest. *Hagans*, 695 F.3d at 509. What is "active" resistance? Physical struggles with the police qualify. *Id.* But so can conduct that is perhaps intuitively not all that active. For example, active resistance can take the form of "verbal hostility or a deliberate act of defiance." *Wright*, 962 F.3d at 867 (citation modified). Or it can include an arrestee refusing to move his hands for police to handcuff him, at least when "coupled with other acts of defiance." *Rudlaff*, 791 F.3d at 641 (citation modified).

Of course, some cases fall in between these two extremes: tasing where the suspect is neither wholly submissive yet neither threatening another nor engaging in active resistance. In this zone of twilight, when the evidence—viewed in a light most favorable to the plaintiff, but through the lens of a reasonable officer at the scene—presents a "complex situation[]," leaving the exact nature of the threat or degree of resistance unclear, we give officers the benefit of the doubt and excuse any reasonable mistake of judgment in deploying a taser. *Brown*, 95 F.4th at 440; *Hagans*, 695 F.3d at 511 ("The essence of qualified immunity . . . is to give government officials cover when they resolve close calls in reasonable (even if ultimately incorrect) ways."). Said more directly, when operating "in the hazy border between excessive and acceptable force," the "proper course is to grant summary judgment to the officers" on qualified immunity grounds. *Rudlaff*, 791 F.3d at 644; *King v. City of Rockford*, 97 F.4th 379, 397 (6th Cir. 2024); *Thomas v. City of Eastpointe*, 715 F. App'x 458, 461 (6th Cir. 2017) (granting qualified immunity when plaintiff's actions "fall somewhere in the middle" between active and no resistance).

2. Where does Feagin's claim of excessive force lie within the realm of our tasing jurisprudence? Given the undisputed evidence, the totality of the circumstances counsel that Moore acted reasonably in tasing Feagin, meaning no constitutional violation resulted. Even if

that were not the case, this dispute falls within the "hazy border between excessive and acceptable force" that warrants a grant of qualified immunity. *Rudlaff*, 791 F.3d at 644 (citation modified).

a. In concluding that Moore did not use excessive force, we measure his conduct against the reasonableness guideposts from the Supreme Court's excessive force jurisprudence. *Barnes*, 145 S. Ct. at 1358; *Graham*, 490 U.S. at 396. Start with the first guidepost, the severity of the crimes at issue. *Barnes*, 145 S. Ct. at 1358. Two officers witnessed Feagin nearly collide head on with Boggs's marked police cruiser. Feagin then disregarded officers' repeated efforts to bring his SUV to a complete stop—first by refusing to stop for roughly half a minute as two cruisers tailed him and then by refusing to comply with commands to park the SUV and, in turn, get out of the car. From these events, officers could conclude that it was fairly probable that Feagin had just committed multiple felonies under Ohio law, and that his conduct could escalate from there. *See, e.g.*, Ohio Rev. Code § 2903.11(A)(2) (felonious assault); *State v. Sepeda*, 157 N.E.3d 889, 898 (Ohio Ct. App. 2020); *see also* Ohio Rev. Code. § 2921.331(C)(3)–(4) (failing to bring a motor vehicle to a stop upon signal from police officer). Given the serious crimes at issue, Moore was reasonably justified in thinking he could use a considerable degree of force to restrain and arrest Feagin. *See Roell v. Hamilton County*, 870 F.3d 471, 481 (6th Cir. 2017). Indeed, given the alternatives facing the officers when they encountered Feagin, it strikes us as laudable that a particularly dangerous situation was contained without harm to a third party. *See Barnes*, 145 S. Ct. at 1362–63 (Kavanaugh, J., concurring) (acknowledging that there are "no easy or risk-free answers" to officers when confronted with a fleeing driver, with many alternatives presenting serious risks to the officers and the community-at-large).

Second, the "actions [Moore] took during the stop" were restrained given the crimes he had just witnessed. *Barnes*, 145 S.Ct. at 1358 (majority op.). Only after repeated commands that Feagin submit to law enforcement went unheeded did Moore opt to use non-lethal force—tasing—to procure Feagin's handcuffing. *Brown*, 95 F.4th at 440.

Finally, consider the suspect's conduct, the issue on which "[m]any of our tasing cases rise and fall." *Shanaberg*, 936 F.3d at 456. Two questions fall under this rubric: What threat

would a reasonable officer have perceived from Feagin's conduct, and was Feagin actively resisting? *See Barnes*, 145 S. Ct. at 1358.

As to the first question, there were safety concerns from the very moment Feagin encountered law enforcement. Driving an SUV that appeared to have had its rear window shot out, Feagin narrowly avoided ramming a police cruiser. Feagin's SUV continued to be a threat to Moore even after the vehicle entered the parking lot. Feagin ignored Moore's repeated commands to exit the vehicle. Making matters worse, the SUV began to move in reverse out of its parking spot, suggesting to the officers that Feagin may have been trying to escape. As these events reveal, the stop that Moore initiated, an "inherently risky" activity itself, was becoming exponentially more dangerous by the second. *Barnes*, 145 S.Ct. at 1361 (Kavanaugh, J., concurring); *id.* at 1363 (discussing the "extraordinary dangers and risks facing police officers and the community at large" when an officer conducts a traffic stop and the driver does not comply).

Now add in what Moore witnessed with respect to Feagin's conduct during the stop. While the parties dispute Feagin's exact motives, all agree that as Moore approached the SUV, Feagin reached toward the center console of the vehicle, a move that fairly suggests he was trying to access a weapon. *See United States v. Ledbetter*, 929 F.3d 338, 347 (6th Cir. 2019). Couple that fact with the undisputed evidence that bullets fell from Feagin's pockets as officers labored to get him out of the SUV. "Where there are bullets, it's fair to infer that a gun is nearby." *United States v. Walker*, 750 F. App'x 324, 329 (5th Cir. 2018). On this record, significant evidence suggested that Feagin posed an immediate threat to the officers' lives that made it quite reasonable to think Feagin needed to be restrained as soon as possible. Later discovered evidence—including the firearms found in or around the SUV—further confirms the veracity of the officers' initial impressions of the safety concerns they faced. *See Kapuscinski v. City of Gibraltar*, 821 F. App'x 604, 609 (6th Cir. 2020) (recognizing that "subsequent" observations can confirm the prior perspective of the reasonable officer at the scene).

What about evidence of Feagin's active resistance? There was plenty. Recall that Feagin's first actions in the parking lot were to defy Moore's repeated commands to get out of the vehicle. *See Wright*, 962 F.3d at 867 (recognizing deliberate defiance by a suspect can

constitute active resistance). Instead of promptly exiting the car, Feagin opted to roll up the vehicle's (unbroken) windows and seemingly put the car in reverse. Feagin then struggled for several seconds with officers after his car door opened. *See Hagans*, 695 F.3d at 509. He kept at least one leg in the vehicle as officers tried to extract him, moving his body back inside the SUV during the struggle. At the moment he was tased, Feagin was still not handcuffed, with his right arm flailing. Collectively, the undisputed evidence shows that Moore acted reasonably in tasing Feagin. Accordingly, no constitutional violation occurred.

b. Even if one were to read the record differently, defendants would still prevail in their assertion of qualified immunity. Recall that, at this juncture, Feagin needs to show not only that Moore was unreasonable in tasing him, but also that he was unreasonable in his understanding of what the law permitted him to do. *See Malley*, 475 U.S. at 341. On this issue, it is Feagin's burden to identify a closely analogous precedent that would have put Moore on notice that his actions were unlawful given the information he possessed. *See Rivas-Villegas*, 142 S. Ct. at 8; *Hicks*, 958 F.3d at 433–34; *Cunningham*, 994 F.3d at 764. At no stage of this litigation has Feagin done so.

Begin with Feagin's motion opposing summary judgment. Most of his cited use-of-force cases were unpublished, which plainly fail to satisfy his burden. *Bell v. City of Southfield*, 37 F.4th 362, 368 (6th Cir. 2022) ("[H]ow can an unpublished case place a question beyond debate when it doesn't even bind a future panel of this court?"). In passing, he also mentioned an out of circuit case, *Coles v. Eagle*, 704 F.3d 624 (9th Cir. 2012). But our sister circuits' case law is "usually irrelevant" to the clearly established inquiry, save for the extraordinary case that announces a right "clearly foreshadowed" by the direct holding of our own case law so that the officers is left with "no doubt" as to whether his conduct was lawful. *Ashford v. Raby*, 951 F.3d 798, 804 (6th Cir. 2020) (citation modified). We need not dwell on whether *Coles* meets that high bar. For one thing, it did not involve the use of a taser. For another, its facts—the use of considerable force (dragging a suspect out of a car through a shattered car window) without any serious crime, threat to the officer's lives, or resistance from the suspect at issue—are miles from this case. *See Coles*, 704 F.3d at 630.

That leaves the sole published case Feagin discussed in any detail, *Solomon v. Auburn Hills Police Department*, 389 F.3d 167 (6th Cir. 2004). But consider its facts: an officer who, upon confronting a woman suspected of sneaking into a movie, used a leg-sweep maneuver even though the woman posed no threat to the officer and was fully compliant with his requests. *Id.* at 175. Comparing Feagin's high risk behavior to that of the matinee goer in *Solomon* gives analogy a bad name.

Feagin's appellate briefing fares no better. *Gradisher v. City of Akron*, 794 F.3d 574 (6th Cir. 2015), his lone citation on the merits of qualified immunity, was never raised with the district court. Assuming we could excuse that forfeiture, *Gradisher* is still distinguishable. There, the facts suggested that officers tased a fully compliant suspect and continued gratuitously tasing him once incapacitated. *Id.* at 586. At day's end, Feagin has failed to even hint at a case with "facts like the ones at issue here," i.e., where an officer tases a non-complaint individual suspected of committing a serious crime in part to prevent access to a potential firearm. *See Rivas-Villegas*, 142 S. Ct. at 8. With nothing to suggest Moore should have been on notice about the putative unlawfulness of his conduct, Feagin would fail to overcome Moore's assertion of qualified immunity as to the tasing claim, had he made out a constitutional violation (which, again, he did not).

3.a. Much of Feagin's appellate briefing emphasizes a procedural point: that, according to Feagin, we lack jurisdiction over the appeal under *Johnson v. Jones*, 515 U.S. 304 (1995). *Johnson* generally limits our jurisdiction in interlocutory qualified immunity appeals to questions of law. *Id.* at 313. Questions of evidence sufficiency, that is, "which facts a party may, or may not, be able to prove at trial," typically are not resolved in an interlocutory posture. *Id.* To Feagin's mind, because Moore continues to contend that a jury could not accept Feagin's telling that he was not resisting arrest, this appeal is a fact-based one that falls outside of our jurisdiction.

We disagree. Consider the classic "he said, she said" dispute in which the defendant's argument in its *entirety* is an attack on the plaintiff's evidence-supported version of the material facts. *See Plumhoff*, 572 U.S. at 773 (recognizing that *Johnson* limits the scope of our jurisdiction over qualified immunity denials only to the extent they involve "purely factual

issues"). In that setting, *Johnson* concerns are most acute. *See Pollard v. City of Columbus*, 780 F.3d 395, 401 (6th Cir. 2015); *Leary v. Livingston County*, 528 F.3d 438, 441 (6th Cir. 2008). But *Johnson* does not impose a magical rule of docket clearing whenever an appealing party simply mentions an issue of fact in their appellate briefing on qualified immunity or fails to wholly abandon their trial defense while on appeal. *Romo v. Largen*, 723 F.3d 670, 678 (6th Cir. 2013) (Sutton, J., concurring in part and dissenting in part); *see also Sevy v. Barach*, 815 F. App'x 58, 68 (6th Cir. 2020) (Readler, J., concurring in part and concurring in the judgment); *Est. of Matthews ex rel. Matthews v. City of Dearborn*, 826 F. App'x 543, 548 (6th Cir. 2020) (Readler, J., concurring in the judgment). Nor does "*Johnson* mean that *every* . . . denial of summary judgment is nonappealable" simply because the district court determined that there were "controverted issues of material fact." *Behrens v. Pelletier*, 516 U.S. 299, 312–13 (1996). Quite the opposite. When defense counsel includes fact-based arguments in a qualified immunity appeal, our obligation is to "separate" the legal wheat from the factual chaff and proceed. *Johnson*, 515 U.S. at 319–20; *DiLuzio v. Village of Yorkville*, 796 F.3d 604, 610 (6th Cir. 2015); *Bunkley v. City of Detroit*, 902 F.3d 552, 560 (6th Cir. 2018).

In fairness to Feagin, Moore certainly overindulges in record-based arguments. Yet we cannot say that his entire appeal is devoid of any legal argument. Instead, his briefing raises a number of issues we have long recognized as legal questions or mixed questions of law and fact that we can (and do) resolve here. Moore's lead argument is that the district court erred in denying him qualified immunity. Embedded within that argument are a bevy of cascading legal questions that Moore raises in his briefing on appeal. Does the undisputed evidence warrant a grant of summary judgment on the merits of the constitutional question? Or did Feagin satisfy his legal burden at summary judgment? If so, did Moore violate clearly established law? Or were his actions instead within the "hazy border between excessive and acceptable force" that would justify a grant of qualified immunity? *See* Appellant's Br. at 11 (concluding the qualified immunity section of his brief by maintaining that the district court "erred when it found that there was a genuine dispute of material fact in this case" and that Moore, at best, was not on notice that his actions were clearly out of bounds (quoting *Rudlaff*, 791 F.3d at 644)). All of these inquiries have long been standard fare in qualified immunity appeals. *See, e.g.*, *Chappell v. City of Cleveland*, 585 F.3d 901, 906 (6th Cir. 2009) (recognizing jurisdiction to determine whether

the plaintiff's evidence raises a genuine issue of material fact warranting trial); *Doe ex rel. Doe v. City of Roseville*, 296 F.3d 431, 438 (6th Cir. 2002) (same); *Williams v. Mehra*, 186 F.3d 685, 690 (6th Cir. 1999) (en banc) (same); *Farm Lab. Org. Comm. v. Ohio State Highway Patrol*, 308 F.3d 523, 531 n.3 (6th Cir. 2002) (holding we have jurisdiction to determine whether, in accepting the plaintiff's evidence, the defendants violated a clearly established legal right). With plenty of non-purely factual questions for us to examine, *Johnson*'s limits on *fact*-based appeals are beside the point.

Like Feagin, the dissenting opinion also presses for an aggressive, review-limiting understanding of *Jones*. Rather than allowing appealing parties to have their day in court, the dissent seemingly would extinguish that right in cases where, having looked to the "core of Defendants' argument," one can detect "Defendants [to have] use[d] their appellate briefing to argue" that the district court erred as to its assessment of a factual matter in the record. Dissenting Op. at 24–25. But the mere existence of "competing allegations on both sides" does not stand in the way of us assessing whether legal arguments likewise exist. *Id.* at 22. Indeed, we have long recognized that the "district court's assertion that there were genuine issues of material fact does not, standing alone, destroy the appealability of a qualified immunity ruling." *See Turner v. Scott*, 119 F.3d 425, 428 (6th Cir. 1997). We instead consider the facts in a light most favorable to the plaintiff. *Id.* Any other approach risks eliminating our review altogether in this setting. After all, facts permeate every qualified immunity dispute. *See Sevy*, 815 F. App'x at 66–67. And qualified immunity exists to protect against a government official's mistake of both fact and law. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Those protections would be "effectively lost if" an appeal were dismissed and a case "permitted to go to trial" simply because a party highlighted factual disputes in the court of appeals. *Id.* (citation modified). So rather than throwing up our hands whenever the parties disagree over the facts or whenever the district court has assessed the record, we instead roll up our sleeves and train our attention on any remaining legal questions. *See Johnson*, 515 U.S. at 319–20; *DiLuzio*, 796 F.3d at 610; *Bunkley*, 902 F.3d at 560.

The dissenting opinion's contrary approach runs counter to Supreme Court authority. Especially with video evidence available here and elsewhere, we can assess many of the facts for

ourselves, regardless how the parties portray them, filling in any holes with the plaintiff's evidence and the defendant's uncontested evidence. And in doing so, as the Supreme Court recently reminded us, we look comprehensively at "any relevant events" that influenced the use of force, *Barnes*, 145 S. Ct. at 1360 (majority op.), rather than narrowly considering, as does the dissenting opinion, only whether Feagin was resisting when he was "pulled upright from his vehicle." Dissenting Op. at 27. We may not make that our sole concern, as we might have done in days gone by. *Barnes*, 145 S. Ct. at 1358.

Rather than following this straightforward path, the dissenting opinion takes odd detours. Case in point, instead of "put[ting] aside factual disputes that are minor or . . . immaterial," *Clark v. Abdallah*, 131 F.4th 432, 445 (6th Cir. 2025), as we must, the dissenting opinion embraces them. We need not, for example, dwell on Feagin's motive in reaching toward the center console of his SUV, let alone, as the dissenting opinion mischaracterizes our opinion as saying, on whether "Feagin reached toward the center console of his vehicle *for a weapon*," Dissenting Op. at 29 (emphasis added). Nor is it material whether Feagin in fact put his car in reverse or the reason his arm was flailing as officers tried to subdue him. *See id.* at 27–29. On these points, again, the relevant touchstone is how a "reasonable officer on the scene" would perceive those actions, not Feagin's mindset. *Graham*, 490 U.S. at 396. And contrary to the dissenting opinion's understanding, *see* Dissenting Op. at 30, the *absence* of evidence, such as any limitations on what the video shows or Feagin's naked assertions that he was not resisting, cannot create genuine disputes of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). In the end, the dissenting opinion would allow a plaintiff to survive summary judgment and escape our interlocutory review by simply pointing to the absence of evidence or irrelevant evidentiary disputes. Much more is necessary before we would turn away on jurisdictional grounds a party seeking review of a qualified immunity denial.

b. That leaves Feagin's arguments on the merits. Primarily, he contends there are disputed facts in the record as to whether he was actively resisting at the exact moment he was removed from his vehicle. But his focus on whether there was active or passive resistance at that moment largely misses the point. We do not evaluate a particular use of force by considering just one tile in the reasonableness mosaic. Rather, the totality of the circumstances, not just one

circumstance in isolation, informs our views. *See Barnes*, 145 S. Ct. at 1358. As the Supreme Court recently confirmed, Feagin's resistance, while necessary to our calculus, should be evaluated together with the nature of the crime he was suspected of committing, Moore's response, and the threat Feagin posed to officers. *Id.* And, as just explained, Moore was justified in using non-lethal force to disable the immediate threat posed by Feagin.

In believing otherwise, Feagin asks us to instead focus narrowly on whether he resisted just before being tased. Ample case law, in particular, the Supreme Court's recent decision in *Barnes*, rejects Feagin's artificial dicing of the record. We pause here to reflect on the last few decades of relevant precedent. The seminal Supreme Court cases on use of force simultaneously emphasize the "split-second judgments" that an officer must make in a use of force situation while instructing lower courts nonetheless to employ a "totality of circumstances" approach. *See, e.g.*, *Graham*, 490 U.S. at 396; *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985). Appellate courts reconciled these commands in different ways in use of force cases. Some took a broad view and considered "all context and causes prior to the moment" of the use of force, *see Abraham v. Raso*, 183 F.3d 279, 291 (3d Cir. 1999), even examining whether an independent Fourth Amendment violation created the need for an otherwise reasonable use of force and rendered the force impermissible, *see Billington v. Smith*, 292 F.3d 1177, 1190–91 (9th Cir. 2002). Others took a narrow approach, one that considered only the seconds immediately surrounding the use of force when the moment of threat arose. *See, e.g.*, *Fraire v. City of Arlington*, 957 F.2d 1268, 1276 (5th Cir. 1992). We took a third path: "carv[ing] up [an] incident" into "conceptually distinct" segments, "judg[ing] each on its own terms to see if the officer was reasonable at each stage." *Dickerson v. McClellan*, 101 F.3d 1151, 1161–62 (6th Cir. 1996) (citation modified); *Pleasant v. Zamieski*, 895 F.2d 272, 276 (6th Cir. 1990). This segmented approach allows for evaluation of the "events preceding" the use of force occurring in "close temporal proximity," *Bletz v. Gribble*, 641 F.3d 743, 752 (6th Cir. 2011), while excluding distinct events that played no direct or foreseeable role in a particular use of force, *see, e.g.*, *Puskas v. Delaware County*, 56 F.4th 1088, 1097 (6th Cir. 2023); *Claybrook v. Birchwell*, 274 F.3d 1098, 1103 (6th Cir. 2001); *Pleasant*, 895 F.2d at 276–77.

Admittedly, we sometimes strayed from this approach, albeit in different ways. Here and there, we nodded towards the over-inclusive provocation approach utilized elsewhere, considering whether an officer should be denied immunity because he unreasonably "placed himself in potential danger" at some point prior to the incident necessitating the use of force. *See, e.g.*, *Latits v. Phillips*, 878 F.3d 541, 552 (6th Cir. 2017) (faulting officer for violating police procedures by ramming suspect's car, leading to a later use of deadly force); *Kirby v. Duva*, 530 F.3d 475, 482 (6th Cir. 2008). Yet on other occasions, we veered in the opposite direction, narrowing the timeframe question functionally to adopt the moment of threat doctrine. *See, e.g.*, *Reich v. City of Elizabethtown*, 945 F.3d 968, 978 (6th Cir. 2019). In extreme outlier cases, we even "hyper-segment[ed]" within the moment of the use of force. *See Osborn v. City of Columbus*, No. 22-3570, 2023 WL 2523307, at *7 (6th Cir. Mar. 15, 2023) (Readler, J., concurring in part and dissenting in part). At the height of such absurdity, we went so far as to divvy up shots fired just seconds apart in the heat of a continuous confrontation to analyze each as a discrete use of force. *See Palma v. Johns*, 27 F.4th 419, 441 (6th Cir. 2022), *see also Hart v. Michigan*, 138 F.4th 409, 420 (6th Cir. 2025) (distinguishing between an officer's use of pepper spray and use of tear gas moments after the pepper spray proved ineffective); *Hood v. City of Columbus*, 827 F. App'x 464, 469–70 (6th Cir. 2020). *But see Palma*, 27 F.4th at 453 (Readler, J., dissenting); *Hart*, 138 F.4th at 427 (Larsen, J., concurring in part and dissenting in part); *Hood*, 827 F. App'x at 472 (Guy, J., concurring in part and dissenting in part) (criticizing the majority for segmenting an exchange of gunfire "within a period of approximately five seconds").

Aware of this confusion, the Supreme Court in recent years clarified the temporal question in use of force cases. In so doing, the Supreme Court mercifully scrubbed any precedential value from many of these outlier cases adopting either extreme view. As to the broad temporal view, the Supreme Court dispelled the notion that the totality of the circumstances test requires consideration of irrelevant circumstances, such as whether an officer at some earlier point in time acted in a way that later led to the use of force. *See Plumhoff*, 572 U.S. at 776 n.3 (rejecting that deadly force cannot be justified simply due to an officer's "deci[ding] to continue" chasing a suspect); *County of Los Angeles v. Mendez*, 581 U.S. 420, 429 (2017) (holding that an unreasonable use of force cannot be premised on a separate incident that

"in some sense set the table for the use of force"). At the other end of the spectrum, the Supreme Court earlier this year barred courts from restricting the relevant timeframe to seconds or less, expressly rejecting the moment of threat doctrine. *Barnes*, 145 S. Ct. at 1356; *see also Est. of Hernandez ex rel. Hernandez v. City of Los Angeles*, 139 F.4th 790, 829 (9th Cir. 2025) (en banc) (Bumatay, J, dissenting) (observing that *Barnes* abrogated the moment of the threat doctrine and other "extreme version[s]" of that rule in which a court "puts on . . . blinders to ignore everything" except the last seconds of a particular interaction). "[N]arrowing [of] the requisite Fourth Amendment analysis" to focus on just the "climatic moment" where force was used, the Supreme Court explained, is, as all agree, improper. *Barnes*, 145 S. Ct. at 1356; *Hodges v. City of Grand Rapids*, 139 F.4th 495, 517 (6th Cir. 2025) (recognizing that *Barnes* rejected "such a segmented approached" that limits the scope of the inquiry to the seconds immediately prior to a shooting); *Heid v. Rutkoski*, 143 F.4th 1255, 1264 (11th Cir. 2025) (similar); Dissenting Op. at 31 (recognizing *Barnes* controls the determination as to Moore's reasonableness). Instead, the Supreme Court embraced a middle path, one akin to our segmented approach when it was properly applied. In utilizing the objective reasonableness analysis, a court must "separately" consider "each search or seizure that is alleged to be unconstitutional." *Mendez*, 581 U.S. at 428; *see also Plumhoff*, 572 U.S. at 777 (considering 15 gunshots as a single use of force); *Mullins v. Cyranek*, 805 F.3d 760, 768 (6th Cir. 2015) (considering multiple gunshots as a single use of force for purposes of qualified immunity analysis because the "second shot did not come at a time after which a reasonable officer would think the threat had passed"). And for each purported violation, in turn, we must consider all the "relevant circumstances" "leading up to the climactic moment." *Barnes*, 145 S. Ct. at 1356. While no artificial "time limit" cabins our consideration of a given use of force, *id.* at 1358, our focus is on what "proximately caused" any Fourth Amendment violation, *Mendez*, 581 U.S. at 430–32; *Puskas*, 56 F.4th at 1097 (holding *Mendez* requires some direct and foreseeable relation between the circumstances being considered and the use of force).

Heeding these commands, the timeframe to consider here is not just the seconds before Feagin's tasing, but instead all of the events that foreseeably led to the use of force. Viewed in this light, the undisputed evidence reveals active, unceasing resistance, as well as threatening behavior by Feagin up to the point he was tased. In the preceding minute, recall, Feagin made a

furtive movement to the inside of the vehicle, ignored Moore's repeated commands to exit the SUV, seemingly put his car in reverse while Moore was standing next to it, dropped bullets from his pockets, and then refused to submit to handcuffing, instead tussling with the officers. *See Wright*, 962 F.3d at 867; *Hagans*, 695 F.3d at 509. And in the seconds around the time of the tasing—a relevant (but not the lone) consideration in assessing the permissibility of the force used— Feagin's right arm was flailing against the SUV as Moore tried to handcuff him. *See Barnes*, 145 S. Ct. at 1358 ("Of course, the situation at the precise time of the shooting will often be what matters most."). *But see Cunningham*, 994 F.3d at 766–67 (rejecting that qualified immunity can be denied based on "stop-action viewing of the real time situation" an officer encountered). In the absence of evidence that Feagin posed no danger and was either fully compliant with officer commands or had ceased resisting, Moore's conduct was not unreasonable. *Rudlaff*, 791 F.3d at 642; *Hagans*, 695 F.3d at 509.

Were that not the case, Feagin still fails to show that Moore was on sufficient notice that his use of force was unreasonable. As already explained, he cites no case denying qualified immunity in circumstances similar to this one. *See Rivas-Villegas*, 142 S. Ct. at 8. The district court, recall, described the events here as falling in the "gray area between active and passive resistance." Order Den. and Granting Defs.' Mots. Summ. J., R. 70, PageID#608. In that instance, our precedents require a grant of qualified immunity. *See Rudlaff*, 791 F.3d at 644 ("Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." (quoting *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992))); *see also Brown*, 95 F.4th at 440; *Hagans*, 695 F.3d at 511; *King*, 97 F.4th at 397.

Nor do Feagin's assertions in his affidavit move the ball in his direction. To rebut Moore's showing that summary judgment is warranted, Feagin "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). Blanket denials of a defendant's evidence are "not enough" to create a genuine issue of material fact. *Irvin v. Airco Carbide*, 837 F.2d 724, 726 (6th Cir. 1987). As such, Feagin does not receive an "automatic trial" simply by "assert[ing], without any evidence, that 'the police are lying'" as to whether he was resisting. *See Elliott v. Leavitt*, 105 F.3d 174, 175 (4th Cir. 1997) (Wilkinson, J., concurring

in the denial of rehearing en banc). That point is compelling here, where Feagin's affidavit consists merely of unadorned assertions that he was "not resisting arrest" when he was tased. Feagin's statements at most reflect his subjective belief that he was not intending to actively resist arrest at the time of the tasing. Yet Feagin's view of his own actions is "not the whole ballgame"; we instead ask "whether, at the time [Moore] fired his taser, every reasonable officer would have *perceived* [Feagin] as no longer actively resisting arrest." *Perez v. Simpson*, 83 F.4th 1029, 1031 (6th Cir. 2023); *see Lanman v. Hinson*, 529 F.3d 673, 680 (6th Cir. 2008). Based on the objective unrebutted evidence, there is no dispute of fact worthy of a trial as to whether a reasonable officer would have perceived Feagin as having surrendered himself when he was tased.

Lastly, Feagin protests that Moore did not warn him before deploying his taser. Perhaps so. But officers need not do as much. *See, e.g.*, *Thomas v. City of Columbus*, 854 F.3d 361, 366 (6th Cir. 2017). Our precedent on that score is especially understandable when one remembers that the Supreme Court's use of force rulings allow officers to make split-second decisions in employing force. *Graham*, 490 U.S. at 396.

All told, a grant of summary judgment is warranted as to the tasing claim against Moore.

B. That leaves the deliberate indifference claims stemming from the allegedly inadequate medical care Feagin received in the wake of Moore deploying pepper spray while Feagin was detained in the police cruiser. The district court refused to grant summary judgment on that claim solely on the basis that defendants never moved on the ground, a position defendants concede. That fact dooms the officers' assertion that we may opine on the deliberate indifference claim. While our interlocutory jurisdiction can include qualified immunity appeals, *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985); *DiLuzio*, 796 F.3d at 609–10, it is difficult to see how it would extend to claims to which officers never sought such immunity, *see Glennborough Homeowners Ass'n v. U.S. Postal Serv.*, 21 F.4th 410, 414 (6th Cir. 2021) (recognizing appellant can forfeit an affirmative argument for jurisdiction by not raising the issue below).

Defendants explain this oversight by noting that they did not read Feagin's deliberate indifference claim to concern the arresting officers, as opposed to the county jail officials.

Either way, without subject matter jurisdiction, we are powerless to render a judgment on the proper scope of that claim. *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868). That said, if Feagin is in fact pursuing a claim beyond the reach of his pleadings, the district court is well positioned to address that concern through proper trial management.

III.

We reverse the district court's denial of qualified immunity as to Feagin's excessive force claim, dismiss the appeal of Feagin's deliberate indifference claim for lack of jurisdiction, and remand to the district court for further proceedings.

DISSENT

CLAY, Circuit Judge, dissenting. This case unfortunately follows the paradigm of so many qualified immunity appeals involving the use of excessive force by police. Despite the existence of disputed facts, Defendants attempt to obscure, minimize, or misrepresent the events leading to the allegations of police misconduct. Qualified immunity supposedly exists for a reason, and no one wishes to see a law enforcement officer subjected to the vagaries of litigation where the facts fail to arguably support a cause of action. But this case is not one in which the incident at issue, when properly construed, should permit judgment to be rendered in the officer's favor based on the reversal of the district court's denial of qualified immunity. In fact, the competing allegations on both sides of this case render the conferring of qualified immunity out-of-bounds under our controlling caselaw. Instead of following legal precedent, Defendants vigorously dispute Plaintiff's version of the facts. Because we can resolve only legal issues on an interlocutory appeal of the denial of qualified immunity, and Defendants present us with none, the appeal should be dismissed for lack of jurisdiction.

The relevant facts may be described, in part, as follows: Ulysses Feagin was driving down the center of a narrow street in Mansfield, Ohio, and approached a Mansfield Police Department ("MPD") police cruiser driving in the opposite direction. Feagin did not stop as he approached the cruiser, though the officer driving, Defendant Mark Boggs, honked his horn in warning. Fearing an accident, Boggs swerved on the road. Immediately thereafter, Boggs and another MPD officer, Defendant Jordan Moore, who was driving a second cruiser, turned to pursue Feagin. Moore and Boggs followed Feagin for about forty seconds before Feagin drove his vehicle to the parking lot of an apartment building, turned into a parking space, and stopped. Believing that Feagin was unresponsive to Moore's initial orders to exit his vehicle, Moore pulled him out of the vehicle. Moore and Boggs then held him against the driver's side door, and Moore tased him twice. The district court denied qualified immunity to Moore, finding that genuine disputes of fact existed as to the crucial question of whether Feagin actively resisted Moore prior to the tasing. The majority would reverse the district court's denial of qualified

immunity to Moore for this use of force, arguing in this appeal that we have jurisdiction over Feagin's allegations of the officers' use of excessive force. But Moore raises only a factual challenge to the denial of qualified immunity. We do not have jurisdiction over such an appeal, and therefore should dismiss this appeal.

In determining whether government officials are entitled to qualified immunity, this Court conducts a two-step inquiry, determining: "(1) whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated, and (2) whether that right was clearly established." *Everson v. Leis*, 556 F.3d 484, 494 (6th Cir. 2009) (internal quotation marks omitted). To prevail on his excessive force claim, Feagin must show that Moore's use of the taser violated his clearly established constitutional rights. *See Meadows v. City of Walker*, 46 F.4th 416, 422 (6th Cir. 2022). On this point, the question of whether Feagin actively resisted the officers' efforts to apprehend and handcuff him is a crucial one. "A suspect has a clearly established constitutional right to be free from the use of physical force by police officers when he is not resisting efforts to apprehend him." *Coffey v. Carroll*, 933 F.3d 577, 589 (6th Cir. 2019). But the majority correctly states that tasing is a reasonable response when a suspect actively resists arrest. "We have often found that the reasonableness of an officer's use of a taser turns on active resistance." *Kent v. Oakland Cnty.*, 810 F.3d 384, 392 (6th Cir. 2016). "Active resistance includes physically struggling with, threatening, or disobeying officers, . . . refusing to move your hands for the police to handcuff you, . . . or fleeing from police." *Id.* (internal quotation marks and citations omitted). Contrary to the majority's assertions, however, tasing is not justified in instances of "passive resistance," such as when a suspect fails to fully comply with an officer's commands but does not pose a physical threat. *See id.* at 392–94 (where a suspect did not comply with officers' commands and "demonstrated 'verbal hostility,'" dismissing officers from his home, but was physically submissive, tasing was unreasonable). The district court denied qualified immunity to Moore because it found that whether Feagin actively or passively resisted, despite some noncompliance, depended on how a factfinder addressed disputed evidence. In other words, whether Feagin actively resisted was a genuine dispute of material fact precluding the grant of qualified immunity to Moore, and Feagin's resistance was also determined by disputed facts.

Defendants' appeal of the district court's denial of qualified immunity presents a jurisdictional issue, as "[w]e are authorized to hear appeals only from 'final decisions' of the district court," *Adams v. Blount Cnty.*, 946 F.3d 940, 948 (6th Cir. 2020) (quoting 28 U.S.C. § 1291), and a district court's denial of a claim of qualified immunity is an appealable final decision only "to the extent that it turns on an issue of law." *Ouza v. City of Dearborn Heights*, 969 F.3d 265, 276 (6th Cir. 2020) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985)). "That is, on an interlocutory appeal from the denial of qualified immunity, we have jurisdiction to review only the 'purely legal' question of 'whether the legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions.'" *Id.* (quoting *Mitchell*, 472 U.S. at 528 & n.9). And "[w]e have jurisdiction only to the extent that the defendant limits his argument to questions of law premised on facts taken in the light most favorable to the plaintiff." *Adams*, 946 F.3d at 948 (alteration adopted) (internal quotation marks omitted).

The issue in dispute in this appeal is not one of law. Defendants argue against the conclusion that this appeal involves a disputed issue of material fact as to whether Feagin actively resisted arrest, raising only a factual challenge. The core of Defendants' argument is that "Feagin was actively resisting arrest at the time Officer Moore deployed the taser," and therefore that Moore's use of force is reasonable and qualified immunity is due. Appellant's Br., 10. Feagin vigorously denies Defendants' factual allegations in this regard, and denies the allegation that he was actively resisting when the taser was used.

In this case, the district court found that disputes of fact governed whether Feagin's actions amounted to active resistance. The Supreme Court made clear in *Johnson v. Jones*, 515 U.S. 304 (1995), that a defendant "may not appeal a denial of a motion for summary judgment based on qualified immunity 'insofar as that order determines whether or not the pretrial record sets forth a "genuine" issue of fact for trial.'" *Adams*, 946 F.3d at 948 (quoting *Johnson*, 515 U.S. at 320). In this case, the district court determined that the video evidence presented a "gray area" in which it was disputed whether Feagin was passively resisting arrest. Op., R. 70, Page ID #608. The question of Feagin's active or passive resistance rests on the characterization of Feagin's actions and movements under the circumstances, as seen in the video and described in the record. This is a quintessentially fact-bound inquiry. The district court found that factual

disputes raised the possibility that a jury could reasonably conclude that Feagin did not actively resist, and only passively resisted—so as to warrant liability for excessive force. *Cf. Meadows*, 46 F.4th at 423–24 (distinguishing between a "gray area" in which "facts are disputed, but a reasonable jury could find a set of facts that, if proven at trial, would show that an officer's actions violated a clearly established right," and a situation in which the undisputed "facts confronting an officer leave ambiguity about whether the officer's actions violate a constitutional right").

In arriving at its ultimate conclusion that Feagin's active resistance was disputed, the district court identified areas of factual dispute from which a jury could conclude that Feagin was not actively resisting. First, the district court read the facts in the record to dispel "a concern for potential escape or immediate harm," concluding that Feagin "parked at the apartment complex" to await the officers' arrival and "made no effort to flee," evincing no threat to the officers. Op., R. 70, Page ID #607. Second, the district court viewed the video to support "run-of-the-mill noncompliance" and that Feagin was "under control" and not resisting when Moore used his taser. *Id.* at Page ID #608.

Defendants dispute both findings using their characterization of the evidence that Feagin was persistently resisting arrest. *See* Appellant's Br., 4, 10. Defendants argue that "arrest reports, the affidavits of the officers, the response to resistance forms, and the video all establish that Mr. Feagin was actively and persistently resisting arrest," and claim that evidence to the contrary—Feagin's sworn affidavit—is inadmissible. *Id.* at 10–11. This itself is jurisdiction-defeating. We have "consistently enforced *Johnson*'s jurisdictional bar in cases in which the defendant's qualified immunity appeal is based solely on his or her disagreement with the plaintiff's facts." *Ouza*, 969 F.3d at 277. Defendants' appeal is based on such disagreement, as they quibble with the district court's contrary findings and Feagin's contrary attestations. Feagin attested that "he never physically resisted" the officers, never reached for a weapon, and never reversed his car. Feagin Aff., R. 61-2, Page ID #451–52. As described, the district court concluded that Feagin never fled, never presented a threat, and that a reasonable jury could conclude that Feagin, though noncompliant, did not resist arrest. Defendants use their appellate briefing to argue otherwise. They state instead that Feagin resisted arrest, reached in the back of

his vehicle, and reversed out of his parking spot in an attempt to flee officers. These facts, Defendants argue, establish that the district court erred in finding a genuine dispute of material fact and denying qualified immunity.[1]

Defendants' arguments defeat our jurisdiction because they reflect a challenge to the district court's determinations about genuine disputes of fact. *See Gregory v. City of Louisville*, 444 F.3d 725, 744 (6th Cir. 2006). Defendants' protestations further defeat our jurisdiction by constituting a failure to accept Feagin's version of the facts as true, thwarting our well-established rule that "to bring an interlocutory appeal of a qualified immunity ruling, the defendant must be willing to concede the plaintiff's version of the facts for purposes of the appeal." *Ouza*, 969 F.3d at 277 (quoting *Jefferson v. Lewis*, 594 F.3d 454, 459 (6th Cir. 2010)); *cf. Heeter v. Bowers*, 99 F.4th 900, 909 (6th Cir. 2024) ("A defendant may invoke our jurisdiction by conceding the district court's version of the facts, as construed in the light most favorable to the plaintiff." (internal quotation marks omitted)). Because Feagin's actions are disputed, we simply cannot reach the legal question of whether his actions amounted to active resistance. *Cf. Adams*, 946 F.3d at 949 (declining to exercise jurisdiction because the defendant contested factual determinations at "the heart of the legal issue" determining whether his conduct amounted to excessive force). This precludes our jurisdiction in this case.

To be sure, "[t]here are two narrow circumstances in which an interlocutory appeal record may contain some dispute of fact," such as the one Defendants raise. *Id.* at 948. One exception is worth discussing here: "[I]n exceptional circumstances, we may decide an appeal challenging the district court's factual determination if that determination is 'blatantly contradicted by the record, so that no reasonable jury could believe it.'" *Id.* (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)). Often, these circumstances come about where there is video footage, as in the prototypical example of *Scott v. Harris*, where video footage "clearly contradict[ed]" the facts as told by the plaintiff and adopted by the lower court. 550 U.S. at 378.

[1]Defendants seem to make the bizarre argument that when there are unresolved factual disputes, "rather than throwing up our hands whenever the district court has assessed the record," Maj. Op., 18, we should address remaining legal questions. Defendants miss the point that when there are material factual disputes, this Court is without jurisdiction and should not reach the legal questions. It is not our place to "[fill] in any holes with the plaintiff's evidence," as Defendants would have us do. *Id.*

Where video footage "resolves many of the factual disputes" in a case, "[w]e may view the facts in the light depicted by the videotape and use it to ensure the district court properly constructed the factual record." *Heeter*, 99 F. 4th at 910 (internal quotation marks omitted).

But in this case, video footage fails to resolve the disputed question of Feagin's resistance and fails to contradict the district court's determination that Feagin's resistance was a genuinely disputed fact. The district court was correct that the video fails to illuminate whether Feagin actively resisted. Thus, the video does not resolve the issue of our jurisdiction over this appeal. The majority makes two errors in exercising jurisdiction anyway and deciding that Moore is entitled to qualified immunity. First, the majority misrepresents by overstating the events depicted in the video to decide the factual and legal issues at hand, implicitly using this decisiveness to exercise jurisdiction. Second, the majority reaches outside of the video and distorts facts in Defendants' favor in order to grant qualified immunity.

The video shows exactly the gray area the district court described, evincing a genuine dispute of material fact that precludes qualified immunity for Moore on Feagin's excessive force claim. From the video, it is apparent that Moore and Boggs are physically controlling Feagin's body before Moore tases Feagin at close range. Feagin opened his car door for the officers, and Moore and Boggs immediately pulled him upright, wrestled his hands behind his back, and pulled him into a standing position. The officers held Feagin against the vehicle and attempted to handcuff him. Moore deployed his taser while the officers were handling Feagin's body in an effort to secure the handcuffs. On the available video footage, much of Feagin's body is obscured. But once he is pulled upright from his vehicle, Feagin does not appear to fight the officers. He was not resisting.

The district court's description of Feagin's movements as he was pulled out of his vehicle, tased, and handcuffed is persuasive. According to the district court, Feagin "appear[ed] to go limp as the officers wrestle[d] him from the driver's seat of the car to a standing position beside it." Op., R. 70, Page ID #594. As the officers put handcuffs on Feagin, "Feagin appear[ed] to cooperate and not resist." *Id.* at Page ID #595. Indeed, Feagin appears to have been unable to resist, because the officers were in control of his body. Though the majority characterizes Feagin's arm as "flailing" in resistance at the point Moore deployed his taser at

close range, Maj. Op. 13, Feagin's arm is largely obscured by the officers at the critical point. The officers have a hold on Feagin's shoulders and upper arm, and a reasonable jury could conclude that the "flailing" might be characterized as an involuntary response to the hold, rather than a form of resistance. As Moore tases Feagin, he and Boggs remain in control of Feagin's body.

The district court was also correct to qualify its statements as Feagin's "apparent" movements. The angle of the footage does not give much insight as to the rigidity of Feagin's body as he was forced against the car, nor to the subtlety of his movements, because the officers are obscuring much of his body as they force him into handcuffs. This leaves us with a factual dispute, as the district court recognized, and thus no jurisdiction. *Cf. Heeter*, 99 F. 4th at 910 (exercising jurisdiction where the video gave a "clear view" of the events relevant to plaintiff's claim). I therefore differ from the majority in my view of the video and its ability to resolve the issues in this appeal.

The majority is also of the mind that utilizing the video and the record exception is unnecessary to exercise our jurisdiction. The majority says that Defendants have raised legal disputes because, despite "overindulg[ing] in record-based arguments," Defendants' "lead argument is that the district court erred in denying [Moore] qualified immunity." Maj. Op., 17. But in other appeals in which we have denied jurisdiction because the interlocutory appeal concerned a factual dispute, defendants necessarily raised the same argument, because they all challenged the denial of qualified immunity. *See, e.g.*, *Gregory*, 444 F.3d at 743–44; *McGrew v. Duncan*, 937 F.3d 664, 667, 669 (6th Cir. 2019). The majority raises for itself questions that it claims are "embedded" within the appeal, such as whether "the undisputed evidence warrant[s] a grant of summary judgment," or whether "Moore violated clearly established law." Maj. Op., 17. Defendants did not raise these issues, as their appeal relies on disputing Feagin's version of events, and they never mention the legal issue of whether the tasing violated clearly established law. It is not our duty to discern "embedded" legal questions for an appellant who does not raise them.

Rather, the majority distorts our precedent in order to assume jurisdiction and reverse the district court. In addition to its outsized misconstrual of the video, it does so by failing to

construe other facts in Feagin's favor while purporting to do so. *See id.* at 8 ("We review the district court's decision de novo, resolving all genuine factual disputes in a light most favorable to Feagin."). This allows the majority to consider disputed facts in the record as "tile[s] in the reasonableness mosaic" supposedly supporting Moore's use of force. *Id.* at 18. By resting its decision on both the unclear video and disputed circumstances surrounding it, the majority reaches far outside our jurisdiction. *Cf. Heeter*, 99 F. 4th at 910 (concluding an appeal of the denial of qualified immunity was within our jurisdiction because we could conduct a legal analysis based on a clear video and undisputed facts).

To reiterate, we must "take the facts in the light most favorable to [Feagin] unless they are clearly contradicted by video." *Ayala v. Hogsten*, 786 F. App'x 590, 591 (2019). What follows are a few ways in the which the majority fails to do so.

First, the majority states that Feagin reached toward the center console of his vehicle for a weapon. Maj. Op., 5. Defendants' "response to resistance" report states that Feagin reached toward the floorboards of his vehicle. Feagin disputes that he reached for the floorboards and acknowledges only that the gear shift is in the center console; he disclaims that he reached for a weapon while he was in his vehicle or as he was pulled from it. The video does not provide a view as to whether Feagin reached for the console—it only shows Feagin being pulled from the car.

Second, the majority asserts that Feagin "[s]uddenly" reversed his car after parking it, in an effort to evade arrest. *Id.* Feagin denies in his sworn affidavit that he attempted to reverse his vehicle. The district court only characterized the vehicle as "roll[ing] slightly backward," without attributing the rollback to Feagin's efforts, acknowledging instead that the rollback occurred when the vehicle "shifted into park and the engine settled into gear." Op., R. 70, Page ID #594. Again, the video does not show Feagin inside the car. Consequently, the mechanism by which the car rolled back is unclear. Taking the facts in Feagin's favor, we would construe the evidence as supporting the narrative that the car rolled back as it settled into park, not because of an intentional reversal. From what the video does show, the car's rollback can be characterized as unintentional. Further, the district court astutely noted that "[n]o evidence in the record suggest[ed] a concern for potential escape or immediate harm," because Feagin

voluntarily parked at the apartment complex and "officers blocked his car." *Id.* at Page ID #607. The circumstances fail to support Defendants' allegation that Feagin intended to flee—he willingly parked his car in the first place, after a limited pursuit.

Third, the majority asserts that bullets fell from Feagin's pocket as the officers were pulling Feagin from his vehicle. Maj. Op., 5. This is based on assertions from Defendants' "response to resistance" report and Boggs' affidavit. As the district court concluded, however, "the video footage does not show ammunition falling from Mr. Feagin's pocket, though it might be too small to see." Op., R. 70, Page ID #595.

The majority's mischaracterization of Feagin's conduct before he was tased allows it to conclude that Feagin was a continuing threat to Moore and Boggs, supporting the conclusion that Moore's use of the taser was reasonable. *See* Maj. Op., 12–13. But these are not facts that the district court found, and for good reason. The majority is wrong to conclude that these purported facts were "undisputed," and to discount Feagin's averments to the contrary. *See id.* "An appellate court reviewing the denial of the defendant's claim of immunity need not consider the correctness of the plaintiff's version of the facts, nor even determine whether the plaintiff's allegations actually state a claim." *Mitchell*, 472 U.S. at 528 (1985). We are obliged instead to accept the plaintiff's factual allegations as true, and to utilize them only in resolving the relevant legal claims. *Id.* Ignoring this, the majority takes the officers' version of events at face value, contradicting our summary judgment standards. That the majority must bend the record to Defendants' favor evinces the existence of factual disputes precluding a resolution at this juncture. But to any objective observer, it is clear that Feagin has raised disputes as to the Defendants' characterization of events. To be sure, where the moving party comes forward with evidence to support summary judgment, a non-moving party must advance more than a "blanket denial" to defeat the motion. *Irvin v. Airco Carbide*, 837 F.2d 724, 726 (6th Cir. 1987). But in this case, the evidence that Defendants provided itself presented "a sufficient disagreement to require submission to a jury," and was not "so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 251–52 (1986). The record evidence in this case cannot be characterized as one-sided given the ambiguity of the interactions in the video and, indeed, what it does not show. There is more than "metaphysical doubt" as to the officers'

versions of material facts and whether the use of force was justified. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In addition to Feagin's sworn attestations, the video fails to show that Feagin was actively resisting when the taser was deployed and fails to corroborate the officers' testimony as to the events leading to the tasing.

In any event, the minutiae of the disputes as to the events preceding the tasing should be irrelevant for the purposes of this appeal. What is relevant is that such disputes exist, and that Defendants rely upon them to argue against the denial of qualified immunity. The majority contends that the reasonableness of Moore's use of force depends on the "totality of the circumstances." *See Barnes v. Felix*, 605 U.S. ---, 145 S. Ct. 1353, 1358–59 (2025) (internal quotation marks omitted). Were we making a determination as to Moore's purported reasonableness, Feagin's conduct outside the moment of the tasing might affect our judgment. But Defendants' appeal, which raises only factual disputes, prevents us from reaching the merits of this issue. Furthermore, our duty to construe factual disputes in Feagin's favor prevents us from viewing the totality of circumstances in the misleading way that the majority does in attempting to sift through unresolved factual disputes.

For these reasons, though I concur in the dismissal of the appeal as to Feagin's deliberate indifference claim, I respectfully dissent from the reversal of the district court's denial of qualified immunity as to Feagin's excessive force claim.