

APPENDIX

A

No. 25-5289

- 2 -

Therefore, when the Cadillac pulled into the parking lot of a convenience store, Reiman pulled in as well to conduct a welfare check and to investigate a possible traffic violation. DeBrossard was driving the Cadillac, and as he exited to go into the store, Reiman approached him and asked him how many kids were in the backseat. DeBrossard admitted that there were five children in the back seat, ranging in age from 7 to 17 years old, and that at least one child was unrestrained. When Ledesma opened the passenger door and stepped out for a moment, Reiman smelled marijuana coming from inside the car.

Then, over the next 45 minutes or so, Reiman (1) conducted a pat-down search of DeBrossard for weapons, with his consent; (2) briefly handcuffed DeBrossard and Ledesma while he verified their identities; (3) conducted a warrantless search of the interior of the Cadillac and discovered a shopping bag containing a small amount of suspected marijuana, a grinder with residue, a suspected marijuana jar, and marijuana blunts in the ashtray; (4) conducted a warrantless search of Ledesma's purse and found an expired driver's license; (5) allowed Ledesma's mother, who lived nearby, to pick up the children and take them to her home; (6) cited DeBrossard for possession of marijuana and drug paraphernalia and for having unrestrained children in the car; and (7) cited Ledesma for possession of marijuana and drug paraphernalia. In the meantime, Officer Spencer Singer arrived to assist Reiman, but he did not participate in the search of the car. Reiman released DeBrossard and Ledesma after issuing the citations. Later, in state court, the prosecutor dismissed the violations after DeBrossard and Ledesma signed stipulations that Reiman had probable cause to cite them.

In November 2022, Ledesma and DeBrossard filed a pro se third amended § 1983 complaint against Reiman, Singer, Elizabethtown Police Chief Jeremy Thompson, and the City of Elizabethtown. Ledesma and DeBrossard claimed that during the stop and detention, Reiman violated the Fourth, Fifth, Ninth, and Fourteenth Amendments by engaging in racial profiling; conducting a warrantless search of DeBrossard, the Cadillac, and Ledesma's purse; unlawfully detaining them; and maliciously prosecuting them. DeBrossard and Ledesma also claimed that Singer and Thompson were liable for the alleged constitutional violations under a failure-to-

No. 25-5289

- 3 -

intervene theory and that the City was liable under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978).

The district court granted summary judgment to the defendants. Ledesma and DeBrossard then filed a timely Rule 59(e) motion that sought reconsideration of the court's order, arguing for the first time that the record showed that Reiman racially profiled them because he did not cite Ledesma's mother, who allegedly has lighter skin than DeBrossard, for transporting the children unrestrained in her similar car. They also argued for the first time that Reiman lacked the training to recognize marijuana odor and to distinguish marijuana odor from the odor of other legal substances, such as hemp and CBD (cannabidiol). The district court denied the motion as an attempt to relitigate arguments it had already considered and rejected, or as an attempt to present arguments and evidence that Ledesma and DeBrossard could have raised or identified before the court entered judgment.

On appeal, Ledesma and DeBrossard focus their attention on the district court's findings that Reiman had probable cause to detain them to investigate the seatbelt violation and to conduct a warrantless search of their car and that Reiman did not racially profile them. They contend that there were material fact questions as to whether Reiman could see through their tinted windows or detect the marijuana odor in their car, and whether Reiman treated Ledesma's mother more favorably than them with respect to the seatbelt violation because of her lighter skin color.

"We review de novo a district court's order granting summary judgment." *Smith v. City of Troy*, 874 F.3d 938, 943 (6th Cir. 2017) (per curiam). Summary judgment is appropriate "if 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 court reviewing a summary-judgment order must draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Ledesma and DeBrossard first dispute the district court's findings that Reiman had probable cause to stop them and to search their car without a warrant. A police officer may make

No. 25-5289

- 4 -

a traffic stop if he has “probable cause to believe that a traffic violation has occurred.” *United States v. Watson*, 142 F.4th 872, 877 (6th Cir. 2025).

Here, Reiman detained Ledesma and DeBrossard to investigate a possible violation of Kentucky Revised Statute § 189.125(3)(b), which requires a driver to secure a child under the age of eight and between 40 and 57 inches tall in a booster seat. Reiman reasonably concluded that there was a violation because he observed five persons riding in the back seat of the car, a place where his experience and common sense told him there could be only three seatbelts. And Reiman’s observation turned out to be accurate—there were five children in the backseat of the car, at least one of whom was an unrestrained seven-year-old. *Cf. United States v. Crawford*, 943 F.3d 297, 306-07 (6th Cir. 2019) (citing *United States v. Hammond*, 351 F.3d 765, 772 (6th Cir. 2003)) (noting that a subsequent police investigation that corroborates a tip can establish probable cause). Although Ledesma and DeBrossard contend that the window tint would have prevented Reiman from being able to see through the rear window, his bodycam video shows that it was possible to see objects even in front of the car through the rear window. The video therefore supports Reiman’s statement that he saw five silhouettes in the back seat. Reiman therefore had probable cause to detain Ledesma and DeBrossard to investigate a possible traffic violation.

Officers may search a car without a warrant if “they have probable cause to believe that the vehicle contains evidence of a crime.” *Watson*, 142 F.4th at 881. Here, the marijuana odor gave Reiman probable cause to search the interior of the car and any containers that could have concealed the marijuana, including Ledesma’s purse. *See id.*; *United States v. Santiago*, 139 F.4th 570, 574-75 (6th Cir. 2025). And Reiman’s discovery of suspected marijuana and drug paraphernalia gave him probable cause to cite Ledesma and DeBrossard for violating the drug statutes. Ledesma and DeBrossard’s malicious-prosecution and false-arrest claims therefore fail because probable cause supported Reiman’s actions. *See Alford v. Deffendoll*, 165 F.4th 490, 496, 499-500 (6th Cir. 2026).

Moreover, Reiman did not violate Ledesma’s and DeBrossard’s constitutional rights when he briefly handcuffed them while he conducted his investigation. *See Howell v. McCormick*, 148

No. 25-5289

- 5 -

F.4th 834, 850 (6th Cir. 2025). Nor did Reiman do so when he patted down DeBrossard because, as both Ledesma and DeBrossard admitted, DeBrossard consented to a pat-down search. *See United States v. Tellez*, 86 F.4th 1148, 1151 (6th Cir. 2023). Reiman did not unreasonably prolong the duration of the stop, either. *See United States v. Daniel-Dejesus Santos*, 161 F.4th 1007, 1011 (6th Cir. 2025). A traffic stop should “last no longer than is necessary to effectuate the purpose of the stop.” *Id.* (citation modified). As the events unfolded, 45 minutes was reasonable for Reiman to sort out how many children were riding in the back seat, search the car after detecting marijuana, discover and take possession of the contraband, verify Ledesma’s and DeBrossard’s identities, and issue the citations. *See United States v. Peake-Wright*, 126 F.4th 432, 437 (6th Cir. 2025) (“[T]he police may prolong a stop based on a reasonable suspicion that arises from unrelated checks conducted during the initial stop.”).

Ledesma and DeBrossard again dispute Reiman’s ability to detect marijuana odor given his alleged lack of training and inability to differentiate marijuana odor from legal substances. The evidence to support this argument was available to Ledesma and DeBrossard before the district court entered its summary-judgment order, yet they did not raise this issue until they filed their Rule 59(e) motion.¹ Consequently, they have forfeited this argument on appeal. *See Adkins v. Marathon Petroleum Co.*, 105 F.4th 841, 854 (6th Cir. 2024).

Ledesma and DeBrossard’s racial-profiling claim fails given the complete lack of evidence that Reiman bore any racial animus toward them, *see Bey v. Falk*, 946 F.3d 304, 320 (6th Cir. 2019), or treated a similarly situated person of a different race more favorably than them, *see Farm Lab. Org. Comm. v. Ohio State Highway Patrol*, 308 F.3d 523, 534 (6th Cir. 2002). On appeal, Ledesma and DeBrossard again rely on the difference in skin tone between DeBrossard and Ledesma’s mother to establish their profiling claim. But they forfeited that argument by raising it for the first time in their Rule 59(e) motion. *See Adkins*, 105 F.4th at 854.

¹In their opposition to the summary-judgment motion, the plaintiffs argued only that Reiman’s sense of smell could not be trusted because of his allegedly poor eyesight and that the marijuana odor alone was insufficient to establish probable cause. They did not argue that Reiman lacked the training to recognize marijuana odor.

No. 25-5289

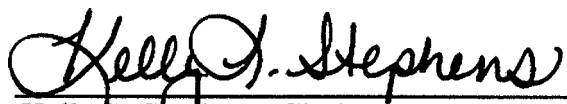
- 6 -

Without proof of an underlying constitutional violation, Ledesma and DeBrossard's failure-to-intervene claims against Singer and Thompson and their *Monell* claim against the City necessarily fail. See *Adams v. Lexington-Fayette Urb. Cnty. Gov't*, 154 F.4th 501, 512 (6th Cir. 2025).

Finally, the district court did not abuse its discretion in denying Ledesma and DeBrossard's Rule 59(e) motion because it was based on arguments and evidence that were available to them prior to the entry of the judgment. See *In re E. Pal. Train Derailment*, 160 F.4th 751, 759 (6th Cir. 2025), *petition for cert. filed*, (U.S. Feb. 6, 2026) (No. 25-929); *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 615 (6th Cir. 2012).

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 03/27/2026.

Case Name: Tralicia Ledesma, et al v. Eric Reiman, et al
Case Number: 25-5289

Docket Text:

ORDER filed : We AFFIRM the district court's judgment, pursuant to FRAP 34(a)(2)(C).
Mandate to issue. Decision not for publication. Eric L. Clay, Circuit Judge; Raymond M.
Kethledge, Circuit Judge and Andre B. Mathis, Circuit Judge.

The following document(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Mr. Maurice A. Debrossard
940 Britton Springs Road
Unit 208
Clarksville, TN 37042

Ms. Tralicia D. Ledesma
940 Britton Springs Road
Unit 208
Clarksville, TN 37042

A copy of this notice will be issued to:

Mr. Jason B. Bell
Mr. James J. Vilt Jr.

APPENDIX

B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

TRALICIA D. LEDESMA and MAURICE A.
DEBROSSARD,

Plaintiffs,

v.

Civil Action No. 3:22-cv-161-DJH-CHL

ERIC REIMAN et al.,

Defendants.

* * * * *

MEMORANDUM AND ORDER

Plaintiffs Tralicia D. Ledesma and Maurice A. DeBrossard, proceeding pro se, filed the instant action against Defendants Eric Reiman, Spencer Singer, Jeremy Thompson, and the City of Elizabethtown, alleging violations of their constitutional rights. (Docket No. 22) Defendants move for summary judgment. (D.N. 50) Plaintiffs move to exclude the testimony of the defendants' expert. (D.N. 51) After careful consideration, the Court will grant Defendants' motion for summary judgment and deny Plaintiffs' motion to exclude as moot for the reasons set forth below.

I.

This action arises out of an encounter between Plaintiffs and Reiman, an officer with the Elizabethtown Police Department, on March 22, 2021. The parties disagree on many of the material facts of the case.

Plaintiffs are residents of Clarksville, Tennessee, but during the events in question, they were in Elizabethtown, Kentucky, visiting family. (D.N. 50-18, PageID.722) According to Reiman, while driving in his police cruiser on March 22, 2021, he observed a car that appeared to have multiple unrestrained children in the backseat. (D.N. 50-2, PageID.346 ¶¶ 2-3) DeBrossard was driving the car and Ledesma was in the passenger seat. (D.N. 50-18,

PageID.726) Five children, between the ages of 7 and 17, were in the backseat of the car (*id.*, PageID.739–40), which only had three seatbelts. (*Id.*, PageID.730) Reiman testified that he could not see Plaintiffs’ faces because the car had tinted windows (D.N. 50-2, PageID.346 ¶ 3), but he could see “multiple heads in the back seat[,] and it appeared to [him] that there were more heads than car seats or seatbelts tha[n] could possibly be in the backseat.” (*Id.*)

Plaintiffs pulled into the parking lot of a store, and Reiman parked next to them to “conduct[] a welfare check.” (*Id.*, PageID.347 ¶ 4) As DeBrossard was going into the store, Reiman “asked him how many kids he had in the back seat of his vehicle and whether they had seatbelts.” (*Id.* at ¶ 6) DeBrossard acknowledged that at least one child was sitting on another’s lap. (D.N. 48-1 (Reiman’s bodycam video))

Plaintiffs dispute that Reiman stopped their car to perform a welfare check. According to Plaintiffs, Reiman could not see inside of the vehicle at all and was not actually concerned about the children. (D.N. 65-9, PageID.668) Plaintiffs assert that Reiman instead decided to approach DeBrossard upon seeing that he was “a black man that had a gold chain around his neck,” racially profiling him. (D.N. 50-18, PageID.733)

As Reiman talked to DeBrossard about the children in the backseat, Ledesma opened the passenger door, stepping out of the vehicle. (D.N. 48-1) According to Reiman, when Ledesma opened the door, he “smelled marijuana emanating from the vehicle.” (D.N. 50-2, PageID.347 ¶ 6) “At that moment, based on smelling marijuana, [Reiman] determined that [he] . . . had probable cause to search the vehicle.” (*Id.*) Reiman advised DeBrossard of this. (D.N. 48-1) Defendant Singer, another officer with the Elizabethtown Police Department, arrived at the scene around this time. (D.N. 50-18; PageID.730–31; D.N. 48-1) Plaintiffs dispute that Reiman actually smelled marijuana. (D.N. 65-9, PageID.668 ¶ 6)

Reiman testified that after receiving DeBrossard's consent, he "conducted a limited *Terry* pat-down search" of DeBrossard "to ensure that he did not have any weapons on his person." (D.N. 50-2, PageID.347 ¶ 7) According to Plaintiffs, Reiman unlawfully frisked DeBrossard without his consent. (D.N. 65, PageID.550) Reiman then asked Ledesma to step out of the car, asked her for identification, and advised her that too many children were in the backseat and that he smelled marijuana which gave him probable cause to search the vehicle. (D.N. 48-1) Ledesma asked Reiman to obtain a search warrant before searching the car, but Reiman, citing *Carroll v. United States*, 267 U.S. 132 (1925), told Ledesma that he had probable cause based on the marijuana smell coming from the vehicle. (D.N. 48-1) Reiman asked the children in the backseat to exit the vehicle. (D.N. 50-2, PageID.348 ¶ 9) Five children of various ages came out of the backseat. (*Id.*; D.N. 48-1)

While searching the vehicle, Reiman found an additional license for Ledesma along with suspected marijuana and related paraphernalia. (D.N. 50-2, PageID.348 ¶ 9; D.N. 50-4) Reiman Mirandized Plaintiffs and told them that they were not under arrest. (D.N. 50-2, PageID.348 ¶ 9) Reiman asked Plaintiffs who owned the marijuana, and he asked Ledesma why she had two driver's licenses.¹ (D.N. 48-1) Plaintiffs did not respond to Reiman's questions. (*Id.*) Reiman "told Plaintiffs that they were being detained" and "placed Plaintiffs in handcuffs for approximately two (2) minutes" while he checked their licenses. (D.N. 50-2, PageID.348 ¶ 10) Upon verifying their identities, Reiman removed Plaintiffs' handcuffs. (*Id.*; D.N. 48-1)

Reiman "explained to Plaintiffs that if neither of them claimed ownership of the marijuana, then [his] only option was to cite both of them." (D.N. 50-2, PageID.348 ¶ 11) Neither Plaintiff responded. (D.N. 48-1) Reiman discussed the situation with Singer (*id.*), and

¹ The license that Reiman found in the car was expired. (*See* D.N. 48-1; D.N. 50-18, PageID.735)

he ultimately cited “Mr. DeBrossard with possession of marijuana, drug paraphernalia – buy/possess, and improper vehicle restraint use, and [he] cited Ms. Ledesma with possession of marijuana and drug paraphernalia – buy/possess.” (D.N. 50-2, PageID.348 ¶ 11) After issuing Plaintiffs citations, he allowed them to leave. (D.N. 48-1) By that time, Ledesma’s mother had arrived and picked up the children. (See D.N. 48-1; D.N. 65-9, PageID.669) Ledesma asserts that her mother had the same style of car as Plaintiffs, but Reiman and Spencer were unconcerned about the five children simply moving to the backseat of the mother’s car, some still unrestrained. (D.N. 65-9, PageID.668–69 ¶ 7)

The charges against Plaintiffs were ultimately dismissed in exchange for Plaintiffs’ stipulation to probable cause. (D.N. 50-12) Both Ledesma and DeBrossard signed a document titled “Terms and Conditions of Dismissal,” which stated, in relevant part, “The Defendant herein by his/her signature expressly and knowingly stipulates probable cause for this offense.” (*Id.*) Plaintiffs assert that they were coerced into signing the stipulations and did not fully understand the terms of the agreement. (D.N. 50-18, PageID.742–43, 756)

Plaintiffs, proceeding pro se, brought the instant 42 U.S.C. § 1983 action against Reiman, Singer, and Elizabethtown police chief Jeremy Thompson in their individual and official capacities, as well as the City of Elizabethtown.² (D.N. 22) Plaintiffs allege selective enforcement, illegal search and seizure, false arrest, failure to intervene, malicious prosecution, and a *Monell* claim. (*Id.*) They seek “Actual, Compensatory, Consequential, and all other

² Plaintiffs also purport to bring this suit under 18 U.S.C. § 242. (D.N. 22) But “[b]ecause private citizens lack authority to initiate a federal criminal prosecution, Plaintiff[s] lack standing to assert a claim under 18 U.S.C. § . . . 242 (deprivation of rights).” *Miller v. Akron Bar Ass’n, Att’y Referral*, No. 5:19CV1334, 2019 WL 2717964, at *1 (N.D. Ohio June 28, 2019) (citing *United States v. Oguaju*, 76 F. App’x 579, 581 (6th Cir. 2003)).

allowable damages against Defendants,” including punitive damages. (*Id.*) Defendants seek summary judgment on all of Plaintiffs’ claims.³ (D.N. 50)

II.

As a preliminary issue, the Court observes that Plaintiffs filed a sur-reply to the defendants’ motion for summary judgment without obtaining the Court’s permission. (*See* D.N. 68) “Neither the Local Rules of this jurisdiction nor the Federal Rules of Civil Procedure permit the filing of sur-replies as a matter of right.” *Vaughn v. Hawkins*, No. 5:14-CV-00099-TBR, 2018 WL 2210873, at *2 (W.D. Ky. May 14, 2018) (citing *Key v. Shelby Cnty.*, 551 F. App’x 262, 265 (6th Cir. 2014)). Thus, “in order ‘to file a sur-reply the party must obtain leave of the court.’” *Id.* (citing *Eberhard v. Chicago Title Ins. Co.*, No. 1:11-cv-834, 2014 WL 12756822, at *2 (N.D. Ohio Jan. 8, 2014)). “District courts are afforded broad discretion in deciding whether to permit a party to file a sur-reply, the classic reason being ‘[w]hen new submissions and/or arguments are included in a reply brief, and a nonmovant’s ability to respond to the new evidence has been vitiated.’” *Id.* (quoting *Key*, 551 F. App’x at 264)).

Notwithstanding Plaintiffs’ failure to first obtain leave, the Court finds Plaintiffs’ sur-reply unwarranted because it largely repeats arguments that Plaintiffs made in their response to the defendants’ motion for summary judgment. (*See* D.N. 68; D.N. 65) In short, Plaintiffs’ sur-reply “present[s] no new evidence or arguments.” *Key*, 551 F. App’x at 265. The Court therefore finds no reason to permit Plaintiffs’ filing of a sur-reply and will direct the Clerk of Court to strike the sur-reply (D.N. 68) from the record.

³ Plaintiffs seek to exclude the testimony of Defendants’ expert Troy Pitcock (D.N. 51), but the Court need not address the merits of that motion because Defendants do not rely on Pitcock’s testimony for purposes of their motion for summary judgment. (*See* D.N. 50)

III.

Summary judgment is required when the moving party shows, using evidence in the record, “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); *see* 56(c)(1). For purposes of summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party. *Loyd v. Saint Joseph Mercy Oakland*, 766 F.3d 580, 588 (6th Cir. 2014) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). However, the Court “need consider only the cited materials.” Fed. R. Civ. P. 56(c)(3); *see Shreve v. Franklin Cnty.*, 743 F.3d 126, 136 (6th Cir. 2014). If the nonmoving party “fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c),” the fact may be treated as undisputed. Fed. R. Civ. P. 56(e)(2)-(3). To survive a motion for summary judgment, the nonmoving party must establish a genuine issue of material fact with respect to each element of each of his claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986) (noting that “a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial”).

The defendants argue that Plaintiffs’ claims are unsupported by the evidence, and the officer-defendants argue that they are entitled to qualified immunity. (D.N. 50-1) Because the defendants’ first argument is dispositive, the Court will address it first, considering whether Plaintiffs have established a genuine issue of material fact as to each element of each of their claims.⁴

⁴ Defendants’ motion for summary judgment addresses claims not raised in the Plaintiffs’ operative complaint, the Third Amended Complaint. (*See* D.N. 50-1; D.N. 22) The Court need not consider claims outside of the operative complaint. *See Tucker v. Brooks*, No. 19-12514, 2022 WL 2813037, at *2 (E.D. Mich. July 18, 2022) (“[A]n amended complaint supersedes and replaces older versions.”).

A. Selective Enforcement

Plaintiffs assert that DeBrossard was discriminated against and racially profiled “though selective enforcement by Defendant[] Eric Reiman.” (D.N. 22, PageID.153) “A Fourteenth Amendment claim of selective enforcement could lead to Section 1983 liability if [Plaintiffs] were to demonstrate ‘purposeful discrimination’ in [Reiman’s] otherwise valid enforcement of the traffic laws against [them].” *Cunningham v. Sisk*, 136 F. App’x 771, 224 (6th Cir. 2005) (quoting *Gardenhire v. Schubert*, 205 F.3d 303, 319 (6th Cir. 2000)). To establish a selective-enforcement claim, Plaintiffs must satisfy the three-part test set out by the Sixth Circuit:

First, [an official] must single out a person belonging to an identifiable group, such as those of a particular race or religion, or a group exercising constitutional rights, for prosecution even though he has decided not to prosecute persons not belonging to that group in similar situations. Second, [the official] must initiate the prosecution with a discriminatory purpose. Finally, the prosecution must have a discriminatory effect on the group which the defendant belongs to.

Gardenhire, 205 F.3d at 319 (alterations in original) (quoting *United States v. Anderson*, 923 F.2d 450, 453 (6th Cir. 1991)). “With regard to the first element, ‘it is an absolute requirement that [Plaintiffs] make at least a *prima facie* showing that similarly situated persons outside [their] category were not prosecuted.’” *Id.* (quoting *Stemler v. City of Florence*, 126 F.3d 856, 873 (6th Cir. 1997)). Moreover, “there is a strong presumption that the state actors have properly discharged their official duties, and to overcome that presumption [Plaintiffs] must present clear evidence to the contrary; the standard is a demanding one.” *Id.* (internal quotation marks omitted) (quoting *Stemler*, 126 F.3d at 873).

Plaintiffs have “proffered nothing to suggest that similarly situated people . . . of different races were treated differently in terms of” the initial stop, the search, “or the issuance of traffic citations.” *Cunningham*, 136 F. App’x at 775. Plaintiffs instead seem to solely rely on their belief that Reiman targeted DeBrossard because DeBrossard is Black American (*see* D.N. 62-1,

PageID.519–20), which is insufficient to overcome the “strong presumption that state actors have properly discharged their official duties.” *Gardenhire*, 205 F.3d at 319; *see also Cunningham*, 136 F. App’x at 775 (rejecting selective-enforcement claim where the plaintiff “appear[ed] to base his selective enforcement claim solely on the fact that he is African American and that [Defendants] are white”). Thus, summary judgment is warranted as to Plaintiffs’ selective-enforcement claim.

B. Illegal Search and Seizure

Plaintiffs challenge the constitutionality of many of Reiman’s actions during their encounter on March 22, 2021. (*See* D.N. 22; D.N. 65)

1. Welfare Check

According to Plaintiffs, Reiman “did not have a right to do a welfare check and ask Plaintiff DeBrossard questions.” (D.N. 65, PageID.553) The Sixth Circuit has explained that

[u]nder the Fourth Amendment, there are three types of permissible encounters between police and citizens: consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked some questions; a temporary involuntary detention or *Terry* stop which must be predicated upon “reasonable suspicion;” and arrests which must be based on probable cause.

United States v. Bueno, 21 F.3d 120, 123 (6th Cir. 1994). “The first of these encounters is permissible without any particularized suspicion because no seizure has occurred for purposes of the Fourth Amendment.” *United States v. Alston*, 375 F.3d 408, 411 (6th Cir. 2004). But “[a] seizure occurs when ‘under the totality of the circumstances, a reasonable person would have believed that he or she was not free to walk away.’” *Id.* (quoting *United States v. Saperstein*, 723 F.2d 1221, 1225 (6th Cir. 1983)). “Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the

citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id.* at 555.

Even if the Court accepts Plaintiffs' contention that Reiman "did not personally observe multiple heads in the back seat of the vehicle," Reiman did not violate Plaintiffs' rights by approaching DeBrossard and asking him how many children were in the vehicle. Reiman's subjective intent behind approaching DeBrossard is irrelevant because their initial encounter did not constitute a seizure requiring reasonable suspicion or probable cause. Reiman simply approached DeBrossard in a public parking lot and asked him a question. (*See* D.N. 48-1) Reiman was the only officer present at that point, and there is no evidence that he touched DeBrossard or asked the question in an objectively demanding or threatening tone. "Such conduct, without more, did not amount to an intrusion upon any constitutionally protected interest." *Mendenhall*, 446 U.S. at 555.

DeBrossard initially responded that "a couple" children were in the backseat, but when Reiman said that it looked to him like one child was sitting on another's lap, DeBrossard confirmed that at least one child was not properly restrained. (D.N. 48-1) Reiman then asked DeBrossard if he had any license or registration, which DeBrossard provided. (*Id.*) Upon receiving DeBrossard's identification, Reiman asked DeBrossard to stand by his car. (*Id.*) After confirming that five children were in the backseat, Reiman told DeBrossard that he "did not want [him] leaving th[e] parking lot without everybody secured." (*Id.*) By that point, the encounter had escalated to a seizure; Reiman told DeBrossard that he did not want him to leave, so a

reasonable person in DeBrossard's position would, of course, not feel free to leave.⁵ See *United States v. Foster*, 376 F.3d 577, 584 (6th Cir. 2004). Around that time, Reiman also specifically told Plaintiffs that he was performing a traffic stop because of the seatbelt violation. (D.N. 48; D.N. 65-9, PageID.668 ¶ 5)

Contrary to Plaintiffs' contention, the traffic stop was lawful. The Sixth Circuit "has consistently held that if 'an officer has probable cause to believe that a traffic violation has occurred or was occurring, the resulting stop is not unlawful and does not violate the Fourth Amendment.'" *United States v. Tillman*, 543 F. App'x 557, 560 (6th Cir. 2013) (quoting *United States v. Ferguson*, 8 F.3d 385, 391 (6th Cir. 1993)). Moreover, "an officer has probable cause if the officer sees an individual in the vehicle not wearing a seatbelt in violation of state law." *United States v. Brooks*, 987 F.3d 593, 598 (6th Cir. 2021); see *United States v. Street*, 614 F.3d 228, 232 (6th Cir. 2010) (holding stop for Tennessee seatbelt-law violation constitutional). Here, DeBrossard admitted to having unrestrained children in the car, in violation of Ky. Rev. Stat. § 189.152(3). Thus, following a consensual encounter, Reiman lawfully seized Plaintiffs. See *Commonwealth v. Fox*, 48 S.W.3d 24, 27 (Ky. 2001) ("KRS 189.125(3) creates a crime for failure to properly restrain a child less than 40 inches in height and the police may properly stop such a vehicle when they observe the violation of the statute.").

2. Pat Down

Reiman searched DeBrossard's person after notifying DeBrossard that he smelled marijuana coming from DeBrossard's vehicle. (D.N. 48-1) According to Defendants, Reiman

⁵ Although Reiman did not directly instruct Ledesma and the children in the car to stay, they were, in effect, seized with DeBrossard. See *United States v. Lawrence*, 425 F. Supp. 3d 828, 832 (E.D. Mich. 2019) ("The United States Supreme Court has held that 'a police officer effectively seizes "everyone in the vehicle," the driver and all passengers' during a traffic stop." (quoting *Arizona v. Johnson*, 555 U.S. 323, 326 (2009))).

conducted a consensual *Terry* pat-down of DeBrossard. (D.N. 50-1, PageID.329) Plaintiffs contend, though, that “Reiman frisked Plaintiff DeBrossard without reasonable suspicion” (D.N. 65, PageID.535), and they dispute that the pat-down was consensual. (*Id.*, PageID.555)

“[A] search authorized by consent is wholly valid.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). But consent “must be voluntary and freely given.” *United States v. Moon*, 513 F.3d 527, 537 (6th Cir. 2008) (citing *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968)). “Consent is voluntary when it is ‘unequivocal, specific and intelligently given, uncontaminated by any duress or coercion.’” *Id.* (quoting *United States v. McCaleb*, 552 F.2d 717, 721 (6th Cir. 1977)). Mere acquiescence to a claim of lawful authority does not constitute free and voluntary consent. *Id.* at 537–38. The validity of consent “is a question of fact to be determined from the totality of all the circumstances.” *Schneckloth*, 412 U.S. at 227.

Despite arguing that “[t]he unlawful ‘stop’ and ‘frisk’ was not consensual” (D.N. 65, PageID.555), Plaintiffs have not presented evidence creating a genuine dispute as to whether DeBrossard consented to the pat-down. In fact, DeBrossard himself testified that he consented. (D.N. 50-18, PageID.751 (responding “[y]es, I did” when asked “[d]id you consent to [the pat-down]?”)) Moreover, Reiman’s bodycam footage shows that DeBrossard consented: After asking DeBrossard if he has anything dangerous on his person, Reiman asks DeBrossard, “Mind if I pat you down real quick just to make sure?”; DeBrossard does not respond verbally, but he raises his arms out to his sides, allowing Reiman to perform the pat-down. (D.N. 48-1) “[C]onsent can be given without speaking a word,” *United States v. Cowan*, 704 F. App’x 519, 524 (6th Cir. 2017) (citing *United States v. Ortiz*, 455 F. App’x 669, 671–72 (6th Cir. 2012)), and the Sixth Circuit has “found that assuming the pat-down position can be evidence of consent.” *Id.* (citing *United States v. Chambers*, 646 F. App’x 445, 448 (6th Cir. 2016)). *Id.* By

lifting his arms, DeBrossard nonverbally consented to the search, and the record does not show that he was coerced into consenting or merely acquiesced: Reiman “did not threaten or promise anything to [DeBrossard]; [he] had not . . . arrested him or threatened to arrest him; and there is no evidence that [Reiman] physically threatened [DeBrossard] or intimidated him.” *United States v. Cochrane*, 702 F.3d 334, 344 (6th Cir. 2012). Reiman’s bodycam footage, coupled with DeBrossard’s own deposition testimony, establish that the pat-down was consensual, and therefore lawful. *Schneckloth*, 412 U.S. at 222.

3. Vehicle Search

The defendants argue that Reiman had probable cause to search Plaintiffs’ vehicle because he smelled marijuana coming from it. (D.N. 50-1, PageID.333) Plaintiffs, on the other hand, contend that Reiman searched their vehicle without probable cause. (D.N. 65, PageID.556) They argue that “Reiman alleged to smell marijuana, but [Reiman’s] sense of smell cannot be trusted.” (*Id.*) Plaintiffs also dispute that an officer can legally search a vehicle after smelling marijuana. (*Id.*, PageID.557)

Plaintiffs provide no legitimate basis for disputing Reiman’s ability to smell marijuana or for their assertion that the smell of marijuana does not provide probable cause for a search. “The odor of marijuana establishes probable cause to search a vehicle under Sixth Circuit precedent.” *United States v. Bohanon*, 629 F. Supp. 2d 802, 809 (E.D. Tenn. 2009), *aff’d*, 420 F. App’x 576 (6th Cir. 2011) (citing *Foster*, 376 F.3d at 588; *United States v. Garza*, 10 F.3d 1241, 1246 (6th Cir. 1993)). Indeed, “when officers smell the odor of marijuana coming from a vehicle, they have probable cause to search the vehicle without a warrant based on the automobile exception.” *United States v. Thomas*, 434 F. Supp. 3d 576, 586 (W.D. Ky. 2020). Accordingly, the smell of marijuana emanating from Plaintiffs’ car provided Reiman with probable cause to search it.

Plaintiffs further challenge the legality of the search on the ground that Reiman went “beyond the scope of [the] search by seizing Plaintiff Ledesma[’s] expired identification from her purse.” (D.N. 65, PageID.560) But “[s]o long as ‘probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part* of the vehicle and its contents that may conceal the object of the search.’” *Carter v. Parris*, 910 F.3d 835, 840 (6th Cir. 2018) (emphasis in original) (quoting *United States v. Ross*, 456 U.S. 798, 825 (1982)). Reiman was searching Plaintiffs’ car for drugs because he smelled marijuana coming from the car. (See D.N. 48-1) There is no genuine dispute that Ledesma’s purse could have “conceal[ed] the objected of the search.” *Ross*, 456 U.S. at 825. Reiman therefore did not exceed the scope of the search by looking in Ledesma’s purse. *See id.*

Nor did Reiman exceed the scope of the search by reviewing the license he found in Ledesma’s purse. Under the plain-view doctrine, “[t]he seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity.” *Payton v. New York*, 445 U.S. 573, 587 (1980). “The standard of probable cause is a common-sense and flexible standard, requiring that the facts available to the police officer at that time ‘warrant a man of reasonable caution in the belief’ that certain items may be contraband, stolen, or evidence of a crime.” *Mallory v. City of Riverside*, 35 F. Supp. 3d 910, 932 (S.D. Ohio 2014) (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983)). And “[t]he standard does not require that this belief play out to be true or more likely than true.” *Id.*

Reiman, having received a driver’s license from Ledesma and then found a second license for Ledesma in her purse (see D.N. 48-1), could have reasonably believed that the second license was fraudulent or evidence of a crime. Thus, under the plain-view doctrine, he lawfully

seized the license. *See Mallory*, 35 F. Supp. 3d at 932. This is true even though the second license turned out to be valid but expired. *See id.* Accordingly, there is no genuine dispute that Reiman's search of Plaintiffs' vehicle was lawful.

4. Citations

Upon searching Plaintiffs' vehicle, Reiman found marijuana and associated paraphernalia. (D.N. 50-2, PageID.348 ¶ 9; D.N. 50-4; D.N. 48-1) Reiman cited "Mr. DeBrossard with possession of marijuana, drug paraphernalia – buy/possess, and improper vehicle restraint use, and [he] cited Ms. Ledesma with possession of marijuana and drug paraphernalia – buy/possess." (D.N. 50-2, PageID.348 ¶ 111; D.N. 50-5) According to Plaintiffs, Reiman lacked probable cause to issue citations to them. (D.N. 65, PageID.558)

"Probable cause determinations are based upon factual and practical considerations of everyday life [that] could lead a reasonable person to believe that there is a probability that an illegal act has occurred or is about to occur." *Harris v. Cnty. of Calhoun*, 127 F. Supp. 2d 871, 874–75 (W.D. Mich. 2001) (alteration in original) (quoting *United States v. Reed*, 220 F.3d 476, 478 (6th Cir. 2000)). The evidence in the record demonstrates that Reiman found what smelled like and looked like marijuana and paraphernalia in Plaintiffs' car, and he also personally observed five children exit the backseat of a car that only had three seatbelts. (*See* D.N. 48-1; D.N. 50-2) Possession of marijuana is illegal in Kentucky, *see* Ky. Rev. Stat. § 218A.144, as is possession of drug paraphernalia. *See* § 218A.500. Kentucky law also requires the use of child restraints in vehicles. *See* § 189.125. Reiman thus reasonably believed that Plaintiffs had violated the law, and no reasonable jury could find that Reiman lacked probable cause to issue Plaintiffs citations for such violations.

5. Duration and Scope of the Stop

Plaintiffs also assert, without further argument, that “Reiman and Spencer prolonged the stop.” (D.N. 65, PageID.541) “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Florida v. Royer*, 460 U.S. 491, 500 (1983). But law enforcement “may extend the stop beyond the scope of what was originally permissible if ‘something happened *during the stop* to cause the officer to have a reasonable and articulable suspicion that criminal activity is afoot.’” *United States v. Stepp*, 680 F.3d 651, 661 (6th Cir. 2012) (emphasis in original) (quoting *United States v. Davis*, 430 F.3d 345, 353 (6th Cir. 2005)).

The stop here lasted roughly 50 minutes total. (See D.N. 48-1) Although Reiman initially approached, and then detained, Plaintiffs for a traffic violation, Reiman smelled marijuana coming from Plaintiffs’ car before the traffic violation had been resolved.⁶ “[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop . . . and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 348–49 (2015) (internal citation omitted) (citing *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). “Authority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* (citing *United States v. Sharpe*, 470 U.S. 675, 685 (1985)).

Because Plaintiffs’ seizure had not ended by the time Reiman smelled marijuana coming from their car, *see id.*, the marijuana smell provided Reiman with reasonable suspicion to extend the seizure beyond its original purpose. *See United States v. Sheckles*, 996 F.3d 330, 345 (6th

⁶ Reiman had asked Plaintiffs to call someone to pick up the children who could not be restrained, but before that person arrived, Reiman smelled marijuana coming from Plaintiffs’ car. (See D.N. 48)

Cir. 2021) (finding that the smell of marijuana coming from vehicle gave officers reasonable suspicion to continue vehicle stop). Moreover, the record does not show that Reiman and Singer acted in a dilatory manner during the stop. Instead, Reiman's bodycam footage indicates that Plaintiffs were detained only as long as necessary to, initially, ensure that the unrestrained children would be picked up, and then to investigate the marijuana smell coming from Plaintiffs' car. (See D.N. 48-1) Accordingly, the stop was not unconstitutionally prolonged.

In sum, there is no genuine dispute as to whether Plaintiffs were subjected to an unlawful search or seizure. Defendants are therefore entitled to summary judgment on that claim.

C. False Arrest

Plaintiffs argue that "Reiman did not have [p]robable cause to handcuff/arrest [them]." (D.N. 65, PageID.560) Defendants contend that Plaintiffs' false-arrest claim must fail "because, very simply, Plaintiffs were not arrested." (D.N. 50-1, PageID.336)

"A false arrest claim under federal law requires a plaintiff to prove that the arresting officer lacked probable cause to arrest the plaintiff." *Voyticky v. Vill. of Timberlake*, 412 F.3d 669, 677 (6th Cir. 2005) (citing *Fridley v. Horrichs*, 291 F.3d 867, 872 (6th Cir. 2002)). The absence of an arrest is fatal to a false-arrest claim. *Fletcher-Hope v. Louisville Metro Gov't*, No. 3:18-CV-469-RGJ-RSE, 2020 WL 1644040, at *4 (W.D. Ky. Apr. 2, 2020) ("An essential element of the false arrest claim is that the plaintiff was under arrest."). "There is no bright-line test for determining when an investigatory stop crosses the line and becomes an arrest." *United States v. Williams*, 170 F. App'x 399, 402 (6th Cir. 2006), *abrogated on other grounds by Arizona v. Gant*, 556 U.S. 332 (2009). Rather, courts must look at the "totality of the circumstances" and consider factors such as "(1) transportation of the detainee to another

location; (2) significant restraints on freedom of movement involving physical confinement or other coercion; (3) use of weapons or bodily force; and (4) issuance of Miranda warnings.” *Id.*

Here, Reiman did Mirandize Plaintiffs, and he handcuffed Plaintiffs for two minutes while he verified their identities. (D.N. 50-2, PageID.348) Before doing so, however, Reiman explicitly told Plaintiffs that they were not under arrest. (*Id.*) Plaintiffs were never transported to another location, and they were not subjected to the use of weapons or bodily force. (*See* D.N. 48-1) Based on these circumstances, the investigatory stop of Plaintiffs never escalated to an arrest. *See Williams*, 170 F. App’x at 402. Accordingly, Defendants are entitled to summary judgment on Plaintiffs’ false-arrest claim. *See Fletcher-Hope*, 2020 WL 1644040, at *4–5.

D. Failure to Intervene – Singer

Plaintiffs allege that Singer “failed his duty to the Plaintiffs by failing to intervene” during the investigatory stop. (D.N. 22, PageID.156) According to Plaintiffs, Singer “was on site to witness Defendant Reiman violate the Plaintiffs[’] Constitutional Rights.” (D.N. 65, PageID.541) Defendants argue that “[t]here is no proof that Singer witnessed constitutional violations and failed to intervene to stop them.” (D.N. 50-1, PageID.341)

A failure-to-intervene claim requires a showing that the defendant “(1) observed or had reason to know that [constitutional harm] would be or was [taking place], and (2) had both the opportunity and the means to stop the harm from occurring.” *Anderson v. Knox Cnty.*, No. CV 6:17-133-KKC, 2018 WL 7500205, at *8 (E.D. Ky. Oct. 3, 2018) (internal quotation marks omitted) (alterations in original) (quoting *Sheffey v. City of Covington*, 564 F. App’x 783, 793 (6th Cir. 2014)). “Because a failure to intervene claim is based on another officer’s unconstitutional actions, ‘to succeed on a claim for failure to intervene, a plaintiff must show that there was an underlying constitutional violation.’” *Clark v. Louisville-Jefferson Cnty. Metro*

Gov't, No. 3:17-CV-419-GNS-CHL, 2024 WL 56938, at *17 (W.D. Ky. Jan. 4, 2024) (quoting *Greene v. Crawford Cnty.*, 22 F.4th 593, 615 (6th Cir. 2022)). Since the Court has determined that Plaintiffs' constitutional rights were not violated during the investigatory stop, Singer is entitled to summary judgment on Plaintiffs' failure-to-intervene claim. *See Bonner-Turner v. City of Ecorse*, 627 F. App'x 400, 413 (6th Cir. 2015) ("And because there is no underlying constitutional violation, [Defendant] may not be liable for failure to intervene.").

E. Malicious Prosecution

The operative complaint asserts a malicious-prosecution claim under state law. (D.N. 65, PageID.562) A malicious-prosecution claim under Kentucky law consists of five elements:

1) the defendant initiated, continued, or procured a criminal or civil judicial proceeding, or an administrative disciplinary proceeding against the plaintiff; 2) the defendant acted without probable cause; 3) the defendant acted with malice . . . ; 4) the proceeding, except in ex parte civil actions, terminated in favor of the person against whom it was brought; and 5) the plaintiff suffered damages as a result of the proceeding.

Jenkins v. Louisville-Jefferson Cnty. Metro Gov't, No. 3:17-CV-151-DJH, 2018 WL 345119, at *5 (W.D. Ky. Jan. 9, 2018) (citing *Martin v. O'Daniel*, 507 S.W.3d 1, 11–12 (Ky. 2016)). Defendants assert that Plaintiffs have not established the second element because "probable cause existed[]" and was stipulated to by Plaintiffs," the third element because "Plaintiffs offer no proof of malice or intent to harm," or the fourth element because "all charges in the Plaintiffs' underlying criminal action were dismissed conditionally." (D.N. 50-1, PageID.338) In response, Plaintiffs assert that they were coerced into stipulating to probable cause, that "Defendants acted with malice," and that "[a]ny [j]udgments against [them] are void including [the] Dismissal with Conditions." (D.N. 65, PageID.562)

The Court has already determined that probable cause existed for the citations at issue. (*See above* Section III.B.4), which is fatal to Plaintiffs' malicious-prosecution claim: "a

Kentucky claim for malicious prosecution, like a Fourth Amendment claim for unreasonable seizure, cannot survive when the police had probable cause.” *Lester v. Roberts*, 986 F.3d 599, 612–13 (6th Cir. 2021). Defendants are therefore entitled to summary judgment on that claim.

F. Failure to Intervene – Thompson

Plaintiffs assert that Defendant “Jeremy Thompson . . . to whom the Plaintiffs made [a] formal sworn Complaint . . . failed to intervene and allowed for the malicious prosecution to be suffered by the Plaintiffs.” (D.N. 22, PageID.156) Defendants’ motion for summary judgment does not address this claim, but for the reasons explained below, the Court will sua sponte enter summary judgment in favor of Thompson as to that claim.

Although the practice is disfavored, the Sixth Circuit has “long recognized a district court’s authority to enter summary judgment on grounds not advanced by either or any party.” *Advanced Concrete Tools, Inc. v. Beach*, 525 F. App’x 317, 319 (6th Cir. 2013) (citing *Smith v. Perkins Bd. of Educ.*, 708 F.3d 821, 829 (6th Cir. 2013); *Excel Energy, Inc. v. Cannelton Sales Co.*, 246 F. App’x 953, 959 (6th Cir. 2007)). A Court may only exercise such authority, however, when “the losing party was on notice that she had to come forward with all of her evidence.” *Celotex Corp.*, 477 U.S. at 326. “In making this inquiry, [the Sixth Circuit] looks to the totality of the proceedings below to determine whether the losing party had sufficient notice of the possibility that summary judgment could be granted against it.” *Turcar, LLC v. I.R.S.*, 451 F. App’x 509, 513 (6th Cir. 2011). Relevant considerations include “whether the prevailing party moved for summary judgment; whether the losing party moved for summary judgment; what issues the parties focused on in their briefs; what factual materials the parties submitted to the court; and whether motions were filed by co-defendants.” *Id.* (citing *Excel Energy*, 246 F. App’x at 960)). Courts also consider whether the losing party “had a facially meritorious

defense to the judgment.” *Sommer v. Davis*, 317 F.3d 686, 695 (6th Cir. 2003) (citing *Emps. Ins. of Wausau v. Petroleum Specialties, Inc.*, 69 F.3d 98, 105–06 (6th Cir. 1995)). In short, “[a] district court can grant summary judgment when ‘the basis for granting summary judgment [is] embraced within the evidence and arguments presented by the parties.’” *Smith*, 708 F.3d at 830 (quoting *Turcar*, 451 F. App’x at 515).

Despite appearing to have inadvertently omitted discussion of Plaintiffs’ failure-to-intervene claim against Thompson in their motion for summary judgment, Defendants seek summary judgment on all of Plaintiffs’ claims. (See D.N. 50-1) And their lengthy motion for summary judgment addresses all but the failure-to-intervene claim against Thompson. (*Id.*) Under these circumstances, Plaintiffs “had sufficient notice of the possibility that summary judgment could be granted against [them].” *Turcar*, 451 F. App’x at 513.

Summary judgment is warranted on Plaintiffs’ failure-to-intervene claim against Thompson because the Court is aware of no cause of action for a failure-to-intervene claim premised on a state-law tort claim. *See generally Hoskins v. Knox Cnty.*, No. CV 17-84-DLB-HAI, 2018 WL 1352163, at *17 (E.D. Ky. Mar. 15, 2018) (“[A] police office can be liable under § 1983 when he or she fails to intervene and prevent constitutional violations.”). But even if such a claim were cognizable, Thompson would still be entitled to summary judgment because Plaintiffs have failed to demonstrate a genuine dispute of material fact as to the underlying malicious-prosecution claim. (See *above* Section III.E.) Because “the basis for granting summary judgment [is] embraced within the evidence and arguments presented by the parties,” *Turcar*, 451 F. App’x at 515, the Court will sua sponte grant summary judgment for Thompson on Plaintiffs’ failure-to-intervene claim,

G. Monell

A municipality cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978); *Deaton v. Montgomery Cnty.*, 989 F.2d 885, 889 (6th Cir. 1993). To demonstrate municipal liability, a plaintiff “must (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy.” *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003) (citing *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364 (6th Cir. 1993)).

Plaintiffs contend that “Defendant Jeremy Thompson and Defendant City of Elizabethtown [are] responsible [for] harm due to policy contrary to the” Fourth Amendment. (D.N. 65, PageID.563) As a preliminary matter, Thompson cannot be held liable under *Monell* in his individual capacity because “the raison d’etre of *Monell* is to impose liability on a municipality under certain circumstances — not individuals.” *Phillips v. City of Cincinnati*, No. 1:18-CV-541, 2019 WL 2289277, at *6 (S.D. Ohio May 29, 2019). And a *Monell* claim against Thompson in his official capacity as the police chief of Elizabethtown is properly construed as a claim against the City, which is duplicative of Plaintiffs’ existing claim against the City. *See id.* Thompson is therefore entitled to summary judgment on Plaintiffs’ *Monell* claim against him.

According to Plaintiffs, Elizabethtown’s policy permitting warrantless searches of vehicles pursuant to *Carroll v. United States*, 267 U.S. 132 (1925), is unconstitutional because “the Carroll doctrine is no longer lawful due to the Eighteenth (18th) Amendment ha[ving] been repealed.” (D.N. 65, PageID.563) Plaintiffs’ argument is without merit. Under *Carroll*, which remains good law, “[p]olice can conduct a warrantless search of a vehicle so long as they have

probable cause to believe they will find evidence of criminal wrongdoing inside.” *United States v. Davis*, No. 23-3447, 2024 WL 808685, at *3 (6th Cir. Feb. 27, 2024) (citing *Carroll v. United States*, 267 U.S. 132, 149 (1925)). Beyond arguing that *Carroll* is unconstitutional, Plaintiffs make no further arguments in support of their *Monell* claim. (D.N. 65, PageID.563) Because Plaintiffs have not identified any policy or custom of the City of Elizabethtown that resulted in a violation of their constitutional rights, the City is entitled to summary judgment on Plaintiffs’ *Monell* claim.

In sum, Plaintiffs have not put forth sufficient evidence to establish a genuine issue of material fact.⁷ The Court will therefore enter summary judgment in favor of the Defendants.

⁷ Although the defendants seek summary judgment on Plaintiffs’ request for punitive damages (see D.N. 50-1), the Court need not address that request. “[A] claim for punitive damages is not a separate cause of action, but a remedy potentially available for another cause of action.” *Dalton v. Animas Corp.*, 913 F. Supp. 2d 370, 378 (W.D. Ky. 2012) (citing *Toon v. City of Hopkinsville*, No. 5:09-CV-37, 2011 WL 1560590, at *3 (W.D. Ky. Apr. 14, 2011), *on reconsideration in part*, No. 5:09-CV-37, 2011 WL 1885406 (W.D. Ky. May 18, 2011)). And Plaintiffs do not attempt to assert an independent claim for punitive damages. (See D.N. 22) Regardless, the Court will enter summary judgment in favor of the defendants as to all of Plaintiffs’ claims, leaving no underlying basis for an award of punitive damages.

IV.

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby

ORDERED as follows:

(1) The Clerk of Court is **DIRECTED** to strike Plaintiffs' sur-reply (D.N. 68) from the record of this matter.

(2) Defendants' motion for summary judgment (D.N. 50) is **GRANTED**.

(3) Plaintiffs' motion to exclude the expert testimony of Troy Pitcock (D.N. 51) is **DENIED as moot**.

(4) A separate Judgment will issue this date.

March 25, 2024


David J. Hale, Judge
United States District Court

APPENDIX

C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

TRALICIA D. LEDESMA and
MAURICE A. DEBROSSARD,

Plaintiffs,

v.

Civil Action No. 3:22-cv-161-DJH-CHL

ERIC REIMAN et al.,

Defendants.

* * * * *

MEMORANDUM AND ORDER

Plaintiffs Tralicia D. Ledesma and Maurice A. Debrossard, proceeding pro se, filed this action against Defendants Eric Reiman, Spencer Singer, Jeremy Thompson, and the City of Elizabethtown, alleging multiple violations of their constitutional rights arising from an encounter between Plaintiffs and Reiman, an officer with the Elizabethtown Police Department, on March 22, 2021. (Docket No. 22) On March 26, 2024, the Court issued a Memorandum and Order granting Defendants' motion for summary judgment on all claims and denying as moot Plaintiffs' motion to exclude certain testimony. (D.N. 86) On the same day, the Court entered Judgment in favor of Defendants on all claims and dismissed Plaintiffs' claims with prejudice. (D.N. 87) Now, Plaintiffs move to alter, amend, or vacate the Court's Order and Judgment pursuant to Federal Rules of Civil Procedure 59(e), 52(b), and 60. (D.N. 88) After careful consideration, the Court will deny Plaintiffs' motion for the reasons set out below.

I. BACKGROUND

The Court incorporates the following factual summary set out in its March 26, 2024 Memorandum and Order:

According to Reiman, while driving in his police cruiser on March 22, 2021, he observed a car that appeared to have multiple unrestrained children in the backseat. (D.N. 50-2, PageID.346 ¶¶ 2-3) DeBrossard was driving the car and

[APPENDIX C]

Ledesma was in the passenger seat. (D.N. 50-18, PageID.726) Five children, between the ages of 7 and 17, were in the backseat of the car (*id.*, PageID.739–40), which only had three seatbelts. (*Id.*, PageID.730) Reiman testified that he could not see Plaintiffs’ faces because the car had tinted windows (D.N. 50-2, PageID.346 ¶ 3), but he could see “multiple heads in the back seat[,] and it appeared to [him] that there were more heads than car seats or seatbelts tha[n] could possibly be in the backseat.” (*Id.*)

Plaintiffs pulled into the parking lot of a store, and Reiman parked next to them to “conduct[] a welfare check.” (*Id.*, PageID.347 ¶ 4) As DeBrossard was going into the store, Reiman “asked him how many kids he had in the back seat of his vehicle and whether they had seatbelts.” (*Id.* at ¶ 6) DeBrossard acknowledged that at least one child was sitting on another’s lap. (D.N. 48-1 (Reiman’s bodycam video))

Plaintiffs dispute that Reiman stopped their car to perform a welfare check. According to Plaintiffs, Reiman could not see inside of the vehicle at all and was not actually concerned about the children. (D.N. 65-9, PageID.668) Plaintiffs assert that Reiman instead decided to approach DeBrossard upon seeing that he was “a black man that had a gold chain around his neck,” racially profiling him. (D.N. 50-18, PageID.733)

As Reiman talked to DeBrossard about the children in the backseat, Ledesma opened the passenger door, stepping out of the vehicle. (D.N. 48-1) According to Reiman, when Ledesma opened the door, he “smelled marijuana emanating from the vehicle.” (D.N. 50-2, PageID.347 ¶ 6) “At that moment, based on smelling marijuana, [Reiman] determined that [he] . . . had probable cause to search the vehicle.” (*Id.*) Reiman advised DeBrossard of this. (D.N. 48-1) Defendant Singer, another officer with the Elizabethtown Police Department, arrived at the scene around this time. (D.N. 50-18; PageID.730–31; D.N. 48-1) Plaintiffs dispute that Reiman actually smelled marijuana. (D.N. 65-9, PageID.668 ¶ 6)

Reiman testified that after receiving DeBrossard’s consent, he “conducted a limited Terry pat-down search” of DeBrossard “to ensure that he did not have any weapons on his person.” (D.N. 50-2, PageID.347 ¶ 7) According to Plaintiffs, Reiman unlawfully frisked DeBrossard without his consent. (D.N. 65, PageID.550) Reiman then asked Ledesma to step out of the car, asked her for identification, and advised her that too many children were in the backseat and that he smelled marijuana which gave him probable cause to search the vehicle. (D.N. 48-1) Ledesma asked Reiman to obtain a search warrant before searching the car, but Reiman, citing *Carroll v. United States*, 267 U.S. 132 (1925), told Ledesma that he had probable cause based on the marijuana smell coming from the vehicle. (D.N. 48-1) Reiman asked the children in the backseat to exit the vehicle. (D.N. 50-2, PageID.348 ¶ 9) Five children of various ages came out of the backseat. (*Id.*; D.N. 48-1)

While searching the vehicle, Reiman found an additional license for Ledesma along with suspected marijuana and related paraphernalia. (D.N. 50-2, PageID.348 ¶ 9; D.N. 50-4) Reiman Mirandized Plaintiffs and told them that they were not under arrest. (D.N. 50-2, PageID.348 ¶ 9) Reiman asked Plaintiffs who owned the marijuana, and he asked Ledesma why she had two driver's licenses. (D.N. 48-1) Plaintiffs did not respond to Reiman's questions. (*Id.*) Reiman "told Plaintiffs that they were being detained" and "placed Plaintiffs in handcuffs for approximately two (2) minutes" while he checked their licenses. (D.N. 50-2, PageID.348 ¶ 10) Upon verifying their identities, Reiman removed Plaintiffs' handcuffs. (*Id.*; D.N. 48-1)

Reiman "explained to Plaintiffs that if neither of them claimed ownership of the marijuana, then [his] only option was to cite both of them." (D.N. 50-2, PageID.348 ¶ 11) Neither Plaintiff responded. (D.N. 48-1) Reiman discussed the situation with Singer (*id.*), and he ultimately cited "Mr. DeBrossard with possession of marijuana, drug paraphernalia – buy/possess, and improper vehicle restraint use, and [he] cited Ms. Ledesma with possession of marijuana and drug paraphernalia – buy/possess." (D.N. 50-2, PageID.348 ¶ 11) After issuing Plaintiffs citations, he allowed them to leave. (D.N. 48-1) By that time, Ledesma's mother had arrived and picked up the children. (*See* D.N. 48-1; D.N. 65-9, PageID.669) Ledesma asserts that her mother had the same style of car as Plaintiffs, but Reiman and Spencer were unconcerned about the five children simply moving to the backseat of the mother's car, some still unrestrained. (D.N. 65-9, PageID.668–69 ¶ 7)

The charges against Plaintiffs were ultimately dismissed in exchange for Plaintiffs' stipulation to probable cause. (D.N. 50-12) Both Ledesma and DeBrossard signed a document titled "Terms and Conditions of Dismissal," which stated, in relevant part, "The Defendant herein by his/her signature expressly and knowingly stipulates probable cause for this offense." (*Id.*) Plaintiffs assert that they were coerced into signing the stipulations and did not fully understand the terms of the agreement. (D.N. 50-18, PageID.742–43, 756)

(D.N. 86, PageID.785–88)

Following these events, Plaintiffs brought this pro se action against Reiman, Singer, Elizabethtown police chief Thompson, and the City of Elizabethtown pursuant to 42 U.S.C. § 1983.¹ (D.N. 22) After discovery, Defendants moved for summary judgment (D.N. 50) and the Court granted the motion on March 26, 2024. (D.N. 86) On the same day, the Court entered

¹ Plaintiffs sued Reiman, Singer, and Thompson in both their individual and official capacities. (D.N. 22)

Judgment in favor of Defendants on all claims and dismissed Plaintiffs' claims with prejudice. (D.N. 87) On April 1, 2024, Plaintiffs moved to alter, amend, or vacate the Court's Order and Judgment pursuant to Federal Rules of Civil Procedure 59(e), 52(b), and 60, arguing that the Court erred in dismissing Plaintiff's selective enforcement, illegal search and seizure, false arrest, failure to intervene, malicious prosecution, and *Monell* claims. (D.N. 88, PageID.810–31)

II. ANALYSIS

A. Rule 59(e)

Federal Rule of Civil Procedure 59(e) allows a party to move to “alter or amend a judgment” no later than “28 days after the entry of judgment.”² Fed. R. Civ. P. 59(e). The Court may alter or amend its judgment based on “(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 841 (6th Cir. 2018) (quoting *Leisure Caviar, LLC v. U.S. Fish & Wildlife Serv.*, 616 F.3d 612, 615 (6th Cir. 2010)). Importantly, a party may not use Rule 59 “to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Id.* (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008)). In fact, “Rule 59(e) motions are extraordinary and sparingly granted[,]” *Melton v. Litteral*, No. 1:17-CV-00120-GNS, 2018 WL 5258626, at *2 (W.D. Ky. Oct. 22, 2018) (internal quotation omitted), and the moving party bears the burden of showing entitlement to relief. *DeVore v. United Parcel Serv. Co. (Air)*, No. 3:21-CV-478-DJH, 2023 WL 2658357, at *1 (W.D. Ky. Mar. 13, 2023) (citing *Melton*, No. 1:17-CV-00120-GNS, 2018 WL 5258626, at *2).

² The Court entered Judgement in favor of Defendants on March 26, 2024. (D.N. 87) Plaintiffs moved to amend on April 1, 2024. (D.N. 88) Thus, Plaintiff's Rule 59(e) motion is timely. See Fed. R. Civ. P. 59(e).

Plaintiffs have failed to articulate a sufficient justification for relief under Rule 59(e). Plaintiffs do not cite newly discovered evidence or an intervening change in controlling law. (*See generally* D.N. 88) Instead, Plaintiffs argue that the Court’s decision was “manifestly erroneous.” (*Id.*, PageID.810) Plaintiffs contend that the Court erred by “not addressing” the fact that Ledesma’s mother was allowed to pick up the children (D.N. 88, PageID.810); “not properly applying law addressing the constitutionality” of Reiman’s actions (*id.*, PageID.812); not properly “applying the law” regarding the legality of Plaintiffs’ citations (*id.*, PageID.819); concluding that Plaintiffs were not subjected to a prolonged stop and unlawful search and seizure (*id.*, PageID.822–26); dismissing Plaintiffs’ false-arrest claim (*id.*, PageID.826); dismissing Plaintiffs’ failure-to-intervene claims (*id.*, PageID.826–29); dismissing Plaintiffs’ malicious-prosecution claim (*id.*, PageID.827); and dismissing Plaintiffs’ *Monell* claim. (*Id.*, PageID.829–31)

These arguments ultimately constitute attempts to “relitigate old matters” and “raise arguments or present evidence that could have been raised prior to the entry of judgment.” *See Brumley*, 909 F.3d at 841. For example, Plaintiffs repeatedly argue that Reiman lacked probable cause to search their vehicle because of various federal laws regarding the sale of hemp products. (*See, e.g.*, D.N. 88, PageID.815–17) But this argument could have been “raised prior to the entry of judgment” and thus is not a proper basis for a motion under Rule 59(e). *See Brumley*, 909 F.3d at 841. In any event, the law is clear that police officers have probable cause to search a vehicle based on the smell of marijuana. *See, e.g., United States v. Brooks*, 987 F.3d 593, 599 (6th Cir. 2021) (explaining that the Sixth Circuit “has long held that officers have the required probable cause when they detect the odor of illegal marijuana coming from [a] vehicle” and collecting cases). The Court noted as much in its prior Order (*see* D.N. 86, PageID.796), and therefore Plaintiffs seek to improperly “relitigate old matters.” *See Brumley*, 909 F.3d at 841. For these

reasons, Plaintiffs also cannot establish that manifest injustice would be prevented by alteration of the Court's prior Order and Judgment. Manifest injustice requires "[a]n error in the trial court that is direct, obvious, and observable." *DeVore*, 2023 WL 2658357, at *6 (quoting *Tenn. Prot. & Advoc., Inc. v. Wells*, 371 F.3d 342, 348 (6th Cir. 2004)). "In other words, 'a showing of manifest injustice requires that there exist a fundamental flaw in the court's decision.'" *Id.* (quoting *United States v. Canal Barge Co.*, No. 4:07CR-12-JHM, 2009 WL 541267, at *2 (W.D. Ky. Mar. 4, 2009)). By attempting to relitigate issues already decided and relying on arguments that could have been raised previously, Plaintiffs fail to meet this high bar. *See Brumley*, 909 F.3d at 841; *DeVore*, 2023 WL 2658357, at *6.

B. Rule 60

Plaintiffs also seek relief under Federal Rule of Civil Procedure 60. (D.N. 88, PageID.809) Rule 60(b)(1) allows the Court to relieve a party from a final judgment for a variety of reasons including "mistake, inadvertence, surprise, or excusable neglect" and "newly discovered evidence."³ Fed. R. Civ. P. 60(b). As with Rule 59(e), a party may not use Rule 60(b) to relitigate a case. *DeVore*, No. 3:21-CV-478-DJH, 2023 WL 2658357, at *6 (citing *Sublett v. Hall*, No. 4:19-CV-00144-JHM, 2022 WL 2671860, at *2 (W.D. Ky. July 11, 2022)). Moreover, "relief under Rule 60(b) is circumscribed by public policy favoring finality of judgments and termination of litigation." *Ford Motor Co. v. Mustangs Unlimited, Inc.*, 487 F.3d 465, 468 (6th Cir. 2007) (quotation and alteration omitted).

Plaintiffs have not identified "mistake, inadvertence, surprise, . . . excusable neglect" or "newly discovered evidence" as required by Rule 60. *See* Fed. R. Civ. P. 60(b). Instead, Plaintiffs

³ A Rule 60(b)(1) motion must be filed "no more than a year after the entry of the judgment or order" at issue. Fed. R. Civ. P. 60(c)(1). Plaintiffs filed their motion within days of the Court's Judgment (*see* D.N. 87; D.N. 88), and therefore the motion is timely. *See* Fed. R. Civ. P. 60(c)(1).

“raise[] essentially the same argument for relief under 60(b)(1) that [they] did for relief under 59(e).” *DeVore*, No. 3:21-CV-478-DJH, 2023 WL 2658357, at *6. Thus, Plaintiffs’ argument fails for the reasons set out in part II.A above.⁴

C. Rule 52

Finally, Plaintiffs move under Federal Rule of Civil Procedure 52(b). (D.N. 88, PageID.809) Under Rule 52(b), the Court “may amend its findings[,] or make additional findings[,] and may amend the judgment accordingly.” Fed. R. Civ. P. 52(b). Rule 52(b) is designed to “permit the correction of any manifest errors of law or fact that are discovered, upon reconsideration, by the trial court.” *Graveline v. Benson*, No. 18-12354, 2020 WL 1303211, at *2 (E.D. Mich. Mar. 19, 2020) (quotation omitted). As with Rules 59(e) and 60(b), however, parties may not rely on Rule 52(b) to “relitigate issues already decided or matters that could have been raised earlier.” *Id.* (quotation omitted). As a result, and for the same reasons articulated in parts II.A and II.B above, Plaintiffs are not entitled to relief under Rule 52(b).

⁴ In addition, Plaintiffs cite Rule 60(a), which allows the Court to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). But Plaintiffs have not articulated, nor has the Court found, any such mistake in the Court’s March 26, 2024 Order and Judgment. Relief is thus not warranted under Rule 60(a).

III. CONCLUSION

For the reasons set out above, and the Court being otherwise sufficiently advised, it is hereby

ORDERED that Plaintiffs' motion to alter, amend, or vacate the Court's March 26, 2024 Order and Judgment (D.N. 88) is **DENIED**. This matter remains **CLOSED**.

March 5, 2025

A handwritten signature in black ink, appearing to read "D.J. Hale", is written over a circular embossed seal of the United States District Court.

David J. Hale, Judge
United States District Court