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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

[DATE STAMP]

FILED

United States Court of Appeals

Tenth Circuit

April 2, 2026

Christopher M. Wolpert

Clerk of Court

DERRICK DUANE BARKER,
Plaintiff - Appellant,

v.

CITY OF WEATHERFORD EX REL.
WEATHERFORD POLICE
DEPARTMENT; RYAN HETHERINGTON;
SEAN LANIER; NORMANDO GUYTON;
DYLAN OWENS; DEREK BECK;
CHASE MURLEY; JUSTIN BLATNICK;
HAGAN ARD, in their individual capacities,
Defendants - Appellees.

No. 25-6069
(D.C. No. 5:24-CV-00235-R)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY**, and **TYMKOVICH**, Circuit Judges.

Derrick Barker brought suit under 42 U.S.C. § 1983 alleging officers of the City of Weatherford Police Department used excessive force while arresting him following a traffic stop. Barker brought his civil rights claims against the City of Weatherford and the eight individual officers who took part in his arrest.

The officers asserted qualified immunity and moved for summary judgment. The district court granted their motion, finding Barker failed to show the officers violated a constitutional right, and even if they had, the constitutional right the officers allegedly violated was not clearly established. This appeal followed.

We **AFFIRM** because we agree with the district court on both prongs of the qualified immunity analysis.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(t); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. Background¹

On the evening of November 27th, 2021, Officer Hetherington observed Barker driving his vehicle in Weatherford, Oklahoma without his vehicle tag illuminated, and conducted a traffic stop. *See* Hetherington Dash at 00:39-00:44 (Barker's vehicle tag not illuminated). Barker parked his vehicle, stepped out of it while the engine was still running, and walked toward Hetherington's police cruiser. Hetherington instructed Barker to get back into his vehicle three times, but Barker did not comply. Hetherington then radioed for backup.

¹ Barker disputes the district court's recitation of the facts. He argues the district court "relied on inaccurate facts" and "ignored material facts," although he concedes "[t]he district court correctly identifies the facts of the incident up until Mr. Barker is tased." Aplt. Br. at 10, 13-17. But because two separate dash cameras and three different officer body cameras captured the incident, we take "what is indisputably shown by the videos ... as a matter of fact." *Kapinski v. City of Albuquerque*, 964 F.3d 900, 903 n.2 (10th Cir. 2020) (citing *Scott v. Harris*, 550 U.S. 372, 378 (2007)). And although under the summary judgment standard we view the facts in the light most favorable to Barker as the nonmoving party, *see* Fed. R. Civ. P. 56(c), we will not adopt a version of the facts that is "blatantly contradicted by the record, [such] that no reasonable jury could believe it," *Scott*, 550 U.S. at 380. After a careful analysis of the videos, we agree with the district court's characterization of the incident.

The Appellees submitted the dash and body camera videos as supplemental appendices 9-13. *See* Supp. App. 9 ("Hetherington Dash"); Supp. App. 10 ("Hetherington Body"); Supp. App. 11 ("Owens Dash"); Supp. App. 12 ("Owens Body"); Supp. App. 13 ("Guyton Body").

Barker eventually returned to his vehicle and reached in to grab a cell phone. Heatherington approached Barker, again instructing him to get in his vehicle, and asked him why he got out of his vehicle. Barker responded, "I just got out of the vehicle." Hetherington Body at 00:57. Barker then reached in his vehicle again, turned back toward Hetherington, and put his hand in his pocket. Hetherington instructed Barker a fifth time to get in his vehicle. In response, Barker slowly turned to his vehicle and spent several seconds rummaging inside it, before finally sitting in the driver's seat.

Hetherington informed Barker that he pulled him over because his license plate was not illuminated. Without speaking, Barker exited his vehicle, and attempted to move past Hetherington toward the rear of the vehicle. Hetherington placed his hand on Barker's chest, extended his arm, and instructed Barker to get back in his vehicle. Barker did not comply, but instead raised his hand to point to the rear of the vehicle, stating he wanted to check his tag light. Hetherington again instructed Barker to return to his vehicle, at which point Barker swiped Hetherington's hand away from his chest and yelled, "Get your hand off me!" Hetherington Body at 01:31-01:33. Hetherington warned that he would arrest Barker for obstruction if he did not comply. Barker still refused to comply and attempted to force his way around Hetherington.

Hetherington then informed Barker he was under arrest, grabbed Barker's arm, and commanded him to put his hands behind his back. Barker pulled his arm

away and attempted to get back into his vehicle. Hetherington grabbed Barker's arm again, to which Barker exclaimed, "This has gone far enough," before pulling himself back into his vehicle. Hetherington Body at 01:49. During this struggle, Hetherington commanded Barker to put his hands behind his back at least four times, yet Barker never complied. Hetherington finally backed away and pulled out his taser.

While pointing his taser at Barker, Hetherington commanded him to exit his vehicle. Barker responded, "First you tell me to get in, now you want me to get out?" Hetherington Body at 02:13. Hetherington instructed Barker to exit his vehicle at least six times before Officer Lanier arrived, at which point Hetherington asked Lanier to "cover" Barker with his taser so Hetherington could remove Barker from the vehicle. *Id.* at 02:36-02:40. For about fifteen seconds, Hetherington tried to pull Barker from his vehicle, but Barker resisted by bracing himself and holding onto the steering wheel. *Id.* at 02:41-57; Hetherington Dash at 03:23-03:38. During that time, both officers continued to demand that Barker exit his vehicle and warned him he would be tased if he did not comply. After Lanier issued a final warning, Hetherington instructed Lanier to tase Barker.

Officers Owens and Guyton arrived just after Lanier tased Barker, to which Owens observed that Barker was "still fighting." Owens Body at 00:33; Guyton Body at 00:33. Guyton ran to help Hetherington remove Barker from his still-running vehicle, while Owens deployed his baton. After being

tased, Barker was still sitting upright, holding onto the steering wheel with his right hand, Owens Body at 00:44, and had both feet inside the vehicle, Owens Dash at 01:24; Guyton Body at 00:43. Hetherington and Guyton then extracted Barker from his vehicle. While the officers tried to pull Barker to the ground, Barker planted his feet and pushed himself back toward his vehicle. *Id.* at 00:45; Owens Dash at 01:30; Owens Body at 00:45. Guyton tried to sweep Barker's legs with his foot, and Owens struck Barker's right leg below the knee with his baton. *Id.* at 00:46; Hetherington Dash at 04:00-04:02; Owens Dash at 01:30-01:34. Yet Barker remained standing. *Id.* at 01:34. Owens then struck Barker's legs again below the knees while Guyton attempted another leg sweep; this time Barker fell to the ground. *Id.* at 01:35; Owens Body at 00:47; Guyton Body at 00:47. Owens wound up for a third baton strike, but stopped his swing when he saw Barker fall. Hetherington Dash at 04:03.

Barker landed on his right side with both hands out in front of him, before turning onto his stomach. Owens Body at 00:47-00:48. Hetherington and Guyton got on top of Barker and tried to pull his arms behind his back, but Barker resisted and placed his palms on the ground out to either side of his body. Owens Dash at 01:37; Hetherington Body at 03:26; Guyton Body at 00:57. After watching his colleagues struggle to secure Barker's hands for several seconds, Owens performed an x-bar pressure point maneuver on Barker's left shin. Owens Dash at 01:42; Owens Body at 00:54. Hetherington and Owens were then able to move Barker's hands behind his back, at which point Owens stopped the x-bar maneuver and put his baton away.

Id. at 01:03; Hetherington Body at 03:29; Owens Dash at 01:45-01:51; Hetherington Dash at 04:08-04:18. Hetherington then handcuffed Barker and arrested him.

II. Discussion

Barker contends that he has produced sufficient evidence for a jury to find that the officers deployed excessive force when they subdued him after tasing him for failing to exit his car.

We review a district court's grant of summary judgment on qualified immunity grounds *de novo*. *Kapinski*, 964 F.3d at 904. But "our review of summary judgment orders in the qualified immunity context differs from that applicable to ... other summary judgment decisions" because "[q]ualified immunity is intended to give officials 'breathing room to make reasonable but mistaken judgments.'" *Id.* (quoting *Stanton v. Sims*, 571 U.S. 3, 6 (2013)). Accordingly, when a public official asserts qualified immunity at summary judgment, the burden shifts to the plaintiff to demonstrate: (1) the official violated a constitutional right; and (2) the right was clearly established at the time of the official's alleged violation. *Id.* at 905.

A. Constitutional Violation

The Fourth Amendment protects individuals against unreasonable seizures, which bars government officials from using "excessive force" to effect an arrest. *Graham v. Connor*, 490 U.S. 386, 396 (1989). To

analyze a claim of excessive force, we determine "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397. This analysis requires us to judge the use of force from the "perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. Because "police officers are often forced to make split-second judgments" under stressful and dangerous conditions, the Supreme Court has cautioned that "[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment." *Id.* (internal citation and quotation marks omitted). With these considerations in mind, we look to the following *Graham* factors to assess the reasonableness of the officers' use of force: (1) the crime's severity; (2) the potential threat posed by the suspect to the officers' safety and the public; and (3) whether the suspect was resisting arrest or attempting to flee. *Helvie v. Jenkins*, 66 F.4th 1227, 1237 (10th Cir. 2023) (citing *Graham*, 490 U.S. at 396).

Barker admits on appeal that the officers *initially* tasing him was "arguably [] reasonable" because it was only "minimal force." Aplt. Br. at 20-21. But Barker argues the officers' *subsequent* use of force was unreasonable because he was effectively subdued by the tasing. The post-tasing force that Barker alleges was excessive includes Hetherington and Guyton removing Barker from his vehicle and pulling him to the ground, Owens striking Barker twice on the shins with a baton, and Owens performing the x-bar

maneuver on his left leg.² After reviewing the videos, and considering the circumstances confronting the officers, we conclude all three *Graham* factors justify the level of force the officers used to arrest Barker.

The first factor, the severity of the crime at issue, might have weighed against the use of force had the incident remained a routine encounter for a traffic violation. Barker, however, "quickly escalated the situation" by refusing to comply with Hetherington's many legitimate commands, which resulted in Hetherington trying to arrest Barker for obstruction. *Helvie*, 66 F.4th at 1241. The officers were thus justified using "additional force to overcome [Barker's] resistance to being removed from his" vehicle. *Id.* As a result, the crimes at issue that required the officers' use of force, including obstruction and resisting arrest (and arguably attempting escape from an officer)—are severe crimes that we have found to justify similar force in previous cases. *See id.* at 1233-34, 1241 (finding officer was justified in dragging the plaintiff from his car and dropping a knee on his chest—resulting in two fractured ribs—because the plaintiff obstructed the officer and resisted arrest).

² An x-bar maneuver is a pain compliance technique where the officer uses his baton as leverage to apply pressure to sensitive body areas—here, Barker's shin—so the officer may gain control over an active resister. Barker also alleges that while he was on the ground someone punched his body two times. Aplt. Br. at 7. He admits, however, that the punches are "not clear" in the videos. *Id.* From our review of the five videos, which cover multiple angles, we see nothing to indicate that any of the officers punched Barker.

This factor accordingly favors the officers.

The second *Graham* factor, whether Barker posed an immediate threat to the safety of the officers or the public, also favors the officers. Barker's behavior from the start of the traffic stop was unusual, when he immediately exited his vehicle and walked toward Hetherington.³ Barker's unusual behavior quickly turned confrontational when he refused to comply with Hetherington's orders and repeatedly reached into his vehicle and pants pocket. Additionally, throughout the incident, Barker left his car running and his "path was not blocked by any police car." *Helvie*, 66 F.4th at 1241. An objective officer in Hetherington's situation might reasonably have suspected Barker was perhaps "driving while impaired, thus presenting a possible danger to the public if he were to flee and also suggesting that [Barker] might have been acting with impaired judgment which might lead him to try to flee." *Id.*; see also *Mecham v. Frazier*, 500 F.3d 1200, 1205 (10th Cir. 2007) ("An officer could reasonably be concerned that Mecham might create a danger to herself or others if not first subdued" when "she had her keys and [was in] control of the car while refusing

³ Barker argues this behavior was not unusual or aggressive because "other officers knew" Hetherington's usual practice during a traffic stop was to have people exit their vehicle and approach his car. Aplt. Br. at 8. But even if true, that does not explain why Barker exited his vehicle before Hetherington ordered him to do so. Also, when Hetherington pulled Barker over, Barker stated that he did not get pulled over often, see Hetherington Body at 01:04; so it is unlikely Barker was accustomed to Hetherington's alleged usual practice.

to cooperate."). And even after Lanier tased Barker, potentially neutralizing any safety concerns about his potential flight, Barker remained a threat to the officers. The officers had no way of knowing whether Barker was armed, and his arms and legs remained unsecured inside the car. Considering these facts, the second factor justifies the officers' use of force after tasing Barker. *See id.* ("With the benefit of hindsight, one might have hoped for a different resolution," but "[i]n making an arrest, officers may inevitably 'use some degree of physical coercion or threat thereof to effect it.'" (quoting *Graham*, 490 U.S. at 396)).

The final factor, whether Barker actively resisted arrest, similarly justifies the officers' post-tasing use of force. The crux of Barker's argument is that he was "physically incapacitated after being tased" and thus incapable of resisting arrest. Aplt. Br. at 16. He argues that at the very least, whether he was effectively subdued by the tasing is a dispute of material fact a jury should decide. The video evidence, however, shows otherwise; we do not credit his version of events that the record contradicts. *Scott*, 550 U.S. at 372.

First, Barker argues his "body went horizontal" after Lanier tased him and that "he was no longer in control of his body." Aplt. Br. at 5. But the videos show that after Lanier tased him, Barker was still sitting upright and holding onto the steering wheel with his right hand before Hetherington and Guyton pulled him from the vehicle.

[GRAPHIC OMITTED]

Owens Body at 00:44. The officers were therefore justified in using force to remove Barker from the vehicle. *See Valencia v. De Luca*, 612 F. App'x 512, 518-19 (10th Cir. 2015) (upholding officers' conduct in "pulling on" a driver to get him out of his vehicle by "using pressure points, and twisting his wrist and arm," when the driver was actively resisting arrest by "bracing his legs against the floorboard and grabbing onto the steering wheel").⁴

Second, Barker argues a jury could conclude he was incapacitated because he was "unable to stand on his own" after the tasing. Aplt. Br. at 16. The videos, however, show that after Hetherington and Guyton pulled Barker from his vehicle, he stood on his legs, pushed his body back toward his vehicle, and resisted the officers' attempts to pull him to the ground. Barker alleges the officers were holding him up, yet the videos show the opposite—the officers tried to get him on the ground by sweeping his legs and pulling him down.

[GRAPHIC OMITTED]

Owens Dash at 01:34.

Third, Barker claims he was not resisting the officers' attempts to move his hands behind his back, but instead, the officers could not secure his hands

⁴ Barker argues the district court's citation to *Valencia* and *Simpson v. Kansas*, *see infra*, was improper because they are unpublished cases. The district court cited those cases, as we do here as well, as illustrative factually analogous cases for its *Graham* analysis under the first prong of qualified immunity.

because they were pinned beneath his incapacitated body. But again, the videos contradict Barker's story. While on the ground, Barker's hands were out to either side of his body and the officers only successfully secured his hands after Owens performed the x-bar maneuver.

[GRAPHIC OMITTED]

Owens Dash at 01:42.

At bottom, the video evidence shows Barker was not incapacitated after Lanier tased him. We thus agree with the district court that Barker was still actively resisting arrest and the officers' subsequent use of physical force was reasonable under the third *Graham* factor. *See Mechem*, 500 F.3d at 1206 ("The pepper spray here was used to subdue and remove an uncooperative and unresponsive, belligerent traffic violator from the car she still controlled, not to further incapacitate an already subdued suspect."); *Simpson v. Kansas*, 593 F. App'x 790, 796-97 (10th Cir. 2014) (upholding officer's use of force to remove an uncooperative motorist, which included pulling motorist from her vehicle, throwing her on the ground, and putting a knee to her back); *Zorn v. Linton*, 607 U.S., 2026 WL 795469, at *3 (2026) (per curiam) (Officer's use of a "rear-wristlock" "pain compliance technique[]" "to move a noncompliant protester after repeated warnings" was not a clearly established violation of the Fourth Amendment.).

Because all three *Graham* factors support the officers, the district court correctly concluded Barker

could not establish a constitutional violation. For that reason, Barker has not established the officers violated the Fourth Amendment, and thus he cannot overcome qualified immunity.

B. Clearly Established

Even if a jury could conclude the officers used excessive force, Barker cannot show the officers violated a clearly established constitutional right. "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (internal quotation marks omitted). "A right is clearly established when it is sufficiently clear that *every reasonable official* would have understood that what he is doing violates that right." *Id.* (internal quotation marks omitted) (emphasis added). Although this standard "does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (per curiam) (internal quotation marks omitted). "In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law." *Id.* (internal quotation marks omitted).

When looking for analogous existing precedent, we must be careful "not to define clearly established law at a high level of generality." *Id.* (internal quotation marks omitted).

Specificity is especially important in the Fourth Amendment context 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 citation and quotation marks omitted).

Barker cites this court's opinion in *McCoy v. Meyers* and alleges the officers violated his "clearly established right to be free from the continued use of force after he was effectively subdued." 887 F.3d 1034, 1048 (10th Cir. 2018). Barker argues he was effectively subdued because Lanier tased him which caused Barker to no longer be in control of his body. But Barker's conclusory statement that he was "effectively subdued" under *McCoy* defines the right at too high a level of generality. See *Zorn*, 607 U.S., 2026 WL 795469, at *2 ("Principles stated generally, such as that 'an officer may not use unreasonable and excessive force,' do not suffice." (quoting *Kise/a*, 584 U.S. at 105)). Rather, we must determine whether *McCoy*, or the precedents it relied on, make clear that *every* reasonable officer would have known-under the *specific facts here-that* Barker was effectively subdued by the tasing. See *Rivas-Villegas*, 595 U.S. at 5; *Kisela*, 584 U.S. at 104.

As we outlined previously in our analysis of the third *Graham* factor, the videos show that after Lanier tased him, Barker was still conscious, sitting upright,

and holding on to the steering wheel in his car. After Hetherington and Guyton removed him from his vehicle, the videos show Barker stood on his feet and resisted the officers' efforts to pull him down. The videos further show that before Owens used the x-bar maneuver, Barker's arms and legs were unrestrained and that he was resisting the officers' efforts to secure his hands behind his back. None of the cases Barker relies on squarely govern these facts. *See id.*

In *McCoy*, this court found the plaintiff was effectively subdued because he was "rendered unconscious, handcuffed, and zip-tied." 887 F.3d at 1050. Barker, however, argues he was subdued despite being fully conscious, unrestrained, and still able to resist the officers. And the precedents *McCoy* relied on to find the right was clearly established are similarly distinguishable from Barker's case. *See Dixon v. Richer*, 922 F.2d 1456, 1463 (10th Cir. 1991) (Plaintiff subdued because "he had already been frisked, had his hands up against the van with his back to the officers, and was not making any aggressive moves or threats."); *Casey v. City of Fed. Heights*, 509 F.3d 1278, 1282 (10th Cir. 2007) (Plaintiff subdued because he was "not violent" and the officer never warned him he was under arrest.); *Weigel v. Broad*, 544 F.3d 1143, 1152-53 (10th Cir. 2008) (Decedent subdued because he "was handcuffed and his legs were bound"). It is accordingly *not* beyond debate that Barker was effectively subdued when the officers used force against him after the tasing. *See Kisela*, 584 U.S. at 104; *see also Mecham*, 500 F.3d at 1206 ("While the facts of the cases compared need not be identical, they must be sufficiently analogous to satisfy the

particularized context necessary to support liability." (internal citation omitted)).

In sum, even if we concluded the officers used unreasonable force against Barker, any such constitutional violation was not clearly established at the time of the incident. The officers are thus also entitled to qualified immunity under this prong.

III. Conclusion

The officers are entitled to qualified immunity because Barker failed to show both that they violated a constitutional right, and that any such right was clearly established. Barker's remaining failure-to-intervene and *Monell* claims also fail because there is no underlying constitutional violation. *See Trigalet v. City of Tulsa*, 239 F.3d 1150, 1155-56 (10th Cir. 2001).

We therefore affirm the district court's grant of summary judgment to the officers and the City.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

[LETTERHEAD OF UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT]

April 02, 2026

Ms. Aimee Majoue
Majoue Legal Services
12220 North Macarthur Boulevard, Suite F765
Oklahoma City, OK 73162

**RE: 25-6069, Barker v. Weatherford Police
Department, et al**
Dist/Ag docket: 5:24-CV-00235-R

Dear Counsel:

Attached is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(d)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rule 40 and 10th Cir. R. 40 for further information governing

petitions for rehearing.

Please contact this office if you have questions.

Sincerely,

/s/

Christopher M. Wolpert
Clerk of Court

cc: Stephen Leon Gerles
Montana Williams

CMW/at

APPENDIX B

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF OKLAHOMA

DERRICK DUANE BARKER,
Plaintiff,

v.

No. CIV-24-235-R

CITY OF WEATHERFORD, *ex rel.*
WEATHERFORD POLICE
DEPARTMENT, *et al.*,
Defendants.

ORDER

Before the Court are Defendant City of Weatherford and Individual Defendants Hetherington, Lanier, Guyton, Owens, Beck, Murley, Blatnick, and Ard's Motions for Summary Judgment [Doc. Nos. 24, 25]. Plaintiff Derrick Duane Barker responded [Doc. Nos. 32, 33], and Defendants replied [Doc. Nos. 39, 40]. The matter is now at issue. For the following reasons, both Motions are GRANTED.

BACKGROUND¹

¹ The incident was captured on two different dash cameras and three separate body cameras [Doc. Nos. 26-3, 26-5, 26-7, 26-8, 26-9]. The Court uses the footage to detail the factual background for the instant Motions.

On the evening of November 27, 2021, Plaintiff was stopped by Defendant Hetherington.² Doc. No. 26-3 at 00:45-00:57. After coming to a stop, Plaintiff stepped out of his vehicle and walked toward Defendant Hetherington's police cruiser while pulling out his wallet. *Id.* at 00:58-01:06. Defendant Hetherington instructed Plaintiff to return to his vehicle. Doc. No. 26-5 at 00:15-00:17. Plaintiff did not immediately comply. *Id.* at 00:17-00:30. Defendant Hetherington called for backup. *Id.* at 00:34-00:38.

Plaintiff then stood by the driver's side of his vehicle. *Id.* at 00:43-00:49. He was told to sit in his vehicle, which he eventually did. *Id.* at 00:44-01:21. He was then informed that he was stopped because his license plate was not illuminated. *Id.* at 01:24-01:27. Plaintiff suddenly exited his vehicle so that he could go look at the license plate himself. *Id.* at 01:26-01:31. Defendant Hetherington placed his hand on Plaintiff's chest and repeatedly instructed Plaintiff to return to his vehicle. *Id.* at 01:28-01:37. Plaintiff did not comply. *Id.* at 01:28-01:41. Defendant Hetherington warned Plaintiff that if he did not return to his vehicle, he would be arrested for obstruction. *Id.* at 01:35-01:37. Plaintiff continued to not comply. *Id.* at 01:37-01:41.

Defendant Hetherington informed Plaintiff that he was under arrest and took Plaintiff's arm to handcuff him. *Id.* at 01:41-01:44. Plaintiff resisted and

² Defendant Ard was a civilian intern with the Weatherford Police Department on a ride-along with Defendant Hetherington at the time of the subject incident. Doc. No. 25 at pp. 1-2.

reentered his vehicle. *Id.* at 01:44-01:58. Defendant Hetherington drew his taser gun and trained it on Plaintiff, directed him to exit the vehicle, and repeatedly informed Plaintiff that he would be tased if he did not exit the vehicle. *Id.* at 01:54-02:31. Defendant Lanier then arrived. *Id.* at 02:23. Defendant Hetherington instructed Defendant Lanier to “cover him” with his taser gun. *Id.* at 02:28. Defendant Hetherington then attempted to extract Plaintiff from the vehicle. *Id.* at 02:35-02:59. Plaintiff resisted. *Id.* Plaintiff was warned multiple times that he would be tased if he did not exit his vehicle. *Id.* Plaintiff still did not comply. *Id.*

Defendant Hetherington then directed Defendant Lanier to deploy his taser, which he did. *Id.* at 02:59-03:01. Within seconds, more officers arrived. Doc. No. 26-3 at 03:47- 03:54. Defendant Hetherington and Defendant Guyton were able to extract Plaintiff from the vehicle despite Plaintiff’s resistance. *Id.* at 03:59-04:01. Defendant Owens struck Plaintiff with a baton in the shin twice to get Plaintiff to the ground. *Id.* at 04:01-04:03. Defendant Hetherington and Defendant Guyton rolled Plaintiff onto his stomach and attempted to place his hands behind his back. Doc. No. 26-7 at 01:38-01:39. Plaintiff resisted. *Id.* at 01:40-01:47. After a couple of seconds, Defendant Owens performed an xbar maneuver on Plaintiff’s shin to encourage him to place his hands behind his back. *Id.* at 01:42-01:51. The maneuver was successful, and Plaintiff was handcuffed. *Id.* at 01:51. Plaintiff was then evaluated by medics and released into police custody. *Id.* at 06:50-18:15.

Plaintiff sued both the individual officers involved in the arrest and the City of Weatherford under 42 U.S.C. § 1983 [Doc. No. 1-2 at p. 6]. Specifically, Plaintiff contends that Individual Defendants violated his Fourth Amendment rights by (1) using excessive force to effect the arrest and (2) failing to intervene to prevent the excessive force. *Id.* Plaintiff also claims that Defendant City’s customs or policies enabled and caused the constitutional injury. *Id.* at pp. 6-7.

LEGAL STANDARD

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “[A] party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (alteration and quotation marks omitted). When there is a recording of an incident, the court must “view the facts in the light depicted by the video recording.” *Valencia v. De Luca*, 612 F. App’x 512, 514 (10th Cir. 2015) (citation omitted) (cleaned up). Accordingly, the court “cannot adopt a party’s version of the facts where there is clear contrary video evidence.” *Id.* (citation and quotation marks omitted).

DISCUSSION

I. Individual Defendants—Qualified Immunity

Individual Defendants have asserted the defense of qualified immunity. Plaintiff responds that Individual Defendants are not entitled to qualified immunity because it was clearly established that their use of excessive force against him and failure to intervene violated the Fourth Amendment.

Qualified immunity “protects government officials ‘from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). To overcome the assertion of qualified immunity, the plaintiff “must establish (1) that the defendant violated a constitutional or statutory right, and (2) that this right was clearly established at the time of the defendant's conduct.” *Dodds v. Richardson*, 614 F.3d 1185, 1191 (10th Cir. 2010) (citation and quotation marks omitted). “[I]f the plaintiff fails to establish either prong of the two-pronged qualified-immunity standard, the defendant prevails on the defense.” *A.M. v. Holmes*, 830 F.3d 1123, 1134-35 (10th Cir. 2016) (citations omitted).

A. Excessive Force

1. Constitutional Violation

Plaintiff contends that use of the taser gun, baton, and x-bar maneuver was objectively unreasonable under the circumstances of the traffic stop.

“When an ‘excessive force claim arises in the

context of an arrest or investigatory stop of a free citizen, it is most properly characterized as one invoking the protections of the Fourth Amendment.” *Vette v. K-9 Unit Deputy Sanders*, 989 F.3d 1154, 1169 (10th Cir. 2021) (quoting *Graham v. Connor*, 490 U.S. 386, 394 (1989)). “Under well-settled Supreme Court precedent, a law-enforcement officer’s ‘right to make an arrest...necessarily carries with it the right to use some degree of physical coercion...to effect it.’” *Holmes*, 830 F.3d at 1151 (quoting *Graham*, 490 U.S. at 396). But “the degree of physical coercion that law enforcement officers may use is not unlimited,’ and must comport with the Fourth Amendment.” *Id.* (quoting *Cortez v. McCauley*, 478 F.3d 1108, 1125 (10th Cir. 2007) (brackets omitted)).

The standard for an excessive force claim is “whether the officer’s actions were objectively reasonable in light of the facts and circumstances confronting him, without regard to underlying intent or motivation.” *Id.* (citations, quotation marks, and brackets omitted). To make this determination, the Court considers “factors such as ‘the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.’” *Id.* (quoting *Graham*, 490 U.S. at 397).

Here, applying the *Graham* factors, a reasonable juror could not find that the amount of force used was unreasonable.

First, Individual Defendants concede that

Plaintiff's offense was not severe, Doc. No. 25 at p. 14, and "a minor offense—at most—supports the use of minimal force." *Helvie v. Jenkins*, 66 F.4th 1227, 1239 (10th Cir. 2023) (quoting *Davis v. Clifford*, 825 F.3d 1131, 1135 (10th Cir. 2016)) (brackets omitted). However, the crime of arrest—obstruction—presents a necessity for force unique from other minor offenses. The first factor therefore favors Plaintiff, albeit slightly.

Second, Individual Defendants correctly note that like the plaintiff in *Mecham v. Frazier*, 500 F.3d 1200 (10th Cir. 2007), Plaintiff was not cooperative, remained in the driver's seat during the stop, left the car on, and had a clear path of flight. *See Mecham*, 500 F.3d at 1205. Individual Defendants cite additional authority supporting their position that Plaintiff's defiance while behind the wheel of a running vehicle posed a threat to the officers and the public at large. *See Simpson v. Kansas*, 593 F. App'x 790, 797 (10th Cir. 2014); *Helvie*, 66 F.4th at 1233; *De Luca*, 612 F. App'x at 519. The Court finds these authorities persuasive, especially considering that the stop took place at night, and Defendant Hetherington considered Plaintiff's conduct from the outset of the stop unusual. Doc. No. 26-5 at 1:00-1:05. Given the context and circumstances of the stop and Plaintiff's demeanor throughout, the second factor favors Individual Defendants.

Finally, from the beginning of the stop, Plaintiff repeatedly resisted Defendant Hetherington's lawful orders. He continued to resist up until the moment he was handcuffed. Throughout the sequence, Plaintiff

was warned that he would be tased if he did not comply. At multiple points, Defendant Hetherington attempted to use lesser force to extract Plaintiff from the vehicle, but Plaintiff resisted. And even after being removed from the vehicle, Plaintiff continued to resist, resulting in Defendant Owens's use of the baton. Once on the ground, Plaintiff remained defiant, leading to Defendant Owens' performance of the x-bar maneuver. So Plaintiff did not only resist arrest, but he defied the instructions of the officers and remained physically intractable from the origin of the stop to its eventual conclusion. This factor therefore strongly weighs in Individual Defendants' favor.

Accordingly, upon consideration of the *Graham* factors, the Court concludes that a reasonable juror could not find Individual Defendants' use of force unreasonable under the circumstances.

2. Clearly Established

Even if the Court reached a different conclusion above, Plaintiff's claim against Individual Defendants would still fail to overcome qualified immunity because Individual Defendants did not violate a clearly established right.

Plaintiff contends that qualified immunity does not apply because it is clearly established that the use of force against "effectively subdued" individuals violates the Fourth Amendment. Individual Defendants respond that Plaintiff was not "effectively subdued" when force was used. The Court agrees.

“[A] law is clearly established when a Supreme Court or Tenth Circuit decision is on point, or if the clearly established weight of authority from other courts shows that the right must be as plaintiff maintains.” *Harman v. Pollock*, 586 F.3d 1254, 1261 (10th Cir. 2009) (citation and quotation marks omitted). “[T]he Supreme Court has ‘repeatedly told courts...not to define clearly established law at a high level of generality.’” *Estate of Smart by Smart v. City of Wichita*, 951 F.3d 1161, 1168 (10th Cir. 2020) (quoting *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)).

Plaintiff frames the clearly established law as the bar on use of force against an “effectively subdued” individual. “*Dixon*³, *Casey*⁴, and *Weigel*⁵ clearly establish that the Fourth Amendment prohibits the use of force without legitimate justification, as when a subject poses no threat or has been subdued.” *McCoy v. Meyers*, 887 F.3d 1034, 1052 (10th Cir. 2018). “[W]hether an individual has been subdued from the perspective of a reasonable officer depends on the officer having enough time to recognize that the individual no longer poses a threat and react to the changed circumstances.” *Walker v. Anderson*, No. 23-CV-0008-CVE-JFJ, 2024 WL 3905733, *8 (N.D. Okla. Aug. 22, 2024) (quoting *McCoy*, 887 F.3d at 1048).

³ *Dixon v. Richer*, 922 F.2d 1456 (10th Cir. 1991).

⁴ *Casey v. City of Fed. Heights*, 509 F.3d 1278 (10th Cir. 2007).

⁵ *Weigel v. Broad*, 544 F.3d 1143 (10th Cir. 2008).

Plaintiff has identified *McCoy*, *Dixon*, *Casey*, and *Weigel* as on-point Tenth Circuit decisions that govern the instant issue. All are distinguishable from the instant facts. He contends that Defendant Owens' use of the baton and performance of the x-bar maneuver came after Plaintiff was subdued, and therefore violated the clearly established principle barring the use of force after a subject has been "effectively subdued." His argument misses the mark.

First, the body camera and dash camera footage show that Defendant Owens used the baton while Plaintiff was resisting two other officers' attempts to bring him to the ground so they could make the arrest. Doc. No. 26-7 at 1:33-01:35. Based on this footage, Plaintiff was not subdued and no clearly established constitutional violation is gleaned from Defendant Owens' baton strikes.

Second, Plaintiff was not "effectively subdued" when Defendant Owens performed the x-bar maneuver. In *Salway v. Norris*, No. 21-8055, 2023 WL 1155868 (10th Cir. Jan. 31, 2023) (unpublished), a plaintiff was handcuffed, placed on a gurney, and punched in the face. *Salway*, 2023 WL 1155868, at *1. There, the court held that the plaintiff was not "effectively subdued" because he was actively kicking and thrashing while handcuffed. *Id.* at *3. The Tenth Circuit distinguished those facts from those in *McCoy*, *Dixon*, and *Casey* because the plaintiffs in those cases had completely ceased resistance, while the plaintiff in *Salway* continued to kick and thrash. *Id.* Here, Plaintiff was actively resisting attempts to place his hands behind his back when Defendant Owens

performed the x-bar maneuver on Plaintiff's shin. Doc. No. 26-7 at 01:40-01:47. This continued resistance distinguishes the instant case from the cases cited by Plaintiff.⁶ The Court therefore finds that no clearly established constitutional right was violated from Defendant Owens' performance of the x-bar maneuver.

Accordingly, Individual Defendants are entitled to qualified immunity and their Motion is granted as to this issue.

B. Failure to Intervene

"Tenth Circuit precedent clearly establishe[s]...that a law enforcement official who fails to intervene to prevent another law enforcement official's use of excessive force may be liable under § 1983." *Mick v. Brewer*, 76 F.3d 1127, 1136 (10th Cir. 1996) (citations omitted). Here, because no reasonable juror could find that the force exerted against Plaintiff was excessive, Individual Defendants are entitled to summary judgment regarding Plaintiff's failure to intervene claim.

II. Defendant City—Municipal Liability

Defendant City is entitled to summary judgment regarding Plaintiff's municipal liability claims because

⁶ Though not addressed by the *Salway* Court, in *Weigel*, the officer continued to apply pressure to the plaintiff's upper back after his hands were cuffed, feet were bound, and legs were restrained. *Weigel*, 544 F.3d at 1152-53. Again, the instant facts are distinguishable.

no underlying constitutional violation for excessive force or failure to intervene was established above. *See Martin v. City of Okla. City*, 180 F.Supp.3d 978, 993 (W.D. Okla. 2016) (“It is well established, however, that ‘even if it could be said that [the City’s] policies...were unconstitutional, the City cannot be held liable where, as here, the officers did not commit a constitutional violation.’” (quoting *Trigalet v. City of Tulsa*, 239 F.3d 1150, 1155-56 (10th Cir. 2001))).

CONCLUSION

Accordingly, because no reasonable juror could find that Individual Defendants violated Plaintiff’s constitutional rights, both Individual Defendants’ Motion and Defendant City’s Motion are GRANTED.⁷

IT IS SO ORDERED this 18th day of April, 2025.

/s/

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

⁷ Before this Order disposes of the action, Individual Defendants’ Motion to Strike [Doc. No. 22] and Plaintiff’s Motion for Leave [Doc. No. 30] are denied as moot.