No. SC-2025-0372

IN THE SUPREME COURT OF ALABAMA

MICHAEL JEROME JENNINGS,

Appellant,

v.

CHRISTOPHER SMITH, JUSTIN GABLE, JEREMY BROOKS, AND CITY OF CHILDERSBURG,

Appellees.

CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, EASTERN DIVISION
CASE NO. 1:22-CV-01165-RDP

APPELLEES' BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

This case involves a question of first impression certified to this Court by the United States District Court of the Northern District of Alabama:

> "Under Alabama Code § 15-5-30, when a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives an incomplete or unsatisfactory response, does the statute prohibit the officer from demanding or requesting physical identification?"

(App. N-Ala. S. Ct. Order, June 27, 2025).

Historically, Alabama law enforcement officers have demanded a physical ID (e.g., driver's license, work ID, water bill, social security card) to obtain or verify a criminal suspect's identity. This has kept officers and civilians safe. The Eleventh Circuit, however, recently interpreted Alabama Code § 15-5-30 to prohibit an officer from making any further inquiry of a criminal suspect when the suspect stated that his name was "Pastor Jennings" who "live[d] across the street" and refused to give any physical identification with a full name and street address and threatened police with a lawsuit. This interpretation prohibits law enforcement from doing their jobs and makes Alabama citizens less safe.

Appellees Officers Christopher Smith, Justin Gable, Jeremy Brooks, and the City of Childersburg would welcome oral argument to discuss the legal arguments and practical consequences of this Court's final interpretation of the words "demand of him his name, address, and an explanation of his actions." Ala. Code § 15-5-30.

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STATEMENT OF JURISDICTION

This Court has jurisdiction to answer the question certified by the U.S. District Court for the Northern District of Alabama under § 140(b) of the Alabama Constitution. Ala. Const. § 140(b) ("The supreme court shall have original jurisdiction … (3) to answer question of state law certified by a court of the United States."). U.S. District Judge R. David Proctor certified the question on May 22, 2025. (App. A-Order Certifying Question.) This Court accepted the certified question by order dated June 27, 2025. (App. N-Sup. Ct. Order Accepting Cert. Question.)

Judge Proctor concluded that the question about Alabama Code § 15-5-30 met the requirements of Alabama Rule of Appellate Procedure 18 because it involved "questions or propositions of law of this State which are determinative of said cause and that there are no clear controlling precedents in the decisions of the Supreme Court of this State …." Ala. R. App. P. 18(a)

First, because the facts surrounding the Childersburg police officers' encounter with Michael Jerome Jennings are undisputed and will require no further development, the certified question regarding Alabama Code § 15-5-30 is a pure question of law of this State. *See*

Simcala, Inc. v. Am. Coal Trade, Inc., 821 So. 2d 197, 200 (Ala. 2001) ("[I]nterpretation of [a statute] involves a question of law ….").

Second, if this Court answers the certified question to allow an officer to demand a physical identification after an oral incomplete or inaccurate name or address is given, the district court would dispose of the case via summary judgment. If Jennings violated § 15-5-30 by not giving his complete name orally or via a physical identification, that would constitute probable cause to arrest Jennings for obstruction of a government investigation. *See* Ala. Code § 13A-10-2(a)(1) ("A person commits the crime of obstructing governmental operations if, by means of intimidation, physical force or interference by any other independently unlawful act, he: (1) Intentionally obstructs, impairs or hinders the administration of law or other governmental function; or …."); (App. H-Dist. Ct.'s Summ. J. Order-Pg.18) ("This court has no hesitation in determining that Defendants [the Officers] possessed probable cause to arrest Plaintiff [Jennings] for violating Alabama Code § 13A-10-2(a). … This flat refusal [to give his full name] amounted to an independent unlawful act."); Prelim. Answer 17-19, 30-32, 44-45.

Third, there are no controlling precedents. "Since each state is sovereign under our system of government, this Court is the final authority on Alabama law." *Harrison v. Insurance Co. of North America*, 318 So. 2d 253, 253–54 (Ala. 1975). This Court has not interpreted the words "demand of him his name, address, and an explanation of his actions" in Alabama Code § 15-5-30.

This Court has original jurisdiction to decide whether the words "demand of him his name, address, and an explanation of his actions," Ala. Code § 15-5-30, "prohibit the officer from demanding or requesting physical identification" when a criminal suspect "gives an incomplete or unsatisfactory response."

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STATEMENT OF THE CASE

After responding to a 911 call regarding possible criminal trespass, Officers Christopher Smith, Justin Gable, and Jeremy Brooks (the "Officers") of the Childersburg Police Department asked the suspect for an ID and for his name several times. When the suspect, Michael Jerome Jennings, replied "Pastor Jennings," but refused to give an ID, the Officers arrested him. The charges were later dropped. But Jennings sued the Officers in the U.S. District Court for the Northern District of Alabama under 42 U.S.C. § 1983 for unlawful arrest and retaliatory arrest. Jennings also sued the Officers and the City of Childersburg for state-law false arrest.

The District Court Grants Summary Judgment to the Officers and the City.

Section 1983-Unlawful Arrest Claim: Judge Proctor granted summary judgment to the Officers on the federal unlawful arrest claim based on the Officers having probable cause to believe that Jennings violated Alabama's obstruction statute. (App. H-Doc.60-Summ.J. Order-Pg.1.) Alabama Code § 13A-10-2(a) defines the crime of obstruction to include "intentionally prevent[ing] a public servant from performing a governmental function." Alabama Code § 15-5-30

provides that once a law enforcement officer reasonably suspects that a person is involved in criminal activity (e.g., criminal trespass), the officer "may demand of [the suspect] his name, address, and an explanation of his actions." Judge Proctor held that by refusing to give his complete name, Jennings violated § 15-5-30 and thus prevented the police officers from conducting an investigation. (App. H-Doc.60-Summ.J.Order-Pgs.9-10, 18.) And that violated § 13A-10-2(a). (*Id*. at 18.)

"Pastor Jennings" could not be effectively run through a police database. (*Id*. at 16.) The officers would not have been able to determine if Jennings was a fugitive from justice or had outstanding warrants and thus posed a danger to the police officers or the public. (*Id*. at 16-17.)

The district court also held that qualified immunity barred Jennings' claims because: (1) Jennings' refused to identify himself after being asked several times; (2) a reasonable officer could have understood that "Pastor Jennings" was an insufficient answer under § 15-5-30; and (3) no "clearly established law," at the time of the May 22, 2022 arrest in this case (i.e., pre-*Edger* (2023)), held that arresting

a citizen for giving an incomplete answer violates his rights. (*Id.* at 21-22.)

Section 1983 Retaliatory Arrest Claim: To succeed on his § 1983 retaliatory arrest claim, Jennings had to show that he was arrested in retaliation for him saying that he did not have to give his name, that he was being profiled, and that he was going to sue, and that these statements were the "but for" cause of his injury—his arrest. (*Id. at* 22-24.) Probable cause for the arrest defeats a claim for retaliatory arrest. (*Id.* at 23.) Because the district court had already determined that the Officers had probable cause to arrest Jennings for obstruction under § 13A-10-2(a), it granted summary judgment on the retaliatory arrest claim. (*Id*. at 24.)

State-Law False Arrest Claim Against the Officers: Jennings's state law false arrest claim was subject to state law immunity under Alabama Code § 6-5-338(a). The district court stated that malice and bad faith were exceptions to state immunity protection. But with probable cause for arrest under § 13A-10-2(a), the malice or bad faith exceptions to state immunity did not apply and summary judgment was due. (*Id.* at 24-25.)

State-Law False Arrest Claim Against the City: The district court dismissed the false arrest claim against the City of Childersburg, stating: "It is well established that, if a municipal peace officer is immune pursuant to [Alabama Code] § 6-5-338(a), then, pursuant to § 6-5-338(b), the city by which he is employed is also immune." *Howard v. City of Atmore,* 887 So. 2d 201, 211 (Ala. 2003). (App. I-Doc. 62-Order Dism.-Pgs.7-8.)

The Eleventh Circuit Reverses Based on Its Interpretation of Alabama Code § 15-5-30.

Jennings appealed. The Eleventh Circuit reversed, interpreting § 15-5-30 differently from the district court. (App. G-*Jennings v. Smith*, No. 23-14171, 2024 WL 4315127 (11th Cir. Sept. 27, 2024)).

The Eleventh Circuit stated that in its previous opinion in *Edger v. McCabe*, 84 F.4th 1230, 1239-40 (11th Cir. 2023), it had held that a law enforcement officer violates clearly established law when he or she arrests a person solely for failing to provide a driver's license or physical identification under Alabama Code § 15-5-30. (App. G-*Jennings*, 2024 WL 4315127 at *3.) The Eleventh Circuit stated, "the plain text of the statute [§ 15-5-30] authorizes police to demand only three things: 'name, address and an explanation of his actions.'" (*Id.*

at *4.) "[T]here is a marked difference between asking for three specific pieces of information and demanding a physical license or ID." (*Id.*)

The Eleventh Circuit stated further: "Given that Jennings had already told officers he was 'Pastor Jennings,' he lived across the street, and he was there to water his neighbors' flowers, the officers' subsequent commands for Jennings to 'identify himself' and statements that 'you have to identify yourself to me' were clearly requests for something more—physical identification." (*Id.*) The Eleventh Circuit continued: "Jennings was under no legal obligation to provide his ID. Therefore, officers lacked probable cause for Jennings' arrest for obstructing government operations because Jennings did not commit an independent unlawful act by refusing to give ID." Additionally, because *Edger* explained that Alabama Code § 15-5-30 was, and is, clearly established law, 84 F.4th at 1239, these officers lacked even arguable probable cause" and thus qualified immunity did not apply. (*Id.*)

On Remand, the District Court Certifies the Interpretation of Alabama Code § 15-5-30 to the Alabama Supreme Court.

On remand, Judge Proctor ordered the parties to brief whether the interpretation of § 15-5-30 should be certified to this Court. (App. F-Doc. 74-Brief. Order.) The parties did so. (App. C-Doc.81-Officers' & City's Resp. to Jennings, App. D-Doc.80-Officers' & City's Resp. to Dist. Ct.; App. E-Doc.77-Jennings' Resp. To Dist. Ct.) On May 19, 2025, the district court issued a memorandum opinion and order holding that the question should be certified to this Court. (App. B-Doc.83-Order Cert. Que.) On May 22, 2025, the District Court provided the exact question and certified it. (App. A-Doc. 84-Cert. Que.-Pg.2.)

STATEMENT OF THE ISSUE

> "Under Alabama Code § 15-5-30, when a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives an incomplete or unsatisfactory response, does the statute prohibit the officer from demanding or requesting physical identification?"

(App. N.)[1]

[1] As the U.S. District Court for the Northern District of Alabama recognized, "the Supreme Court may in its discretion, restate the issue." (App. A-Doc. 84-Cert. Que.-Pg.2.) *See Fed. Ins. Co. v. Travelers Cas. & Sur. Co.*, 843 So. 2d 140, 141 n.1 (Ala. 2002) ("Our modification of the certified questions is in accordance with both the leeway given by the United States Court of Appeals for the Eleventh Circuit, see *Federal Insurance Co. v. Traveler's Casualty & Surety Co.,* 280 F.3d 1356, 1357

Answer: Section 15-5-30 does not prohibit a law enforcement officer from demanding physical identification after a criminal suspect gives incomplete oral name and address information. Moreover, because § 15-5-30 does not limit the form of the name and address information that a law enforcement officer can demand, an officer can demand a "ID" as his first communication with a criminal suspect.

STATEMENT OF THE FACTS

"On May 22, 2022, a 911 caller requested that police check on her neighbors' home." (App. G-*Jennings v. Smith*, No. 23-14171, 2024 WL 4315127, at *1 (11th Cir. Sept. 27, 2024)). The caller reported: "My neighbors went out of town this morning to Gatlinburg, and there's a vehicle over there with people I don't think are supposed to be over there. … I saw a younger Black male over there. ... They're outside the vehicle." (App. P-911 Call Tr.-Pgs.1-2.) "Childersburg Police Officer Christopher Smith responded to the call." *Jennings*, 2024 WL 4315127, at *1.

(11th Cir.2002) ('The particular phrasing used in the certified question is not to restrict the Supreme Court's consideration of the issues in its analysis of the record certified in this case. This latitude extends to the Supreme Court's restatement of the issue or issues and the manner in which the answers are given.').").

Bodycam image of Jennings at the house with "No Trespassing" and "Private Property" signs.

"Upon arrival, Officer Smith saw Jennings, a Black man, with a garden hose and asked what he was doing on the property. Jennings responded, 'watering flowers.'" *Id.* "Officer Smith asked if Jennings lived at the residence, and he said he did not. Officer Smith explained that police had received a 911 call regarding someone on the property." *Id.* "Jennings replied, 'I'm supposed to be here. I'm Pastor Jennings. I live across the street.... I'm looking out for the house while they gone, I'm watering they flowers.'" *Id.*

"In response, Officer Smith said, 'Okay, that's cool, do you have, like, ID?' and motioned with his hands as if to request a driver's license." *Id.* "Jennings stopped watering the flowers and walked away from Officer Smith, stating in a raised voice, 'Oh, no man, I'm not gonna give you no ID.'" *Id.* "Officer Smith asked, 'Why not?' and Jennings replied, 'I ain't did nothing wrong.'" *Id.* "Officer Smith responded, 'Well, look, listen I'm not saying that you did nothing wrong, but there's a suspicious person in the yard, and if you're not going to identify yourself....'" *Id.* "Jennings interrupted to say that he did not have to identify himself." *Id.*

"Childersburg Police Officer Justin Gable then arrived at the scene." *Id.* "Officer Gable also asked Jennings if he lived at the house, and Jennings answered, 'You see a Black man out here watering neighbors' flowers.... You have no right to approach me if I ain't did nothing suspicious or nothing wrong. Told him I'm a pastor, I pastor at a church.'" *Id.* "The parties continued talking over each other, and Jennings eventually retorted, 'I don't want to hear you, you want to lock me up, lock me up.... I'm not gonna show y'all anything. I'm gonna continue to water these flowers.'" *Id.* "The officers continued trying to speak with Jennings, but he walked away from them yelling, 'I don't care

who called y'all.... Lock me up and see what happens.'" *Id.* "Officers Smith and Gable followed Jennings and instructed him to 'just come here and talk to us.'" *Id.* "Jennings continued distancing himself and demanded that the officers tell him who called them." *Id.* "Officer Smith stated, 'If you would let us talk to you, we could figure stuff out.'" *Id.*

"Officer Gable warned Jennings that he would get an 'obstruction charge' if he continued walking away." *Id.* "Jennings stopped, turned around, and said, 'You can do whatever you want. Do it.'" *Id.* "Officers then placed Jennings in handcuffs." *Id.* "Officer Gable explained, 'We're just trying to talk to you.... I don't want to argue with you.... I don't want to arrest you either." *Id.* "Jennings and the officers continued yelling over each other, and Jennings eventually said, 'I don't have to ID myself.'" *Id.* "Officer Gable replied, 'I have a call on you, you have to identify yourself to me.'" *Id.* "Jennings continued to refuse to identify himself, and Gable reiterated, 'It's okay if you're out here to water the plants, talk to us.'" *Id.*

"By this time, Childersburg Police Sergeant Jeremy Brooks had also arrived. As Jennings continued to yell at the officers, Sergeant Brooks interrupted to explain that the officers had a right to identify

him." *Id*. at 2. "Sergeant Brooks continued, 'Everything is being audio and video recorded. You won't shut your mouth.'" *Id*. "Jennings shouted, 'You don't shut your mouth. You don't talk to me like I'm a child, boy!'" *Id*. "Officers then arrested Jennings and placed him in the back of the police cruiser." *Id*.

The Officers arrested Jennings for obstructing governmental operations because when the officers responded to a 911 call, Jennings would not give them his name or other information. (App. H-Doc. 60-Summ. J. Order-Pg.5.) When Jennings said that he told the Officers his name, "Pastor Jennings," Officer Smith replied: "That's not a name; that's a pastor." (*Id*.)

STATEMENT OF THE STANDARD OF REVIEW

"Because the issues before us involve only the application of law to undisputed facts, our review is de novo." *Nationwide Mut. Ins. Co. v. Wood*, 121 So. 3d 982, 984 (Ala. 2013) (answering certified question from federal court) (internal citation & quotation marks omitted).

SUMMARY OF THE ARGUMENT

Alabama Code § 15-5-30 authorizes a law enforcement officer who confronts a criminal suspect to "demand of him is name, address and an explanation of his actions." "Name" means the suspects full, legal name—Michael Jerome Jennings—not a nickname like, Pastor Jennings. "Demand" means an officer is authorized to obtain that name, not just ask and if he is refused, just walk away.

Section 15-5-30 does not include limitations on the form (e.g., oral, written, electronic) of the information concerning the criminal suspect's name and address that the law enforcement officer can obtain. A law enforcement officer can demand the information—name and address—in any form, including a driver's license. Law enforcement officers throughout the State routinely ask for a driver's license or other physical ID. A physical ID carries some indicia of reliability and can be checked in law enforcement database for any criminal history of the suspect.

The common law, the history of § 15-5-30, and U.S. Supreme Court precedent all favor authorizing a law enforcement officer to ask a criminal suspect for a physical ID. If the suspect does not have a physical ID on him, he can state his full name orally.

The Eleventh Circuit's decisions in *Jennings v. Smith*, No. 23-14171, 2024 WL 4315127 (11th Cir. Sept. 27, 2024), and *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023), reject this reality, and hold that an officer can merely ask for a name and if the suspect gives a nickname, the officer can go no further.

The Eleventh Circuit incorrectly reasoned that a criminal suspect is generally free to ignore police officers and not answer questions unless a statute makes an exception to this general rule. But that is the rule for members of the public, not for the small subset of the public for whom police officers have a reasonable suspicion that they have committed a crime. For criminal suspects, the general rule has long been that a law enforcement officer can stop, frisk, and question the suspect.

This Court, not the Eleventh Circuit, is the final decision maker on Alabama law. And this Court should authoritatively interpret § 15-5-30 to reflect the text, history, common law, and the reality of what real law enforcement officers who encounter real criminal suspects go through every day throughout this State.

ARGUMENT

In *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County*, 542 U.S. 177, 181 (2004), the U.S. Supreme Court upheld the constitutionality of a stop-and-identify statute that authorized an officer to obtain a criminal suspect's "identity." The Supreme Court upheld the Nevada stop-and-identify statute as applied to a law enforcement officer asking for an ID, as in this case. *See id*. ("The officer asked him if he had 'any identification on [him],' which we understand as a request to produce a driver's license or some other form of written identification.").

Alabama's stop-and-identify statute authorizes a law enforcement officer who confronts a criminal suspect to "demand of him is name, address and an explanation of his actions." *See* Ala. Code § 15-5-30. The plain meaning of those words, the history of that statute, and the common law all support authorizing a law enforcement officer to obtain the real, accurate name of a criminal suspect to defend himself and the civilians he has sworn to protect.

I. The Plain Meaning Of The Words "Name" And "Demand," The Context Of A *Terry* Stop, And The History Of The Statute All Support Allowing An Officer To Obtain A Reasonably Accurate Name Of A Criminal Suspect.

A. The Plain Meaning of "Name" and "Demand" And The Context of Stopping a Criminal Suspect Support a Full Legal Name and an Officer's Right to Obtain It.

1. "Name" means the criminal suspect's full legal name that can be checked in the LETS Database for outstanding warrants.

To interpret a statute, "[w]e begin with the text." *Blankenship v. Kennedy*, 320 So. 3d 565, 567 (Ala. 2020). The text of § 15-5-30 is as follows:

> **A sheriff** or other officer acting as sheriff, his deputy or any constable, acting within their respective counties, any marshal, deputy marshal **or policeman** of any incorporated city or town within the limits of the county or any highway patrolman or state trooper **may stop any person** abroad in a public place **whom he reasonably suspects is committing,** has committed or is about to commit a felony or other public offense and may **demand of him his name**, **address and an explanation of his actions.**

Ala. Code § 15-5-30 (emphases added).

The word "name" in § 15-5-30 means "[a] person's full name as recognized in law," "[a]n individual's personal name, second or middle names or initials (if any) and surname arranged in customary order," e.g.,

Michael Jerome Jennings. *See* Name, legal name & full name, *Black's Law Dictionary* 1181 (10th ed. 2014).

The context in which the Legislature used the word "name"—a law enforcement officer's encounter with a criminal suspect—supports interpreting § 15-5-30 to allow the officer to obtain the criminal suspect's full, legal name. *See Johnson v. Four-C Volunteer Fire Dep't*, No. SC-2024-0205, 2024 WL 5101169, at *15 (Ala. Dec. 13, 2024) ("[P]lain meaning draws on the specific **context** in which that language is used.") (emphasis added) (internal quotation marks and citations omitted). Section 15-5-30 applies where a police officer is demanding the "name" of a person whom the police officer "reasonably suspects is committing, has committed or is about to commit a felony or other public offense" – a *Terry* stop. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968) ("[W]here in the course of investigating [potentially criminal] behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might

be used to assault him."); *Schultz v. State*, 437 So.2d 670, 673 (Ala. Crim. App. 1983) ("[S]tatutory authority for the type of investigatory detention approved in *Terry v. Ohio*, supra, is found in Section 15–5–30, Code of Alabama 1975.").

When a sheriff's deputy or police officer stops a person suspected of committing a crime, obtaining the suspect's name helps protect the deputy or officer from being killed or injured:

> Obtaining a suspect's **name** in the course of a *Terry* stop serves important government interests. **Knowledge of identity** may **inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder**. On the other hand, knowing identity may help clear a suspect and allow the police to concentrate their efforts elsewhere. … **Officers** called to investigate domestic disputes **need to know <u>whom they are dealing with</u> in order to assess the situation, the <u>threat to their own safety</u>, and possible danger to the potential victim**.

Hiibel, 542 U.S. at 186 (upholding stop-and-identify statute) (emphases added).

By contrast, running an incomplete or inaccurate name through a database will not assist the police officer in determining whether that criminal suspect is a threat. *See, e.g.*, *Shanklin v. State*, 187 So. 3d 734, 760 & n.13 (Ala. Crim. App. 2014) (describing the Law Enforcement

Tactical System database that provides a "LETS" readout and stating: "Regarding the 'LETS readout[s],' Investigator Softley testified that the majority of the individuals on the readouts have a picture at the top of the sheet followed by their name, address, and 'rap sheet.'"). Nicknames, such as "Flapjack Smith," "T-Bone Jones," or "Attorney Brown," do not allow a full and accurate check of a name in the LETS database. Jennings is a common name and could yield numerous hits that were not Michael Jerome Jennings. The difference between a non-dangerous suspect and a dangerous one could cost a deputy or police officer his life. *See Hiibel*, 542 U.S. at 186.

Moreover, § 15-5-30 does not limit the form in which the criminal suspect's name is conveyed. Section 15-5-30 does not include a requirement that the form of the name and address be an oral statement, as opposed to written or electronic form. And such a requirement should not be read into the statute. *See Alabama Disabilities Advoc. Program v. J.S. Tarwater Developmental Ctr.*, 97 F.3d 492, 498 (11th Cir. 1996) ("The Act imposes no special requirements on the source of the complaint or of the person making it, and we agree with the district court that no such requirements should be read into the statute."); *Gulf Stevedore Corp. v.*

Rabren, 242 So. 2d 386, 389 (Ala. 1970) ("To read into the statute the additional requirement that the 'supplies' must be purchased by the ship's owner or operator would, in our view be tantamount to judicial legislation under the guise of interpretation."). So a sheriff's deputy could demand a driver's license from a criminal suspect to obtain a reliable and correctly spelled name and address.

2. "Demand" means that the law enforcement officer has a right to obtain the real name of a criminal suspect.

Because of the danger to law enforcement officers and the civilians they protect when a law enforcement officer does not obtain a criminal suspect's actual name, the Legislature's use of the word "demand" is important. A "demand" is not merely a request, but an assertion of a legal right. *Compare Demand, Black's Law Dictionary* 522 (10th ed. 2014) ("The assertion of a legal or procedural right"), *with Request, Merriam-Webster's Collegiate Dictionary* 1058 (11th ed. 2007) ("to ask for"). Of course, a police officer can "ask" a suspect about anything — the suspect just doesn't have to answer. So if a police officer could only "ask" (and not "demand") the information, there would not be any need for the statute.

This Court, however, must presume that the Alabama Legislature enacted § 15-5-30 for a purpose. *See City of Montgomery v. Town of Pike Rd.,* 35 So. 3d 575, 584 (Ala. 2009) ("There is a **presumption that every word,** sentence, or provision [of a statute] was **intended for some useful purpose,** has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used.") (emphases added) (internal quotation marks and citations omitted). The Legislature's use of the word "demand" indicates that the suspect has to provide his name and address.

B. The History of § 15-5-30 Supports a Demand for an ID showing the criminal suspect's name.

The predecessor to § 15-5-30 was enacted in 1966. *See* Ala. Acts 1966, Ex. Sess., No. 157, p. 183, § 1. *See, e.g.*, *Protective Life Ins. Co. v. Jenkins*, 386 So. 3d 443, 447 n.4 (Ala. 2023) ("The statute's history supports this reading as well. The predecessor to § 6-2-38(m) was enacted following the enactment of the Federal Labor Standards Act of 1938 ('the FLSA') ….") (emphasis added). This was in the middle of the Warren Court's criminal procedure revolution that directly impacted Alabama.

In *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 95 (1965), the Supreme Court reversed the conviction of a civil rights leader for violating two city ordinances because the anti-loitering ordinance was unconstitutionally vague and arbitrary and the failure-to-obey-a-police-officer ordinance did not apply to non-traffic offenses. If police could no longer use traditional vagrancy and loitering statutes to detain and question criminal suspects, the Legislature had to provide some other statutory authorization.

In 1966, the Alabama Legislature did not create its own stop-and-identify statute from scratch. Instead, the Alabama Legislature appears to have modeled what is now § 15-5-30 after New York's stop-and-identify statute. New York's 1964 stop-and-identify statute, authorized a police officer to stop and "demand of [a person] his name, address and an explanation of his conduct" when the officer "reasonably suspects that such person is committing, has committed or is about to commit" a crime.[2]

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[2] New York Section 180-a, Code of Criminal Procedure, added by L. 1964, ch. 86, effective July 1, 1964 provided:

> A police officer may stop any person abroad in a public place whom he **reasonably suspects** is committing, has committed or is about to commit a felony or any of the crimes

Subsequently, the New York courts applied the "demand of him his name" statutory language when New York police officers asked suspects for identification or drivers' licenses. *See, e.g., People v. Richardson,* 41 N.Y.2d 886, 886-87 (N.Y. 1977) ("[T]he [airline ticketing] agent then summoned police, who approached defendant as he was exiting from a men's room and **asked him for identification;** that defendant then produced the forged **driver's license** . . . the police reasonably suspected that defendant was about to commit a crime involving a forged instrument and, accordingly, by statute could demand of defendant his name, address and an explanation of his conduct (CPL 140.50, subd 1).") (emphases added); *People v. Watts,* 764 N.Y.S.2d 737, 738 (N.Y. App. Div. 2003) ("Upon approaching the vehicle, the officer observed defendant's clothing in a state of disarray, thereby increasing the officer's suspicion of illegal drug activity, and defendant acknowledged that he did not have

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> specified in section five hundred fifty-two of this chapter, and may **demand of him his name, address and an explanation of his actions.**

People v. Peters, 254 N.Y.S.2d 10, 12 (N.Y. Westchester Cnty. Ct. 1964) (reprinting statute) (emphases added). In 1970, New York added this language to its general criminal procedure code, NY CLS CPL § 140.50(1) ("**may demand of him his name, address and an explanation of his conduct.**") (emphasis added).

a valid **driver's license.** The officer was then entitled to ask defendant to step out of the vehicle and to interfere with defendant 'to the extent necessary to gain explanatory information' (*id.*; *see* CPL 140.50 [1]).") (emphasis added).

Like the New York courts, the Alabama Court of Criminal Appeals has relied on "demand of him his name, address" language as authority for conducting *Terry* stops in which officers asked criminal suspects for identification or driver's licenses. *See, e.g.*, *Andrews v. State*, 624 So. 2d 1095, 1100-01 (Ala. Crim. App. 1993) ("[The officer] went to the driver's side and asked him to get out and checked the **driver's license** and identification. … [I]f there are reasonable grounds based on heightened suspicion to make a *Terry*-type stop pursuant to **§ 15-5-30** ...."') (emphases added); *Gradford v. City of Huntsville*, 557 So. 2d 1330, 1331 (Ala. Crim. App. 1989) ("Officer Young stopped the appellant and asked him to produce his **driver's license**. ... Section **15-5-30**, Code of Alabama, 1975, provides as follows: ...."') (emphases added).

C. The Eleventh Circuit's analysis was mistaken.

The Eleventh Circuit did not analyze the operative words in the statute—"name" and "demand." Instead, that court based its analysis on three conclusions:

(1) the broad background rule is that members of the public can refuse to answer questions from law enforcement officers and just walk away;

(2) any obligation of a person to answer a question from a law enforcement officer arises from state law, not the constitution; and

(3) Section 15-5-30 lists only three things that the police may ask about, and obtaining a physical ID is not one of them.

See generally Edger, 84 F.4th at 1239.

These premises are flawed.

1. The background rule for criminal suspects, as opposed to members of the public, is that a law enforcement officer may conduct a frisk and demand information.

Edger, 84 F.4th at 1239, relied in part, on the theory that a person can just walk away from a police officer when asked a question:

> First, the broad background rule is that the police may ask **members of the public** questions and make consensual requests of them, *Florida v. Bostick*, 501 U.S. 429, 434–35, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) (collecting cases and examples), "as long as the police do not convey a message that compliance ... is required." *Id.* at 435, 111 S.Ct. 2382. But the **person "need not answer any question put to him; indeed, he may decline to listen to questions at all and**

> **may go on his way."** ***Florida v. Royer***, 460 U.S. 491, 497–98, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).

(Emphases added.)

But *Royer*, 460 U.S. at 497-98, was discussing "members of the public," not the much smaller subset of persons for whom law enforcement officers have a reasonable suspicion that those persons have committed, or are about to commit, crimes. We know this because *Royer* expressly relied on Justice Harlan's concurring opinion in *Terry* that differentiated between members of the public and criminal suspects. *See id.* "The **person approached, however, need not answer any question** put to him; indeed, he may decline to listen to the questions at all and may go on his way. ***Terry*** *v. Ohio*, supra, 392 U.S., at 32–33, 88 S.Ct., at 1885–1886 (**Harlan, J., concurring**)…." *Id.* (emphases added.)

In *Terry*, Justice Harlan explained that an ordinary citizen can "ignore his interrogator and walk away" from a police officer:

> In the first place, if the frisk is justified in order to protect the officer during an encounter with a citizen, **the officer must first have constitutional grounds to insist on an encounter, to make a forcible stop**. Any person, including a policeman, is at liberty to avoid a person he considers dangerous. If and when a **policeman has a right instead to disarm such a person for his own protection**, he must first have a right not to avoid him but to be in his

> presence. **That right must be more than the liberty (again, possessed by every citizen) to address questions to other persons, for ordinarily the person addressed has an equal right to ignore his interrogator and walk away**; he certainly need not submit to a frisk for the questioner's protection. I would make it perfectly clear that **the right to frisk in this case depends upon the reasonableness of a forcible stop to investigate a suspected crime**.

Terry, 392 U.S. at 32–33 (Harlan, J., concurring) (emphases added).

In the next paragraph, however, Justice Harlan explained that when a police officer confronts a criminal suspect, the police officer can go ahead and frisk the suspect without asking for permission, because the answer to the request for permission could be a "bullet":

> Where such a stop is reasonable, however, the right to frisk must be immediate and automatic if the reason for the stop is, as here, an articulable suspicion of a crime of violence. Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. **There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet.**

Id. at 33 (emphasis added).

Section 15-5-30 applies to only criminal suspects and not to ordinary "members of the public." *Edger* got the baseline of the analysis

wrong. Under § 15-5-30, law enforcement officers can demand the name of the criminal suspect.

2. State law has long provided that a criminal suspect must provide his legal name to a law enforcement officer.

Edger, 84 F.4th at 1239, assumed that state law strictly limited what a law enforcement officer could demand or request of a criminal suspect. It never has.

a) The common law allowed law enforcement officers to question criminal suspects.

Unlike a member of the public for whom there is no reasonable articulable suspicion that he committed a crime, for a criminal suspect, the law has long provided that he must provide the police his name. The U.S. Supreme Court *in Hiibel*, 542 U.S. at 183, explained that stop-and-identify statutes have their roots in old English law:

> Stop and identify statutes have their roots in early English vagrancy laws that required suspected vagrants to face arrest unless they gave "a good Account of themselves," 15 Geo. 2, ch. 5, § 2 (1744), a power that itself reflected common-law rights of private persons to "arrest any suspicious night-walker, and detain him till he give a good account of himself ... ." 2 W. Hawkins, Pleas of the Crown, ch. 13, § 6, p. 130 (6th ed. 1787).

Other courts agreed. *See United States v. Thomas*, 250 F. Supp. 771, 782–83 (S.D.N.Y. 1966) ("Both at common law[16] and under the decisional law of the various states with and without statutory authority, the police have been found to be possessed of a clearly though perhaps narrowly defined power to stop and question (and frisk, though such is not the case herein) and even detain persons, under certain circumstances.") *aff'd*, 396 F.2d 310 (2d Cir. 1968).[3] *State v. Terry*, 214 N.E.2d 114, 117 (Ohio App.

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[3] In footnote 16, the court in *Thomas* explained:

> In *Lawrene v. Hedger*, 3 Taunt, 13, 128 Eng. Rep. 6 (C.P. 1810), the plaintiff in a false imprisonment action, while walking through the streets of London at 10:00 in the evening with a bundle in his hand, was stopped and questioned by a watchman and when he failed to give a proper account of himself was placed in jail until morning.
>
> The Court upheld the power of the watchman to detain when there is 'reasonable ground to suspect' a crime thusly: 'In the night when the town is asleep and it is the especial duty of these watchmen and other officers to guard against malefactors, it is highly necessary that they should have such a power to detention. And in this case what to you talk of groundless suspicion? There was abundant ground of suspicion here. We should be very sorry if the law were otherwise.' 128 Eng.Rep. at 7. See generally, *United States v. Vita*, supra, 294 F.2d at 530; *People v. Rivera*, supra, 14 N.Y.2d at 445-446, 252 N.Y.S.2d at 462, 201 N.E.2d at 34-35; Leagre, *The Fourth Amendment & The Law of Arrest*, 54 J.Crim.L., C & P.S. 393, 408-11 (1963); Ronayne, supra, 33 Fordham L.Rev. at 213-15.").

8th Dist. 1966) ("The right of the proper authorities to stop and question persons in suspicious circumstances has its roots in early English practice where it was approved by the courts and the common-law commentators. *See* 2 Hawkins, Pleas of the Crown (6th Ed. 1777) 122, 129; 2 Hale, Pleas of the Crown (Amer.Ed.1847) 89, 96–97; *Lawrence v. Hedger* (Common Pleas 1810) 3 Taunt. 14, 128 Eng.Rep. 6.")), *aff'd*, 392 U.S. 1 (1968).

Alabama adopted the common law. *See* Ala. Code § 1-3-1 ("The common law of England, so far as it is not inconsistent with the Constitution, laws and institutions of this state, shall, together with such institutions and laws, be the rule of decisions, and shall continue in force, except as from time to time it may be altered or repealed by the Legislature.").

Consistent with this common law, Alabama law enforcement officers routinely asked suspects for their IDs before the 1966 enactment of § 15-5-30. *See, e.g.*, *Boulden v. State*, 179 So. 2d 20, 26 (Ala. 1965) ("The officers approached Boulden's car with guns drawn and asked him for his driver's license."); *McCurdy v. State*, 143 So. 2d 185, 185 (Ala. App. 1962) ("Officer Daniel was checking defendant's driver's license ….").

"[The 1966 Alabama Legislature] [wa]s unlikely to [have] intend[ed] any radical departures from past practice without making a point of saying so." *Jones v. United States*, 526 U.S. 227, 234 (1999). History supports reading the common law in the form of inherent police powers and § 15-5-30 to authorize a police officer to demand an ID.[4]

b) States without stop-and-identify statutes allow officers to demand a physical ID from criminal suspects.

Even the Ninth Circuit permits law enforcement officers to demand "a suspect's identification during a *Terry* stop so long as the request is reasonably related to the detention" in States without a stop-and-identify statute. *United States v. Christian*, 356 F.3d 1103, 1106-07 (9th Cir. 2004) (holding that it was reasonable for the officers to demand of the suspect for proof of his true

[4] And Alabama courts strictly construe statutes to avoid conflict with the common law. *See Ex parte Gartrell*, No. SC-2024-0743, 2025 WL 1776392, at *5 (Ala. June 27, 2025) ("All statutes are construed in reference to the principles of the common law; and it is not to be presumed that there is an intention to modify, or to abrogate it, further than may be expressed, or than the case may absolutely require.") (quoting *Beale v. Posey*, 72 Ala. 323, 330 (1882)); *Ex parte Christopher*, 145 So. 3d 60, 65 (Ala. 2013) (observing that "'[s]tatutes [in derogation or modification of the common law] are presumed not to alter the common law in any way not expressly declared.'") (quoting *Arnold v. State*, 353 So. 2d 524, 526 (Ala. 1977)).

identity even though there is no stop-and-identify statute in Washington) ("To preclude police from ascertaining the identity of their suspects would often prevent officers from fully investigating possible criminal behavior."); *see also Vanegas v. City of Pasadena*, No. 2:20-CV-07845-SVW-AGR, 2021 WL 1917126, at *6 (C.D. Cal. Apr. 13, 2021), *aff'd*, 46 F.4th 1159 (9th Cir. 2022) ("while the parties do not cite any California statute specifically empowering police officers to demand identification, California case law suggests that officers are permitted to request or demand identification consistent with general Fourth Amendment principles. . . . There is simply no clear relationship between a state legislature's decision to spell out an officer's duties by statute and the presence of probable cause to arrest a suspect for obstructing an officer's duties.") (internal citations omitted).

> [In *Hiibel*], the Supreme Court never stated that [a stop-and-identify] statute is required for an arrest based on failure to produce identification to be constitutional. Nor did the Supreme Court appear to rely on the existence of the statute in upholding the arrest in that case. Rather, the Supreme Court rested on general Fourth Amendment principles to conclude that failure to produce identification during a lawful *Terry* stop can constitute probable cause.

Vanegas, 2021 WL 1917126, at *5 (citing *Hiibel*, 542 U.S. at 183).

It is highly unlikely that the Alabama Legislature was more restrictive in 1966, when it enacted § 15-5-30, on what a police officer could demand of a criminal suspect than the Ninth Circuit was in 2022.

3. Section 15-5-30 obligates a criminal suspect to provide his name in whatever form the police officer demands.

Edger, 84 F.4th at 1239, interpreted § 15-5-30, to limit a law enforcement officer to "request[ing]" a name from a criminal suspect instead of "demand[ing]" it, and *Jennings*, 2024 WL 4315127, at *4, required the officer to accept a nickname—"Pastor Jennings"—instead of a full "name." But that is not what the statute says.

Request v. Demand

***Edger*, 84 F. 4th at 1238**	**Ala. Code § 15-5-30**
"**Section 15-5-30** does not require anyone to produce an 'ID' or 'driver's license' as Officer McCabe demanded. Indeed, it **does not require anyone to produce anything**. Instead, it grants Alabama police the authority to **request** ~~three~~ specific pieces of information." (Emphases added.)	"A … policeman … may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or other public offense and may **demand** of him his name, address and an explanation of his actions." (Emphases added.)

And § 15-5-30 does not limit a law enforcement officer's right to "demand" a name to an oral, written, or electronic answer. And for decades in Alabama, the word "demand" in § 15-5-30 indicates a right to obtain the criminal suspect's real name in some type of verifiable form. *See Wright v. State,* 601 So. 2d 1095, 1096 (Ala. Crim. App. 1991) ("Inherent in an officer's right to stop a suspect and demand his name, address, and an explanation of his actions is the right to detain him temporarily to **verify the information** given or to obtain information independently of the suspect's cooperation.") (emphasis added).

After all, sometimes criminal suspects lie. *See, e.g., United States v. Jernigan,* 341 F.3d 1273, 1276 (11th Cir. 2003), *abrogated on other grounds, Rehaif v. United States,* 588 U.S. 225, 237 (2019) ("Although Jernigan initially *gave the* officers a **false name,** they found a driver's license bearing his picture and true name.") (emphasis added); *United States v. Jackson,* 2017 WL 10259734, at *5 (N.D. Ga. Sept. 27, 2017) ("[D]uring the stop, Richardson could not produce a driver's license and *gave a* **false name** and date of birth to the officers ….") (emphasis added); *Hawkins v. State,* 585 So. 2d 154, 155 (Ala. 1991) ("Hawkins told the

officer that his **name** was Dwayne Henderson, which was **false.**") (emphases added).

Obtaining a written identification of some kind (e.g., driver's license, social security card, work ID, gym membership card) provides some indicia or reliability and contains the presumably correct spelling of the criminal suspect's name. A correct spelling enables the law enforcement officer to conduct a more accurate check in the LETS database—e.g., Haden v. Hadden. When seconds count and lives are at stake, accuracy matters.

The Officers contend that under a reasonable construction of § 15-5-30, a law enforcement officer may first demand a physical ID from a criminal suspect. If the suspect does not have a physical ID, the officer can obtain the suspect's full, legal name orally.

In *Edger,* 84 F.4th at 1239, the Eleventh Circuit appeared to apply the *expressio unius est exclusion alterius* canon of construction to a list of *types* of information to exclude certain *sources* of that information:

> [T]he Alabama statute is clear. It lists **only three things that the police may ask about.** This is not an issue of "magic words" that must be uttered. There is a difference

> between asking for specific information: "What is your name? Where do your live?" and demanding a physical license or ID.

(Emphasis added.)

Justice Scalia and Bryan Garner caution against the overapplication of the *expressio unius* canon:

> "Virtually all the authorities who discuss the negative-implication canon [*expressio unius*] emphasize that it **must be applied with great caution,** since its application depends so much on context. ... The doctrine properly applies only when the *unius* (or technically, *unum,* **the thing specified)** can reasonably be thought to be an expression of *all* that shares in the grant or prohibition involved.

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (bold emphases added) (italics in original). *See Ex parte Gartrell*, No. SC-2024-0743, 2025 WL 1776392, at *6 (Ala. June 27, 2025) (the canon of "expressio unius est exclusio alterius … is most useful when the statute at issue 'utilizes a listing or group of **things**'") (emphasis added) (internal quotation marks and citation omitted). The "thing specified" by § 15-5-30 is *types* of information — "name, address and an explanation of [the criminal suspect's] actions," — not the *sources* from which that information may be obtained. A criminal suspect may provide an oral answer, such as, "My name is Michael Jerome Jennings." A criminal suspect who cannot talk

or speaks only broken English, may provide a written answer on a piece of paper. And a criminal suspect could hand the officer a driver's license, passport, government ID, or Green Card that contains a name and address.[5]

Moreover, § 15-5-30 does not limit the "sources" from which the law enforcement officer can obtain the name and address information. *See generally e.g.*, *United States v. Lewis*, 517 F.3d 20, 29 (1st Cir. 2008) ("[M]ultiple sources provided similar **types of information**. It says that, taking account of this cross-corroboration, it appropriately concluded that the witnesses possessed sufficient credibility.") (emphasis added); *BlueEarth Biofuels LLC v. Hawaiian Elec. Co.*, No. Civ-09-00181-DAE-KSC, 2010 WL 4715717, at *19 (D. Haw. Nov. 15, 2010) ("[A] party who already knew a **source** of the other party could not violate the NDA by

[5] *See* Ala. Code § 32-6-6 (effective July 1, 2022) ("Each **driver license** … shall contain a distinguishing number assigned to the licensee and a color photograph of the licensee, the **name,** birthdate, **address,** and a description of the licensee….") (emphases added); *United States v. Hammoude,* 51 F.3d 288, 293 (D.C. Cir. 1995) ("Even customs officials must look to the **passport,** with its **name, address,** photograph, and other identifying information, to verify that the bearer is the individual he or she claims to be.") (emphases added).

soliciting business from that non-confidential source.") (emphasis added).[6]

Amici the ACLU, *et al.*, contend that because the Legislature expressly requires the production of a physical ID in certain cases and did not do so in § 15-5-30, this Court should assume a legislative purpose to not require such an ID. (ACLU, et. al. Br. 27-28.) This argument proves too much. While the driver's license statute, Alabama Code § 32-6-9(a), requires a driver to produce his license when asked by a law enforcement officer, and § 15-5-30 does not, there is a reason for that. The driver's license is the only evidence that a person has passed the state driver's license written exam and driving test.

By contrast, the driver's license is not the only evidence of a criminal suspect's name and address. His name and address can be found on a work ID, Green Card, utility bill, etc. And law enforcement officers confront criminal suspects in a variety of situations that do not involve driving. So, it makes sense that the Legislature limited law enforcement officers to one source of information for evidence of passing the driver's

[6] *Supra* note 2.

test and did not limit the sources of information for obtaining a criminal suspect's name. [7]

Section 17-9-30 requires a person to have one of a discrete set of valid government ID cards to vote because the Legislature wanted to limit voter fraud, e.g., the same person voting twice. When a person is going to vote, he knows to take a government ID with him.

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[7] Because a traffic safety statute, Alabama Code § 32-6-9(a), provides that a driver "shall display" his driver's "license" "upon demand," and a criminal investigation statute, § 15-5-30, does not mention "shall display," one might contend (applying the "different words have different meanings" canon) that § 15-5-30 is more limited than § 32-6-9(a). But that would be incorrect because that canon applies to different words within the same statute and §§ 32-6-9 and 15-5-30 come from different statutes that were enacted at different times and which have manifestly different purposes. *See* Ala. Act 1939-181 § 9 (predecessor of § 32-6-9); Ala. Act No. 1966-157 (predecessor of § 15-5-30). *See, e.g.*, *Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section **of the same Act**, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (emphasis added) (internal quotation marks and citation omitted); *Trott v. Brinks, Inc.*, 972 So. 2d 81, 85 (Ala. 2007) ("'[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended. … The use of different terms within related statutes generally implies that different meanings were intended.'") (quoting 2A Norman Singer, *Sutherland on Statutes and Statutory Construction* § 46:06, at 194 (6th ed. 2000) (footnotes omitted). Each different act has its own history.

A criminal suspect, however, may not anticipate being confronted by a law enforcement officer and may not have a government ID in his possession. So, it makes sense that the Legislature did not limit the types of sources of a name to governmental IDs. If a suspect's name on a gym membership card checks out and he has a reasonable explanation for his actions, he can go free—no government ID required.

And Alabama Code § 15-20A-18 provides that a sex offender must have in his possession a "valid driver license or identification card issued by the Alabama State Law Enforcement Agency" "bearing a designation that enables law enforcement officers to identify the licensee as a sex offender…" *Id.* at (a) & (b). It makes sense to limit the sex offender designation to a one of two types of ID cards because the state government convicted the offender of a sex offense and controls that designation on IDs that it issues.

By contrast, the State does not give criminal suspects their names, and persons with outstanding warrants for arrest may not have been convicted of an offense that warrants their branding as a danger to the community. And a criminal suspect's name can be found on numerous

reliable types of physical evidence, such as a work ID, gym card, and utility bills that the government has no reason to control.

D. The Test Should Be Objective and Reasonable.

Under a reasonable construction of § 15-5-30, a law enforcement officer may first demand a physical ID from a criminal suspect. If the suspect does not have a physical ID, the officer can obtain the suspect's full, legal name orally (or if the suspect cannot talk, by writing).[8]

The argument that § 15-5-30 does not expressly state "physical ID" and thus does not require one fails on two grounds. First, that argument presupposes an analytical baseline under which the suspect has no obligation to provide any answer to an officer unless a statute makes an exception to that general baseline rule. *See Edger*, 84 F.4th at 1239. As

[8] *Amici* the ACLU, SPLC, Cato Institute, and Woods Foundation contend at page 26 of their Brief that when § 15-5-30's predecessor was enacted in 1966, not all Alabamians had driver's licenses. That would not stop the Legislature from authorizing law enforcement officers to obtain the best information they could from a suspect whether that be a driver's license, work ID, utility bill, dog tag, or an oral name. The baseline was not that the Constitution barred seeking any item from a criminal suspect unless a statute specifically described the type and form of information to be requested. Instead, when it came to criminal suspect, the common law, police powers, and the history of § 15-5-30 all support allowing a law enforcement officer to obtain the best information he reasonably can from a criminal suspect to protect himself and the public.

explained above, the authorities cited in *Edger* for that proposition ultimately apply the no-obligation-to-disclose baseline to members of the general public, not to criminal suspects.

For criminal suspects, the baseline established in English and American law is that the police can stop, frisk, and obtain information reasonably necessary for investigation of criminal activity. *See Terry*, 392 U. S. at 32 (Harlan, J., concurring). Section 15-5-30 should not be read to impose the general public rule onto criminal suspects.

Second, § 15-5-30 does not include a requirement that the form of the name and address be an oral statement, as opposed to written or electronic form. And such a requirement should not be read into the statute. *See Alabama Disabilities*, 97 F.3d at 498 ("The Act imposes no special requirements on the source of the complaint or of the person making it, and we agree with the district court that no such requirements should be read into the statute.").

The law enforcement officer will usually desire the most reliable form of name and address—a driver's license—because that has a photograph that can be compared to the physical appearance of the suspect and, because it has the correct spelling of the name, can easily be

checked in the LETS database. If the criminal suspect does not have a physical ID in his possession, the suspect could state his name and address orally without violating § 15-5-30.

This would be consistent with the U.S. Supreme Court's decision in *Hiibel*.

> The officer asked him if he had "any identification on [him]," which we understand as a request to produce a driver's license or some other form of written identification. The man refused
> ....
>
> [T]he statute does not require a suspect to give the officer a driver's license or any other document. Provided that the suspect either states his name or communicates it to the officer by other means—a choice, we assume, that the suspect may make—the statute is satisfied and no violation occurs. See *id.,* at 876–877, 59 P.3d, at 1206–1207.

Hiibel, 542 U.S. at 181, 185 (affirming conviction of suspect for obstruction of a police officer in the performance of his duties).[9] *See State*

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[9] In *Hiibel*, 542 U.S. at 181-82, provided:

> "1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.
>
> .....
>
> "3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person

v. Hansen, 199 Wash. App. 1066, 2017 WL 3142570, at *3 (Wash. App. Div. 2 July 25, 2017) ("[W]e agree, that the plain meaning of the ordinances requires an individual suspected of a code violation to provide, upon request by an authorized official, at least the minimum information identifying a person in our society, which is their full name. *See Hiibel*, 542 U.S. at 184–85."). [10]

The certified question provides, "when a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives an incomplete or unsatisfactory response, does the statute prohibit the officer from demanding or requesting physical identification?" (App. N). An negative answer to this question would require a law enforcement officer to ask for a name first, and obtain a physical ID only after an obviously incomplete (e.g., Manager Davis) or false (e.g., Arnold Schwarzenegger) oral answer.

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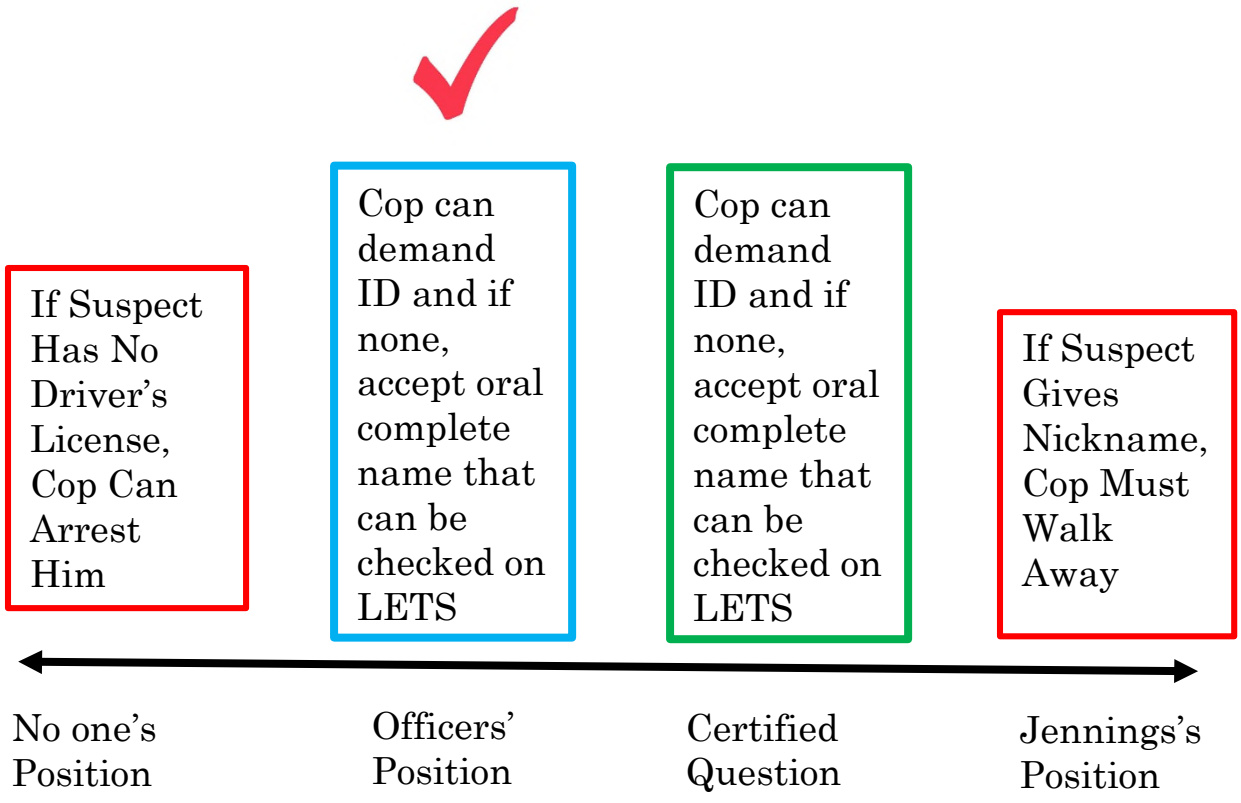
so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer."

[10] Moreover, that a driver's license would convey information beyond a criminal suspect's name and address does not matter. Once a law enforcement officer inputs an accurate name and address into the LETS database, the database will display a copy of the suspect's driver's license as well as his criminal history. *See* https://www.caps.ua.edu/wp-content/uploads/2014/03/CAPS_LetsGo_flyer_201409025.pdf.

The practice of law enforcement officers throughout the State, however, is to demand an ID as the first step in the encounter. *See* (Br. of Amici State Trooper, et al. 39.) The text of § 15-5-30, the common law history, *Hiibel*, and practical reality all favor interpreting § 15-5-30 to authorize a law enforcement officer to demand a physical ID first, and if the criminal suspect does not have one, to accept an oral answer of the suspect's complete name.

Possible Interpretations of § 15-5-30



II. Jennings's Arguments Against Application Of § 15-5-30 Fail.

A. Section 15-5-30 Does Not Clearly Bar a Law Enforcement Officer from Demanding a Criminal Suspect's Name in a Verifiable Form.

Jennings argues that the Eleventh Circuit's decisions in *Edger* and *Jennings* establish that § 15-5-30 clearly bars a police officer from asking for a physical ID. (Jennings Br. 14-16.) Jennings simply relied on the Eleventh Circuit's previous opinion in *Edger*. The Eleventh Circuit's opinion in *Edger* is not binding on this Court. *See Ex parte Hale*, 6 So. 3d 452, 458 n.5 (Ala. 2008), *as modified on denial of reh'g* (Oct. 10, 2008) ("[W]e are not bound by the decisions of the Eleventh Circuit ...."). And as shown above, § 15-5-30 does not clearly bar a law enforcement officer from demanding a criminal suspect's full and accurate name, instead of requesting a name and being satisfied with a nickname. The plain language, context, and history of the statute and the common law all authorize a law enforcement officer to demand (i.e., obtain) a criminal suspect's full legal name that can be checked in the LETS database. *See* Arg. Section I.D., *supra*.

B. Interpreting § 15-5-30 to Authorize a Law Enforcement Officer to Demand a Criminal Suspect's Name in a Reasonably Verifiable Form Does Not Render the Statute Unconstitutionally Vague.

Jennings argues that to interpret § 15-5-30 to authorize a law enforcement officer to demand a physical ID when someone gives an incomplete or unsatisfactory oral response would render the statute unconstitutionally vague under *Kolender v. Lawson*, 461 U.S. 352. (Jennings's Br. 17-18.) This argument fails because the statute in *Kolender* was subject to the officer's subjective determination that the information received from a suspect was credible and reliable, while Alabama Code § 15-5-30 is violated only if the criminal suspect's actions violate an objective standard of reasonableness.

In *Kolender*, 461 U.S. at 360, the Supreme Court stated that "a suspect violates [the statute] unless 'the officer [is] satisfied that the identification is reliable.'" This "vest[ed] virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest." *Id.* at 358. Because an officer could always be subjectively unsatisfied with whatever answer a suspect gives, the statute was unconstitutionally vague.

By contrast, the Officers seek an objective interpretation of § 15-5-30—would a reasonable law enforcement officer under the circumstances consider an answer to a demand for a name incomplete or false. The Officers do not seek an interpretation of § 15-5-30 that would allow a law enforcement officer to decide for himself whether failure to provide a driver's license or a photo ID from work or an oral response satisfies the statute. For example, a person taking a walk in her neighborhood may not have a photo ID on her (and is not required to if she is not driving), but if she matches the description of a wanted outlaw, could be stopped by a police officer. Upon his demand for her name, she could give her full name and explain that she left her driver's license back at her home (e.g., 403 Girard Avenue in Dothan, Alabama). If he had his vehicle nearby, the officer could check the name and address in the LETS database and a picture of the suspect's driver's license would appear on the officer's computer. An objectively reasonable officer could not arrest the suspect under these circumstances. Nor could a sheriff's deputy arrest a suspect for handing over his driver's license, when the deputy later explains that he secretly (and subjectively) wanted the suspect's Social Security card.

If a law enforcement officer demands a criminal suspect's name, and the suspect replies, "Buck Tooth Haden," "Riley Kate-The Girl Who Can Skate," "Attorney Stubbs," or "Poison Ivey," the officer could demand a physical ID or a complete legal name that could be checked in the LETS database either by the dispatcher or by the officer if he is near his vehicle. These answers, like "Pastor Jennings," are objectively incomplete names. Section 15-5-30 authorizes the officer to demand the criminal suspect's accurate and complete name, not a nickname or job description.

This is consistent with the present objective reasonableness standard for qualified immunity. In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Supreme Court "completely reformulated qualified immunity…." *Anderson v. Creighton*, 483 U.S. 635, 645 (1987) (citing *Harlow*, 457 U.S. at 815-820), "replacing the common-law subjective standard with an objective standard that allows liability only where the official violates 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *See Burns v. Reed*, 500 U.S. 478, 494 n.8 (1991) (quoting *Harlow*, supra, 457 U.S. at 818). And it is consistent with the objective standard for probable cause for arrest.

See Nieves v. Bartlett, 587 U.S. 391, 402 (2019) ("[P]robable cause speaks to the objective reasonableness of an arrest ….").

In *Hicks v. State*, 153 So. 3d 53, 65 (Ala. 2014), this Court rejected the argument that the chemical-endangerment statute is unconstitutionally vague. This Court explained that difficulty in interpreting a statute does not make the statute ambiguous:

> Mere difficulty of ascertaining its meaning or the fact that it is susceptible of different interpretations will not render a statute or ordinance too vague or uncertain to be enforced. The judicial power to declare a statute void for vagueness should be exercised only when a statute is so incomplete, so irreconcilably conflicting, or so vague or indefinite, that it cannot be executed, and the court is unable, by the application of known and accepted rules of construction, to determine, with any reasonable degree of certainty, what the legislature intended.

Id. (quoting *Vaughn v. State*, 880 So.2d 1178, 1194–96 (Ala. Crim. App. 2003)) (internal quotation marks and citations omitted).

Section 15-5-30 is not too vague or uncertain to be enforced. Law enforcement officers have been following it since 1966.

C. Answering the Certified Question to Authorize Seeking a Physical ID Would Determine this Case Because it Would Resolve Every Claim.

1. The phrasing of the communications does not matter; the substance of the communications does.

The certified question asks, "when a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives an incomplete or unsatisfactory oral response, does the statute prohibit the officer from demanding or requesting physical identification?" (Ala. S. Ct. Order, June 27, 2025). Jennings argues that answering that question with a No, still would not resolve this case. Jennings says that the Officers did not ask for his name, address, and an explanation of his actions, but immediately demanded an ID. (Jennings's Br. at 19.) So Jennings thinks the answer to the certified question is a hypothetical, untied to the facts of this case.

Judge Proctor knew that this case would set precedent for law enforcement officers across the State and stated the question in broad terms. In any event, it is the essence of the communications that counts, not the literal phrasing of the statement. Evidently, Jenings understood that the Officers wanted to know his name, address, and what he was

doing on someone else's property. He gave partial responses to what the officer was obviously interested in knowing.

In fact, only once very early in the encounter did Officer Smith ask for "ID" and **Jennings himself** immediately shifted the inquiry—stating that he did not have to **identify** himself—a clearly incorrect proposition under anyone's interpretation of § 15-5-30. (*See* App. G-*Jennings v. Smith,* No. 23-14171, 2024 WL 4315127, at *1 (11th Cir. Sept. 27, 2024).) Equally, it is clear that Jennings knew he **had not** "**identified"** himself as required by the statute, because he repeatedly asserted that he did not **have** to do so, not that he **had** done so when he offered his job description and a last name ("Pastor Jennings"). (*Id.*)

In any event, this Court can rephrase the question at its discretion. *See Fed. Ins. Co. v. Travelers Cas. and Sur. Co.*, 843 So. 2d 140, 141 n.1 (Ala. 2002) ("Our modification of the certified questions is in accordance with both the leeway given by the United States Court of Appeals for the Eleventh Circuit, see *Federal Insurance Co. v. Traveler's Casualty & Surety Co.,* 280 F.3d 1356, 1357 (11th Cir.2002) …."). For example, the certified question could be rephrased as follows:

> Under Alabama Code § 15-5-30, can a law enforcement officer demand of a criminal suspect his name and address in

the form of a physical ID, and if the suspect has none, can the officer then demand that the suspect giver his full name in an oral response?

The answer to this rephrased question would be "Yes."

2. A violation of § 15-5-30 results in probable cause of a violation of § 13A-10-2 and qualified immunity for the officers, and that ends this case.

If this Court holds that Jennings violated § 15-5-30, this case will be over. If Jennings' answer of an incomplete name and refusal to give an ID in order to verify his identity violated § 15-5-30, that would be an independent unlawful act under § 13A-10-2(a)(1). Section 13A-10-2 provides that it is a Class A misdemeanor to commit an "independently unlawful act" that "impairs or hinders the administration of law" or "prevents a public servant from performing a governmental function":

> **§ 13A-10-2. Obstructing governmental operations.**
>
> (a) A person commits the crime of obstructing governmental operations if, by means of intimidation, physical force or interference or by **any other independently unlawful act**, he:
>
> (1) Intentionally **obstructs, impairs or hinders the administration of law** or other governmental function; or
>
> (2) Intentionally **prevents a public servant from performing a governmental function**.

> (b) This section does not apply to the obstruction, impairment or hindrance of the making of an arrest.
>
> (c) Obstructing governmental operations is a Class A misdemeanor.

Ala. Code § 13A-10-2 (emphases added).

Jennings refused to identify himself further than the nickname, Pastor Jennings.

> Officer Smith: There's a suspicious person in the yard, and if you're not going to identify yourself . . . .
>
> Jennings: I don't have to identify myself. It's not a stop-and-identify state.

(App. M-Smith BWC Video at 18:25:01.)

Each of Appellant's claims rises or falls on the presence of probable cause or at least arguable probable cause to arrest Appellant. *Morris v. Town of Lexington*, 748 F.3d 1316, 1324 (11th Cir. 2014). A violation of § 13A-10-2(a)(1) would provide the Officers with probable cause to arrest Jennings and thus defeat the unlawful and retaliatory arrest claims. As Judge Proctor held, Jennings's violation of § 15-5-30 is an "independently unlawful act." (App. H-Dist. Ct.'s Summ. J. Order.) And that act "impair[ed] or hinder[ed] the administration of law—the Officers completion of the investigation of the 911 call. And it "prevent[ed]" the

Officers "from performing a governmental function." (*Id.*) And it would eliminate the malice and bad faith exceptions to state immunity, rendering the Officers and the City immune from the state-law false arrest claims. (*Id.* at 24-25; App. I-Doc. 62-Order Dism. City-Pgs.7-8.)[11] *See also Ex parte Harris*, 216 So. 3d 1201, 1214 (Ala. 2016) ("The existence of probable cause, and in particular the facts showing that probable cause, contradict any suggestion of

[11] In addition, and separately, the Eleventh Circuit panel asserted, "Walking *toward* officers while yelling or speaking can supply the physical interference or intimidation element; walking *away* does not." *Jennings*, 2024 WL 4315127, at *3 (emphases in original) (citing *D.A.D.O. v. State*, 57 So. 3d 798, 806–07 (Ala. Crim. App. 2009)). But *D.A.D.O.,* 57 So. 3d at 806, does not support that holding. In *D.A.D.O.*, *id*., "once the officer requested that D.A.D.O. leave the office, he complied…." Instead, *A.A.G. v. State*, 668 So. 2d 122, 127-29 (Ala. Crim. App. 1995), supports that running from a police officer constitutes obstruction of governmental operations. The suspect "left the foyer and ran into another room of the house, despite the fact that the officers had explained their presence and had requested that the appellant remain with her sisters and with Officer Melton in a secure area." *Id.* at 128. Similarly, Jennings walked away from the Officers and thus physically interfered with their investigation.

Also, in *D.A.D.O. v. State*, 57 So. 3d 798, 802 (Ala. Crim. App. 2009), a majority opinion of the Court of Criminal Appeals held the phrase "by means of intimidation, physical force or interference …" in Alabama Code § 13A-10-2 applies only to interference that is physical in nature. This Court should overrule *D.A.D.O.* and hold that any form of interference – including the failure to obey a lawful order – satisfies the interference element of § 13A-10-2.

malicious intents or bad faith.") (quoting *Wood v. Kesler*, 323 F.3d 872, 884 (11th Cir. 2003)).

CONCLUSION[12]

Based on the foregoing, the Officers and the City respectfully request that this Court answer the certified question to permit an officer to demand a physical ID from a criminal suspect and if the suspect does not have one, the suspect may orally state his full name to comply with Alabama Code § 15-5-30.

Respectfully submitted,

/s/ Ed R. Haden
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[12] The Officers adopt every argument and citation in this Brief and in their Preliminary Brief into every section of this Brief.

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word limitations set forth in Ala. R. App. 28(j)(1) (i.e., 14,000 words). According to the word-count function of Microsoft Word, this Brief contains 11,430 words. I further certify that this Brief, prepared in Century Schoolbook font using 14-point type, complies with the font requirements set forth in Ala. R. App. 32(a)(7). *See* Ala. R. App. 32(d) (certificate of compliance).

/s/ Ed R. Haden
One of the Attorneys for Appellees
Christopher Smith, Justin Gable,
Jeremy Brooks, and the City of
Childersburg

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief of Appellee, which was electronically filed today, will be served electronically under Rules 25(c)(1)(D) and 57(h)(5), Ala. R. App. P., by email or U.S. Mail, properly addressed and postage prepaid or by email, each as indicated below, under Rule 25(c), Ala. R. App. P., on this 26th day of September, 2025, on the following:

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Appendix A

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,	}	
	}	
Plaintiff,	}	
	}	
v.	}	**Case No.: 1:22-cv-01165-RDP**
	}	
CHRISTOPHER SMITH et al.,	}	
	}	
Defendants.	}	

CERTIFICATION OF QUESTION FROM UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA TO THE SUPREME COURT OF ALABAMA, PURSUANT TO RULE 18 OF THE ALABAMA RULES OF APPELLATE PROCEDURE

To the Supreme Court of Alabama and the Court's Honorable Justices:

It appears to this court that (1) the above-styled case involves a question or proposition of law of the State of Alabama that is determinative of the cause, and (2) there is not a clear, controlling precedent in the decisions of the Supreme Court of Alabama answering the question.

I. STYLE OF THE CASE

The style of this case is reflected in the caption of this Certification.

II. PROCEDURAL HISTORY AND STATEMENT OF FACTS

This case is on remand from the Eleventh Circuit after it reversed this court's qualified-immunity summary judgment ruling. The procedural history and underlying facts of this case are stated in the Eleventh Circuit's decision. *Jennings v. Smith*, 2024 WL 4315127 (11th Cir. 2024).

III. QUESTION CERTIFIED TO THE SUPREME COURT OF ALABAMA

Pursuant to Article VI, § 6.02(b)(3) of the Alabama Constitution of 1901, as amended, and Alabama Rule of Appellate Procedure 18, the court **CERTIFIES** the following question of state law to the Supreme Court of Alabama:

> **Under Alabama Code § 15-5-30, when a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives an incomplete or unsatisfactory oral response, does the statute prohibit the officer from demanding or requesting physical identification?**[1]

This court fully understands that the Supreme Court may, in its discretion, restate the issue. *See Coastal Petroleum Co. v. Secretary of the Army of the United States*, 489 F.2d 777, 786 n.25 (5th Cir. 1973) (quotation omitted).

DONE and **ORDERED** this May 22, 2025.

R. DAVID PROCTOR
CHIEF U.S. DISTRICT JUDGE

[1] There are at least two questions that relate to this analysis:

1. Is the word "demand" meaningfully different from a word like "request" in that it allows an officer to both ask for the information specified in § 15-5-30 and take follow-up steps to verify the information if the suspect answers those questions in an incomplete or non-credible way?

2. If § 15-5-30 authorizes an officer to request identification, does a suspect's *refusal* to provide identification when requested give an officer probable cause for arresting the suspect for obstruction?

Appendix B

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,	}	
	}	
Plaintiff,	}	
	}	
v.	}	**Case No.: 1:22-cv-01165-RDP**
	}	
CHRISTOPHER SMITH et al.,	}	
	}	
Defendants.	}	

MEMORANDUM OPINION AND ORDER

This matter is before the court on Defendants' Motion to Certify Controlling Question to the Supreme Court of Alabama. (Doc. # 80). The Motion (Doc. # 80) has been fully briefed (Docs. # 76, 77,[1] 80, 81)[2] and is now under submission. For the reasons discussed below, the Motion (Doc. # 80) is **GRANTED**. This case is **STAYED** until further order of this court.

Under Alabama Rule of Appellate Procedure 18, a federal court may certify a question to the Supreme Court of Alabama "[w]hen it shall appear . . . that there are involved in any proceeding before it questions or propositions of law of this State which are determinative of said cause and that there are no clear controlling precedents in the decisions of the Supreme Court of this State." *See* Ala. R. App. P. 18(a).

The court concludes the question framed in the separately entered Certification of Question is appropriate for certification because (1) it will resolve questions of law that are determinative

[1] The court notes that Documents # 76 and 77 appear to be identical, except for the fact that Document # 77 has attachment # 77-1.

[2] The court also notes that Plaintiff had the right to file a reply brief to Defendants' Motion. (Doc. # 80). There was no obligation to file a reply though. So, the court considers this matter fully briefed.

of this case and (2) there is not a clear, controlling decision on this question from the Supreme Court of Alabama. Further, the answer to this question may determine the outcome of the case before this court because it will resolve whether there was probable cause (and thus qualified immunity[3]) for officers to arrest an individual for violating Alabama Code § 15-5-30, when that individual gave incomplete responses when asked his name and refused to provide physical identification.

As discussed more fully below, Eleventh Circuit panels have addressed § 15-5-30 in three separate decisions. *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023) (holding that an officer violated clearly established law when she arrested an individual for failing to produce an ID or driver's license under Ala. Code § 15-5-30; *Jennings v. Smith*, 2024 WL 4315127 (11th Cir. Sept. 27, 2024) (holding that an officer did not have probable cause to arrest an individual for violating Ala. Code § 15-5-30 when the individual refused to show physical identification), *with Metz v. Bridges*, 2024 WL 5088586 (11th Cir. Dec. 12, 2024) (concluding that an officer had probable cause to handcuff and arrest an individual for violating Ala. Code § 15-5-30 when the individual refused to show physical identification when requested to do so six different times). The Supreme Court of Alabama has not addressed the question of whether § 15-5-30 prohibits a law enforcement

[3] Qualified immunity protects "government officials performing discretionary functions . . . 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." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Government officials, of course, include police officers.

Recently, controversy over the doctrine and its application has grown, particularly from the academy. *See, e.g.*, Abigail Sloan, *Shoot First, Think Later, Pay Never: How Qualified Immunity Perpetuates the Modern-Day Lynching of Black Americans and Why Abolition is the Answer*, 37 J. CIV. RIGHTS & ECON. DEV'T 49, 53 (2024) ("Qualified immunity is the court-created doctrine that allows police a license to kill . . . ."); Fred O. Smith, Jr., *Formalism, Ferguson, and the Future of Qualified Immunity*, 93 NOTRE DAME L. REV. 2093, 2095 (2018) ("In recent years, federal courts scholars have undermined some of the basic empirical and legal assumptions undergirding qualified immunity[.]"); William Baude, *Is Qualified Immunity Unlawful?* 106 CAL. L. REV. 45, 88 (2018) ("The Court's crusade to enforce the doctrine of qualified immunity does not serve congressional intent or the rule of law."); Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 70 (2017) ("My findings suggest that the Court's efforts to advance its policy goals through qualified immunity have been an exercise in futility.").

officer from demanding the production of identification. Definitively answering this question is crucial because it could clarify and shape the course of future federal litigation about *Terry*[4] stops in Alabama – stops that occur frequently and that can pose significant danger for the officers involved. *See Jennings*, 2024 WL 4315127, at *4 ("Police officers 'conduct approximately 29,000 arrests every day – a dangerous task that requires making quick decisions in circumstances that are tense, uncertain, and rapidly evolving.'") (quoting *Nieves v. Bartlett*, 587 U.S. 391, 403 (2019)).

I. Style of the Case

The style of the lead case is reflected in the caption.

II. Statement of the Facts and Circumstances

The case before this court shares a familiar background with *Edger* and *Metz*. Police arrive at a scene and have reason to suspect that a person there is engaging in or is about to engage in criminal activity. During the course of gathering information about the suspect and his activity, and unsatisfied with his responses to their questions, the police eventually ask the suspect to produce physical identification. The suspect refuses to provide such identification and the police arrest him, at least in part based on probable cause that the suspect has obstructed governmental operations in violation of Alabama Code § 13A-10-2.

Edger and this case turned on the Eleventh Circuit's construction of Alabama Code § 15-5-30, which is known as Alabama's "stop-and-identify statute." *Metz* also involved an application of the statute. Section 15-5-30 provides:

> A sheriff or other officer acting as sheriff, his deputy or any constable, acting within their respective counties, any marshal, deputy marshal or policeman of any incorporated city or town within the limits of the county or any highway patrolman or state trooper may stop any person abroad in a public place whom he reasonably

[4] *Terry v. Ohio*, 392 U.S. 1 (1968).

> suspects is committing, has committed or is about to commit a felony or other public offense and *may demand of him his name, address and an explanation of his actions*.

Ala. Code § 15-5-30 (emphasis added).

The recurring question in these cases is whether Alabama Code § 15-5-30's language of "may demand of him his name, address and an explanation of his actions" authorizes a police officer to also "demand" physical identification and to arrest a suspect if they refuse to provide it. Courts have split on this question because they disagree on whether the statute's language of "may demand" followed by the list of "his name, address and an explanation of his actions" makes it unlawful for an officer to request anything beyond the listed items of "name, address, and an explanation" – namely, physical identification if that is available.

One potential source of this confusion relates to the word "demand" in the statute. "Demand" often means something more than "request." *See* Webster's Third New International Dictionary 598 (1993) (defining "demand" in part as "to ask (a person) *authoritatively* or formally for information") (emphasis added). Therefore, one issue is whether the statute authorizes an officer to obtain an answer about a suspect's identity (*i.e.*, the suspect's name) through multiple methods, including by asking for physical identification.

Another potential source of confusion is whether the list of items in the statute is exclusive. The Eleventh Circuit has based its conclusion about § 15-5-30 on the semantic canon of statutory construction, *expressio unius est exclusio alterius*, which roughly translated means "the expression of one thing implies the exclusion of others." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* 107 (2012). Although this canon may appear relevant for interpreting a statute that lists items, such as § 15-5-30, "[v]irtually all the authorities who discuss

the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context." *Id.* (citations removed).

The question certified matters to federal courts because we are often called on to determine whether an officer who arrests a suspect for refusing to provide identification has probable cause to believe that the suspect violated § 15-5-30. If an officer has such probable cause, she is entitled to qualified immunity because there is no violation of any clearly established Fourth Amendment right based on the arrest. If the officer does not have probable cause, then they are not entitled to qualified immunity.

Without question, this inquiry is centered solely on state law. As the Eleventh Circuit has made clear, "any obligation to answer police questions arises from state – not federal Constitutional-law." *Edger*, 84 F.4th at 1239 (citing *Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177, 187 (2004)). The Eleventh Circuit concluded that "[t]here simply is no state law foundation for [an officer to] demand that [someone who is stopped under *Terry*] produce physical identification." *Id.* The Supreme Court of Alabama has never interpreted § 15-5-30. And, federal courts interpreting are simply making *Erie*[5] guesses when they adjudicate what the statute authorizes and does not authorize. In making its *Erie* guess in *Edger* (that is, in interpreting the statutory text), the circuit concluded that § 15-5-30 "is clear and requires no additional construction." *Id.* The court determined it was "clearly established at the time of [] Edger's arrest that [the officer] could not demand he produce physical identification." *Id.* Therefore, there is a substantial need for the Supreme Court of Alabama to answer this question.

[5] *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

A. Alabama Caselaw

Again, this court's research shows that the Supreme Court of Alabama has never decided whether the language of "may demand" followed by the list of "his name, address and an explanation of his actions" operates to preclude a law enforcement officer from requesting physical identification. The Alabama Court of Criminal Appeals has offered some analysis of the stop-and-identify statute, but that analysis does not directly answer the question posed in the court's certification.

The Alabama Court of Criminal Appeals has noted, for example, that "[i]nherent in an officer's right to stop a suspect and demand his name, address, and an explanation of his actions is the right to detain him temporarily to verify the information given or to obtain information independently of the suspect's cooperation." *Wright v. State*, 601 So. 2d 1095, 1096 (Ala. Crim. App. 1991) (citing *Walker v. City of Mobile*, 508 So. 2d 1209 (Ala. Crim. App. 1987)). The Court of Criminal Appeals has also described § 15-5-30 as "a codification of the principles announced in *Terry v. Ohio*, 392 U.S. 1 (1968)." *Hopkins v. State*, 661 So. 2d 774, 778 (Ala. Crim. App. 1994); *see also Hickman v. State*, 548 So. 2d 1077, 1080 (Ala. Crim. App. 1989) (citing *Terry* together with Ala. Code § 15-5-30). And in *Walker*, when discussing § 15-5-30, the Court of Criminal Appeals, quoting from the United States Supreme Court case *Adams v. Williams*, stated that "[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Walker*, 508 So. 2d at 1212 (quoting *Adams*, 407 U.S. 143, 145-46 (1972)).[6]

[6] Additionally, there is a line of cases from the Alabama Court of Criminal Appeals in which the court acknowledges that § 15-5-30 may be used to ask for a driver's license, although to be fair each of these cases involves driving. *See, e.g.*, *Gradford v. City of Huntsville*, 557 So. 2d 1330 (Ala. Crim. App. 1989) ("Officer Young stopped the appellant and asked him to produce his driver's license . . . . Section 15-5-30, Code of Alabama, 1975, provides

Consider this hypothetical. A law enforcement officer is dispatched to a commercial business on a weekend. The 911 call that triggers the dispatch indicates there is a person trying to access the building. When the officer arrives on the scene, she encounters an individual who is standing near a door to the building. The officer asks what he is doing. The individual replies that he is waiting on a ride to pick him up and take him home. The officer asks him his name and the location of his home. The suspect hesitates a moment but finally mumbles: "Ummm, John Smith. 123 Main Street." There is no Main Street in the town, and the officer concludes, based on the circumstances, there is also reason to question the accuracy of the name provided and the explanation of the suspect's actions. Given that § 15-5-30 is a codification of *Terry* stop principles, and in light of the *Wright* court's holding that "[i]nherent in an officer's right to stop a suspect and demand his name, address, and an explanation of his actions is the right to detain him temporarily to verify the information given or to obtain information independently of the suspect's cooperation," *Wright*, 601 So. 2d at 1096, are we to understand that *Terry* principles and state law do not allow the officer to request identification[7] to verify the questionable name and address

as follows . . . ."); *Minnifield v. State*, 390 So. 2d 1146, 1152 (Ala. Crim. App. 1980), *cert denied*, 390 So. 2d 1154 (Ala. 1980) ("The concept of the investigative stop has been adopted by statute in Alabama, § 15-5-30 . . . and though *Terry* was factually concerned with stops of suspicious characters on sidewalks, it is clear . . . that the *Terry* principle is equally applicable to the stop of a vehicle."); *Kemp v. State*, 434 So. 2d 298, 300-01 (Ala. Crim. App. 1983) (describing a *Terry* stop of an automobile in which the officer "asked the appellant for identification," *id.* at 300, and stating "'[t]he concept of the investigative stop has been adopted by statute in Alabama, § 15-5-30,'" *id.* at 301) (quoting *Minnifield*, 390 So. 2d at 1152); *Childress v. State*, 455 So. 2d 175, 176-77 (Ala. Crim. App. 1984) (describing a *Terry* stop in which a person seated in a parked car was asked for his driver's license and provided a birth certificate instead, and stating "[t]he principles set forth in [Alabama decisions discussing *Terry v. Ohio*] have now been codified in Title 15-5-30").

[7] In *Edger*, the Eleventh Circuit noted that "neither the parties nor our own research can identify any Alabama law that generally requires the public to carry physical identification . . . ." *Edger*, 84 F.4th at 1239. Of course, the court assumes that citizens are not required to carry identification, and that, to the extent law enforcement officers are permitted to ask for physical identification, if a citizen is not carrying identification, there is no obligation to produce that which does not exist.

provided? Is a conclusion that the officer cannot make such a request as part of her investigation wholly counter-intuitive to the purpose of a *Terry* stop?

There is, therefore, an open question under Alabama caselaw about whether § 15-5-30 authorizes a police officer to "demand" physical identification in a non-driving context.

B. Federal Court Decisions

The different conclusions reached by the judges who have ruled on this question reflect the apparent uncertainty about how to read Alabama Code § 15-5-30. Below, the court summarizes the three cases in which courts have addressed this question.

The first Eleventh Circuit decision that interpreted § 15-5-30 was *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023). In *Edger*, a car mechanic (Edger) was called out to repair a client's car that was parked in a church parking lot. *Edger*, 84 F.4th at 1233. Edger went to the church to pick up the keys in the afternoon and returned in the evening with his stepson to begin repairs. *Id.* The church's security guard observed the two and called 911, stating "I have two Hispanic males, messing with an employee's car that was left on the lot." *Id.* Officer Krista McCabe arrived on the scene and began asking Edger questions about what he was doing. *Id.* at 1233-34. She never asked for his name or address. *Id*. And, without inquiring about his name, Officer McCabe asked "do y'all have driver's license or IDs on you?" *Id.* at 1234. Edger refused to provide an ID. *Id.* Officer Perillat then arrived and while Edger was stating his refusal to provide identification to Officer McCabe, Officer Perillat began handcuffing Edger. *Id.* Edger offered his driver's license three times while he was being handcuffed, but Officer Perillat did not stop and eventually searched and detained Edger. *Id.* Edger was charged with obstructing governmental operations in violation of Alabama Code § 13A-10-2(a)(1), which specifies that a person violates that section if "by means of intimidation, physical force or interference or by any other *independently unlawful act*, he"

obstructs a governmental function. *Id.* at 1237 (emphasis in original) (citing Ala. Code § 13A-10-2(a)(1)). These charges were later dropped. *Id.* at 1234.

Edger filed a § 1983 lawsuit alleging false arrest in violation of the Fourth Amendment. *Id.* at 1235. The district court determined that Edger did not violate § 15-5-30 when he failed to provide a form of ID. Therefore, the officers lacked probable cause to arrest Edger for a violation of Alabama Code §§ 32-6-9 and 13A-10-2(A). Nevertheless, the district court determined that the officers were entitled to qualified immunity because there was arguable probable cause to make the arrest under § 13A-10-2(A). *Id.* As Judge Burke concluded:

> [A] reasonable but mistaken officer could've believed that Edger's failure to provide his driver's license violated Ala. Code § 15-5-30. Edger's failure to comply with McCabe's request for identification could provide additional justification for an officer's belief (albeit mistaken) that Edger was obstructing a governmental operation. Therefore, McCabe had arguable probable cause and qualified immunity attaches to her actions, and by extension, Officer Perillat's.

Edger v. McCabe, 572 F. Supp. 3d 1143, 1154 (N.D. Ala. 2021), *rev'd by* 84 F. 4th 1230 (11th Cir. 2023).

The Eleventh Circuit reversed and vacated the district court's judgment. *Id.* at 1241. In doing so, the panel reasoned that there was no probable cause (actual or arguable) to believe that Edger had violated Alabama Code § 13A-10-2(a)(1) by violating Alabama's stop-and-identify statute (§ 15-5-30) because § 15-5-30 does not authorize an officer to ask for anything more than the three things listed in the statute. *Id.* at 1238. Those three things are: name, address, and an explanation of his actions. *Id.* The panel reasoned: "Section 15-5-30 does not require anyone to produce an 'ID' or 'driver's license' as Officer McCabe demanded. Indeed, it does not require anyone to produce anything. Instead, it grants Alabama police the authority to request three specific pieces of information." *Id.* Because "the plain text of the Alabama statute is so clear that no reasonable officer could have interpreted it to permit Mr. Edger's arrest for failing to produce

his 'ID' or 'driver's license' under § 15-5-30," the panel reasoned, there was no "state law foundation for Officer McCabe's demand that Mr. Edger produce physical identification." *Id.* at 1238-39.

The *Edger* panel added that there were three premises leading to this conclusion: first, that while police may ask the public questions, the public may decline to answer such questions; second, that "any obligation to answer police questions arises from state – not federal Constitutional – law"; and third, that "the Alabama statute is clear" that police are only authorized to ask three questions under § 15-5-30. *Id.* at 1239 (citations removed).

The next case to address § 15-5-30 was *Jennings v. Smith*, 2023 WL 8859760 (N.D. Ala. Dec. 21, 2023), *rev'd by* 2024 WL 4315127 (11th Cir. Sept. 27, 2024). Again, *Jennings* is the case currently on remand before this court and the case in which the court has certified this question. In *Jennings*, three police officers arrived at a house after a 911 caller who lived across the street requested that police check on her neighbors' home. *Jennings*, 2024 WL 4315127, at *1. The caller had "reported that her elderly white neighbors had left town and she saw an unfamiliar gold vehicle and a young Black male around the home." *Id.* When the officers arrived, they observed Jennings (a Black male) holding a garden hose. *Id.* They asked him what he was doing and he said, "watering flowers," and "I'm supposed to be here. I'm Pastor Jennings. I live across the street . . . I'm looking out for the house while they gone, I'm watering they flowers." *Id.* One officer asked, "do you have, like, ID?" and motioned with his hands as if to request a driver's license. *Id.* Jennings started walking away and said, "Oh, no man, I'm not gonna give you no ID . . . I ain't did nothing wrong." *Id.* After some more back-and-forth, Jennings said: "You see a Black man out here watering neighbors' flowers . . . I don't want to hear you, you want to lock me up, lock me up." *Id.* One officer "warned Jennings that he would get an 'obstruction charge' if he continued walking away,"

to which Jennings replied "You can do whatever you want. Do it." *Id.* At this point, the officers put him in handcuffs and told him that "you have to identify yourself to me" and that the officers had a right to identify him. *Id.* at *1-2. One officer said, "It's okay if you're out here to water the plants, talk to us." *Id.* at *1. When Jennings continued to yell at the officers, another officer stated "Everything is being audio and video recorded. You won't shut your mouth." *Id.* at *2. Jennings then replied: "You don't shut your mouth. You talk to me like I'm a child, boy!" *Id.* The officers then arrested him and charged him under Alabama Code § 13A-10-2(a) for obstructing government operations. *Id.* at *2-3. Although not referenced in the Eleventh Circuit statement of facts, the Rule 56 record included the fact that one of the officers explained to Plaintiff while he was handcuffed and sitting in the police cruiser that if he had told the officers his full name instead of "Pastor Jennings," it might have dispelled any reasonable suspicion. *Jennings v. Smith*, 2023 WL 8859760, at *3 (N.D. Ala. Dec. 21, 2023).

Jennings sued the officers under § 1983 for unlawful and retaliatory arrest (among other things). The undersigned granted summary judgment in favor of the officers and granted the City's motion to dismiss after concluding that the officers had qualified immunity. *See id.* at *2.

The Eleventh Circuit reversed, holding that under its *Edger* decision, there was no probable cause to arrest Jennings for his refusal to show physical identification to the officers. *Id.* at *3-4. The panel first emphasized that "[p]robable cause is the cornerstone of Jennings' appeal. The existence of probable cause both allows for a qualified immunity defense and defeats § 1983 claims for false and retaliatory arrests." *Id.* at *2. The panel quoted from *Edger* in reasoning that "while there are no 'magic words' that an officer must utter, there is a marked difference between asking for three specific pieces of information and demanding a physical license or ID." *Id.* at *4 (quoting *Edger*, 84 F.4th at 1239). The panel noted that Jennings provided information to the officers that

closely tracked what officers may request under § 15-5-30 by stating "I'm supposed to be here. I'm Pastor Jennings. I live across the street . . . I'm looking out for the house while they gone, I'm watering they flowers." *Id.* With this background, the panel proceeded to apply *Edger* and concluded that "Jennings was under no legal obligation to provide his ID," and that "because *Edger* explained that Alabama Code § 15-5-30 was, and is, clearly established law, 84 F.4th at 1239, these officers lacked even arguable probable cause." *Id.*

The third and most recent Eleventh Circuit decision to address § 15-5-30 is *Metz v. Bridges*, 2024 WL 5088586 (11th Cir. Dec. 12, 2024). *Metz* is an unpublished opinion.[8]

Metz and a colleague were visiting an office of the Alabama Department of Human Resources ("DHR") and filming a video. *Id.* at *1. The DHR security guard noticed them and asked them to leave several times. *Id.* When they refused, the security guard asked a DHR employee to call 911 to inform a dispatcher that there were men "filming inside of a building they're not supposed to be in." *Id.* Officer Bridges arrived, and a DHR employee pointed out the men and stated: "[t]hese men are videoing down here." *Id.* Officer Bridges asked six times for the two men to produce identification, and they refused each time. *Id.* Officer Bridges handcuffed them. *Id.* Officer Dodson arrived and was told that the men were refusing to leave after the security guard asked them to do so; Officer Dodson informed the men that they were trespassing and asked them to identify themselves. *Id.* When they refused, Officer Dodson searched them. *Id.* The men were later allowed to go. *Id.*

Metz brought a § 1983 claim against the officers for violating his Fourth Amendment rights. *Id.* at *2. After the officers moved to dismiss on qualified immunity grounds, the district

[8] The court fully appreciates that *Metz* is not precedential and *Edger* is controlling. But, as discussed below, the significance of *Metz* is that it permitted the arrest of an individual for failure to produce identification; therefore it appears the *Metz* panel's determination is inconsistent with *Edger* and *Jennings*. A clear rule pronounced by the Supreme Court of Alabama would advance uniformity in this area.

court denied the motion, holding that there was no valid *Terry* stop and therefore no basis for law enforcement to demand identification. *Metz v. Bridges*, 2023 WL 2626275, at *1-2 (M.D. Ala. Mar. 24, 2023).

The district court in *Metz* made a passing reference to § 15-5-30, but it did so merely to state that the Supreme Court had "analyzed an arrest made when a suspect refuses to produce identification and has held that" an officer conducting a *Terry* stop can require a suspect to answer questions when there is a "state law requiring a suspect to disclose his name in the course of a **valid** *Terry* stop." *Id.* at *1 (quoting *Hiibel*, 542 U.S. at 187) (emphasis in original). "Alabama has such a statute," the district court stated. *Id.* (citing Ala. Code § 15-5-30). Without elaborating on the § 15-5-30 point, the district court concluded that the officers did not have qualified immunity because "there was no arguable reasonable suspicion of trespass upon which to base a *Terry* stop." *Id.* at *2. The officers appealed.

On review, an Eleventh Circuit panel reversed, concluding that the *Terry* stop was valid. It then addressed the question that the district court had not – whether the officers had violated Metz's rights when they arrested him for failing to identify himself and produce identification when the officers requested it. *Metz*, 2024 WL 5088586, at *4. The panel first outlined the test for establishing qualified immunity, explaining that once a public official proves "that he was acting within the scope of his discretionary authority when the alleged misconduct took place," the burden shifts to the plaintiff to show that "the defendant violated a constitutional right" and "the right was clearly established at the time of the alleged misconduct." *Id.* at *2 (citations removed). The constitutional right at issue in this case was whether the officers violated the Fourth Amendment by arresting (that is, handcuffing) Metz without probable cause or arguable probable cause, which is sufficient to establish qualified immunity for a Fourth Amendment false arrest claim. *Id.* at *3.

Relevant to the certified question presented here, the panel considered whether Metz's refusal to produce identification gave the officers arguable probable cause to arrest Metz for violating "Alabama's stop-and-identify statute," also known as Ala. Code § 15-5-30. *Id.* at *4. Like the district court had, the Eleventh Circuit panel answered this question in the affirmative, concluding that "[o]nce Officer Bridges validly had stopped Metz, he was allowed to ask Metz for identification, and to arrest him when he refused. . . . Alabama's stop-and-identify statute imposes this requirement."[9] *Id.* (citing Ala. Code § 15-5-30).

III. Parties' Arguments

Plaintiff argues that Alabama Code § 15-5-30 "is so clear on its face, no judicial interpretation is needed or should be sought by the court." (Doc. # 76 at 3). Citing to the fact that the Eleventh Circuit in both *Edger* and *Jennings* believed that the statutory language was clear, Plaintiff contends that the court should show restraint and not certify this question to this state's highest court. (*Id.* at 3-5). Plaintiff further points out that Alabama House Bill 34, which was introduced on February 4, 2025, would authorize a law enforcement officer to "demand a person's date of birth," and argues this implies that the Alabama legislature does not believe that Alabama Code § 15-5-30 authorizes an officer to demand physical identification. (*Id.* at 5-7). Plaintiff contends that the certified question, if there is one, should be "is Ala. Code § 15-5-30 ambiguous?" (*Id.* at 7).

Defendants argue that "[c]ertification is appropriate because the authorities are inconsistent regarding the proper interpretation of Alabama Code § 15-5-30, the Supreme Court of Alabama has not ruled on the issue, and the answer to the certified question will terminate this case." (Doc.

[9] A district court in the Middle District of Alabama has concluded similarly (in another unreported case) that § 15-5-30 allows an officer to "demand identification under this statute." *Metz v. Dodson*, 2023 WL 2974939, at *7 (M.D. Ala. Feb. 22, 2023).

80 at 1). Defendants emphasized that *Metz* was issued "[l]ess than three months after the panel decision in *Jennings* . . . uncritically and with no reference whatsoever to either *Edger* or *Jennings*." (*Id.* at 2). Defendants further cited to a U.S. Supreme Court opinion interpreting a Nevada statute to permit an officer to demand a driver's license where the statute merely authorized ascertaining "identity." (*Id.* at 3). Defendants contend that certification would help federal courts "avoid making unnecessary *Erie* guesses" and offer the state court the opportunity to interpret or clarify existing law. (*Id.* at 8 (quoting *Tobin v. Michigan Mut. Ins. Co.*, 398 F.3d 1267, 1274 (11th Cir. 2005)). Defendants also note that the word "demand" in § 15-5-30 renders the statute ambiguous, as it could suggest that an officer "has a legal right to an answer from the suspect" and could fulfill that right by asking for identification. (*Id.* at 14). Defendants summarized several Alabama Court of Criminal Appeals decisions in *Terry* stop situations involving drivers, concluding that "the Alabama Supreme Court is likely to give weight" to these decisions. (*Id.* at 15-16). This court fully understands the distinction in an officer's right to ask for a driver's license from the operator of a motor vehicle on this state's roads. But the question about the correct interpretation of § 15-5-30 remains.

After careful review, the court concludes that despite Plaintiff's arguments about the clarity of the statutory language, the need for restraint in certifying questions to state courts, and the existence of an introduced house bill that they believe suggests a legislative understanding of § 15-5-30 consistent with their arguments, certification is appropriate. The statutory language is, simply put, not clear. As discussed at length above, the different outcomes reached by federal courts highlight the ambiguity inherent in this language and the need for a clear answer from Alabama's highest court. Furthermore, the cases that Plaintiff cites in support of the need for "restraint" actually weigh in favor of certification here. *See Mosher v. Speedstar Div. of AMCA*

Intern., Inc., 52 F.3d 913, 916-17 (11th Cir. 1995) ("Where there is any doubt as to the application of state law, a federal court should certify the question to the state supreme court to avoid making unnecessary *Erie* 'guesses' and to offer the state court the opportunity to interpret or change existing law."); *Ruderman ex rel. Schwartz v. Washington Nat. Ins. Corp.*, 671 F.3d 1208, 1212 (11th Cir. 2012) (after noting "our practice to show restraint," writing "[b]ut for truly debatable questions 'a federal court should certify the question to the state supreme court'" (quoting *Mosher*, 52 F.3d at 916-17)). The judicially modest approach by a federal court is to defer to state courts about the interpretation of state statutes. Finally, the court notes that it does not accord weight to a House Bill that has been introduced (*i.e.*, not voted on or enrolled) and that in any event is not evidence of the legislative intent at the time § 15-5-30 was enacted.

IV. Conclusion

The court believes the question certified in the contemporaneously filed Certification of Question satisfies the requirements of Alabama Rule of Appellate Procedure 18(a): First, it presents a pure question of Alabama law; second, the question is "determinative" of this case in the sense that a negative answer would warrant dismissal of Plaintiff's claims; and third, the Supreme Court of Alabama has never considered or resolved the question. An answer provided by Alabama's highest court would significantly aid this and other federal court's in adjudicating qualified immunity cases in which law enforcement asks for identification as part of a *Terry* stop.

For these reasons, Defendant's Motion (Doc. # 80) is **GRANTED** and this court respectfully asks the Supreme Court of Alabama to answer the question certified.

DONE and **ORDERED** this May 19, 2025.

R. DAVID PROCTOR
CHIEF U.S. DISTRICT JUDGE

Appendix C

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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO.: 1:22-cv-01165-RDP**
	)	
CHRISTOPHER SMITH, *et al*.,	)	
	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S BRIEF REGARDING CERTIFIED QUESTION TO THE SUPREME COURT OF ALABAMA

Defendants respectfully respond to Plaintiff's brief regarding whether to certify a question to the Supreme Court of Alabama (Doc. 77), as follows:

Plaintiff first argues that Ala. Code § 15-5-30 is clear on its face, such that no judicial interpretation is needed or should be sought by this Court. (*See* Doc. 77 at 3.) In this regard, Plaintiff points to the decision in *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023) and the Eleventh Circuit panel decision in the instant case. (*See id.*) However, Plaintiff has overlooked *Metz v. Bridges*, No. 23-11275, 2024 WL 5088586 (11th Cir. Dec. 12, 2024) (unpublished), which, uncritically and with no reference whatsoever to either *Edger* or *Jennings*, **reversed** the **denial** of qualified immunity to police officers who had detained two suspects on suspicion of trespassing, and then arrested them for refusing to produce identification after being asked to do so repeatedly. This begs the question of why, if no interpretation or guidance is needed, the federal decisions that have construed Ala. Code § 15-5-30 are divergent.

And, of course, the federal courts' rulings on § 15-5-30 are *Erie* guesses in any event, and there are no clear and controlling precedent of the Alabama Supreme Court on this issue. This brings us to the Plaintiff's second argument – that this Court should exercise restraint in certifying

questions to the Alabama Supreme Court. (*See* Doc. 77 at 4.) Plaintiff cites to two cases for this proposition – *Mosher v. Speedstar Div. of AMCA Int'l, Inc*.,52 F.3d 913, 916–17 (11th Cir. 1995) and *Ruderman v. Washington Nat'l Ins. Corp*., 671 F.3d 1208, 1212 (11th Cir. 2012). However, the undersigned has been unable to locate any holding in *Mosher* that stands for the proposition for which Plaintiff cites it. And *Ruderman* recognizes the "practice" of the Eleventh Circuit showing restraint in certifying questions, but then immediately confirms the principle that "[f]or truly debatable questions 'a federal court should certify the question to the state supreme court to avoid making unnecessary *Erie* "guesses" and to offer the state court the opportunity to interpret or change existing law.' " *Ruderman*, 671 F.3d at 1212 (quoting *Mosher*, 52 F.3d at 916–17). Notably, in both *Mosher* and *Ruderman*, the Eleventh Circuit elected to certify questions for precisely those reasons.

Equally importantly, Plaintiff has acknowledged that the *McCabe* panel "did not substantively address what [the] term 'demand' means in the context of [§ 15-5-30]." (*See* Doc. 77 at 5.) Plaintiff argues only that the term is clear and unambiguous and that there is currently proposed legislation pending in the Alabama Legislature that proposes certain changes to § 15-5-30, which changes, Plaintiff says, do not include changes to allow a law enforcement officer to demand a driver's license or other physical identification. (*See* Doc. 6-7.) Neither of these points by Plaintiff changes the need for certification of Defendants' proposed question. Indeed, Plaintiff's argument actually only further highlights the need for a certified question, as Plaintiff is speculating on legislative intent based on **proposed** (not enacted) legislation that is being considered against a backdrop where the Alabama Supreme Court has not interpreted the statute.

Last, but certainly not least, Plaintiff states that, if this Court does certify a question to the Alabama Supreme Court, the question should be "is Ala. Code § 15-5-30 ambiguous?" (*See* Doc.

77 at 7.) This proposed question is itself ambiguous and would provide little to no guidance to the Alabama Supreme Court regarding the problems that are being grappled with in this case. Defendants respectfully urge this Court to eschew Plaintiff's proposed question in favor of Defendants' proposed question, which clearly and concisely frames the issue to be answered, but which would not unduly restrict the Supreme Court of Alabama's consideration of the problems and issues as it perceives them to be. *See Hammonds v. Comm'r, Dep't of Corr.*, 822 F.3d 1201, 1209 (11th Cir. 2016).

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully move this Court to certify the question Defendants proposed in their initial briefing on this matter (Doc. 80), and for such other, further, and general relief as this Court believes is proper under the circumstances.

Respectfully submitted,

/s/ C. David Stubbs
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/s/ Lisa M. Ivey
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the following has been served a copy of the foregoing document, on the 7th day of April 2025 by placing the same in the U.S. mail, postage prepaid and properly addressed; or, if the party being served is a registered participant in the ECF System of the United States District Court for the Northern District of Alabama, by a "Notice of Electronic Filing" pursuant to N.D. Ala. Local Rule 5.4:

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Appendix D

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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO.: 1:22-cv-01165-RDP**
	)	
CHRISTOPHER SMITH, *et al*.,	)	
	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO COURT'S ORDER AND MOTION TO CERTIFY CONTROLLING QUESTION TO THE SUPREME COURT OF ALABAMA

Defendants ask this Court to certify to the Alabama Supreme Court the following controlling question of Alabama law:

> Under Alabama Code § 15-5-30, where a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives incomplete oral responses, what may the officer subsequently demand in order to obtain the complete information? [1]

Certification is appropriate because the authorities are inconsistent regarding the proper interpretation of Alabama Code § 15-5-30, the Supreme Court of Alabama has not ruled on the issue, and the answer to the certified question will terminate this case and restore the decades old practice of law enforcement throughout the State of Alabama of demanding a driver's license from a criminal suspect to protect the officer and the public.

[1] The suggested phrasing of this question is not intended to limit this Court in choosing a different phrasing, nor to limit the inquiry of the Supreme Court of Alabama if a question is certified. "The particular phrasing used in the certified question[s] is not to restrict the Supreme Court's consideration of the problems involved and the issues as the Supreme Court perceives them to be in its analysis of the record certified in this case." *Hammonds v. Comm'r, Dep't of Corr.*, 822 F.3d 1201, 1209 (11th Cir. 2016). "[I]f we have overlooked or mischaracterized any state law issues or inartfully stated any of the questions we have posed, we hope the Alabama Supreme Court will feel free to make the necessary corrections." *Id.* (quoting *Tillman v. R.J. Reynolds Tobacco*, 253 F.3d 1302, 1308 (11th Cir. 2001), *certified question answered sub nom. Tillman v. R.J. Reynolds Tobacco Co.*, 871 So. 2d 28 (Ala. 2003))).

I. INTRODUCTION

On September 27, 2024, a panel of the Eleventh Circuit[2] issued an opinion holding, in pertinent part, that the police officers in this case were not entitled to summary judgment on their qualified immunity defense to Plaintiff's § 1983 claim for unlawful arrest in violation of the Fourth Amendment. *See Jennings v. Smith*, No. 23-14171, 2024 WL 4315127, at *4 (11th Cir. Sept. 27, 2024) (unpublished). In reaching this decision, the Eleventh Circuit panel relied on *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023), which interpreted Alabama Code § 15-5-30 to not authorize a law enforcement officer to demand a physical form of identification, such as a driver's license, from a person suspected of criminal activity, but simply to ask the suspect for his name, address, and an explanation of what he is doing. Thus, when an Alabama police officer arrests a criminal suspect solely for failing to provide some form of physical identification under Alabama Code § 15-5-30, the Eleventh Circuit held the officer violates clearly established law and is not protected by qualified immunity. *See Edger*, 84 F.4th at 1239–40.

Less than three months after the panel decision in *Jennings*, a different panel of the Eleventh Circuit,[3] uncritically and with no reference whatsoever to either *Edger* or *Jennings*, **reversed** the **denial** of qualified immunity to police officers who had detained two suspects on suspicion of trespassing, and then arrested them for refusing to produce identification after being asked to do so repeatedly. *Metz v. Bridges*, No. 23-11275, 2024 WL 5088586 (11th Cir. Dec. 12, 2024) (unpublished). Also referencing Alabama Code § 15-5-30, the *Metz* panel wrote:

> Once Officer Bridges validly had stopped Metz, **he was allowed to ask Metz for identification, and to arrest him when he refused**. "The principles of *Terry* permit a State to require a suspect to disclose his name in the course of a *Terry* stop." *Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177, 187 (2004).

[2] Circuit Judges Wilson, Rosenbaum, and Grant.

[3] Circuit Judges Wilson, Brasher, and Carnes.

> Alabama's stop-and-identify statute imposes this requirement. *See* Ala. Code § 15-5-30. This meant that Metz's refusal to identify himself during a valid *Terry* stop violated Alabama's stop-and-identify statute and gave Officer Bridges probable cause to arrest him. *See Hiibel*, 542 U.S. at 180, 189 (suspect's refusal to provide identity, in violation of state stop-and-identify statute, gave officers probable cause to arrest him); *see also* Ala. Code § 15-5-30; Dothan City Code § 1-5.

Metz, 2024 WL 5088586, at *4 (emphasis supplied).

The United States Supreme Court has affirmed a conviction arising from a suspect's failure to provide a driver's license under a stop-and-identify statute that authorized an officer who stopped a suspect to "ascertain his identity," but did not mention "driver's license." *Hiibel Sixth Judicial District Court of Nevada*, 542 U.S. 177, 181-82 (2004) (quoting Nev. Rev. Stat. § 177.123).

And the Alabama Court of Criminal Appeals has relied on Alabama Code § 15-5-30 to decide a number of *Terry* stop and probable cause cases in which an officer asked for a suspect's driver's license. *See, e.g.*, *Gradford v. City of Huntsville*, 557 So. 2d 1330 (Ala. Crim. App. 1989) ("Officer Young stopped the appellant and asked him to produce his driver's license. ... Section 15-5-30, Code of Alabama, 1975, provides as follows: ….").[4] In light of the inherent tension in these cases, and for the reasons explained below, certification to the Alabama Supreme Court is appropriate

This case has raised novel and unsettled question of purely state law that meets the criteria for certification under Rule 18(a), Ala. R. App. P. To be sure, there are no clear controlling

[4] While *Gradford* and the cases discussed *infra* arose in the context of traffic stops of automobile drivers, who are required by separate Alabama statute to have a driver's license in their possession, *see* Ala. Code § 32-6-9(a), none of the cases rely on § 32-6-9(a) as distinct from what an officer may do and "demand" as part of an investigative stop under the *Terry* line of cases and § 15-5-30. In other words, nothing about the fact that **drivers** may have additional statutory duties to display a driver's license upon demand forecloses or even suggests that an officer may not also demand one when seeking the information he or she is allowed to ascertain under § 15-5-30.

precedents of the Alabama Supreme Court on this issue, and the federal courts' *Erie*[5] guesses are incomplete at best and divergent at worst. Only the state courts can say authoritatively what state law is, and they should be given the opportunity to do so in this matter. *See Tobin v. Michigan Mut. Ins. Co.*, 398 F.3d 1267, 1274 (11th Cir. 2005), *certified question answered,* 948 So. 2d 692 (Fla. 2006) ("Where there is doubt in the interpretation of state law, a federal court may certify the question to the state supreme court to avoid making unnecessary *Erie* guesses and to offer the state court the opportunity to interpret or change existing law.").

II. BACKGROUND

Plaintiff Michael Jerome Jennings filed this action against Defendants Christopher Smith ("Officer Smith"), Justin Gable ("Officer Gable"), Jeremy Brooks ("Officer Brooks") (collectively "the Individual Officers"), and the City of Childersburg, Alabama ("the City") on September 9, 2022. (Doc. 1.) He amended his complaint on November 1, 2022, and the amended pleadings included four claims: (1) an unlawful arrest claim against Smith, Gable, and Brooks pursuant to 42 U.S.C. § 1983 (Count 1); (2) a retaliatory arrest claim against Smith, Gable, and Brooks pursuant to 42 U.S.C. § 1983 (Count 2); (3) a state-law false arrest claim against Smith, Gable, and Brooks (Count 3); and (4) a state-law false arrest claim against the City of Childersburg (Count 4). (Doc. 16.)

The City of Childersburg filed a Motion to Dismiss the state-law false arrest claim against it. (Doc. 46.) Simultaneously, Defendants Smith, Gable, and Brooks filed a Motion for Summary Judgment. (Doc. 48.) In considering the officers' summary-judgment motion, this Court found that Jennings's failure to identify himself to the officers at the scene was an independently unlawful act under Ala. Code § 13A-10-2(a), which authorized his arrest for the crime of obstructing

[5] *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

governmental operations. *Jennings v. Smith*, No. 1:22-CV-01165-RDP, 2023 WL 8859760, at *6 (N.D. Ala. Dec. 21, 2023), *rev'd and remanded,* No. 23-14171, 2024 WL 4315127 (11th Cir. Sept. 27, 2024). Regarding Jennings's compliance (or lack thereof) with Ala. Code § 15-5-30, this Court wrote:

> The court notes that Defendant Smith did initially inquire if Plaintiff had any form of physical identification. (Doc. # 47-4 at 18:24:45 to 18:24:48). However, the totality of the dialogue in the video indicates that the actual concern of Defendants was the lack of *any* real identification made by Plaintiff. Throughout the remainder of the encounter (until Plaintiff's eventual arrest), Defendants repeatedly asked him to identify himself and they did not again request physical identification. Plaintiff is correct that he was under no requirement to give Defendants his driver's license as Alabama Code § 15-5-30 does not require a suspect to give the officers a driver's license or any other document. *Edger v. McCabe*, No. 21-14396, 2023 WL 6937465, at *6 (11th Cir. 2023). But, the statute requires that a suspect, in circumstances such as this, either state his name or identify himself to an officer by some other means. *Id.*
>
> To be sure, Plaintiff stated to Defendant Smith when he first walked up that he was "Pastor Jennings." However, despite multiple other requests from the Defendants during their investigation, Plaintiff refused to give any information more than that. Although Plaintiff asserts that Defendants only arrested him because he refused to give them his physical driver's license (Doc. # 51-1 at 28), the body camera footage presents undisputed evidence that is simply not so. That is, the video clearly shows Defendant stating that they arrested Plaintiff because they were responding to a call and Plaintiff would not give them his name or other information, which prevented them from investigating what was occurring at the scene, in violation of § 15-5-30. (Doc. # 47-4 at 18:38 to 18:39:14).
>
> Further, footage shows Defendant Smith clearly stating that if Plaintiff had only identified himself, it might have dispelled any initial reasonable suspicion, because "Pastor Jennings" was not a name but a title. (*Id.* at 18:32:55 to 18:33:07). Indeed, in the discussion about whether to charge Plaintiff, Defendant Gable remarked, "He seems like a reasonable nice guy, I don't understand ... just talk to us man ..." (Doc. # 47-4 at 18:39:35 to 18:39:55). Defendant Smith reiterated this in his deposition testimony: "Pastor is a title. Jennings would be a first name or could be a last name." (Doc. # 47-3 at 5).
>
> It is well established that an individual can be arrested under a state stop-and-identify statute for failing to give his full name to officers. *See Brienza v. City of Peachtree City, Georgia*, 2022 WL 3841095, at *2, *7 (11th Cir. 2022) (holding that officers had probable cause to arrest a suspect for only giving his first name, but not his last name or birth date to officers). That is precisely what occurred here.

> To the extent Plaintiff contends that stating he was "Pastor Jennings" was sufficient here, that contention is off the mark. "Pastor Jennings" cannot be entered into a database to search government records, and without any other accompanying information, that information would do nothing to help officers determine an individual's history or why they were at the scene. "Obtaining a suspect's name in the course of a.... stop serves important government interests. Knowledge of identity may inform an officer that a suspect is wanted for another offense or has a record of violence or mental disorder. On the other hand, knowing [a person's] identity may help clear a suspect and allow the police to concentrate their efforts elsewhere." *Hiibel*, 542 U.S. at 186.

Jennings v. Smith, No. 1:22-CV-01165-RDP, 2023 WL 8859760, at *8 (N.D. Ala. Dec. 21, 2023), *rev'd and remanded,* No. 23-14171, 2024 WL 4315127 (11th Cir. Sept. 27, 2024).

Based on this analysis, this Court held that the officers had actual probable cause to arrest Jennings, and, as an alternative holding, that the officers were entitled to qualified immunity because they had at least arguable probable cause. *Id.* at *9. The Court also granted summary judgment to the officers on Jennings's state-law false arrest claim under the similar doctrine of state agent immunity, *id.* at *13, and granted the City's motion to dismiss because it shared the officers' immunity, *see Jennings v. Smith*, No. 1:22-CV-01165-RDP, 2023 WL 8851623 (N.D. Ala. Dec. 21, 2023), *vacated and remanded,* No. 23-14171, 2024 WL 4315127 (11th Cir. Sept. 27, 2024).

The Eleventh Circuit panel reversed both of these rulings, relying on *Edger* and reasoning that:

> The plain text of the statute authorizes police to demand only three things: "name, address and an explanation of his actions." Ala. Code § 15-5-30. Ultimately, while there are no "magic words" that an officer must utter, there is a marked difference between asking for three specific pieces of information and demanding a physical license or ID.

Jennings, 2024 WL 4315127, at *4 (quoting *Edger*, 84 F.4th at 1239).

And, the panel said, the officers' conduct in this case fell on the wrong side of this dividing line because it was not "obvious" that the officers were "actually" seeking a name, address, and

explanation. *See id.*, at *4. This was so, the panel said, because "[g]iven that Jennings had already told officers he was 'Pastor Jennings,' he lived across the street, and he was there to water his neighbors' flowers, the officers' subsequent commands for Jennings to 'identify himself' and statements that "you have to identify yourself to me" were clearly requests for something more—physical identification." *See id.*

So, in *Jennings*, the Eleventh Circuit panel **denied** qualified immunity supposedly because the officers "demanded" "something more" to which they were not entitled, which was found to be a constitutional violation in *Edger*.[6] But, in *Metz*, it was abundantly clear that the officers demanded that the plaintiffs "produce" "identification," yet qualified immunity was nevertheless **granted**. *Metz*, 2024 WL 5088586, at *4. Too, what neither *Edger* nor *Jennings* explains or substantively addresses is what an officer **may** demand under Ala. Code § 15-5-30 when an individual gives obviously incomplete information, and *Metz* appears to part company with the rationale of *Edger* and *Jennings* altogether and allow officers to "demand" physical identification and arrest individuals who refuse to give it. In the light of this unsettled and conflicting legal landscape among multiple federal courts, this case presents an ideal opportunity to obtain from the Alabama Supreme Court a definitive answer to the controlling question of Alabama law.

[6] With utmost respect, just as this Court is not at all convinced that the Eleventh Circuit correctly interpreted Ala. Code § 15-5-30 (*see* Doc. 74), Defendants are not convinced of this, either, especially since a **reasonable** interpretation of Ala. Code § 15-5-30 (indeed, a **plain text reading**) is that an officer is entitled to have an individual identify himself or herself by **name** and to give an **address**, as well as an explanation of his or her actions, and in this case, one could see how a reasonable officer could conclude that Jennings's actions – at least as the officers perceived them – did not comply with § 15-5-30. However, as this Court also candidly recognized, that is of no moment unless the Supreme Court of Alabama interprets § 15-5-30 differently, as requested.

III. Under Applicable Precedent and Court Rules, This Court Should Certify the Controlling Question to the Alabama Supreme Court.

"Where there is doubt in the interpretation of state law, a federal court may certify the question to the state supreme court …." *Tobin*, 398 F.3d at 1274. Notably, Alabama law allows "any of the federal courts" to certify a question to the Alabama Supreme Court on the "motion of any interested party." Ala. R. App. P. 18(c). The reasons for a federal court to choose certification are clear: (1) "to avoid making unnecessary *Erie* guesses" about unsettled questions of state law and (2) "to offer the state court the opportunity to interpret or change existing law." *Tobin*, 398 F.3d at 1274; *see also, e.g.*, *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974) (noting that certification often "save[s] time, energy, and resources and helps build a cooperative judicial federalism").

Certification here will provide a definitive answer in a way that even the Eleventh Circuit has not done (and could not do). The federal decisions that have construed Ala. Code § 15-5-30 rest on *Erie* guesses, and those guesses themselves are all over the map. Those decisions do not bind Alabama state courts, or, for that matter, any other court—state or federal—outside the Eleventh Circuit's territorial jurisdiction. Certification, by contrast, allows the Alabama Supreme Court—the "final arbiter of Alabama law"—an opportunity to conclusively answer the question in a way that will control future litigation involving an issue that certainly occurs with tremendous frequency.[7] *Ex parte James*, 836 So. 2d 813, 834 (Ala. 2002); *see also Wainwright v. Goode*, 464

[7] While there is little to no systematic tracking of *Terry* stops, data that is available suggests that this is one of the most frequent law enforcement encounters with suspects. For example, in Cleveland, which tracks such stops pursuant to a federal consent decree, the police department reported over 16,000 stops – about 45 a day – in 2022, and more than 900 of those were reported as *Terry* stops. *See* 2022 Stop, Search & Arrest Data Report.pdf (last visited April 3, 2025). And in Seattle in 2018, there were 8,871 *Terry* stops involving 6,858 unique subjects. 6136893-SPDs-2019-Annual-Report-on-Stops-and-Detentions.pdf (last visited April 3, 2025). And various advocacy groups, although being critical of the practice, have reported sharp increases in *Terry* stops in New York in the last two years. *See, e.g.*, Stop-and-Frisk Data - NYCLU (last visited April 3, 2025). Moreover, over 300 published cases from Alabama's appellate courts have cited

U.S. 78, 84 (1983) ("[T]he views of [a] state's highest court with respect to state law are binding on the federal courts."); *Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen*, 116 F.3d 1406, 1413 (11th Cir. 1997), *certified question answered,* 714 So. 2d 293 (Ala. 1998) ("Because the only authoritative voice on Alabama law is the Alabama Supreme Court, it is axiomatic that that court is the best one to decide issues of Alabama law."). This case is tailor-made for certification. Alabama law sets forth three criteria:

> When it shall appear to a court of the United States that there are involved in any proceeding before it [1] questions or propositions of law of this State [2] which are determinative of said cause and [3] that there are no clear controlling precedents in the decisions of the Supreme Court of this State, such federal court may certify such questions or propositions of law of this State to the Supreme Court of Alabama for instructions concerning such questions or propositions of state law, which certified question the Supreme Court of this State, by written opinion, may answer.

Ala. R. App. P. 18(a).

A. The Interpretation of § 15-5-30 is a Pure Question of Law.

The dispositive question presented here perfectly satisfies Rule 18(a)'s conditions. ***First***, the question presented is a pure question of Alabama state law involving the interpretation of its own statute. *See State Farm Mut. Auto. Ins. Co. v. Bennett*, 974 So. 2d 959, 961 (Ala. 2007) ("This Court reviews de novo a trial court's interpretation of a statute, because only a question of law is presented.") (internal quotation marks and citation omitted).

B. The Question is Determinative of this Case.

Second, the legal question presented is determinative of the entire case, because each of the claims presented by the Plaintiff rises or falls on the presence or absence of probable cause or at least arguable probable cause to arrest Jennings. *See Morris v. Town of Lexington Alabama*, 748

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to *Terry* since 1968, and it is impossible to know how many more unpublished decisions have done so. Accordingly, what police officers may ask or demand during these stops consistent with Alabama law is a question that cries out for clarity.

F.3d 1316, 1324 (11th Cir. 2014) ("An arrest without a warrant and lacking probable cause violates the Constitution and can underpin a § 1983 claim, but the existence of probable cause at the time of the arrest is an absolute bar to a subsequent constitutional challenge to the arrest."); *Garcia v. Casey*, 75 F.4th 1176, 1186 (11th Cir. 2023) (for an officer to be entitled to qualified immunity, he need not have actual probable cause, but only arguable probable cause); *Ex parte Harris*, 216 So. 3d 1201, 1214 (Ala. 2016) (officer is entitled to State-agent immunity if he had arguable probable cause to arrest); *Howard v. City of Atmore*, 887 So. 2d 201, 211 (Ala. 2003) ("if a municipal police officer is immune pursuant to [Ala. Code] § 6-5-338, the City is immune as well").[8]

As this Court has noted, an answer to the question could result in a change to controlling authority "should the Supreme Court of Alabama agree to accept a certified question and issue an interpretation of the Alabama statute that differs from the *Edger* panel's interpretation." (Doc. 77.) Or, as this Court has also noted, "if the Supreme Court answers the question, it may provide helpful discussion about how a jury should be charged on Plaintiff's claim." (*Id*.)

C. There is No Controlling Decision of the Alabama Supreme Court and a Substantial Doubt on How the Supreme Court Will Answer the Question.

***Third*,** there is no decision of the Alabama Supreme Court that squarely addresses and resolves the question presented. *See, e.g.*, *Penzer v. Transportation Ins. Co.*, 545 F.3d 1303, 1311

[8] Plaintiff can be expected to argue that his First Amendment retaliatory arrest claim would survive based on the Eleventh Circuit's analysis of that issue in the panel opinion. *See Jennings*, 2024 WL 4315127, at *4. In this regard, the panel acknowledged that, in the retaliatory arrest context, a plaintiff must affirmatively prove the absence of probable cause for the arrest. *See id.* (citing *Nieves v. Bartlett*, 587 U.S. 391, 404, 139 S. Ct. 1715, 204 L. Ed. 2d 1 (2019)). However, the panel (incorrectly, in Defendants' view) qualified this holding somewhat and said that the existence of probable cause only "usually" bars such a clam. *See id.* Defendants respectfully aver that the existence of probable cause is, in fact, also determinative of the retaliatory arrest claim as a matter of law under *Nieves* and the facts presented here. But, even if it were not, and even if the answer to the certified question is not determinative of the entire case, this does not necessarily disqualify the question from certification. *See Comeens v. HM Operating, Inc.*, No. 6:14-CV-00521-JHE, 2015 WL 12979134, at *1 (N.D. Ala. Jan. 20, 2015) (certifying question even though there were defendants to which question was not applicable).

(11th Cir. 2008), *certified question answered,* 29 So. 3d 1000 (Fla. 2010) (certifying question where "[t]here appear[ed] to be no controlling Florida Supreme Court law and no intermediate appellate court decisions on point"). The "most important" factors in deciding to certify are "the closeness of the question and the existence of sufficient sources of state law ... to allow a principled rather than conjectural conclusion." *State of Fla. ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 274–75 (5th Cir. 1976). Thus, certification is generally appropriate where we face "substantial doubt on a dispositive state law issue." *WM Mobile Bay Env't Ctr., Inc. v. City of Mobile Solid Waste Auth.*, 972 F.3d 1240, 1251 (11th Cir. 2020), *certified question answered,* 355 So. 3d 841 (Ala. 2021). Unsurprisingly, federal courts have sought guidance from the Supreme Court of Alabama on unsettled issues of tort liability before. *See Farsian v. Pfizer, Inc.*, 52 F.3d 932, 934 (11th Cir. 1995), *certified question answered*, 682 So.2d 405 (Ala. 1996); *Campbell v. Cutler Hammer, Inc.*, 996 F.2d 1164, 1166 (11th Cir. 1993), *certified question answered*, 646 So. 2d 573 (Ala. 1994).

There is substantial doubt as to whether Alabama Code § 15-5-30 authorizes a law enforcement officer to demand to see a criminal suspect's physical ID, such as a driver's license. The 11th Circuit has issued opinions going both ways. *Compare Edger*, 84 F.4th at 1238–39 (§ 15-5-30 does not authorize an officer to demand a physical license or ID) and *Jennings*, 2024 WL 4315127, at *4 (same), *with Metz*, 2024 WL 5088586, at *4 (officer allowed to ask suspect for identification under § 15-5-30 and arrest him if he does not produce an ID). In *Edger*, 84 F.4th at 1239, the Eleventh Circuit analyzed § 15-5-30 as follows:

> [T]he Alabama statute is clear. It lists only three things that the police may ask about. This is not an issue of "magic words" that must be uttered. **There is a difference between asking for specific information: "What is your name? Where do you live?" and demanding a physical license or ID.** The information contained in a **driver's license goes beyond the information required to be revealed under § 15-5-30**. Compare Ala. Code § 32-6-6 ("Each driver license . . . shall contain a distinguishing number assigned to the licensee and a color photograph of the licensee, the name, birthdate, address, and a description of the

> licensee . . . ."), and Ala. Code § 22-19-72 (requiring that there be "a space on each driver's license . . . to indicate in appropriate language that the [licensee] desires to be an organ donor"), with Ala. Code § 15-5-30 ("A [police officer] may stop any person abroad in a public place whom he reasonably suspects is committing . . . a [crime] and may demand of him his name, address and an explanation of his actions."). Further, **neither the parties nor our own research can identify any Alabama law that generally requires the public to carry physical identification**—much less an Alabama law requiring them to produce it upon demand of a police officer. There simply is no state law foundation for Officer McCabe's demand that Mr. Edger produce physical identification.

Edger, 84 F.4th at 1239 (emphases added).

Edger, 84 F.4th at 1239, mentioned *Hiibel*, for the proposition that "while the Fourth Amendment permits the police to briefly detain a person to investigate criminal activity, any obligation to answer police questions arises from state—not federal Constitutional—law." (Citing *Hiibel*, 542 U.S. at 187). But the Eleventh Circuit in *Edger* did not examine *Hiibel* any further. In *Hiibel*, 542 U.S. at 181, the U.S. Supreme Court explained: "the officer asked [the suspect] if he had 'any identification on [him],' which we understand as a request to produce a **driver's license or some other form of written identification**." (Emphasis added.) When the suspect refused to produce an ID, the officer arrested the suspect for obstructing an officer in discharging his duty—requesting the ID under Nevada's stop-and-identify statute. *Id*. The Supreme Court upheld the conviction, stating giving one's name is not incriminating evidence for purpose of the Fifth Amendment. *Id.* at 190-91. And the Court held that asking for the suspect's identity during a *Terry* stop was reasonable under the Fourth Amendment because it is routine police practice and because knowing the suspect's identity helps policy address a "threat to their own safety, and possible danger to the potential victim":

> In the ordinary course a **police officer is free to ask a person for identification** without implicating the Fourth Amendment. "[I]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure." *INS v. Delgado*, 466 U.S. 210, 216, 80 L. Ed. 2d 247, 104 S. Ct. 1758 (1984).

> . . . .
>
> Our decisions make clear that **questions concerning a suspect's identity are a routine and accepted part of many *Terry* stops**. See *United States v. Hensley*, 469 U.S. 221, 229, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985) ("[T]he ability to briefly stop [a suspect], ask questions, or check identification in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice") . . . . .
>
> . . . .
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> **Obtaining a suspect's name in the course of a *Terry* stop serves important government interests**. **Knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder**. On the other hand, knowing identity may help clear a suspect and allow the police to concentrate their efforts elsewhere. Identity may prove particularly important in cases such as this, where the police are investigating what appears to be a domestic assault. **Officers called to investigate domestic disputes need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim.**

Hiibel, 542 U.S. at 185–86 (emphases added).

A comparison of the Nevada statute at issue in *Hiibel*, to Alabama's stop-and-identify statute shows that neither specifically mention a driver's license and both require the suspect to provide the officer with information:

Nevada Stop-and Demand Statute **Nev. Rev. Stat. § 171.123**	**Alabama Stop-and-Demand Statute** **Ala. Code § 15-5-30**
"1. Any peace officer **may detain any person** whom the officer encounters under **circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime**. . . . . . "3. The officer may detain the person pursuant to this section only **to ascertain his identity and the suspicious circumstances surrounding his presence** abroad. **Any <u>person so detained shall identify himself</u>**, but may not be compelled to answer any other inquiry of any peace officer." *Hiibel*, 542 U.S. at 181–82 (emphases added).	"A sheriff or other officer acting as sheriff, his deputy or any constable, acting within their respective counties, any marshal, deputy marshal or policeman of any incorporated city or town within the limits of the county or any highway patrolman or state trooper may **stop any person** abroad in a public place whom **he reasonably suspects is committing, has committed or is about to commit a felony or other public offense** and may **<u>demand</u> of him his name, address and an explanation of his actions**." (Emphases added.)

While Alabama Code § 15-5-30 does not expressly **require** the suspect to produce his name, just as the Nevada stop-and-identify statute says that the suspect "shall" identify himself, and is "compelled" to do so, § 15-5-30 does state that the officer may **"demand"** a suspect's name and address. The word "demand," as opposed to "request," indicates the law enforcement officer has a legal right to an answer from the suspect. *See Demand*, Black's Law Dictionary 522 (10th ed. 2014) ("The assertion of a legal or procedural right"); *Demand*, Cambridge Dictionary Online DEMAND | definition in the Cambridge English Dictionary (last visited April 3, 2025) ("to ask for something forcefully, in a way that shows that you do not expect to be refused"); *Demand*, Collins Online Dictionary DEMAND definition in American English | Collins English Dictionary (last visited April 3, 2025) ("to ask for with proper authority; claim as a right"); *Demand*, Merriam-Webster's Online Dictionary DEMAND Definition & Meaning - Merriam-Webster (last visited April 3, 2025) ("to call for something in an authoritative way **:** to make a demand **:** ask; to ask or call for with authority **:** claim as due or just").

A "dictionary definition" is "an assertion of th[e] very meaning that an ordinary person would give a particular word" because it is "the result of an examination into the interpretation that ordinary people would give the word." *Carpet Installation & Supplies of Glenco v. Alfa Mut. Ins. Co.*, 628 So. 2d 560, 562 (Ala. 1993); *see also* Scalia & Garner, *Reading Law* app. A, at 418 ("A dictionary definition states the core meanings of a term."). *See Robinson v. Liberty Mut. Ins. Co.*, 958 F.3d 1137, 1140 (11th Cir. 2020) (William Pryor, J.) (citing dictionaries to determining meaning of a word in a statute). The Alabama Supreme Court could well interpret § 15-5-30 to require Jennings to have produced his full legal name upon the demand of the officers.

Further, it is unlikely that the Alabama Legislature in 1966, when § 15-5-30 was enacted, intended a radical departure from the routine police practice of asking a criminal suspect for his driver's license without making a point of saying so. *See Jones v. United States*, 526 U.S. 227, 234 (1999) ("Congress is unlikely to intend any radical departures from past practice without making a point of saying so."); *see, e.g.*, *Alabama v. Means*, 256 F. Supp. 437, 439 (N.D. Ala. 1965) ("[D]efendant was stopped by a deputy sheriff and was asked by the deputy to produce his driver's license."); *Boulden v. State*, 278 Ala. 437, 179 So. 2d 20, 26 (1965) ("The officers approached Boulden's car with guns drawn and asked him for his driver's license."); *Clenney v. State*, 43 Ala. App. 622, 198 So. 2d 289, 289 (Ala. Ct. App.), *rev'd,* 281 Ala. 9, 198 So. 2d 293 (1966) ("Officer Romagnano told defendant he was parked illegally and questioned him about a driver's license."); *McCurdy v. State*, 41 Ala. App. 546, 143 So. 2d 185, 185 (Ala. Ct. App. 1962) ("Officer Daniel was checking defendant's driver's license …."). The Alabama Supreme Court could interpret § 15-5-30 to not break from routine past police practice.[9]

And the Alabama Supreme Court is likely to give weight to several Alabama Court of Criminal Appeals *Terry*-stop decisions that relied on § 15-5-30. *See, e.g.*, *Andrews v. State*, 624 So. 2d 1095, 1100–01 (Ala. Crim. App. 1993) ("[The officer] went to the driver's side and ask him to get out and checked the driver's license and identification. … [I]f there are reasonable grounds based on heightened suspicion to make a *Terry*-type stop pursuant to § 15-5-30, Code of Alabama 1975, then giving a false name to a legitimate inquiry could provide probable cause for arrest."); *Gradford*, 557 So. 2d at 1331 ("Officer Young stopped the appellant and asked him to produce his driver's license. … The basis for these motions was an alleged lack of probable cause to stop and subsequently arrest the appellant. Section 15-5-30, Code of Alabama 1975, provides as follows

[9] *See supra* Note 4.

…."); *Cains v. State*, 555 So. 2d 290, 291 (Ala. Crim. App. 1989) ("When McGlothlin asked the defendant for his license, McGlothlin noticed that the defendant's eyes were 'extremely bloodshot,' that he acted 'sluggish,' and that he 'looked intoxicated.' … [D]efendant was detained on reasonable suspicion of DUI pursuant to § 15-5-30, Code of Alabama 1975, and the *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968), line of cases."); *Childress v. State*, 455 So. 2d 175, 176–77 (Ala. Crim. App. 1984) ("The appellant was then asked for identification and had no driver's license, though he was seated on the driver's side of the vehicle which was parked. He supplied the two officers with a birth certificate. … The principles set forth in these opinions have now been codified in Title 15-5-30 and 15-5-31 …."); *Kemp v. State*, 434 So. 2d 298, 300 (Ala. Crim. App. 1983) ("[The officer] asked the appellant for identification and he stated that he had no driver's license and did not have any identification on his person. … The concept of the investigative stop has been adopted by statute in Alabama, § 15-5-30 …."); *Minnifield v. State*, 390 So. 2d 1146, 1150 (Ala. Crim. App.), *writ denied sub nom. Ex parte Minnifield*, 390 So. 2d 1154 (Ala. 1980) ("Appellant testified that the police officer asked to see his [driver's] license …. The concept of the investigative stop has been adopted by statute in Alabama, § 15-5-30 …."). The Alabama Supreme Court could interpret § 15-5-30 to apply to the officers *Terry*-stop of Jennings.[10]

Moreover, to actually serve the important governmental interests of "inform[ing] an officer that a suspect is wanted for another officer, or has a record of violence or mental disorder," and "clear[ing] a suspect and allow[ing] the police to concentrate their efforts elsewhere," and "know[ing] whom they are dealing with in order assess the situation, the threat to their own safety, and possible danger to the potential victim," *Hiibel*, 542 U.S. at 186, an officer needs the suspect's complete and accurate name and address. The Alabama Supreme Court could interpret § 15-5-30

[10] *See supra* Note 4.

to require Jennings to have produced his driver's license after giving only an incomplete name "Pastor Jennings" and an incomplete address "across the street." The police could not run "Pastor Jennings" through their computer system, but would require a full legal name, like that shown on a driver's license. *See* Ala. Code § 32-6-6 ("Each driver's license . . . shall contain a distinguishing number assigned to the licensee and a color photograph of the licensee, the name, birthdate, address, and a description of the licensee, who, for the purpose of identification …."). The Alabama Supreme Court could interpret § 15-5-30 to require Jennings to have provide his driver's license with his full legal name—"Michael Jerome Jennings"—that could be run though a police database, as opposed to "Pastor Jennings." After all, the beating heart of § 15-5-30 is that an officer may **"demand"** these three pieces of information – a right that means nothing if an officer is required to accept an incomplete answer and walk away without any further follow-up.

And sometimes criminal suspects lie about their names and a driver's license could provide an accurate name. *See, e.g.*, *United States v. Jernigan*, 341 F.3d 1273, 1276 (11th Cir. 2003) ("Although Jernigan initially gave the officers a false name, they found a driver's license bearing his picture and true name."); *United States v. Jackson*, 2017 U.S. Dist. LEXIS 221421, *16 (N.D. Ga. Sept. 27, 2017) ("[D]uring the stop, Richardson could not produce a driver's license and gave a false name and date of birth to the officers …."); *Hawkins v. State*, 585 So. 2d 154, 155 (Ala. 1991) ("Hawkins told the officer that his name was Dwayne Henderson, which was false.").

Given the pervasive and longstanding police practice of asking for a driver's license and the critical need to protect the lives of law enforcement officers and the public by obtaining a complete and accurate name and address of a criminal suspect to check in a police database, it is unlikely that the Alabama Supreme Court would read into § 15-5-30 limitations that the Alabama Legislature did not place there. For example, § 15-5-30 does not contain a limitation on the word

"demand" that requires an officer to accept: (1) only one form of a suspect's response—oral versus written; (2) a partial answer—"Pastor Jennings"—that cannot be checked against a police database; or (3) a false name, such as "John Wayne." *See Dean v. United States*, 556 U.S. 568, 572 (2009) ("[W]e ordinarily resist reading words or elements into a statute that do not appear on its face."); *Ex parte Jones*, 444 So. 2d 888, 890 (Ala. 1983) ("We cannot read into the statute a provision which the legislature did not include."); *Brienza v. City of Peachtree*, No. 21-2290, 2022 WL 3841095, at *2, *7 (11th Cir. Aug. 30, 2022) ("Brienza gave his first name [to the officers] but refused to give his last name and birthdate. … [T]here was probable cause to arrest him. … A suspect can violate Section 16-10-24(a) [Georgia's obstruction statute] by refusing to identify himself and by refusing to surrender documents after he has been lawfully detained.")

There is substantial doubt as to how the Alabama Supreme Court will answer the question posed in this Motion. The question presented thus satisfies Rule 18's certification standard and provides the ideal opportunity to obtain definitive resolution of an important question of Alabama law.

IV. Considerations of Judicial Economy Strongly Counsel Certification.

Even beyond Rule 18, there are compelling practical reasons to certify the question presented to Alabama Supreme Court. First, the question is an important one, and its resolution will have far-reaching implications. As pointed out above, it is not unreasonable to conclude that resolution of this issue will affect not only pending cases (or those that might later arise) but also thousands of Alabama citizens. The question is likely to recur every time a *Terry* stop occurs.

Second, and relatedly, certification will likely lead to significant litigation efficiencies. An answer from the Alabama Supreme Court would resolve (once and for all) a threshold legal issue in cases like Jennings's and thereby streamline trial proceedings—including, most immediately,

the remaining proceedings in this case. If the Alabama Supreme Court issues an interpretation of the Alabama statute that differs from the *Edger* panel's interpretation, the decision would foreclose Jennings's claims against the officers and the City as a matter of law, or at the very least render unnecessary much of the remaining discovery and pre-trial practice that would otherwise occur. And such an answer would allow law enforcement officers through the State of Alabama to ask criminal suspects for their driver's license to check in the police database and thus protect the officers and the public as the police have done for decades.

V. CONCLUSION

Because certification of the question presented would spare both the Court and the parties enormous waste and will resolve an unsettled controlling question of Alabama law, the Defendants respectfully request that the Court certify the following question to the Alabama Supreme Court:

> Under Alabama Code § 15-5-30, where a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives incomplete oral responses, what may the officer subsequently demand in order to obtain the complete information?

The Defendants also respectfully state that, if this Court wishes for Defendants to submit a proposed certificate for the Court's consideration, Defendants would be pleased to do so.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the following has been served a copy of the foregoing document, on the 4th day of April 2025 by placing the same in the U.S. mail, postage prepaid and properly addressed; or, if the party being served is a registered participant in the ECF System of the United States District Court for the Northern District of Alabama, by a "Notice of Electronic Filing" pursuant to N.D. Ala. Local Rule 5.4:

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Appendix E

FILED
2025 Mar-20 PM 12:26
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,

Plaintiff,

v. CASE NO.: 1:22-cv-01165-RDP

CHRISTOPHER SMITH, et al.,

Defendants.

PLAINTIFF'S BRIEF THAT ADDRESSES WHETHER THE COURT SHOULD CERTIFY A QUESTION TO THE ALABAMA SUPREME COURT

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IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,

Plaintiff,

v. CASE NO.: 1:22-cv-01165-RDP

CHRISTOPHER SMITH, et al.,

Defendants.

ARGUMENT

1. Ala. Code § 15-5-30 is so clear on its face, no judicial interpretation is needed or should be sought by this court.

The first step in statutory interpretation requires that courts apply the plain meaning of the statutory language unless it is ambiguous. Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992); United States v. Fisher, 289 F.3d 1329, 1337-38 (11th Cir. 2002)." Johnson v. Governor of State of Florida, 405 F.3d 1214, 1247 (11th Cir. 2005). Ala. Code § 15-5-30 is clear. Notably, five (5) United States Court of Appeals Judges and one (1) District Court Judge at the Eleventh Circuit determined that Ala. Code § 15-5-30 is clear.[1] Specifically, the Court in Edger opinioned the following:

> It lists only three things that the police may ask about. This is not an issue of "magic words" that must be uttered. There is a difference

[1] See Edger v. McCabe, No. 21-14396, (11th Cir. Oct. 20, 2023); also see Jennings v. Smith, No. 23-14171, (11th Cir. Sep. 27, 2024).

> between asking for specific information: "What is your name? Where do you live?" and demanding a physical license or ID. The information contained in a driver's license goes beyond the information required to be revealed under § 15-5-30.

Edger v. McCabe, No. 21-14396, at *16 (11th Cir. Oct. 20, 2023).

Further, the Eleventh Circuit held in Harris v. Garner that, statutory interpretation as always begin with the language of the statute. 216 F.3d 970, 972 (11th Cir. 2000) (en banc). When the import of the statute's language is clear, we need not resort to legislative history, and we never do so to undermine the plain meaning of clear statutory language. Id. at 976. "When the words of the statute are unambiguous, . . . judicial inquiry is complete.'" Merritt v. Dillard Paper Co.,120 F.3d 1181, 1186 (11th Cir. 1997) (citation omitted).

2. The District Court should exercise restraint in certifying a question to the Alabama Supreme Court.

The Eleventh Circuit has long held that, while certification of questions has immense value, it has been our practice to show restraint in certifying questions to state courts. Mosher v. Speedstar Div. of AMCA Int'l, Inc.,52 F.3d 913, 916–17 (11th Cir.1995); Ruderman v. Washington Nat'l Ins. Corp., 671 F.3d 1208, 1212 (11th Cir. 2012). Ala. R. App. P. 18 reads:

> **(a)** When certified. When it shall appear to a court of the United States that there are involved in any proceeding before it questions or propositions of law of this state which are determinative of said cause and that there are no clear controlling precedents in the decisions of the supreme court of this state, such federal court may

> certify such questions or propositions of law of this state to the supreme court of Alabama for instructions concerning such questions or propositions of state law, which certified questions the supreme court of this state, by written opinion, may answer.

Ala. R. App. P. 18

As stated above the Eleventh Circuit have determined twice that Ala. Code § 15-5-30 is clear. If the Eleventh Circuit needed help to interpret Ala. Code § 15-5-30, it could have certified a question to the Alabama Supreme Court. It did not. In its Order on March 4, 2025, this Court focused is on the word "demand" in Ala. Code § 15-5-30. Specifically, the Court determined that the panel in McCabe did not substantively address what that term "demand" means in the context of the statute and the McCabe panel made an Erie[2] guess that the plain language of the "statute does not permit the police to demand physical identification, but there was no analysis (again, in the context of the statute) of what the police may do in making a "demand." The Plaintiff agree with the Court that the panel in McCabe did not substantively address what that term "demand" means in the context of the statute. However, the Plaintiff departs with the Court as to whether the Court needs to substantively address a clear and unambiguous "term" in a clear and unambiguous statue. The Court should take judicial notice that the Alabama House Bill 34 (HB 34) was introduced on February 4, 2025. The bill proposes changes to Ala. Code §

[2] Erie R. Co. v. Tompkins, 304 U.S. 64 (1938).

15-5-30. The synopsis of HB34 read as follows:

> Under existing law, it is a crime to give a false name or address to a law enforcement officer in the course of the officer's official duties with the intent to mislead the officer. A violation is a Class A misdemeanor.
>
> This bill would also include within the offense *giving a false date of birth to a law enforcement officer under the same circumstances.* A violation would be subject to the same criminal penalties.
>
> Under existing law, certain designated law enforcement officers including, constables, deputy sheriffs, and police officers in their counties and state troopers, may stop a person if the officer reasonably suspects the person is committing, has committed, or is about to commit a felony or other public offense and demand the person's name, address, and an explanation of his or her actions. No penalty is provided for failure to comply with a lawful request.
>
> This bill would further authorize a designated law enforcement officer to *demand a person's date of birth under the same circumstances*.
>
> This bill would also further provide that a person who knowingly refuses to comply with a lawful request for the information requested pursuant to a lawful stop would be guilty of a Class C misdemeanor. (Exhibit 1)

Although legislative intent is not required in the interpretation of Ala. Code § 15-5-30 because the statue is clear, this Court can see from the proposed language in 2025 HB34 that the Alabama Legislation in drafting Ala. Code § 15-5-30 still have no intention of allowing a law enforcement officer to demand a identification card or driver's license per Ala. Code § 15-5-30. If the Alabama Legislation wanted to include an identification card or driver's license in Ala. Code § 15-5-30, they could have. Expressio unius est exclusio alterius "the expression of one thing is the exclusion of the other."

CONCLUSION

For the above-stated reasons, this Court should not sua sponte a certified question to the Alabama Supreme Court to interpret the term "demand" after two panels at the Eleventh Circuit has determined that the language in Ala. Code § 15-5-30 is clear and unambiguous. Further, HB 34 clearly show the legislative intent of Ala. Code § 15-5-30 requiring no further interpretation . Nonetheless, if this Court is still compelled to certify a question to Alabama Supreme Court to interpret the term "demand" the Court should simply ask the Alabama Supreme Court "is Ala. Code § 15-5-30 ambiguous?

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

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HB34 INTRODUCED

HB34

YJI4N6N-1

By Representative Bolton

RFD: Public Safety and Homeland Security

First Read: 04-Feb-25

PFD: 29-Aug-24

SYNOPSIS:

Under existing law, it is a crime to give a false name or address to a law enforcement officer in the course of the officer's official duties with the intent to mislead the officer. A violation is a Class A misdemeanor.

This bill would also include within the offense giving a false date of birth to a law enforcement officer under the same circumstances. A violation would be subject to the same criminal penalties.

Under existing law, certain designated law enforcement officers including, constables, deputy sheriffs, and police officers in their counties and state troopers, may stop a person if the officer reasonably suspects the person is committing, has committed, or is about to commit a felony or other public offense and demand the person's name, address, and an explanation of his or her actions. No penalty is provided for failure to comply with a lawful request.

This bill would further authorize a designated law enforcement officer to demand a person's date of birth under the same circumstances.

This bill would also further provide that a person who knowingly refuses to comply with a lawful request for the information requested pursuant to a

lawful stop would be guilty of a Class C misdemeanor.

A BILL

TO BE ENTITLED

AN ACT

Relating to law enforcement; to amend Section 13A-9-18.1, Code of Alabama 1975; to further provide that a person who gives a false date of birth to a law enforcement officer in the course of the officer's official duties would be in violation of the statute subject to the existing penalties; and to amend Section 15-5-30, Code of Alabama 1975, to further provide that a person subject to a lawful stop by certain designated law enforcement officers under certain conditions may be requested to give his or her date of birth in addition to his or her name, address, and an explanation of his or her actions; and to further provide for criminal penalties if the person refuses to comply with a lawful request pursuant to Section 15-5-30.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 13A-9-18.1 and 15-5-30, Code of Alabama 1975, are amended to read as follows:

"§13A-9-18.1

(a) A person commits the crime of giving ~~a~~ false ~~name or address~~ information to a law enforcement officer if the person gives a false name ~~or~~, address, or date of birth to a law enforcement officer in the course of the officer's

official duties with intent to mislead the officer.

(b) Giving ~~a~~ false ~~name or address~~ information to a law enforcement officer is a Class A misdemeanor."

"§15-5-30

(a) A sheriff or ~~other officer acting as sheriff, his~~ a deputy sheriff, or any constable, acting within their respective counties, any ~~marshal, deputy marshal or policeman~~ police officer of any incorporated city or town within the limits of the county or any ~~highway patrolman or~~ state trooper or any other sworn officer of the Alabama State Law Enforcement Agency may stop any person ~~abroad~~ in a public place whom he or she reasonably suspects is committing, has committed, or is about to commit a felony or other public offense and may demand ~~of him his~~ that the person give his or her name, address, date of birth, and an explanation of his or her actions.

(b) A person who knowingly refuses to give the law enforcement officer his or her name, address, date of birth, and an explanation of his or her actions pursuant to a lawful demand pursuant to subsection (a) is guilty of a Class C misdemeanor punishable as provided by law."

Section 2. This act shall become effective on October 1, 2025.

Appendix F

FILED
2025 Mar-04 PM 03:14
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,	}	
	}	
Plaintiff,	}	
	}	
v.	}	**Case No.: 1:22-cv-01165-RDP**
	}	
CHRISTOPHER SMITH et al.,	}	
	}	
Defendants.	}	

ORDER

This matter is before the court on the Circuit's mandate (Doc. # 69). On December 3, 2024, the Eleventh Circuit entered judgment reversing and remanding this case back to the district court for further proceedings. (*Id.*). In doing so, the Eleventh Circuit panel, relying on *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023), held that the officers in this case were not entitled to summary judgment on their qualified immunity defense to Plaintiff's § 1983 claim for unlawful arrest in violation of the Fourth Amendment. (*Id.* at 11).[1] *Edger* interpreted Alabama Code § 15-5-30 and held that an Alabama police officer violates clearly established law when they arrest someone solely for failing to provide a driver's license or physical identification under Alabama Code § 15-5-30. *See Edger*, 84 F.4th at 1239-40.

Section 15-5-30 provides that an Alabama law enforcement officer "may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to

[1] At the status conference, the court candidly acknowledged that it is not at all convinced that the Eleventh Circuit correctly interpreted Alabama Code § 15-5-30. But, that is of no moment. It is simply irrelevant what the undersigned, sitting as a lower court, thinks. After all, unless there is a change in controlling law or a presentation of new facts to the trier of fact, the Eleventh Circuit's holding is law of the case here. *Piambino v. Bailey*, 757 F.2d 1112, 1120 (11th Cir. 1985).

commit a felony or other public offense and may demand of him his name, address and an explanation of his actions." Ala. Code § 15-5-30. This court's focus is on the word "demand." The panel in *McCabe* did not substantively address what that term means in the context of the statute. That is, the *McCabe* panel made an *Erie*[2] guess that the plain language of the "statute does not permit the police to demand physical identification," 84 F.4th at 1238, but there was no analysis (again, in the context of the statute) of what the police may do in making a "demand."

To this court's knowledge, the Supreme Court of Alabama has not interpreted the statutory provision at issue here. Therefore, this question appears ripe to be certified to the Supreme Court of Alabama. Additionally, certification does not appear to be in conflict with the law-of-the-case doctrine. "'Under the law of the case doctrine, both district courts and appellate courts are generally bound by a prior appellate decision in the same case.'" *Newman v. Ormond*, 456 Fed. App'x 866, 867 (11th Cir. 2012) (per curiam) (quoting *Alphamed, Inc. v. B. Braun Medical, Inc.*, 367 F.3d 1280, 1285-86 (11th Cir. 2004)). However, "[e]xceptions to this doctrine apply when substantially different evidence is produced, *when there has been a change in controlling authority*, or when the prior decision was clearly erroneous and would result in manifest injustice." *Id.* (quoting *Jackson v. Ala. State Tenure Comm'n*, 405 F.3d 1276, 1283 (11th Cir. 2005)) (emphasis added). Such a change in controlling authority could occur should the Supreme Court of Alabama agree to accept a certified question and issue an interpretation of the Alabama statute that differs from the *Edger* panel's interpretation. Of course, the Alabama court may not agree to answer the question. Or, the Court could answer it in a manner that is consistent with *McCabe*. Finally, there is always the chance that, if the Supreme Court answers the question, it may provide helpful discussion about how a jury should be charged on Plaintiff's claim.

[2] *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938).

Because these questions are material to the future litigation of this case, the parties are **DIRECTED**, on or before **March 31, 2025**, to file briefs that address whether the court should certify a question and provide their respective proposals on how the court should frame any certified question on this issue to the Supreme Court of Alabama. The parties **SHALL** also file reply briefs on or before **April 14, 2025**.

DONE and **ORDERED** this March 4, 2025.

R. DAVID PROCTOR
CHIEF U.S. DISTRICT JUDGE

Appendix G

2024 WL 4315127
Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

Michael Jerome JENNINGS, Plaintiff-Appellant,
v.
Christopher SMITH, in his individual capacity, Justin Gable, in his individual capacity, Jeremy Brooks, in his individual capacity, Childersburg, Alabama, City of, Defendants-Appellees.

No. 23-14171
|
Non-Argument Calendar
|
Filed: 09/27/2024

Appeal from the United States District Court for the Northern District of Alabama, D.C. Docket No. 1:22-cv-01165-RDP

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Before Wilson, Rosenbaum, and Grant, Circuit Judges.

Opinion

PER CURIAM:

***1** Plaintiff-Appellant Michael Jennings appeals the district court's grant of summary judgment for three City of Childersburg Police Officers based on qualified immunity and grant of the City of Childersburg's motion to dismiss based on state-agent immunity. Jennings argues that the officers are not entitled to qualified immunity because they lacked probable cause for his arrest, and without this showing, the City is not entitled to state agent immunity. After careful review, we reverse the district court.

I.

On May 22, 2022, a 911 caller requested that police check on her neighbors' home. She reported that her elderly white neighbors had left town and she saw an unfamiliar gold vehicle and a young Black male around the home. Childersburg Police Officer Christopher Smith responded to the call.

Upon arrival, Officer Smith saw Jennings, a Black man, with a garden hose and asked what he was doing on the property. Jennings responded, "watering flowers." Officer Smith asked if Jennings lived at the residence, and he said he did not. Officer Smith explained that police had received a 911 call regarding someone on the property. Jennings replied, "I'm supposed to be here. I'm Pastor Jennings. I live across the street.... I'm looking out for the house while they gone, I'm watering they flowers."

In response, Officer Smith said, "Okay, that's cool, do you have, like, ID?" and motioned with his hands as if to request a driver's license. Jennings stopped watering the flowers and walked away from Officer Smith, stating in a raised voice, "Oh, no man, I'm not gonna give you no ID." Officer Smith asked, "Why not?" and Jennings replied, "I ain't did nothing wrong." Officer Smith responded, "Well, look, listen I'm not saying that you did nothing wrong, but there's a suspicious person in the yard, and if you're not going to identify yourself...." Jennings interrupted to say that he did not have to identify himself.

Childersburg Police Officer Justin Gable then arrived at the scene. Officer Gable also asked Jennings if he lived at the house, and Jennings answered, "You see a Black man out here watering neighbors' flowers.... You have no right to approach me if I ain't did nothing suspicious or nothing wrong. Told him I'm a pastor, I pastor at a church." The parties continued talking over each other, and Jennings eventually retorted, "I don't want to hear you, you want to lock me up, lock me up.... I'm not gonna show y'all anything. I'm gonna continue to water these flowers." The officers continued trying to speak with Jennings, but he walked away from them yelling, "I don't care who called y'all.... Lock me up and see what happens." Officers Smith and Gable followed

Jennings and instructed him to "just come here and talk to us." Jennings continued distancing himself and demanded that the officers tell him who called them. Officer Smith stated, "If you would let us talk to you, we could figure stuff out." Officer Gable warned Jennings that he would get an "obstruction charge" if he continued walking away. Jennings stopped, turned around, and said, "You can do whatever you want. Do it." Officers then placed Jennings in handcuffs. Officer Gable explained, "We're just trying to talk to you.... I don't want to argue with you.... I don't want to arrest you either." Jennings and the officers continued yelling over each other, and Jennings eventually said, "I don't have to ID myself." Officer Gable replied, "I have a call on you, you have to identify yourself to me." Jennings continued to refuse to identify himself, and Gable reiterated, "It's okay if you're out here to water the plants, talk to us."

***2** By this time, Childersburg Police Sergeant Jeremy Brooks had also arrived. As Jennings continued to yell at the officers, Sergeant Brooks interrupted to explain that the officers had a right to identify him. Sergeant Brooks continued, "Everything is being audio and video recorded. You won't shut your mouth." Jennings shouted, "You don't shut your mouth. You don't talk to me like I'm a child, boy!" Officers then arrested Jennings and placed him in the back of the police cruiser.

Jennings sued Officer Christopher Smith, Officer Justin Gable, and Sergeant Jeremy Brooks under 42 U.S.C. § 1983 for unlawful and retaliatory arrest and sued the officers and the City of Childersburg (collectively, Appellees) under Alabama law for false arrest. The officers moved for summary judgment, and the City moved to dismiss. The district court granted both motions, finding that the officers were entitled to qualified and state-agent immunity and the City was entitled to state-agent immunity because probable cause existed for the arrest. Jennings timely appealed.

II.

We review the summary judgment decision of the district court de novo, applying "the same legal standard used by the district court" and construing the facts "in the light most favorable to the non-moving party." *Smith v. Owens*, 848 F.3d 975, 978 (11th Cir. 2017).

III.

We first address the related issues of qualified immunity and unlawful arrest. Generally, when public officials perform discretionary duties, as the parties agree the officers were in this case, they may claim the protection of qualified immunity. *See* *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1263–64 (11th Cir. 2004). To rebut this defense, the plaintiff must show both that "the defendant's conduct violated a statutory or constitutional right" and the right was "clearly established." *Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007) (internal quotation marks omitted). "We may decide these issues in either order," but the plaintiff must satisfy both points to negate qualified immunity. *Hinson v. Bias*, 927 F.3d 1103, 1116 (11th Cir. 2019).

Jennings argues that Appellees violated his Fourth Amendment right to be free from unreasonable searches and seizures by arresting him without probable cause. Whether a seizure, including an arrest, is reasonable under the Fourth Amendment depends on the presence of probable cause. *Case v. Eslinger*, 555 F.3d 1317, 1326–27 (11th Cir. 2009). Probable cause exists "where a reasonable officer could conclude—considering all of the surrounding circumstances, including the plausibility of the explanation itself—that there was a substantial chance of criminal activity." *Edger v. McCabe*, 84 F.4th 1230, 1236 (11th Cir. 2023) (internal quotation marks omitted).

Probable cause is the cornerstone of Jennings' appeal. The existence of probable cause both allows for a qualified immunity defense and defeats § 1983 claims for false and retaliatory arrests. *Carter v. Butts Cnty.*, 821 F.3d 1310, 1319 (11th Cir. 2016); *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1297 (11th Cir. 2019). Probable cause also blocks Jennings' state-law false arrest claim. *See Ex parte Harris*, 216 So. 3d 1201, 1214 (Ala. 2016) (finding

state-agent immunity for an officer under Alabama Code § 6-5-338(a) on plaintiff's false arrest claim because of the existence of probable cause).

Even without probable cause, a court may still grant qualified immunity to an officer who had arguable probable cause for the arrest. *Skop*, 485 F.3d at 1137. Arguable probable cause exists where "a reasonable officer, looking at the entire legal landscape at the time of the arrests, could have interpreted the law as permitting the arrests." *Garcia v. Casey*, 75 F.4th 1176, 1186 (11th Cir. 2023) (quotation marks omitted). The arguable probable cause inquiry in a false arrest case is "no different from the clearly established law inquiry in any other qualified immunity case." *Id.* at 1187. If the court "conclude[s] that the officers had arguable probable cause then we conclude that their violation of the law was not clearly established and vice-versa." *Edger*, 84 F.4th at 1236.

***3** The presence of actual or arguable probable cause "depends on the elements of the alleged crime and the operative fact pattern." *Id.* at 1237 (quotation marks omitted). Here, Jennings was charged under Alabama Code § 13A-10-2(a) [1] with obstructing governmental operations. Appellees maintain they had at least arguable probable cause under the statute because (1) Jennings used intimidation or physical interference to impair the officers in the governmental function of investigating the scene and (2) Jennings committed an independent unlawful act by failing to adequately identify himself to intentionally prevent investigation.

To start, the facts do not support that Jennings intimidated or physically interfered with the officers. Section 13A-10-2 requires that a person interfere with law enforcement using a "physical movement, threat, or motion of violence"—"words alone" are not enough. *D.A.D.O. v. State*, 57 So. 3d 798, 806–07 (Ala. Crim. App. 2009); *Garcia*, 75 F.4th at 1188. Walking *toward* officers while yelling or speaking can supply the physical interference or intimidation element; walking *away* does not. *See generally* *D.A.D.O.*, 57 So. 3d at 806–07 (yelling at an officer while leaving an officer's presence falls short of intimidation or physical interference under § 13A-10-2). Here, even though Jennings shouted and made potentially threatening statements like "see what happens," he did so over his shoulder as he was walking away from the officers. Without more, intimidation or physical interference cannot support a finding of probable cause.

Next, Appellees contend that Jennings' refusal to identify himself was an independent unlawful act under Alabama Code § 15-5-30. This statute allows an Alabama police officer to stop a person in a public place, if he "reasonably suspects" that person has committed, is committing, or is about to commit a crime, and demand of him three things: "his name, address and an explanation of his actions." *Id.* [2]

Jennings argues that he was not arrested for refusing to give those three pieces of information but rather because he declined to show physical identification. In support, Jennings relies on this court's decision in *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023). *Edger* held that an Alabama police officer violates clearly established law when she arrests a person solely for failing to provide a driver's license or physical identification under Alabama Code § 15-5-30. 84 F.4th at 1239–40. We agree that this case falls within the purview of *Edger*.

In *Edger*, two police officers arrived at the scene where Edger, a mechanic, was working on a client's car. *Id.* After a couple initial questions, one officer demanded to see Edger's ID. *Id.* When Edger refused, the officers arrested him, even though he continued trying to explain himself. *Id.*

***4** The court held that no reasonable officer could interpret the law to permit Edger's arrest based on three main principles of clearly established law. *Id.* at 1238–39. First, under the Fourth Amendment, the police are free to ask questions, and the public is free to ignore them. *Id.* at 1239. Second, any legal obligation to speak to the police and answer their questions arises as a matter of state law. *Id.* Third, the plain text of the statute authorizes police to demand only three things: "name, address and an explanation of his actions." Ala.

Code § 15-5-30. Ultimately, while there are no "magic words" that an officer must utter, there is a marked difference between asking for three specific pieces of information and demanding a physical license or ID. *Edger*, 84 F.4th at 1239.

Like Edger, Jennings was arrested for his refusal to provide officers with physical identification. When Officer Smith explained that he was on the property to investigate a suspicious person, Jennings clarified, "I'm supposed to be here. I'm Pastor Jennings. I live across the street.... I'm looking out for the house while they gone, I'm watering they flowers." This information closely tracks what officers may request under Alabama Code § 15-5-30 (name, address, and an explanation for one's actions). However, Officer Smith proceeded to request Jennings' "ID" and to gesture with his hands in a way that indicated he meant a physical card.

In other circumstances, this court has acknowledged "we are loath to second-guess the decisions made by police officers in the field." *See* *Penley v. Eslinger*, 605 F.3d 843, 854 (11th Cir. 2010). Police officers "conduct approximately 29,000 arrests every day—a dangerous task that requires making quick decisions in circumstances that are tense, uncertain, and rapidly evolving." *Nieves v. Bartlett*, 587 U.S. 391, 403 (2019) (internal quotation marks omitted). But here, the officers never asked the fundamental questions in trying to ascertain a person's full name or address: "What is your name?" or "What is your address?" Even if there are no "magic words" that an officer must utter, *Edger*, 84 F.4th at 1239, it must be obvious that officers actually seek a name, address, and explanation. Given that Jennings had already told officers he was "Pastor Jennings," he lived across the street, and he was there to water his neighbors' flowers, the officers' subsequent commands for Jennings to "identify himself" and statements that "you have to identify yourself to me" were clearly requests for something more—physical identification.

While it is always advisable to cooperate with law enforcement officers, Jennings was under no legal obligation to provide his ID. Therefore, officers lacked probable cause for Jennings' arrest for obstructing government operations because Jennings did not commit an independent unlawful act by refusing to give ID. Additionally, because *Edger* explained that Alabama Code § 15-5-30 was, and is, clearly established law, 84 F.4th at 1239, these officers lacked even arguable probable cause. Accordingly, we reverse the district court's grant of summary judgment on Jennings' unlawful arrest claim because the officers are not entitled to qualified immunity.

IV.

Jennings also argues that the district court erred by granting summary judgment to the officers on his § 1983 First Amendment retaliatory arrest claim. To bring a First Amendment claim for retaliation, a plaintiff generally must show: (1) he "engaged in constitutionally protected speech," (2) "the defendant's retaliatory conduct adversely affected that protected speech," and (3) "a causal connection exists between the defendant's retaliatory conduct and the adverse effect on the plaintiff's speech." *DeMartini*, 942 F.3d at 1289. In the retaliatory arrest context, a plaintiff must affirmatively prove the absence of probable cause for the arrest. *Nieves*, 587 U.S. at 404. The absence of probable cause generally provides "weighty evidence that the officer's animus caused the arrest." *Id.* at 402. Meanwhile, the existence of probable cause usually bars a retaliatory arrest claim as a matter of law. *Id.* at 408. Still, once the plaintiff disproves probable cause, he must then prove causation using the framework established by Supreme Court in *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 276 (1977).

***5** In *Mt. Healthy*, a teacher sued a city board of education after the board decided not to rehire him. *Id.* The plaintiff alleged that the adverse employment decision resulted from a call he made to a local radio station, but the board claimed that the teacher's unprofessionalism, not his protected speech, prompted the decision. *Id.* at 282–84. To determine the true cause, the Supreme Court held that the plaintiff must show that the speech was a "substantial" or

"motivating factor," and if the plaintiff meets that burden, the burden shifts to the defendant to establish that he "would have reached the same decision ... even in the absence of the protected conduct." *Id.* at 287. This burden-shifting framework for proving causation now applies not only in the employment context but also in retaliatory arrest cases. *See* *Nieves*, 587 U.S. at 404.

On appeal, Jennings argues that (1) his speech was constitutionally protected, (2) his arrest adversely affected his speech, and (3) his speech was a motivating factor for the arrest. First, we agree that Jennings' speech was constitutionally protected. The First Amendment protects "a significant amount of verbal criticism and challenge directed at police officers." *City of Houston v. Hill*, 482 U.S. 451, 461 (1987). And Jennings' verbal jabs at police do not rise to the level of "fighting words" that might remove them from First Amendment protection. *See* *id.* at 461–62. Second, the arrest clearly adversely affected Jennings' speech. An arrest would certainly "deter a person of ordinary firmness from exercising his or her First Amendment rights." *Bennett v. Hendrix*, 423 F.3d 1247, 1252 (11th Cir. 2005).

The third element is causation, which asks whether the officer "would have taken the action complained of" even "without the impetus to retaliate." *Hartman v. Moore*, 547 U.S. 250, 260 (2006). To start, this court's no-probable-cause finding lends "weighty evidence that the officer's animus caused the arrest." *Nieves*, 587 U.S. at 402. But that does not end the analysis. Jennings claims that his speech was a motivating factor for his arrest because the officers decided to arrest him only after he protested the way the officers were speaking to him and Officer Brooks explained, "You talked your way into going to jail." This evidence seemingly points to speech as a motivating factor for the arrest.

For their part, Appellees argue that they arrested Jennings because he did not identify himself. Even though Alabama law does not allow officers to arrest someone for refusing to provide an ID, the officers here may be able to escape liability for First Amendment retaliatory arrest if they can show they would have arrested Jennings even in the absence of his protected speech. Ultimately, both sides present differing evidence for the cause of Jennings' arrest. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Therefore, we reverse the district court's grant of summary judgment to the officers on Jennings' retaliatory arrest claim and leave the jury to decide if Jennings' arrest "would have been initiated without respect to retaliation." *DeMartini*, 942 F.3d at 1296 (quotation marks omitted).

V.

Finally, Jennings appeals the grant of summary judgment to the officers and the dismissal of the claim against the City of Childersburg based on the district court's findings of state-agent immunity. "We review *de novo* a district court's interpretation of a state law." *Jones v. United Space All., LLC*, 494 F.3d 1306, 1309 (11th Cir. 2007). The state-agent immunity defense is based in Alabama law. Specifically, Alabama Code § 6-5-338 grants municipal officers "immunity from tort liability arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties." This immunity does not apply when an officer "acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." *Ex parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000).

***6** The existence of probable cause, particularly the facts establishing probable cause, "contradict any suggestion of malicious intents or bad faith." *Ex parte Harris*, 216 So. 3d at 1214 (citing *Wood v. Kesler*, 323 F.3d 872, 884 (11th Cir. 2003)). A finding of even arguable probable cause allows officers to invoke state-agent immunity under § 6-5-338. *Id.* And when state-agent immunity applies to police officers, it also applies to the municipality that employs them. *See Ex parte Dixon*, 55 So. 3d 1171, 1179 (Ala. 2010).

On appeal, Jennings contends that officers acted willfully, maliciously, fraudulently, in bad faith, and beyond their authority by arresting him in retaliation for his speech. He also argues that officers acted under a mistaken interpretation of law for arresting him for refusing to give physical identification. Without a showing of probable cause, the record does not allow us to make the state-agent immunity determination. Appellees make no argument on appeal that they should be still entitled to state-agent immunity in the absence of probable cause. The district court did not conduct any analysis of state-agent immunity independent of the actual or arguable probable cause inquiry. Accordingly, we reverse the district court's grant of summary judgment on the state-law false arrest claim, vacate the dismissal of the state law claim against the City, and remand for further proceedings.

REVERSED and REMANDED.

All Citations

Not Reported in Fed. Rptr., 2024 WL 4315127

Footnotes

1 The Alabama statute for obstructing governmental operations provides the following:

> A person commits the crime of obstructing governmental operations if, by means of intimidation, physical force or interference or by any other independently unlawful act, he: (1) Intentionally obstructs, impairs or hinders the administration of law or other governmental function; or (2) Intentionally prevents a public servant from performing a governmental function.

Ala. Code § 13A-10-2(a).

2 While the Fourth Amendment does not impose an obligation to answer police questions, state law may require a person to identify himself during a stop to investigate reasonable suspicion. *See* *Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177, 187 (2004). Alabama Code § 15-5-30 is one so-called “stop-and-identify” statute.

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Appendix H

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U.S. DISTRICT COURT
N.D. OF ALABAMA

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO.: 1:22-cv-01165-RDP**
	)	
CHRISTOPHER SMITH, *et al*.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This matter is before the court on Defendants Christopher Smith, Justin Gable, and Jeremy Brooks' (collectively "Defendants") Motion for Summary Judgment. (Doc. # 48). The Motion has been fully briefed. (Docs. # 48, 51, 56). After the Eleventh Circuit published its decision in *Edger v. McCabe*, 84 F.4th 1230 (11th Cir. 2023), the court directed the parties to brief what effect that opinion had on Defendants' Motion. (Doc. # 57). The parties provided supplemental briefing in response to that order. (Docs. # 58, 59). After careful review of the parties' briefs and the Rule 56 record, and for the reasons outlined below, the court concludes Defendants' Motion (Doc. # 48) is due to be granted.

I. Background[1]

On May 22, 2022, at approximately 6:20 p.m., the Talladega County Emergency Management Communications District received a 911 call from a caller who identified herself as "Amanda" requesting police officers to check on a neighbor's home. (Doc. # 47-1). Amanda stated

[1] The facts set out in this opinion are gleaned from the parties' submissions and the court's own examination of the evidentiary record. All reasonable doubts about the facts have been resolved in favor of the non-moving party. *See Info. Sys. & Networks Corp. v. City of Atlanta*, 281 F.3d 1220, 1224 (11th Cir. 2002). These are the "facts" for summary judgment purposes only. They may not be the actual facts that could be established through live testimony at trial. *See Cox v. Adm'r U.S. Steel & Carnegie Pension Fund*, 17 F.3d 1386, 1400 (11th Cir. 1994).

that her neighbors had left town that morning and that an unknown gold vehicle was parked in front with people she did not think should be over there. (*Id.* at 00:26 to 00:35). Amanda added that the neighbors were an elderly white couple but that she had seen a younger black male over there a few minutes before. (*Id.* at 00:56 to 1:01). She further stated that she could not see them but had heard "them talking a minute ago out like in their back door, and I can't hear them talking anymore, so they may be in the house now. I don't know." (*Id.* at 1:20 to 1:34).

Childersburg Police Officer Christopher Smith ("Defendant Smith") was dispatched on the call and arrived about five minutes later to the residence. When Defendant Smith arrived at the residence, he saw Plaintiff, an African American male, standing in the yard holding a watering hose. (Doc. # 47-4 at 18:24:08). When asked what he was doing on the property, Plaintiff responded, "watering flowers." (*Id.* at 18:24:16). Defendant Smith then asked if Plaintiff lived at the residence; Plaintiff responded he did not. (*Id.* at 18:24:28 to 18:24:31). Defendant Smith explained someone had called 911 and reported that Plaintiff was not supposed to be on the property. (*Id.* at 18:24:30 to 18:24:37). Plaintiff responded, "I'm supposed to be here. I'm Pastor Jennings. I live across the street…. I'm looking out for the house while they gone, I'm watering they flowers." (*Id.* at 18:24:37 to 18:24:45).

At this point, Defendant Smith asked Plaintiff if he had any form of identification. (*Id.* at 18:24:45 to 18:24:48). Plaintiff stopped watering the flowers and walked away, stating, "Oh, no man, I'm not gonna give you no ID" and "I ain't did nothing wrong." (*Id.* at 18:24:46 to 18:24:51). Defendant Smith replied, "Well, look, listen I'm not saying that you did nothing wrong, there's a suspicious person in the yard, and if you're not going to identify yourself …." (*Id.* at 18:24:52 to 18:25:06). Plaintiff stated that he did not have to identify himself because Alabama was not a stop-and-identify state. (*Id.* at 18:25:07 to 18:25:10).

Childersburg Police Officer Justin Gable ("Defendant Gable") arrived at the scene at this point and has testified that he immediately heard Plaintiff being "loud." (Doc. #47-5 at 4). Plaintiff gestured to Defendant Gable and stated, "That guy know me. He come to my store that got broke in. I live right over there across the street." (Doc. # 47-4 at 18:25:10 to 18:25:16). Defendant Gable asked Plaintiff if he lived at the house, to which Plaintiff replied, "You see a black man out here watering the neighbors' flowers…" before continuing with "You have no right to approach me if I ain't did nothing suspicious, or nothing wrong. Told him I'm a pastor, I pastor at a church …." (*Id.* at 18:25:21 to 18:25:34).

Plaintiff and the two officers continued talking over each other, before Defendant Gable reiterated that they had received a call that a suspicious person was on the property. (*Id.* at 18:25:42). Plaintiff walked towards him and dropped the water hose; he then walked away from the officers and around the side of the house yelling, "I don't care who called y'all…. lock me up and see what happens." (*Id.* at 18:25:42 to 18:25:46). Defendants Smith and Gable followed Plaintiff around the house, emphasizing, "Hey man, just come here and talk to us." (*Id.* at 18:25:47 to 18:25:49). Plaintiff continued to walk away, stating, "I'm going to water these back flowers is what I'm fixing to do" as well as, "Tell me who called y'all." (*Id.* at 18:25:49 to 18:25:53).

Defendant Gable warned Plaintiff that he was going to get an "obstruction charge" if he continued walking away from the officers. (*Id.* at 18:25:55 to 18:26:05). Plaintiff stopped, turned around, and responded, "You can do whatever you want. Do it." (*Id.*). At this point, the officers detained Plaintiff and applied handcuffs to him, stating, "We're just trying to talk to you" and "I don't want to argue with you….I don't want to arrest you either." (*Id.* at 18:26:05 to 18:26:27). Plaintiff replied, "Go ahead and do what you gotta do, go on and lock me up….it's already a lawsuit." (*Id.*)

At that point, Sergeant Jeremy Brooks ("Defendant Brooks") arrived at the scene. Plaintiff continued talking, stating "My son was just racially profiled in Michigan, he's got his master's degree….three police officers had profiled him and came in, I was an ex-police officer doing what I told you. I'm a pastor." (*Id.* at 18:26:42 to 18:26:58). Defendant Gable and Plaintiff both began yelling loudly over each other, with Plaintiff saying, "I don't have to ID myself, take me down and book me, do what you need to do" and Defendant Gable saying, "I have a call on you, you have to identify yourself to me, do you understand that?" (*Id.* at 18:27:00 to 18:27:10). Defendant Gable also stated, "It's okay if you're here to water the plants, talk to us," to which Plaintiff replied, "No, it's alright, it's already a lawsuit, that's fine." (Doc. #47-8, at 18:27:22 to 18:27:27).

A few more minutes of arguing ensued, before Defendant Brooks eventually stated, "Everything is being audio and video recorded…You won't shut your mouth." (*Id.* at 18:27:53 to 18:27:57). Plaintiff then yelled, "You don't shut your mouth! You don't talk to me like I'm a child, boy." (*Id.* at 18:27:57 to 18:28:00). At this point, Defendant Smith walked up to Plaintiff, stating "You know what? 10-15, 10-15. I ain't gonna sit there and have that, dude." (*Id.* at 18:27:58 to 18:28:05). Defendant Brooks simultaneously stated, "Look? Go ahead, you're going to jail. You talked your way into going to jail." (*Id.* at 18:28:00 to 18:28:08).

Plaintiff was escorted to a police cruiser and put in the back seat. After running the tag on the gold vehicle, Defendant Smith asked Plaintiff if he was Roy Mallum – the registered owner of the car. (Doc. # 47-4 at 18:32:03 to 18:32:12). Only at that point, while in the police cruiser, did Plaintiff respond that his name was Michael Jennings. (*Id.*)

Meanwhile, Amanda – the 911 caller – conversed with Defendants. Amanda stated that she did not realize it was Plaintiff in the neighbors' yard and believed it to be a teenager, or she would not have called. (Doc. # 47-6 at 18:30:59 to 18:31:10). She further stated, "He does live right there,

and he would probably be watering their flowers; this is probably my fault." (Doc. # 47-4 at 18:31:20 to 18:31:26). Amanda refused to give Defendants her full name for fear it would be published in the paper in connection with the event. (Doc. # 47-6 at 18:33:15 to 18:33:47). Defendant Brooks replied that her name would be on the notes of the investigation and any other information could be obtained by running her car tag if necessary. (Doc. # 47-4 at 18:37:53 to 18:38:14).

Shortly thereafter, Defendant Smith approached Plaintiff while he was seated in the police cruiser and stated, "Any time the police come out, and they say 'we want to identify you,' you have to identify yourself, because there's a reasonable suspicion that it's a….man, that there's a vehicle." (*Id.* at 18:32:41 to 18:32:50). Defendant Smith further explained that if Plaintiff had simply told the officers his name, it might have dispelled any reasonable suspicion. (*Id.* at 18:32:53 to 18:32:57). Plaintiff replied that he had told him his name was Pastor Jennings, to which Defendant Smith replied, "That's not a name; that's a pastor." (*Id.* at 18:32:56 to 18:33:05).

The Defendants convened to discuss potential charges that might apply to Jennings. (*Id.* at 18:34:20 to 18:34:30). Defendant Gable stated that it had been impossible to talk to Plaintiff because all he would reference was "racial profiling" and "suing," but that he had not planned on detaining Plaintiff until he began speed walking away as the officers were trying to speak to him. (*Id.* at 18:38:40 to 18:38:55). Defendants decided to charge Plaintiff with the sole offense of "obstructing governmental operations" on the basis that the officers were responding to a call and Plaintiff would not give them his name or other information. (*Id.* at 18:38:55 to 18:39:14). During this discussion, Defendant Gable remarked, "He seems like a reasonable nice guy, I don't understand….just talk to us, man…" (*Id.* at 18:39:35 to 18:39:55).

II. Legal Standard

Under Federal Rule of Civil Procedure 56, summary judgment is proper "if … there is no genuine issue as to any material fact and … the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party asking for summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of the pleadings or filings which it believes demonstrate the absence of a genuine issue of material fact. *Id*. at 323. Once the moving party has met its burden, Rule 56 requires the non-moving party to go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial. *Id*. at 324.

The substantive law will identify which facts are material and which are irrelevant. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). All reasonable doubts about the facts and all justifiable inferences are resolved in favor of the non-movant. *See Allen v. Bd. of Pub. Educ. for Bibb Cty*., 495 F.3d 1306, 1314 (11th Cir. 2007); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted. *See id*. at 249.

When faced with a "properly supported motion for summary judgment, [the nonmoving party] must come forward with specific factual evidence, presenting more than mere allegations." *Gargiulo v. G.M. Sales, Inc*., 131 F.3d 995, 999 (11th Cir. 1997). As *Anderson* teaches, under Rule 56(c) a plaintiff may not simply rest on his allegations made in the complaint; instead, as the party bearing the burden of proof at trial, he must come forward with at least some evidence to support each element essential to his case at trial. *See Anderson*, 477 U.S. at 252. "[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.'" *Id*. at 248 (citations omitted).

Summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp*., 477 U.S. at 322. "Summary judgment may be granted if the non-moving party's evidence is merely colorable or is not significantly probative." *Sawyer v. Sw. Airlines Co.*, 243 F. Supp. 2d 1257, 1262 (D. Kan. 2003) (citing *Anderson*, 477 U.S. at 250-51). "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

Although the court must resolve all reasonable doubts in favor of the non-movant, this does not mean the court cannot rely on objective videotape evidence. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). Thus, if a videotape clearly depicts events and leaves no material factual disputes, the court need not rely on one party's version of facts when they are obviously discredited by that undisputed video evidence. *Id*. at 380–81.

III. Discussion

Plaintiff filed this action against Defendants Smith, Gable, Brooks, and the City of Childersburg on September 9, 2022. (Doc. # 1). He amended his complaint on November 1, 2022 (Doc. # 16), and the amended pleadings include four claims: (1) an unlawful arrest claim against

Smith, Gable, and Brooks pursuant to 42 U.S.C. § 1983 (Count 1); (2) a retaliatory arrest claim against Smith, Gable, and Brooks pursuant to 42 U.S.C. § 1983 (Count 2); (3) a state-law false arrest claim against Smith, Gable, and Brooks (Count 3); and (4) a state-law false arrest claim against the City of Childersburg (Count 4). (Doc. # 16).

The City of Childersburg filed a Motion to Dismiss the state-law false arrest claim against it. (Doc. # 46). Simultaneously, Defendants Smith, Gable, and Brooks filed a Motion for Summary Judgment. (Doc. # 48). The court will address the City of Childersburg's Motion to Dismiss in a separate memorandum opinion. So, this memorandum opinion focuses on Defendants Smith, Gable, and Brooks' claims, which are discussed below.

A. Plaintiff's Claims Under § 1983

Section 1983 "provides a method for vindicating federal rights conferred by the Constitution and federal statutes." *Proescher v. Bell*, 966 F. Supp. 2d 1350, 1359 (N.D. Ga. 2013) (citing *Baler v. McCollan*, 443 U.S. 137, 144 n. 3 (1979)). A plaintiff bringing a § 1983 claim must show "that the conduct complained of (1) was committed by a person acting under color of state law; and (2) deprived the complainant of rights, privileges, or immunities secured by the Constitution or laws of the United States." *Id.* (quoting *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992)) (internal quotes and citations omitted). Here, understandably, Defendants do not contest that they were acting under color of law. So, the relevant dispositive question is whether they deprived Plaintiff of his constitutional rights.

1. Unlawful Arrest

Under the Fourth Amendment, an individual has a right to be free from unreasonable searches and seizures. The reasonableness of an arrest is determined by the presence or absence of probable cause for the arrest. *Skop v. City of Atlanta, GA*, 485 F.3d 1130, 1137 (11th Cir. 2007).

"An arrest without a warrant and lacking probable cause violates the Constitution and can underpin a § 1983 claim, but the existence of probable cause at the time of the arrest is an absolute bar to a subsequent constitutional challenge to the arrest." *Morris v. Town of Lexington Alabama*, 748 F.3d 1316, 1324 (11th Cir. 2014) (quoting *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010)).

An officer possesses probable cause when "the facts within the collective knowledge of law enforcement officials, derived from reasonably trustworthy information, are sufficient to cause a person of reasonable caution to believe that a criminal offense has been or is being committed." *Brown*, 608 F.3d at 734 (citing *Madiwale v. Savaiko*, 117 F.3d 1321, 1324 (11th Cir. 1997)). Further, probable cause only requires that there be a substantial chance of criminal activity. "We do not require that there be proof beyond a reasonable doubt of an arrestee's guilt, or even that there be a preponderance of evidence to support arrest. In other words, '[p]robable cause is not a high bar.'" *Turner v. Williams*, 65 F.4th 564, 581-582 (quoting *Kaley v. United States*, 571 U.S. 320, 338 (2014)).

Whether an officer possesses probable cause to arrest an individual depends on the elements of the alleged crime and the operative fact pattern. *Morris*, 748 F.3d at 1324; *Skop*, 485 F.3d at 1137-38. Therefore, the reasonableness of Plaintiff's arrest for obstructing governmental operations hinges on the elements of Alabama Code § 13A-10-2(a), which states:

> A person commits the crime of obstructing governmental operations if, by means of intimidation, physical force or interference or by any other independent unlawful act, he: (1) intentionally obstructs, impairs or hinders the administration of law or other governmental function; or (2) intentionally prevents a public servant from performing a governmental function.

Ala. Code § 13A-10-2. A governmental function includes any activity which a public servant is legally authorized to undertake on behalf of a government. Ala. Code § 13A-10-

1(3). In addition, a public servant includes any officer or employee of the government. Ala. Code § 13A-10-1(7).

Defendants argue that they had probable cause to arrest Plaintiff under § 13A-10-2(a) because: (1) Plaintiff used intimidation, physical force, or interference to intentionally prevent the officers from performing the governmental function of investigating the scene; and (2) Plaintiff engaged in illegal activity by refusing to identify himself to them, with the intent of preventing them from performing the governmental function of conducting an investigation. In the alternative, Defendants argue that even if the court finds they lacked probable cause to arrest Plaintiff, they are entitled to qualified immunity because there was arguable probable cause for the arrest. The court addresses each of these arguments below.

a. Intimidation or Physical Interference

Defendants first contend that Plaintiff's behavior rose to the level of intimidation or physical interference under Alabama Code § 13A-10-2 that prevented the officers from responding to the 911 call. This court is not convinced.

Alabama courts have held that Alabama Code § 13A-10-2 requires that any interference be physical interference and that words alone fail to provide culpability under the statute. *D.A.D.O. v. State*, 57 So. 3d 798, 806 (Ala. Crim. App. 2009); *see generally A.A.G. v. State*, 668 So. 2d 122 (Ala. Crim. App. 1995) (holding that an individual delaying opening a door for officers, running away from them as they attempted to search the residence, and striking an officer amounted to intimidation or physical interference under § 13A-10-2); *Scott v. Palmer*, 210 F. Supp. 3d 1303 (N.D. Ala. 2016), *aff'd sub. nom. Scott v. City of Red Bay, Alabama*, 686 F. App'x 631 (11th Cir. 2017) (holding that an individual stepping *towards* officers while saying the words "we got county law down here" were words coupled with conduct that was sufficient to be physical in nature under

the statute); *Dawson v. Jackson*, 748 Fed. App'x 298 (11th Cir. 2018) (holding that a defendant ordering officers off his property, physically standing in their way, refusing to move his car, and refusing to comply with instructions they gave him based on a valid abatement order amounted to intimidation or physical interference under § 13A-10-2). But, an individual who only yells at officers while walking away from them does not rise to the level of intimidation or interference required by § 13A-10-2. *See generally D.A.D.O.*, 57 So. 3d 798 (Ala. Crim. App. 2009) (holding that an individual's loud outbursts and his boisterous yelling of, "man you don't tell me what to do. I can talk to them anytime I want to. I don't like the way you're talking to me" as he walked *away* from officers did not rise to the level of being physical in nature to qualify as intimidation or physical interference under § 13A-10-2).

Defendants allege that Plaintiff's conduct -- including speaking in a loud tone, being uncooperative with the investigation, and making statements that the Defendants should arrest him and "see what happens" -- meets the criteria of physical interference required by § 13A-10-2. Again, the court disagrees.

As the court determined in *D.A.D.O*, an individual merely yelling at officers – while potentially annoying – does not rise to the level of physical interference required under the statute, because words alone are not enough. 57 So. 3d at 806-07. Further, although Plaintiff's statement of "lock me up, see what happens" could potentially be perceived as menacing, it was not coupled with the physicality of steps *toward* the officers (like the threat in *Scott v. Palmer*). If anything, the video evidence shows that as Plaintiff made the statement, he was moving *away* from Defendants. (Doc. # 47-4 at 18:25:45 to 18:25:48). Thus, Plaintiff's actions were similar to those in *D.A.D.O*, where the Alabama Court of Civil Appeals found the conduct did not rise to a level

of physical interference. The Rule 56 evidence does not support a finding that Plaintiff's actions qualified as intimidation or physical interference under § 13A-10-2.

b. Independently Unlawful Acts

In the alternative, Defendants argue that Plaintiff's failure to identify himself during their investigation is an independently unlawful act under Alabama Code § 13A-10-2(a) that prevented the officers from being able to conduct their investigation at the scene. This argument hinges on the contention that Plaintiff's failure to identify himself to the officers violated Alabama Code § 15-5-30, which states:

> A sheriff or other officer acting as sheriff, his deputy or any constable, acting within their respective counties, any marshal, deputy marshal or policeman of any incorporated city or town within the limits of the county or any highway patrolman or state trooper may stop any person abroad in a public place whom he reasonably suspects is committing, has committed, or is about to commit a felony or other public offense and may demand of him his name, address, and an explanation of his actions.

Ala. Code § 15-5-30.

Plaintiff presents three arguments as to why Defendants did not have probable cause to arrest him for a violation under § 13A-10-2(a). The court addresses each argument, in turn.

First, Plaintiff contends that Defendants had no arguable reasonable suspicion that Plaintiff was committing, had committed, or was about to commit a felony or other public offense to warrant them asking for his name, address, or explanation of his actions. (Doc. # 51-1 at 10). The court disagrees.

A law enforcement officer may "seize" a person to conduct a brief investigation if "(1) the officers have a reasonable suspicion that the suspect was involved in, or is about to be involved in, criminal activity, and (2) the stop 'was reasonably related in scope to the circumstances which

justified the interference in the first place.'" *United States v. Jordan*, 635 F.3d 1181, 1186 (11th Cir. 2011) (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968)).

"Whether an officer has a reasonable suspicion is an objective question viewed from the standpoint of a reasonable police officer at the scene ... and [presents] a question of law." *Evans v. Stephens*, 407 F.3d 1272, 1280 (11th Cir. 2005) (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996)). The existence of "reasonable suspicion" is determined according to the totality of the circumstances. *Jordan*, 635 F.3d at 1186. At a minimum, reasonable suspicion requires "specific, articulable, and objective facts reasonably to suspect that a crime is being or will soon be committed … but is a less demanding standard than probable cause." *United States v. Babcock*, 924 F.3d 1180, 1187 (11th Cir. 2019) (citing *United States v. Puglisi*, 723 F.2d 779, 789 (11th Cir. 1984); *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)) (quotations omitted).

Defendant Smith was dispatched to the scene in response to a 911 call reporting that the homeowners were out of town, there was an unknown gold vehicle parked in front of the house, and people were present who the caller believed should not be there. Further, the 911 caller stated that the owners of the home were an elderly white couple, but she had seen a black male and believed people may be in the house. When Defendant Smith arrived, he observed a gold vehicle and Plaintiff -- a black male -- in the yard, watering the plants.

Plaintiff contends that Defendant Smith possessed no reasonable suspicion because he did not see any illegal activity when he arrived on the scene. However, this assertion misses the mark by a wide margin because officers are not required to actually observe criminal conduct; rather, they may form reasonable suspicion of criminal activity even when observing exclusively legal activity. *United States v. Gordon*, 231 F.3d 750, 754 (11th Cir. 2000). Of course, a 911 call from an identified caller describing contemporaneous criminal behavior is sufficient to provide

reasonable suspicion, so long as the information bears an indicia of reliability. *See U.S. v. McCall*, 563 Fed. Appx. 696, 700-01 (11th Cir. 2014). Here, the totality of the circumstances, including the 911 call from an identified caller and the presence of a suspect similar to the description given by the caller, gave Defendant Smith more than enough "specific, articulable, and objective facts" to believe Plaintiff may have been trespassing on the property and that other individuals could be on the property. *Babcock*, 924 F.3d at 1187. The fact that plaintiff was watering flowers outside the house does not foreclose a finding of reasonable suspicion. A savvy criminal could easily pick up a watering hose to use as a ruse when officers approach. *See United States v. Bruce*, 977 F.3d 1112, 1119 (11th Cir. 2020) ("The 'absence of additional suspicious conduct' when the police arrived did not 'dispel the reasonable suspicion' of criminal activity…those engaged in criminal activity would rationally be inspired to hide it at the first sign of police.") (citations omitted). Therefore, it goes without saying that Defendant Smith's request for Plaintiff's name was reasonably related to the circumstances prompting his talking to him.

Second, Plaintiff argues that even if the Defendants had reasonable suspicion to ask him for identifying information, Alabama Code § 15-5-30 applies to individuals stopped in public places and Plaintiff was under no legal obligation to provide his name to Defendants because he was on private property at the time of the investigation. (Doc. # 51-1 at 17). To support this argument, Plaintiff cites Alabama Code § 22-15(A)-3(8), which states that a private residence is not a public place. Plaintiff fails to read this statutory provision in its full context: Section 22-15(A)-3(8) is a part of Alabama's "Clean Indoor Air Act," which, under § 22-15(A)-4, prohibits smoking in a "public place." In that context, a private residence is understandably not a public place for purposes of a ban on smoking. But, that point is inapposite to the situation here. Without question, a valid warrantless stop can take place on private property, including the property's

curtilage, so long as the area is exposed to public view. *See United States v. Santana*, 427 U.S. 38, 42 (1976).

Finally, Plaintiff argues that he did not violate § 13A-10-2(a) because he told Defendants his name was "Pastor Jennings" when Defendant Smith first arrived at the scene. Plaintiff further contends that he believed that any other requests from Defendants for identification throughout the investigation were for his driver's license, which he was under no requirement to produce. (Doc. # 51-1 at 17). In contrast, Defendants contend that they were not asking Plaintiff to identify himself by submitting his physical driver's license, but instead only by stating his name so that they could identify him and confirm he was not engaged in illegal activity. (Doc. # 56 at 12).

The court notes that Defendant Smith did initially inquire if Plaintiff had any form of physical identification. (Doc. # 47-4 at 18:24:45 to 18:24:48). However, the totality of the dialogue in the video indicates that the actual concern of Defendants was the lack of *any* real identification made by Plaintiff. Throughout the remainder of the encounter (until Plaintiff's eventual arrest), Defendants repeatedly asked him to identify himself and they did not again request physical identification. Plaintiff is correct that he was under no requirement to give Defendants his driver's license as Alabama Code § 15-5-30 does not require a suspect to give the officers a driver's license or any other document. *Edger v. McCabe*, No. 21-14396, 2023 WL 6937465, at *6 (11th Cir. 2023). But, the statute requires that a suspect, in circumstances such as this, either state his name or identify himself to an officer by some other means. *Id.*

To be sure, Plaintiff stated to Defendant Smith when he first walked up that he was "Pastor Jennings." However, despite multiple other requests from the Defendants during their investigation, Plaintiff refused to give any information more than that. Although Plaintiff asserts that Defendants only arrested him because he refused to give them his physical driver's license

(Doc. # 51-1 at 28), the body camera footage presents undisputed evidence that is simply not so. That is, the video clearly shows Defendant stating that they arrested Plaintiff because they were responding to a call and Plaintiff would not give them his name or other information, which prevented them from investigating what was occurring at the scene, in violation of § 15-5-30. (Doc. # 47-4 at 18:38 to 18:39:14).

Further, footage shows Defendant Smith clearly stating that if Plaintiff had only identified himself, it might have dispelled any initial reasonable suspicion, because "Pastor Jennings" was not a name but a title. (*Id.* at 18:32:55 to 18:33:07). Indeed, in the discussion about whether to charge Plaintiff, Defendant Gable remarked, "He seems like a reasonable nice guy, I don't understand … just talk to us man …" (Doc. # 47-4 at 18:39:35 to 18:39:55). Defendant Smith reiterated this in his deposition testimony: "Pastor is a title. Jennings would be a first name or could be a last name." (Doc. # 47-3 at 5).

It is well established that an individual can be arrested under a state stop-and-identify statute for failing to give his full name to officers. *See Brienza v. City of Peachtree City, Georgia*, 2022 WL 3841095, at *2, *7 (11th Cir. 2022) (holding that officers had probable cause to arrest a suspect for only giving his first name, but not his last name or birth date to officers). That is precisely what occurred here.

To the extent Plaintiff contends that stating he was "Pastor Jennings" was sufficient here, that contention is off the mark. "Pastor Jennings" cannot be entered into a database to search government records, and without any other accompanying information, that information would do nothing to help officers determine an individual's history or why they were at the scene. "Obtaining a suspect's name in the course of a….stop serves important government interests. Knowledge of identity may inform an officer that a suspect is wanted for another offense or has a record of

violence or mental disorder. On the other hand, knowing [a person's] identity may help clear a suspect and allow the police to concentrate their efforts elsewhere." *Hiibel*, 542 U.S. at 186.

In fact, it was not until well after Plaintiff was arrested that he ever told the officers his full name – Michael Jennings. (Doc. # 48-8 at 18:32:10). Video evidence clearly shows officers stating, "We're here to investigate a call and he wouldn't give us his name," (*Id.* at 18:39:07) and then explaining to Plaintiff's wife that he had not identified himself until he had "already caught the charge." (*Id.* at 18:42:55 to 18:43:00).

Plaintiff's contention that Defendants lacked probable cause to arrest him misses the mark. The Rule 56 evidence shows that it is undisputed that Defendants had probable cause to arrest Plaintiff:

- Defendants received a 911 call requesting officers to come check on a neighbor's house. The caller stated that her neighbors were elderly and white, but that there was a black male in the yard and potentially others in the house. In addition, there was an unknown gold vehicle parked in front of the house.

- Defendant Smith arrived at the scene and saw both a gold SUV in the driveway and a black male standing in the yard, holding a watering hose. Defendant Smith did not know if Plaintiff was legally on the property, if he was genuinely watering the plants, or if there were other individuals located elsewhere on the property.

- The second Defendant Smith asked if he had any form of identification, Plaintiff became hostile.

- Plaintiff repeatedly refused to identify himself and immediately accused Defendants of wanting to lock him up.

- Plaintiff walked away from Defendants and pulled out his phone, refusing to talk to them, even when Defendant Gable warned him he was nearing an obstruction charge.

- Defendants repeatedly informed Plaintiff they did not want to arrest him but only wanted him to communicate with them. Each time he was asked to do so, Plaintiff refused to share his identity with Defendants, instead telling them he did not have to identify himself and daring them to "go ahead and lock [him] up."

- Plaintiff repeatedly told officers "It's already a lawsuit," before he loudly yelled at Defendant Brooks, "You don't talk to me like I'm a child, Boy."

- Plaintiff did not state his full name – Michael Jennings – to Defendants until he had already been placed under arrest.

For these reasons, the court has no hesitation in determining that Defendants possessed probable cause to arrest Plaintiff for violating Alabama Code § 13A-10-2(a). By refusing to give his full name to officers, Plaintiff did not comply with § 15-5-30, which gives a law enforcement officer the authority to "stop any person abroad in a public place whom he reasonably suspects is committing, has committed, or is about to commit a felony or other public offense and…demand of him his name, address, and an explanation of his actions." Ala. Code § 15-5-30. This flat refusal amounted to an independent unlawful act. And, it is clear it prevented the officers from performing a governmental function – investigating the 911 call about people potentially trespassing on the subject property. Thus, "the facts within the collective knowledge of [the] law enforcement officials, derived from reasonably trustworthy information" were sufficient to cause the officers to believe that Plaintiff had committed the criminal offense of obstructing government operations. *Brown*, 608 F.3d at 734 (citing *Madiwale v. Savaiko*, 117 F.3d 1321, 1324 (11th Cir. 1997)).

c. Qualified Immunity

Even if Defendants did not possess actual probable cause to arrest Plaintiff for obstructing governmental operations (and, to be clear, the court finds that it is undisputed they did), Defendants are still immune from civil damages under the doctrine of qualified immunity.

"[Q]ualified 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 receive qualified immunity's shield

of protection, a public official must show that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred. *Courson v. McMillan*, 939 F.2d 1479, 1487 (11th Cir. 1991)). There is no question that the officers were acting in their discretionary authority by responding to a 911 call at the time they arrested Plaintiff.

And because Defendants Smith, Gable, and Brooks were acting within the scope of their discretionary authority at the time the arrest was made, the burden shifts to Plaintiff to show that qualified immunity is inappropriate. *Manners v. Cannella*, 891 F.3d 959, 968 (11th Cir. 2018).

An officer is entitled to qualified immunity unless (1) he has committed a constitutional violation; and (2) the constitutional right was "clearly established" at the time of the officer's alleged misconduct. *Pearson*, 555 U.S. at 232 (holding that a court may consider these two prongs in any order, as opposed to the rigid two-step process outlined in *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). Further, for an officer to be entitled to qualified immunity, he need not have actual probable cause, but only arguable probable cause. *Morris v. Town of Lexington Ala.*, 748 F.3d 1316, 1324 (11th Cir. 2014). "In the false arrest context, arguable probable cause exists where 'a reasonable officer, looking at the entire legal landscape at the time of the arrest[], could have interpreted the law as permitting the arrest[].'" *Edger v. McCabe*, No. 21-14396, 2023 WL 6937465, at *4 (11th Cir. 2023) (quoting *Garcia v. Casey*, 75 F.4th 1176, 1186 (11th Cir. 2023)).

Importantly, Eleventh Circuit caselaw makes clear that whether an officer possesses arguable probable cause is an individualized inquiry that must be made on a case-by-case basis. *See Edger*, 2023 WL 6937465, at *4 (citing *Rivas-Villegas v. Cortesluna*, 585 U.S. 1, 8 (2021)) ("[T]his inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition"). Thus, Defendants are entitled to qualified immunity if reasonable officers

in *their* position reasonably could have believed that Plaintiff was obstructing governmental operations as defined by Alabama Code § 13A-10-2.

Consistent with the court's discussion above, the court is not convinced that a reasonable officer could have looked at Plaintiff's behavior and found that he was physically interfering with Defendants' operations or intimidating them. So, the question becomes this: whether Defendants reasonably believed that there was probable cause to permit the arrest based on the independently unlawful act prong of § 13A-10-2?

Plaintiff argues that the court must find that Defendants did not possess arguable probable cause under the Eleventh Circuit's recent decision of *Edger v. McCabe*, which held that an officer was not entitled to qualified immunity after wrongly arresting an individual for failing to provide his driver's license. But, as the *Edger* panel made clear, "whether an officer possesses either actual or arguable probable cause 'depends on the elements of the alleged crime and the operative fact pattern'" in a specific case. *Edger*, 2023 WL 6937465, at *4 (citing *Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 735 (11th Cir. 2010)). *Edger* does not control here because it involved very different key facts.

There are some similarities. The Officers in *Edger* responded to a 911 call reporting a suspicious person on private property. *Edger*, 2023 WL 6937465, at *1. And, like here, upon arriving at the scene, Officer McCabe initially asked Edger if he had "driver's license or ID" on him. *Id.* at *2. However, the similarities between *Edger* and this case end there. In *Edger*, the video evidence clearly showed that Officer McCabe arrested Edger within two minutes of arriving at the scene *solely* because Edger refused to give the officers his physical driver's license. *Id.* And, despite video evidence showing Edger offering his driver's license to Officer McCabe at least three

times before she could finish handcuffing him, Officer McCabe arrested Edger without ever asking him for his name. *Id.*

The facts of this case are drastically different. When Defendant Smith walked up on the scene, he initially asked Plaintiff if he had any form of physical identification. Had Defendant Smith arrested Plaintiff at that point, solely for failing to give him his driver's license, this case would align with *Edger* and there would be a clear violation of § 15-5-30. However, the video evidence here indisputably shows that, throughout the rest of the encounter, Defendants only asked Plaintiff to *identify* himself – not to produce his driver's license. It was not until Plaintiff had repeatedly refused to identify himself and refused to cooperate with the officers that he was arrested. Indeed, Defendant Smith stated that if Plaintiff had simply told them his name, it may have dispelled any suspicion. Although a panel of our Circuit has ruled that § 15-5-30 only allows a police officer to ask an individual for his name, address, and explanation of his actions, there are no "'magic words' that must be uttered." *Edger*, 2023 WL 6937465, at *6.

Here, Defendants' request for Plaintiff to identify himself fits squarely within the confines of the state statute. The undisputed body camera footage makes clear that at multiple times during their interaction with Plaintiff, Defendants asked Plaintiff to identify himself. Yet, each time, Plaintiff adamantly refused. Defendants gave Plaintiff several opportunities to cooperate before ultimately arresting him. Therefore, unlike the circumstance in *Edger*, Plaintiff was not arrested because he simply refused to give Defendants his driver's license. Rather, over and over again, he refused to identify himself in any manner that would allow them to know who he is and confirm what he was doing at the house was not illegal.

Plaintiff points out that initially he stated that his name was "Pastor Jennings." But, a reasonable officer could have understood such a reference, without more, was insufficient under

the circumstances. And, no clearly established law holds that an officer violates the rights of a citizen, in a situation like this, when arresting him for failing to provide his identity, even if some short-hand reference (*e.g.*, "Pastor Jennings") is given. *See Hiibel*, 542 U.S. at 187-88 (upholding a state law permitting arrest for failing to identify oneself – where the request for identification is reasonably related to circumstances justifying the stop – as "consistent with Fourth Amendment prohibitions against unreasonable searches and seizures").[2]

Therefore, this court disagrees with Plaintiff's assertion that this case is like *Edger*. Here, Defendants repeatedly requested Plaintiff's name, not his driver's license. Because Plaintiff refused to give this information to them, Defendants reasonably interpreted the law as permitting the arrest and qualified immunity attaches to their actions. Thus, even if Plaintiff's failure to identify himself to Defendants did not provide probable cause to arrest under § 13A-10-2 (and, to the contrary, the court concludes it did), this court finds that Defendants still had "breathing room to make the purported mistake of law" when they arrested Plaintiff. *Vanegas*, 46 F.4th at 1167.

2. Retaliatory Arrest

Plaintiff also alleges that he was only arrested by Defendants in retaliation for engaging in constitutionally protected speech and conduct. That argument finds no support in the summary judgment record.

To allege a First Amendment retaliatory arrest claim under Section 1983, a plaintiff generally must show: (1) that he engaged in constitutionally protected speech; (2) the defendant's retaliatory conduct adversely affected that protected speech; and (3) a causal connection exists

[2] Cases from other jurisdictions do not clearly establish the law. But, the court notes that decisions from the Ninth Circuit are actually consistent with this legal point. *See Vanegas v. City of Pasadena*, 46 F.4th 1159, 1166 (9th Cir. 2022) (holding that officers had qualified immunity for arresting an individual for failing to identify himself to them when they asked him several times); *United States v. Landeros*, 913 F.3d 862, 869 (9th Cir. 2019) ("In some circumstances, a suspect may be required to respond to an officer's request to identify herself, and may be arrested if she does not.").

between the defendant's retaliatory conduct and the adverse effect on the plaintiff's speech. *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019). Of course, "it is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured – the motive must *cause* the injury. Specifically, it must be the 'but-for' cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722, 204 L. Ed. 2d 1 (2019) (quoting *Hartman v. Moore*, 547 U.S. 250, 260 (2006)).

Under the standard set forth by the Supreme Court in *Nieves*, a plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest to succeed. 139 S. Ct. at 1724. Therefore, "the presence of probable cause will generally defeat a § 1983 First Amendment retaliation claim…as a matter of law." *DeMartini*, 942 F.3d at 1304.

Again, here, Defendants had probable cause to arrest Plaintiff for violating § 13A-10-2(a). Under that statute, an individual is guilty of obstructing governmental operations "if, by means of intimidation, physical force or interference or by any other independent unlawful act, he…intentionally prevents a public servant from performing a governmental function." Ala. Code § 13A-10-2. Plaintiff committed an unlawful act when he refused to give his name, address, or otherwise explain his actions to officers as they were investigating the 911 call. Ala. Code § 15-5-30. This, alone, defeats Plaintiff's retaliatory arrest claim.[3]

[3] Plaintiff also argues that because he was arrested right after he said, "You don't shut your mouth. You don't talk to me like I'm a child, boy," the officers made the decision to arrest him in retaliation for his protected speech. The undisputed evidence -- *i.e.*, video footage of the encounter in the Rule 56 record -- does not support that argument either. Even assessing that argument without the benefit of the video footage, it is completely lawful for Defendants to have made the decision to arrest Plaintiff after hearing the content of these words, particularly when coupled with his other actions. "Protected speech is often a wholly legitimate consideration for officers when deciding whether to make an arrest." *Nieves*, 139 S. Ct. at 1724. Because officers must make split-second judgments when deciding whether to arrest a suspect, the content and manner of any conversation with the suspect may convey vital information such as "if he's ready to cooperate or rather presents a continuing threat" to interests the law must protect. *Id.*; *see also Lozman v. City of Riviera Beach, Fla.*, 585 U.S. 1946, 1953 (2018). Plaintiff's allegedly protected words quite clearly conveyed that he was not willing to cooperate with the officers' legitimate request to identify himself.

Because the court determines that Defendants had probable cause to arrest Plaintiff for violating § 13A-10-2(a), summary judgment for Defendants on Plaintiff's retaliatory arrest claim is warranted.

B. Plaintiff's State-Law False Arrest Claim

In addition to Plaintiff's federal claims under Section 1983, Plaintiff has asserted a state law claim against Defendants for false arrest. Defendants argue that they are entitled to summary judgment on this claim because they are entitled to state-agent immunity under Alabama law.

Under Alabama law, a municipal officer is immune from state tort liability "arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties." Ala. Code § 6-5-338(a) (1975). "This immunity applies 'when the conduct made the basis of the claim against the [officer] is based upon the [officer's] exercising judgment in the enforcement of the criminal law of [Alabama], including, but not limited to, law enforcement officers' arresting or attempting to arrest persons…". *Scott v. Palmer*, 210 F. Supp. 3d 1303, 1315 (N.D. Ala. 2016) (quoting *Hollis v. City of Brighton*, 950 So. 2d 300, 309 (Ala. 2006)). However, the state-agent immunity does not apply when officers act "willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." *Ex Parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000).

Plaintiff also argues that Defendants' statements to the 911 caller indicating that Plaintiff would only talk about "racial profiling" and "suing" are evidence that the officers' true reason for arresting him was because of those statements. But again, in analyzing a retaliatory arrest claim, the subjective intent of the officers is irrelevant. It simply does not provide any basis for invalidating an arrest. *Nieves*, 139 S. Ct. at 1725 (citing *Devenpeck v. Alford*, 543 U.S. 146, 153, 155 (2004)). Rather, when reviewing an arrest, the courts asks "whether the circumstances, viewed objectively, justify the [challenged] action, and if so, concludes 'that action was reasonable whatever the subjective intent motivating the relevant officials.'" *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011)). Because the court has already found that there was probable cause to arrest Plaintiff for obstructing governmental operations, any subjective intent that he alleges Defendants possessed is irrelevant.

Plaintiff argues that Defendants are not entitled to summary judgment on the state law false arrest claim because they acted "willfully, maliciously, fraudulently, in bad faith, [and] beyond their authority in detaining and arresting" him and because they acted under a mistaken interpretation of the law. (Doc. # 51-1 at 24). The record lends no support to that argument. Indeed, to the contrary, the Rule 56 evidence shows that Defendants did not act willfully, maliciously, or in bad faith with respect to Plaintiff's false arrest claim.

"In the false arrest context, the Alabama Supreme Court considers the presence of arguable probable cause irreconcilable with the allegations of malice or bad faith." *Scott*, 210 F. Supp. 3d at 1316. As noted above, Defendants had (at least) arguable probable cause to arrest Plaintiff under § 13A-10-2 due to Plaintiff's refusal to identify himself to the investigating officers. Therefore, because arguable probable cause existed for Defendants to arrest Plaintiff, Defendants cannot be found to have acted willfully, maliciously, or in bath faith in doing so. *See Ex Parte Harris*, 216 So. 3d 1201, 1214 (Ala. 2016) ("Because Harris had arguable probable cause to arrest Bryson, we cannot say that he acted 'willfully, maliciously, fraudulently, [or] in bad faith' so as to remove him from the umbrella of State-agent immunity afforded to him under *Ex Parte Cranman*.").

There is simply no Rule 56 evidence that Defendants acted under a mistaken interpretation of the law when arresting Plaintiff. Under § 13A-10-2, officers may arrest an individual if, by another independent unlawful act, he intentionally prevents a public servant from performing a governmental function. Ala. Code § 13A-10-2. As addressed above, although Plaintiff alleges that Defendants only arrested him because he refused to give them his physical driver's license (Doc. # 51-1 at 28), the body camera footage undisputedly shows otherwise. That is, video from the scene clearly shows Defendants stating that they arrested Plaintiff after responding to a call when Plaintiff would not give them his name or other information, all in violation of § 15-5-30. (Doc. #

47-4 at 18:38 to 18:39:14). Further, Defendant Smith made clear that (1) if Plaintiff had only told him his name, it might have dispelled any suspicion, and (2) his self-identification as "Pastor Jennings" was not useful to get a sense of what was occurring. (*Id.* at 18:32:55 to 18:33:07). Under these undisputed facts, even when they are viewed in the light most favorable to Plaintiff, it is obvious that Defendants were not acting under a mistaken interpretation of the law when they arrested Plaintiff for failing to identify himself. Therefore, the Defendants are entitled to state-agent immunity under Alabama law, and summary judgment in their favor is appropriate.

IV. Conclusion

For the reasons discussed above, summary judgment is due to be granted**.** An order consistent with this memorandum opinion will be entered contemporaneously.

DONE and **ORDERED** this December 21, 2023.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

Appendix I

FILED
2023 Dec-21 PM 05:10
U.S. DISTRICT COURT
N.D. OF ALABAMA

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO.: 1:22-cv-01165-RDP**
	)	
CHRISTOPHER SMITH, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This matter is before the court on Defendant City of Childersburg's Motion to Dismiss. (Doc. # 46). The Motion has been fully briefed. (Docs. # 46, 52, 55). After careful review, and for the reasons outlined below, the Motion (Doc. # 46) is due to be granted.

I. Background[1]

Plaintiff Michael Jerome Jennings ("Plaintiff") filed this action against Defendants Christopher Smith ("Officer Smith"), Justin Gable ("Officer Gable"), Jeremy Brooks ("Officer Brooks") (collectively "the Individual Officers"), and the City of Childersburg, Alabama ("the City") on September 9, 2022. (Doc. # 1). He amended his complaint on November 1, 2022. (Doc. # 16).

The Amended Complaint alleges that, on May 22, 2022, Plaintiff was on his neighbor's private property watering the flowers when he was approached by Officers Smith and Gable of the

[1] In evaluating a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court assumes the factual allegations in the complaint are true and gives the plaintiff the benefit of all reasonable factual inferences. *Hazewood v. Found. Fin. Grp., LLC*, 551 F.3d 1223, 1224 (11th Cir. 2008). Accordingly, the facts set out herein are taken from Plaintiff's Amended Complaint (Doc. # 16), and they are assumed true for purposes of this Memorandum Opinion. However, the court would be amiss if it did not address that this is simply an outline of the allegations from Plaintiff's perspective. Thus, the factual record here differentiates slightly from the Rule 56 record in the Summary Judgment Memorandum Opinion.

Childersburg Police Department. (Doc. # 16, ¶ 9). When asked what he was doing on the property, Plaintiff told the officers he was watering the flowers. (*Id.* at ¶ 10). Officer Smith informed Plaintiff that they received a 911 call reporting that there was an unknown gold SUV parked on the property and an individual present that was not supposed to be there. (*Id.* at ¶ 11). Plaintiff responded by saying, "I'm supposed to be here. I'm Pastor Jennings. I live across the street. I'm looking out for their house while they're gone, watering their flowers." (*Id.*).

Officer Smith then asked Plaintiff to provide him with his identification card ("ID"). (*Id.* at ¶ 12). Plaintiff refused to give his ID to the officers and instead walked away to continue watering the flowers. (*Id.* at ¶¶ 12-14). At this point, he was detained by Officers Gable and Smith and placed in handcuffs. (*Id.* at ¶ 14).

Subsequently, Officer Brooks arrived on the scene and informed Plaintiff that the officers had a right to identify him and that "he needed to listen to them and shut his mouth." (*Id.* at ¶¶ 15-16). Plaintiff responded by informing Officer Brooks that *they* need to listen, and that he needs to "shut his mouth and not talk to him like he is a child." (*Id.* at ¶ 16). At this point, the officers arrested Plaintiff and informed him that he was going to jail. (*Id.*).

While Plaintiff was detained in the back of one of the officer's vehicles, the officers made contact with the 911-caller, Amanda. (*Id.* at ¶ 18). Plaintiff contends that upon speaking with Amanda, the officers were satisfied that Plaintiff "was who he said he was and was doing what he said he was doing" (i.e., watering his neighbor's flowers while they were out of town). (*Id.*). Nonetheless, he was taken to the Childersburg City Jail, booked and transported to the Talladega County Jail, and remained in custody for approximately two hours before his wife was able to bail him out of jail. (*Id.* at ¶¶ 19-20). On June 1, 2022, the charges against Plaintiff were dismissed with prejudice. (*Id.* at ¶ 22).

Plaintiff's Amended Complaint includes four claims: (1) an unlawful arrest claim against the Individual Officers pursuant to 42 U.S.C. § 1983 (Count 1); (2) a retaliatory arrest claim against the Individual Officers pursuant to 42 U.S.C. § 1983 (Count 2); (3) a state-law false arrest claim against the Individual Officers (Count 3); and (4) a state-law false arrest claim against the City (Count 4). (Doc. # 16).

The City filed a Motion to Dismiss the state-law false arrest claim against it. (Doc. # 46). Simultaneously, the Individual Officers filed a Motion for Summary Judgment. (Doc. # 48). The court addresses the Individual Officers' Motion for Summary Judgment in a separate memorandum opinion. This memorandum opinion focuses solely on the City's Motion to Dismiss, which is discussed below.

II. Legal Standard

The Federal Rules of Civil Procedure require that a complaint provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). However, the complaint must include enough facts "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Pleadings that contain nothing more than "a formulaic recitation of the elements of a cause of action" do not meet Rule 8 standards, nor do pleadings suffice that are based merely upon "labels and conclusions" or "naked assertion[s]" without supporting factual allegations. *Id.* at 555, 557. In deciding a Rule 12(b)(6) motion to dismiss, courts view the allegations in the complaint in the light most favorable to the non-moving party. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007).

To survive a motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although "[t]he plausibility standard is not akin to a 'probability requirement,'" the complaint must demonstrate "more than a sheer possibility that a defendant has acted unlawfully." *Id.* A plausible claim for relief requires "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence" to support the claim. *Twombly*, 550 U.S. at 556.

In considering a motion to dismiss, a court should "1) eliminate any allegations in the complaint that are merely legal conclusions; and 2) where there are well-pleaded factual allegations, 'assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.'" *Kivisto v. Miller, Canfield, Paddock & Stone, PLC*, 413 F. App'x 136, 138 (11th Cir. 2011) (quoting *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010)). That task is context specific and, to survive the motion, the allegations must permit the court based on its "judicial experience and common sense . . . to infer more than the mere possibility of misconduct." *Iqbal*, 556 U.S. at 679. If the court determines that well-pleaded facts, accepted as true, do not state a claim that is plausible, the claims are due to be dismissed. *Twombly*, 550 U.S. at 570.

Complaints that tender "'naked assertion[s]' devoid of 'further factual enhancement'" will not survive a motion to dismiss. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557) (alteration in original). Stated differently, the complaint must allege enough facts "to raise a reasonable expectation that discovery will reveal evidence" supporting a claim. *Twombly*, 550 U.S. at 556.

III. Discussion

In its Motion to Dismiss, the City seeks to dismiss Plaintiff's state-law false arrest claim against it (Count 4). (Doc. # 46). In particular, the City alleges that Plaintiff's state-law false arrest

claim should be dismissed because (1) Plaintiff's Amended Complaint fails to state a claim against the City under the applicable pleading standard, and (2) the claim fails as a matter of law because the City shares the Individual Officers' state-agent and peace officer immunity. (Doc. # 46-1 at 5). The court addresses each argument in turn.

a. Plaintiff's state-law false arrest claim meets the Rule 8 pleading standard.

The City first argues that Plaintiff's state-law false arrest claim must be dismissed because it fails to state a claim under the applicable pleading standard. The court disagrees.

Plaintiff alleges a false arrest claim against the City for the "lack of skills or carelessness" of the Individual Officers pursuant to Alabama Code § 11-47-190. (Doc. # 16, ¶¶ 59-64). Under § 11-47-190,

> No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in the work therefore and while acting in the line of his or her duty.

Ala. Code § 11-47-190. Thus, "this section limits municipal liability to claims of negligence based on the conduct of agents, officers, or employees of the municipality." *Lee v. Houser*, 148 So. 3d 406, 419 (Ala. 2013).

"Where a plaintiff alleges a factual pattern that demonstrates 'neglect, carelessness, or unskillfulness,' the plaintiff has stated a cause of action against a municipality under [§] 11-47-190 of the Alabama Code." *Hardy v. Town of Hayneville*, 50 F. Supp. 2d 1176, 1193 (M.D. Ala. Apr. 1, 1999). However, the City argues that Plaintiff's claim under 11-47-190 must be dismissed because he simultaneously asserts that that the Individual Officers acted intentionally in arresting him and any allegations of negligence are merely conclusory,

Throughout the complaint, Plaintiff alleges that the officers acted "willfully, maliciously, in bad faith, and in reckless of disregard of [his] federally protected constitutional rights" and that they did so with "shocking and willful indifference…and conscious awareness that it could cause [him] harm." (Doc. # 16, ¶¶ 25, 32-35, 45-47, 56). However, Federal Rule of Civil Procedure 8(d) expressly permits a party to plead alternative or inconsistent claims or defenses in one case. *United Tech. Corp. v. Mazer*, 556 F.3d 1260, 1273 (11th Cir. 2009). When a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. Fed. R. Civ. P. 8(d)(2). Further, one pleading "should not be construed as an admission against another alternative or inconsistent pleading in the same case." *Silverio v. Buffalo Rock Co.*, 2010 WL 11614793, at *3 (N.D. Ala. Apr. 1, 2010) (quoting *Henry v. Daytop Vill., Inc.*, 42 F.3d 89, 95 (2d Cir. 1994) and *Molsbergen v. United States*, 757 F.2d 1016, 1018-19 (9th Cir.), *cert. dismissed*, 473 U.S. 934 (1985)).

To be sure, "alternative pleading does not relieve a plaintiff of [his] obligation under Rule 8(a) to state 'enough facts to state a claim to relief that is plausible on its face.'" *Thomas v. Kamtek, Inc.*, 143 F. Supp. 3d 1179, 1189 (N.D. Ala. Oct. 28, 2015) (quoting *Twombly*, 550 U.S. at 547). Nevertheless, the court finds that Plaintiff has cleared that hurdle here. At the pleading stage, the court assesses only whether Plaintiff's allegations are "enough to raise a right to relief above the speculative level." *United Tech. Corp*, 556 F.3d at 1273 (quoting *Twombly*, 550 U.S. at 555). Here, while the actions of the Individual Officers in arresting Plaintiff could be found to be intentional or malicious, they could also be construed as negligent, as well. Therefore, in accepting Plaintiff's allegations as true and viewing them in the light most favorable to him, the court finds that Plaintiff has sufficiently alleged that the Individual Officers were careless and unskilled in arresting him.

Accordingly, at the initial pleading stage, Plaintiff's allegations are sufficient to state a claim against the City under § 11-47-190.

b. Plaintiff's claim against the City is due to be dismissed because the City shares the Individual Officers' state-agent and peace officer immunity.

Plaintiff alleges that the City is liable for the Individual Officers' actions falling below that of a skilled or proficient officer in similar circumstances. (Doc. # 16, ¶¶ 59-65). However, because the Individual Officers are entitled to state-agent immunity under Alabama Code § 6-5-338, the City also cannot be held liable for their actions, and Plaintiff's claim is to due be dismissed.

"Alabama law provides for immunity for police officers performing discretionary functions within the scope of their employment… Thus, police officers, and by extension the City, are generally immune from claims of negligence." *Fowler v. Meeks*, 569 Fed. Appx. 705, 708 (11th Cir. 2014) (citing Ala. Code § 6-5-338).

Under Alabama law, a municipal officer is immune from state tort liability "arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties." Ala. Code § 6-5-338(a). However, the state-agent immunity does not apply when officers act "willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." *Ex Parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000).

In its evaluation of the Individual Officers' Motion for Summary Judgment, the court has already ruled that they are entitled to state-agent immunity for their arrest of Plaintiff. *See* Doc. # 60 at 25-26. And, because the Individual Officers are shielded from liability under § 6-5-338, the City is immune as well. "It is well established that, if a municipal peace officer is immune pursuant to § 6-5-338(a), then, pursuant to § 6-5-338(b), the city by which he is employed is also immune. Section 6-5-338(b) provides: 'This section is intended to extend immunity only to peace officers

and governmental units or agencies authorized to appoint peace officers.'" *Howard v. City of Atmore*, 887 So. 2d 201, 211 (Ala. 2003) (holding that § 6-5-338(b) shielded a city from liability for the alleged neglect, carelessness, and unskillfulness of the police chief); *see also Shaw v. City of Selma*, 241 F. Supp. 3d 1253, 1287 (S.D. Ala. Mar. 15, 2017).

Because this court finds that the Individuals Officers are entitled to immunity under § 6-5-338(a), the City of Childersburg is also immune from Plaintiff's state-law claim under § 6-5-338(b). Therefore, Plaintiff's state-law false arrest claim against the City is due to be dismissed.

IV. Conclusion

For the reasons discussed above, the City of Childersburg's Motion to Dismiss is **GRANTED**. An order consistent with this memorandum opinion will be entered contemporaneously.

DONE and **ORDERED** this December 21, 2023.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

Appendix J

FILED
2022 Nov-01 PM 12:42
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS

Plaintiff,

vs.

CHRISTOPHER SMITH,
in his individual capacity;
JUSTIN GABLE,
in his individual capacity.
JEREMY BROOKS,
in his individual capacity.
CITY OF CHILDERSBURG, ALABAMA,

Defendants.

CAFN: 1:22-cv-01165-RD

COMPLAINT

COMES NOW, Plaintiff, Pastor Michael Jerome Jennings (hereinafter "Pastor Jennings" or "Plaintiff"), through his undersigned counsel, files this Amended Complaint pursuant to FRCP 15(a)(1)(B) against the above-named Defendant Christopher Smith (hereinafter "Defendant Smith"), in his individual capacity; Defendant Justin Gable (hereinafter "Defendant Gable"), in his individual capacity; Defendant Jeremy Brooks (hereinafter "Defendant Brooks"), in his individual capacity; and the City of Childersburg, Alabama, and in support thereof states as follows:

INTRODUCTION

"I'm supposed to be here. I'm Pastor Jennings. I live across the street." "I'm looking out for their house while they're gone, watering their flowers."

---Pastor Michael Jennings, May 22, 2022

On May 22, 2022, Michael Jennings, a longtime pastor at Vision of Abundant Life Church in Sylacauga, Ala., was arrested and charged with obstruction of government operation while doing a neighborly deed of watering his out-of-town neighbor's flowers, per their request. According to the incident report related to Pastor Jennings' arrest, Pastor Jennings was arrested because he failed to identify himself to the Childersburg's police officers after they received a called that a suspicious person was on the neighbor's property while they were out-of-town. Notably, Pastor Jennings identified himself to the responding officer even though he was under no lawful obligation to identify himself to the responding officers, pursuant to Alabama code section 15-5-30. Pastor Jennings was arrested and transported to Childersburg City Jail, where he was fingerprinted, his mug shot was taken and then he was booked and transported to Talladega County Jail. Pastor Jennings had to post a bond in the amount of $500.00 to bail out of jail. On June 1, 2022, Pastor Jennings charges were dismissed with prejudice.

Plaintiff brings federal constitutional claims against all individually Defendants for committing acts under color of law that deprived, Plaintiff, Pastor Jennings of his

rights under the Constitution. Further, Plaintiff brings state law claims of False Arrest against all named Defendants.

JURISDICTION AND VENUE

1.

This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiff's claims under the U.S. Constitution, which are brought both directly under 42 U.S.C. § 1983.

2.

This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. § 1367 because it is so related to the federal claims that it forms part of the same case or controversy under Article III of the U.S. Constitution.

3.

Venue is proper in this District under 28 U.S.C. § 1391(b)(2). All of the events giving rise to this Complaint occurred within this District.

PARTIES

4.

At all times relevant hereto, Plaintiff Michael Jerome Jennings, was a resident of the State Alabama and citizen of the United States of America.

5.

At all times relevant hereto, Defendant Christopher Smith was a citizen of the United States and a resident of the State of Alabama and was acting under color of state law in his capacity as a law enforcement officer employed by the City of Childersburg, Alabama. Defendant Christopher Smith is sued in his individual capacity.

6.

At all times relevant hereto, Defendant Justin Gable was a citizen of the United States and a resident of the State of Alabama and was acting under color of state law in his capacity as a law enforcement officer employed by the City of Childersburg, Alabama. Defendant Justin Gable is sued in his individual capacity.

7.

At all times relevant hereto, Defendant Jeremy Brooks was a citizen of the United States and a resident of the State of Alabama and was acting under color of state law in his capacity as a law enforcement officer employed by the City of Childersburg, Alabama. Defendant Jeremy Brooks is sued in his individual capacity.

8.

The City of Childersburg, Alabama in municipality under the laws of Alabama. The City of Childersburg Police Department is a department of the City of Childersburg, Alabama Government.

FACTUAL ALLEGATIONS

Events That Occurred on May 22, 2022

9.

On May 22, 2022, at approximately 6:21 p.m., Pastor Jennings, a black man, was on his neighbor's private property watering his neighbor's flowers, per his neighbor's request, when he was approached by Defendants Smith and Gable of the Childersburg Police Department.

10.

Defendant Smith asked Pastor Jennings what he was doing there at the private property. Pastor Jennings told Defendants Smith that he was watering flowers. Notably, Pastor Jennings was holding a water hose in his hand and watering flowers when he told Defendants Smith that he was watering flowers.

11.

Defendant Smith then told Pastor Jennings that someone called 911 and said a gold SUV parked on the private property was not supposed to be there nor did Pastor Jennings supposed to be there. Pastor Jennings responded by saying, "I'm supposed to be here. I'm Pastor Jennings. I live across the street." "I'm looking out for their house while they're gone, watering their flowers."

12.

Defendant Smith acknowledged the Pastor Jennings had identified himself as Pastor Jennings, then he asked for Pastor Jennings to provide him with his identification card to prove his identity to him. However, Pastor Jennings refused to do so.

13.

Subsequently, Defendant Gable arrived on scene. Pastor Jennings told Defendant Gable that he had already told Defendants Smith who he was. He reiterated that he there watering flowers for his neighbor and that he lived across the street, and he had not done anything suspicious.

14.

Pastor Jennings attempted to walk away and continue his good deed of watering his neighbor's flowers; however, he was detained by Defendants Gable and Smith and placed in handcuffs. Defendant Smith took his cell phone away from him.

15.

Subsequently, Defendant Brooks arrived on scene. Upon Defendant Brooks arrival on scene, Defendants Smith walked to his patrol vehicle while Defendants Brooks and Gable stayed with Pastor Jennings.

16.

Defendant Brooks told Pastor Jennings that they have a right to identify him, and he needed to listen to them and shut his mouth. Pastor Jennings told Defendant Brooks they need to listen, and he needs to shut his mouth and not to talk to him like he is a child. Immediately, after Pastor Jennings express his discontent of how Defendant Brooks was speaking to him, Defendants Smith decided to arrest Pastor Jennings. Defendant Brooks concurred with Defendant Smith and told Pastor Jennings he was going to jail.

17.

Defendant Gable escorted Pastor Jennings to his patrol vehicle. Notably, Defendants Brooks and Smith acknowledged that Pastor Jennings was on private property as they were walking to run a license plate check on the gold SUV that was in the yard.

18.

Subsequently, the individual Defendants made contact with Amanda. Amanda was the person who initiated the call to the police concerning a suspicious person in her neighbor's yard. Upon speaking with Amanda, the Defendants were then satisfied that Pastor Jennings was who he said he was and was doing what he said he was doing, watering his neighbor's flowers while they were out of town. Notably, Amanda, a white woman, refuse to prove her last name and identification/driver's license to the individual Defendants.

19.

Despite that fact Pastor Jennings identified himself to Defendants Smith under no legal obligation to do so; Despite that fact Amanda validated who Pastor Jennings was and that he probably had permission to be on the private property; Despite that fact Pastor Jennings' wife produced his identification to the individual Defendants; The individual Defendants refused to release Pastor Jennings from their custody and took him to the Childersburg City Jail and then he was booked and transported to the Talladega County Jail.

20.

While at the jail, Pastor Jennings was fingerprinted. He was required to take a mugshot and had to pay a cash bond for his release in the amount of $500.00 dollars. Pastor Jennings was incarcerated for approximately 2 hours before his wife was able was able to borrow the money from a relative to bail him out of jail.

Mugshot of Pastor Jennings on 5/22/22 at the Childersburg City Jail

21.

The above photo was posted on https://bustedtalladegacounty.com/sylacauga/

22.

On June 1, 2022, Pastor Jennings charges were dismissed with prejudice.

23.

As a direct and proximate result of the individual Defendants' wrongful conduct, the Pastor Jennings sustained substantially injuries. These injuries include, but are not limited to, loss of constitutional and federal rights, emotional distress, and/or aggravation of pre-existing conditions, and ongoing special damages medically/psychologically related treatment caused by the unconstitutional and moving forces concerted conduct of all these Defendants. Plaintiff also continues to suffer ongoing emotional distress, with significant PTSD type symptoms, including sadness, anxiety, stress, anger, depression, frustration, sleeplessness, nightmares and flashbacks from his unlawful arrest.

24.

In the alternative, the individual Defendants arrested Pastor Jennings due to their lack of skills or carelessness as officers operating in their scope of duty in confronting the above facts and circumstances. Their actions fell below that response which a skilled or proficient officer would exercise in similar circumstances.

25.

Pastor Jennings is also entitled to punitive damages on all of his claims against all of the individual Defendants personally to redress their willful, malicious, wanton, reckless and fraudulent conduct towards Pastor Jennings.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 – Unlaw Arrest in Violation of the Fourth Amendment
(Against All Individual Defendants)

26.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint.

42 U.S.C. § 1983 provides that:

> Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress…..

27.

All individual Defendants to this claim, are persons for purposes of 42 U.S.C. § 1983.

28.

All individual Defendants, at all times relevant hereto, were acting under the color of state law in their capacities as officers for the City of Childersburg and their acts or omissions were conducted within the scope of their official duties or employment.

29.

At the time of the complained of events, Pastor Jennings had a clearly established constitutional right under the Fourth Amendment to be secure in his person from unreasonable seizure and not to be arrested without arguable probable cause to do so. Notably, Pastor Jennings identified himself although he was under no legal obligation to pursuant to Alabama code section 15-5-30.

30.

Alabama code section 15-5-30 states:

> A sheriff or other officer acting as sheriff, his deputy or any constable, acting within their respective counties, any marshal, deputy marshal or policeman of any incorporated city or town within the limits of the county or any highway patrolman or state trooper may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or other public offense and may demand of him his name, address and an explanation of his actions.

31.

It is undisputed that Pastor Jennings was on private property at the time the individual Defendants demand for him to prove his identity by showing his

identification card. Although Pastor Jennings was under no legal obligation to provide his name, address, and an explanation of his actions, he did. Upon his initial encounter with Defendant Smith, he told Defendant Smith "I'm Pastor Jennings. I live across the street." "I'm looking out for their house while they're gone, watering their flowers."

32.

All individual Defendants' actions, as described herein, were willful, malicious and deliberate indifferent to Pastor Jennings's federally protected rights.

33.

All individual Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Pastor Jennings' federally protected constitutional rights.

34.

All individual Defendants did so with shocking and willful indifference to Pastor Jennings' rights and with conscious awareness that it could cause Pastor Jennings harm.

35.

The acts or omissions of all individual Defendants were the moving forces behind Pastor Jennings' injuries. The acts or omissions of all individual Defendants as described herein intentionally deprived Pastor Jennings' of his constitutional rights

and caused him other damages. All individual Defendants are not entitled to qualified immunity for their actions.

36.

As a proximate result of all individual Defendants' unlawful conduct, Pastor Jennings suffered loss of his freedom and other injuries. As a further result of the individual Defendants' unlawful conduct, Pastor Jennings has incurred special damages, including medical expenses and other special damages related expenses, in amounts to be established at trial.

37.

On information and belief, Pastor Jennings suffered lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his injuries, in amounts to be ascertained in trial. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

38.

In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton

disregard of the constitutional rights of Jennings. All Defendants are jointly and severally liable for violating Jennings's Fourth Amendment Rights.

39.

WHEREFORE, Plaintiff prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages;
3. Cost of suit;
4. Reasonable attorney fees, pursuant to 42 U.S.C. § 1988;
5. Trial by jury as to all issues so triable; and such other relief as this Honorable Court may deem just and appropriate.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983
Retaliatory arrest in violation of the First Amendment
(Against All Individual Defendants)

40.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint.

41.

All individual Defendants to this claim, is a person for purposes of 42 U.S.C. § 1983.

42.

All individual Defendants, at all times relevant hereto, were acting under the color of state law in their capacities as officers for the City of Childersburg and their acts or omissions were conducted within the scope of their official duties or employment.

43.

At the time of the complained of events, Pastor Jennings had a clearly established constitutional right under the First Amendment to be free from arrest after engaging in protected speech under the First Amendment.

44.

The individuals Defendants made the decision to arrest Pastor Jennings in retaliation after Pastor Jennings engaged in constitutionally protected speech and conduct. The statements made by Pastor Jennings were not fighting words. The statements and conduct of Pastor Jennings constituted protected speech under the First Amendment.

45.

All individual Defendants' actions, as described herein, was willful, malicious and deliberate indifferent to Pastor Jennings's federally protected rights.

46.

All individual Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Pastor Jennings' federally protected constitutional rights.

47.

All individual Defendants did so with shocking and willful indifference to Pastor Jennings' rights and with conscious awareness that it could cause Pastor Jennings harm.

48.

The acts or omissions of all individual Defendants were the moving forces behind Pastor Jennings' injuries. The acts or omissions of all individual Defendants as described herein intentionally deprived Pastor Jennings' of his constitutional rights and caused him other damages. All individual Defendants are not entitled to qualified immunity for their actions.

49.

As a proximate result of all individual Defendants' unlawful conduct, Pastor Jennings suffered loss of his freedom and other injuries. As a further result of the individual Defendants' unlawful conduct, Pastor Jennings has incurred special damages, including medical expenses and other special damages related expenses, in amounts to be established at trial.

50.

On information and belief, Pastor Jennings suffered lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his injuries, in amounts to be ascertained in trial. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

51.

In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Pastor Jennings. All of the individual Defendants are liable for violating Pastor Jennings' First Amendment Rights.

52.

WHEREFORE, Plaintiff prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages;
3. Cost of suit;
4. Reasonable attorney fees, pursuant to 42 U.S.C. § 1988;

5. Trial by jury as to all issues so triable; and such other relief as this Honorable Court may deem just and appropriate.

THIRD CLAIM FOR RELIEF
(False Arrest)
(Against All Individual Defendants)

53.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint.

54.

No reasonable officer in the individuals Defendants' position could have believed there was arguable probable cause that Pastor Jennings committed the offense obstruction of government or any other criminal act prior to his arrest.

55.

Additionally, Pastor Jennings was arrested in retaliation after engaging in constitutionally protected speech and conduct.

56.

The individual Defendants' arrest of Pastor Jennings was malicious, willful or with a reckless or wanton disregard of Pastor Jennings' constitutional rights.

57.

The Defendants' action caused the Plaintiff to suffer from emotional distress, with significant PTSD type symptoms, including sadness, anxiety, stress, anger,

depression, frustration, sleeplessness, nightmares and flashbacks from his unlawful arrest.

58.

WHEREFORE, Plaintiffs prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages;
3. Cost of suit;
4. Reasonable attorney fees:
5. Trial by jury as to all issues so triable; and

Such other relief as this Honorable Court may deem just and appropriate.

FOURTH CLAIM FOR RELIEF
(False Arrest)
(Against City of Childersburg)

59.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint.

60.

In the alternative, the individual Defendants arrested Pastor Jennings due to their lack of skills or carelessness as officers operating in their scope of duty in confronting

the above facts and circumstances. Their actions fell below that response which a skilled or proficient officer would exercise in similar circumstances.

61.

The individual Defendants were careless and unskilled in arresting Pastor Jennings after Pastor Jennings refused to prove his identification card to the individual Defendants.

62.

The individual Defendants were careless and unskilled in arresting Pastor Jennings after Pastor Jennings engaged in constitutionally protected speech and conduct.

63.

The Defendants' action caused the Plaintiff to suffer from emotional distress, with significant PTSD type symptoms, including sadness, anxiety, stress, anger, depression, frustration, sleeplessness, nightmares and flashbacks from his unlawful arrest.

64.

At the time of the complained incident, all individual Defendants were acting within the scope of their employment with City of Childersburg. At the time all individual Defendants committed the acts described herein, they were acting within the course and scope of their employment and/or agency with City of Childersburg. As

such, the City of Childersburg is liable for the lack of skills or carelessness of the individual Defendants while operating in their scope of duty in confronting the above facts and circumstances. The individual Defendants' actions fell below that response which a skilled or proficient officer would exercise in similar circumstances.

Therefore, the unskillfulness and carelessness of all individual Defendants are imputed to City of Childersburg through the doctrines of agency, vicarious liability and respondeat superior.

65.

WHEREFORE, Plaintiffs prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages;
3. Cost of suit;
4. Reasonable attorney fees:
5. Trial by jury as to all issues so triable; and

Such other relief as this Honorable Court may deem just and appropriate.

PRAYER FOR RELIEF

Plaintiff prays that this Court enter judgment for the Plaintiff and against each of the Defendants and grant:

A. compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount into be determine by a jury;

B. economic losses on all claims allowed by law;

C. special damages in an amount to be determined at trial;

D. punitive damages on all claims allowed by law against all individual Defendants;

E. attorneys' fees and the costs associated with this action under 42 U.S.C. § 1988, including expert witness fees, on all claims allowed by law;

F. pre- and post-judgment interest at the lawful rate; and,

G. any further relief that this court deems just and proper, and any other appropriate relief a law and equity.

PLAINTIFF REQUESTS A TRIAL BY JURY.

Respectfully submitted November 1, 2022.

(*Signatures on following page*)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS

Plaintiff,

vs.

CHRISTOPHER SMITH,
in his individual capacity;
JUSTIN GABLE,
in his individual capacity.
JEREMY BROOKS,
in his individual capacity.
CITY OF CHILDERSBURG, ALABAMA,

Defendants.

CAFN: 1:22-cv-01165-RD

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the following has been served a copy of the foregoing document, on the 1st day of November 2022, by placing the same in the U.S. mail, postage prepaid and properly addressed; or, if the party being served is a registered participant in the ECF System of the United States District Court for the Northern District of Alabama, by a "Notice of Electronic Filing" pursuant to N.D. Ala. Local Rule 5.4:

STUBBS, SILLS & FRYE P.C.
C. David Stubbs
Attorney for Defendant City of Childersburg
1724 South Quintard Avenue Post Office Box 2023

The Law Offices of Harry M. Daniels, LLC

/s/Harry M. Daniels
Harry M. Daniels, Esq

Appendix K

FILED
2022 Sep-12 PM 05:29
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MICHAEL JEROME JENNINGS Plaintiff, vs. CHRISTOPHER SMITH, in his individual capacity; JUSTIN GABLE, in his individual capacity. JEREMY BROOKS, in his individual capacity. CITY OF CHILDERSBURG, ALABAMA, Defendants.	CAFN:

COMPLAINT

COMES NOW, Plaintiff, Pastor Michael Jerome Jennings (hereinafter "Pastor Jennings" or "Plaintiff"), through his undersigned counsel, files this Complaint against the above-named Defendant Christopher Smith (hereinafter "Defendant Smith"), in his individual capacity; Defendant Justin Gable (hereinafter "Defendant Gable"), in his individual capacity; Defendant Jeremy Brooks (hereinafter "Defendant Brooks"), in his individual capacity; and the City of Childersburg, Alabama, and in support thereof states as follows:

INTRODUCTION

"I'm supposed to be here. I'm Pastor Jennings. I live across the street." "I'm looking out for their house while they're gone, watering their flowers."

---Pastor Michael Jennings, May 22, 2022

On May 22, 2022, Michael Jennings, a longtime pastor at Vision of Abundant Life Church in Sylacauga, Ala., was arrested and charged with obstruction of government operation while doing a neighborly deed of watering his out-of-town neighbor's flowers, per their request. According to the incident report related to Pastor Jennings' arrest, Pastor Jennings was arrested because he failed to identify himself to the Childersburg's police officers after they received a called that a suspicious person was on the neighbor's property while they were out-of-town. Notably, Pastor Jennings identified himself to the responding officer even though he was under no lawful obligation to identify himself to the responding officers, pursuant to Alabama code section 15-5-30. Pastor Jennings was arrested and transported to Childersburg City Jail, where he was fingerprinted, his mug shot was taken and then he was booked and transported to Talladega County Jail. Pastor Jennings had to post a bond in the amount of $500.00 to bail out of jail. On June 1, 2022, Pastor Jennings charges were dismissed with prejudice.

Plaintiff brings federal constitutional claims against all individually Defendants for committing acts under color of law that deprived, Plaintiff, Pastor Jennings of his

rights under the Constitution. Further, Plaintiff brings state law claims of False Arrest against all named Defendants.

JURISDICTION AND VENUE

1.

This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiff's claims under the U.S. Constitution, which are brought both directly under 42 U.S.C. § 1983.

2.

This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. § 1367 because it is so related to the federal claims that it forms part of the same case or controversy under Article III of the U.S. Constitution.

3.

Venue is proper in this District under 28 U.S.C. § 1391(b)(2). All of the events giving rise to this Complaint occurred within this District.

PARTIES

4.

At all times relevant hereto, Plaintiff Michael Jerome Jennings, was a resident of the State Alabama and citizen of the United States of America.

5.

At all times relevant hereto, Defendant Christopher Smith was a citizen of the United States and a resident of the State of Alabama and was acting under color of state law in his capacity as a law enforcement officer employed by the City of Childersburg, Alabama. Defendant Christopher Smith is sued in his individual capacity.

6.

At all times relevant hereto, Defendant Justin Gable was a citizen of the United States and a resident of the State of Alabama and was acting under color of state law in his capacity as a law enforcement officer employed by the City of Childersburg, Alabama. Defendant Justin Gable is sued in his individual capacity.

7.

At all times relevant hereto, Defendant Jeremy Brooks was a citizen of the United States and a resident of the State of Alabama and was acting under color of state law in his capacity as a law enforcement officer employed by the City of Childersburg, Alabama. Defendant Jeremy Brooks is sued in his individual capacity.

8.

The City of Childersburg, Alabama in municipality under the laws of Alabama. The City of Childersburg Police Department is a department of the City of Childersburg, Alabama Government.

FACTUAL ALLEGATIONS

Events That Occurred on May 22, 2022

9.

On May 22, 2022, at approximately 6:21 p.m., Pastor Jennings, a black man, was on his neighbor's private property watering his neighbor's flowers, per his neighbor's request, when he was approached by Defendants Smith and Gable of the Childersburg Police Department.

10.

Defendant Smith asked Pastor Jennings what he was doing there at the private property. Pastor Jennings told Defendants Smith that he was watering flowers. Notably, Pastor Jennings was holding a water hose in his hand and watering flowers when he told Defendants Smith that he was watering flowers.

11.

Defendant Smith then told Pastor Jennings that someone called 911 and said a gold SUV parked on the private property was not supposed to be there nor did Pastor Jennings supposed to be there. Pastor Jennings responded by saying, "I'm supposed to be here. I'm Pastor Jennings. I live across the street." "I'm looking out for their house while they're gone, watering their flowers."

12.

Defendant Smith acknowledged the Pastor Jennings had identified himself as Pastor Jennings, then he asked for Pastor Jennings to provide him with his identification card to prove his identity to him. However, Pastor Jennings refused to do so.

13.

Subsequently, Defendant Gable arrived on scene. Pastor Jennings told Defendant Gable that he had already told Defendants Smith who he was. He reiterated that he there watering flowers for his neighbor and that he lived across the street, and he had not done anything suspicious.

14.

Pastor Jennings attempted to walk away and continue his good deed of watering his neighbor's flowers; however, he was detained by Defendants Gable and Smith and placed in handcuffs. Defendant Smith took his cell phone away from him.

15.

Subsequently, Defendant Brooks arrived on scene. Upon Defendant Brooks arrival on scene, Defendants Smith walked to his patrol vehicle while Defendants Brooks and Gable stayed with Pastor Jennings.

16.

Defendant Brooks told Pastor Jennings that they have a right to identify him, and he needed to listen to them and shut his mouth. Pastor Jennings told Defendant Brooks they need to listen, and he needs to shut his mouth and not to talk to him like he is a child. Immediately, after Pastor Jennings express his discontent of how Defendant Brooks was speaking to him, Defendants Smith decided to arrest Pastor Jennings. Defendant Brooks concurred with Defendant Smith and told Pastor Jennings he was going to jail.

17.

Defendant Gable escorted Pastor Jennings to his patrol vehicle. Notably, Defendants Brooks and Smith acknowledged that Pastor Jennings was on private property as they were walking to run a license plate check on the gold SUV that was in the yard.

18.

Subsequently, the individual Defendants made contact with Amanda. Amanda was the person who initiated the call to the police concerning a suspicious person in her neighbor's yard. Upon speaking with Amanda, the Defendants were then satisfied that Pastor Jennings was who he said he was and was doing what he said he was doing, watering his neighbor's flowers while they were out of town. Notably, Amanda, a white woman, refuse to prove her last name and identification/driver's license to the individual Defendants.

19.

Despite that fact Pastor Jennings identified himself to Defendants Smith under no legal obligation to do so; Despite that fact Amanda validated who Pastor Jennings was and that he probably had permission to be on the private property; Despite that fact Pastor Jennings' wife produced his identification to the individual Defendants; The individual Defendants refused to release Pastor Jennings from their custody and took him to the Childersburg City Jail and then he was booked and transported to the Talladega County Jail.

20.

While at the jail, Pastor Jennings was fingerprinted. He was required to take a mugshot and had to pay a cash bond for his release in the amount of $500.00 dollars. Pastor Jennings was incarcerated for approximately 2 hours before his wife was able was able to borrow the money from a relative to bail him out of jail.

Mugshot of Pastor Jennings on 5/22/22 at the Childersburg City Jail

21.

The above photo was posted on https://bustedtalladegacounty.com/sylacauga/

22.

On June 1, 2022, Pastor Jennings charges were dismissed with prejudice.

23.

As a direct and proximate result of the individual Defendants' wrongful conduct, the Pastor Jennings sustained substantially injuries. These injuries include, but are not limited to, loss of constitutional and federal rights, emotional distress, and/or aggravation of pre-existing conditions, and ongoing special damages medically/psychologically related treatment caused by the unconstitutional and moving forces concerted conduct of all these Defendants. Plaintiff also continues to suffer ongoing emotional distress, with significant PTSD type symptoms, including sadness, anxiety, stress, anger, depression, frustration, sleeplessness, nightmares and flashbacks from his unlawful arrest.

24.

Pastor Jennings is also entitled to punitive damages on all of his claims against all of the individual Defendants personally to redress their willful, malicious, wanton, reckless and fraudulent conduct towards Pastor Jennings.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 – Unlaw Arrest in Violation of the Fourth Amendment
(Against All Individual Defendants)

25.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 24 of this Complaint.

42 U.S.C. § 1983 provides that:

> Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress…..

26.

All individual Defendants to this claim, are persons for purposes of 42 U.S.C. § 1983.

27.

All individual Defendants, at all times relevant hereto, were acting under the color of state law in their capacities as officers for the City of Childersburg and their acts or omissions were conducted within the scope of their official duties or employment.

28.

At the time of the complained of events, Pastor Jennings had a clearly established constitutional right under the Fourth Amendment to be secure in his person from unreasonable seizure and not to be arrested without arguable probable cause to do so. Notably, Pastor Jennings identified himself although he was under no legal obligation to pursuant to Alabama code section 15-5-30.

29.

Alabama code section 15-5-30 states:

> A sheriff or other officer acting as sheriff, his deputy or any constable, acting within their respective counties, any marshal, deputy marshal or policeman of any incorporated city or town within the limits of the county or any highway patrolman or state trooper may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or other public offense and may demand of him his name, address and an explanation of his actions.

30.

It is undisputed that Pastor Jennings was on private property at the time the individual Defendants demand for him to prove his identity by showing his identification card. Although Pastor Jennings was under no legal obligation to provide his name, address, and an explanation of his actions, he did. Upon his initial encounter with Defendant Smith, he told Defendant Smith "I'm Pastor Jennings. I live across the street." "I'm looking out for their house while they're gone, watering their flowers."

31.

All individual Defendants' actions, as described herein, were willful, malicious and deliberate indifferent to Pastor Jennings's federally protected rights.

32.

All individual Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Pastor Jennings' federally protected constitutional rights.

33.

All individual Defendants did so with shocking and willful indifference to Pastor Jennings' rights and with conscious awareness that it could cause Pastor Jennings harm.

34.

The acts or omissions of all individual Defendants were the moving forces behind Pastor Jennings' injuries. The acts or omissions of all individual Defendants as described herein intentionally deprived Pastor Jennings' of his constitutional rights and caused him other damages. All individual Defendants are not entitled to qualified immunity for their actions.

35.

As a proximate result of all individual Defendants' unlawful conduct, Pastor Jennings suffered loss of his freedom and other injuries. As a further result of the

individual Defendants' unlawful conduct, Pastor Jennings has incurred special damages, including medical expenses and other special damages related expenses, in amounts to be established at trial.

36.

On information and belief, Pastor Jennings suffered lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his injuries, in amounts to be ascertained in trial. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

37.

In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Jennings. All Defendants are jointly and severally liable for violating Jennings's Fourth Amendment Rights.

38.

WHEREFORE, Plaintiff prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages;

3. Cost of suit;

4. Reasonable attorney fees, pursuant to 42 U.S.C. § 1988;

5. Trial by jury as to all issues so triable; and such other relief as this Honorable Court may deem just and appropriate.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983
Retaliatory arrest in violation of the First Amendment
(Against All Individual Defendants)

39.

All individual Defendants to this claim, is a person for purposes of 42 U.S.C. § 1983.

40.

All individual Defendants, at all times relevant hereto, were acting under the color of state law in their capacities as officers for the City of Childersburg and their acts or omissions were conducted within the scope of their official duties or employment.

41.

At the time of the complained of events, Pastor Jennings had a clearly established constitutional right under the First Amendment to be free from arrest after engaging in protected speech under the First Amendment.

42.

The individuals Defendants made the decision to arrest Pastor Jennings in retaliation after Pastor Jennings engaged in constitutionally protected speech and conduct. The statements made by Pastor Jennings were not fighting words. The statements and conduct of Pastor Jennings constituted protected speech under the First Amendment.

43.

All individual Defendants' actions, as described herein, was willful, malicious and deliberate indifferent to Pastor Jennings's federally protected rights.

44.

All individual Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Pastor Jennings' federally protected constitutional rights.

45.

All individual Defendants did so with shocking and willful indifference to Pastor Jennings' rights and with conscious awareness that it could cause Pastor Jennings harm.

46.

The acts or omissions of all individual Defendants were the moving forces behind Pastor Jennings' injuries. The acts or omissions of all individual Defendants as described herein intentionally deprived Pastor Jennings' of his constitutional rights and caused him other damages. All individual Defendants are not entitled to qualified immunity for their actions.

47.

As a proximate result of all individual Defendants' unlawful conduct, Pastor Jennings suffered loss of his freedom and other injuries. As a further result of the individual Defendants' unlawful conduct, Pastor Jennings has incurred special damages, including medical expenses and other special damages related expenses, in amounts to be established at trial.

48.

On information and belief, Pastor Jennings suffered lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his injuries, in amounts to be ascertained in trial. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

49.

In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Pastor Jennings. All of the individual Defendants are liable for violating Pastor Jennings' First Amendment Rights.

50.

WHEREFORE, Plaintiff prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages;
3. Cost of suit;
4. Reasonable attorney fees, pursuant to 42 U.S.C. § 1988;
5. Trial by jury as to all issues so triable; and such other relief as this Honorable Court may deem just and appropriate.

THIRD CLAIM FOR RELIEF
(False Arrest)
(All Defendants)

51.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 24 of this Complaint.

52.

No reasonable officer in the individuals Defendants' position could have believed there was arguable probable cause that Pastor Jennings committed the offense obstruction of government or any other criminal act prior to his arrest.

53.

Additionally, Pastor Jennings was arrested in retaliation after engaging in constitutionally protected speech and conduct.

54.

The individual Defendants' arrest of Pastor Jennings was malicious, willful or with a reckless or wanton disregard of Pastor Jennings' constitutional rights.

55.

The Defendants' action caused the Plaintiff to suffer from emotional distress, with significant PTSD type symptoms, including sadness, anxiety, stress, anger, depression, frustration, sleeplessness, nightmares and flashbacks from his unlawful arrest.

56.

At the time of the complained incident, all individual Defendants were acting within the scope of their employment with City of Childersburg. At the time all individual Defendants committed the acts described herein, they were acting within the course and scope of their employment and/or agency with City of Childersburg. As such, the City of Childersburg is liable for the intentional malicious acts of all individual Defendants. Therefore, the intentional acts of all individual Defendants are imputed to City of Childersburg through the doctrines of agency, vicarious liability and respondeat superior.

57.

WHEREFORE, Plaintiffs prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages;
3. Cost of suit;
4. Reasonable attorney fees:
5. Trial by jury as to all issues so triable; and

Such other relief as this Honorable Court may deem just and appropriate.

PRAYER FOR RELIEF

Plaintiff prays that this Court enter judgment for the Plaintiff and against each of the Defendants and grant:

A. compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount into be determine by a jury;

B. economic losses on all claims allowed by law;

C. special damages in an amount to be determined at trial;

D. punitive damages on all claims allowed by law against all individual Defendants;

E. attorneys' fees and the costs associated with this action under 42 U.S.C. § 1988, including expert witness fees, on all claims allowed by law;

F. pre- and post-judgment interest at the lawful rate; and,

G. any further relief that this court deems just and proper, and any other appropriate relief a law and equity.

PLAINTIFF REQUESTS A TRIAL BY JURY.

Respectfully submitted September 9th, 2022.

(*Signatures on following page*)

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Appendix L

STAYED,PROTECTIVE ORDER

U.S. District Court
Northern District of Alabama (Eastern)
CIVIL DOCKET FOR CASE #: 1:22-cv-01165-RDP

Jennings v. Smith et al
Assigned to: Judge R David Proctor
Case in other court: Eleventh Circuit, 23-14171
Cause: 42:1983 Civil Rights Act

Date Filed: 09/09/2022
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Michael Jerome Jennings

represented by **Bethaney Embry Jones**
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V.

Defendant

Christopher Smith
in his individual capacity

represented by **Charles David Stubbs**
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Defendant

Justin Gable
in his individual capacity

represented by **Charles David Stubbs**
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Lisa Marie Ivey
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ATTORNEY TO BE NOTICED

Defendant

Jeremy Brooks
in his individual capacity

represented by **Charles David Stubbs**
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LEAD ATTORNEY
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Lisa Marie Ivey
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Childersburg, Alabama, City of

represented by **Charles David Stubbs**
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Lisa Marie Ivey
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/09/2022	1	COMPLAINT against Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith, filed by Michael Jerome Jennings.(KAM) (Entered: 09/12/2022)

09/22/2022		PHV Fee paid: $ 75, receipt number AALNDC-4175529. (Daniel, Roderick) NDAL rec# B-1267 Modified on 9/23/2022 (KAM). (Entered: 09/22/2022)
09/22/2022	2	MOTION for Leave to Appear Pro Hac Vice *Harry Daniels* by Michael Jerome Jennings. (Attachments: # 1 Exhibit Letter of Good Standing, # 2 Text of Proposed Order)(Daniel, Roderick) (Entered: 09/22/2022)
09/22/2022		Filing Fee: Filing fee $ 402, receipt_number AALNDC-4175564. related document 1 COMPLAINT against Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith, filed by Michael Jerome Jennings.(KAM). (Daniel, Roderick) NDAL rec# B-1268 Modified on 9/23/2022 (KAM). (Entered: 09/22/2022)
09/23/2022	3	**TEXT ORDER** - Before the court is Harry Danielss Motion for Leave to Appear Pro Hac Vice 2 . The Motion 2 is **CONDITIONALLY GRANTED**. On or before **September 26, 2022**, Attorney Daniels **SHALL** certify to the court that he has read and understands this courts CM/ECF requirements. Failure to submit the above item will result in vacatur of the conditional grant of the motion. Signed by Judge R David Proctor on 9/23/2022. (KAM) (Entered: 09/23/2022)
09/23/2022	4	Summons Issued as to Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith delivered to plaintiff (KAM) (Entered: 09/23/2022)
09/26/2022	5	AFFIDAVIT *Harry M. Daniels* by Michael Jerome Jennings. filed by Michael Jerome Jennings (Daniel, Roderick) (Entered: 09/26/2022)
09/27/2022	6	First MOTION for Leave to Appear Attorney Appearance *of Bethaney Embry Jones* by Michael Jerome Jennings. (Embry Jones, Bethaney) Modified on 9/30/2022 (KAM). (Entered: 09/27/2022)
10/14/2022	7	AFFIDAVIT of Service for Complaint and Summons served on Justin Gable on October 10, 2022, filed by Michael Jerome Jennings. (Embry Jones, Bethaney) (Entered: 10/14/2022)
10/14/2022	8	AFFIDAVIT of Service for Complaint and Summons served on City of Childersburg on October 10, 2022, filed by Michael Jerome Jennings. (Embry Jones, Bethaney) (Entered: 10/14/2022)
10/25/2022	9	MOTION to Dismiss by Childersburg, Alabama, City of. (Attachments: # 1 Brief in Support of Motion to Dismiss)(Stubbs, C) (Entered: 10/25/2022)
10/25/2022	10	ANSWER to 1 Complaint by Jeremy Brooks, Justin Gable, Christopher Smith.(Stubbs, C) (Entered: 10/25/2022)
10/25/2022	11	Corporate Disclosure Statement by Childersburg, Alabama, City of. filed by Childersburg, Alabama, City of (Stubbs, C) (Entered: 10/25/2022)
10/25/2022	12	Corporate Disclosure Statement by Christopher Smith. filed by Christopher Smith (Stubbs, C) (Entered: 10/25/2022)
10/25/2022	13	Corporate Disclosure Statement by Justin Gable. filed by Justin Gable (Stubbs, C) (Entered: 10/25/2022)
10/25/2022	14	Corporate Disclosure Statement by Jeremy Brooks. filed by Jeremy Brooks (Stubbs, C) (Entered: 10/25/2022)
10/27/2022	15	INITIAL ORDER - with appendices attached. Signed by Judge R David Proctor on 10/27/2022. (KAM) (Entered: 10/27/2022)
11/01/2022	16	AMENDED COMPLAINT against All Defendants, filed by Michael Jerome Jennings.(Daniels, Harry) (Entered: 11/01/2022)
11/02/2022	17	**TEXT ORDER** - This matter is before the court on Defendant City of Childersburg, Alabamas Motion to Dismiss 9 , which was filed on October 25, 2022. Because Plaintiff filed an Amended Complaint 16 on November 1, 2022, Defendants Motion 9 is **MOOT**, as it is no longer directed at the operative complaint. Signed by Judge R David Proctor on 11/2/2022. (KSS) (Entered: 11/02/2022)
11/08/2022	18	WAIVER OF SERVICE Returned Executed by Michael Jerome Jennings. Christopher Smith waiver sent on 11/4/2022, answer due 1/3/2023. (Embry Jones, Bethaney) (Entered: 11/08/2022)

11/08/2022	19	WAIVER OF SERVICE Returned Executed by Michael Jerome Jennings. Jeremy Brooks waiver sent on 11/4/2022, answer due 1/3/2023. (Embry Jones, Bethaney) (Entered: 11/08/2022)
11/11/2022	20	Joint MOTION for Discovery *Rule 26(f) Conference* by Michael Jerome Jennings. (Attachments: # 1 Text of Proposed Order Proposed Order)(Embry Jones, Bethaney) (Entered: 11/11/2022)
11/14/2022	21	**TEXT ORDER** - Before the court is the parties Joint Motion for Rule 26(f) Conference to be Conducted via Teleconference 20 . The Motion 20 is **GRANTED**. Signed by Judge R David Proctor on 11/14/2022. (KAM) (Entered: 11/14/2022)
11/22/2022	22	REPORT of Rule 26(f) Planning Meeting. (Stubbs, C) (Entered: 11/22/2022)
11/22/2022	23	Joint MOTION for Hipaa Order by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith. (Stubbs, C) (Entered: 11/22/2022)
11/22/2022	24	QUALIFIED HIPAA PROTECTIVE ORDER. Signed by Judge R David Proctor on 11/22/2022. (KAM) (Entered: 11/22/2022)
11/30/2022	25	MOTION to Dismiss by Childersburg, Alabama, City of. (Attachments: # 1 Brief in Support of Motion to Dismiss)(Stubbs, C) (Entered: 11/30/2022)
11/30/2022	26	ANSWER to 16 Amended Complaint by Jeremy Brooks, Justin Gable, Christopher Smith.(Stubbs, C) (Entered: 11/30/2022)
12/13/2022	27	ORDER SETTING RULE 16(b) SCHEDULING CONFERENCE Scheduling Conference set for 12/20/2022 10:00 AM before Judge R David Proctor.The conference will be held by telephone. Counsel for Plaintiff and Defendants are DIRECTED to dial-in to the conference by calling 866-434-5269 at the scheduled time. The access code is 6022965. Signed by Judge R David Proctor on 12/13/2022. (KAM) (Entered: 12/13/2022)
12/14/2022	28	RESPONSE in Opposition re 25 MOTION to Dismiss filed by Michael Jerome Jennings. (Daniels, Harry) (Entered: 12/14/2022)
12/14/2022	29	**TEXT ORDER** - This matter is before the court on Defendant Childersburgs Motion to Dismiss 25 . The parties are **REMINDED** to brief the motion in accordance with Exhibit B to the courts Initial Order 15 . Signed by Judge R David Proctor on 12/14/2022. (KAM) (Entered: 12/14/2022)
12/15/2022	30	REPLY to Response to Motion re 25 MOTION to Dismiss filed by Childersburg, Alabama, City of. (Stubbs, C) (Entered: 12/15/2022)
12/20/2022	31	**TEXT ORDER** - As discussed during the December 20, 2022 conference, the parties **SHALL** provide a Joint Report on or before **Friday, January 13, 2023** explaining how the parties plan to proceed with respect to the issue of qualified immunity. Signed by Judge R David Proctor on 12/20/2022. (KAM) (Entered: 12/20/2022)
12/20/2022		Minute Entry for proceedings held before Judge R David Proctor: Scheduling Conference held on 12/20/2022. As discussed, by January 13, 2023, the parties shall file a joint report addressing how the case shall proceed as to the qualified immunity issue. The scheduling conference will be rescheduled to later date if necessary. (KLL) (Entered: 12/20/2022)
12/20/2022	32	SCHEDULING ORDER: certain time limits apply as set out in this order; Discovery due by 8/18/2023. Dispositive Motions due by 10/30/2023. Mediation in August 2023, Pretrial conference ready in February 2024, Jury trial ready in March 2024. Signed by Judge R David Proctor on 12/20/2022. (KAM) (Entered: 12/20/2022)
01/05/2023	33	STATUS REPORT *Joint Status Report Regarding Qualified Immunity Issues* by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith. filed by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith (Stubbs, C) (Entered: 01/05/2023)
01/10/2023	34	ORDER This case is before the court on the Parties' Joint Report. (Doc. # 33). In light of the report, the Scheduling Order (Doc. # 32) is **AMENDED** as follows: The parties may engage in discovery limited to the issue of qualified immunity for **sixty (60) days**, beginning on the date of entry of this order. All other discovery is **STAYED**. After the conclusion of this limited discovery, but no later than **seventy-five (75) days** from the date of entry of this order, the parties **SHALL** file a joint report

		updating the court on how they plan to proceed on the issue of qualified immunity. Except for these matters, all other litigation in this case is hereby **STAYED**. Signed by Judge R David Proctor on 1/10/2023. (KAM) (Entered: 01/10/2023)
02/14/2023	35	NOTICE by Michael Jerome Jennings *Notice of Depositions* (Attachments: # 1 Notice of Deposition_Def Gable, # 2 Notice of Deposition_Def Brooks)(Embry Jones, Bethaney) (Entered: 02/14/2023)
03/09/2023	36	STATUS REPORT *Updated Joint Status Report Regarding Qualified Immunity Issues* by Jeremy Brooks, Justin Gable, Christopher Smith. filed by Jeremy Brooks, Justin Gable, Christopher Smith (Stubbs, C) (Entered: 03/09/2023)
04/03/2023	37	**TEXT ORDER** - This matter is before the court following the parties submission of their Joint Status Report 36 . This case is **SET** for a status conference in the chambers of the undersigned on **Wednesday, April 5, 2023, at 3:30 P.M.** Out of state counsel may participate via telephone by dialing **866-434-5269**. The access code is **6022965**. Signed by Judge R David Proctor on 4/3/2023. (KAM) (Entered: 04/03/2023)
04/06/2023	38	ORDER As discussed at the April 5, 2023, status conference, any motions by the parties on the issue of qualified immunity **SHALL** be filed **on or before May 5, 2023**. Oppositions to any such motion will be due **on or before May 26, 2023**. Reply briefs will be due **on or before June 2, 2023**. As further discussed at the status conference, Defendant City of Childersburg's Motion to Dismiss (Doc. # 25) is **ADMINISTRATIVELY TERMINATED WITHOUT PREJUDICE**. On or before April 19, 2023, the parties are **DIRECTED** to meet and confer regarding the status of any motion Defendant Childersburg plans to file or reinstate. Defendant Childersburg is **ORDERED** to inform the court of its intended course of action **on or before May 5, 2023**. Signed by Judge R David Proctor on 4/6/2023. (KAM) (Entered: 04/06/2023)
04/19/2023	39	STATUS REPORT *Defendants' Report to the Court on Motions to be Filed or Reinstated* by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith. filed by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith (Stubbs, C) (Entered: 04/19/2023)
04/19/2023	40	Unopposed MOTION for Extension of Time *to Extend Dispositive Motion Deadlines* by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith. (Stubbs, C) (Entered: 04/19/2023)
04/20/2023	41	**TEXT ORDER** - Before the court is Defendants Unopposed Motion to Extend Dispositive Motion Deadlines 40 . The Motion 40 is **GRANTED**. All dispositive motions **SHALL** be filed **on or before May 15, 2023**, with oppositions and replies to be filed according to the briefing schedule outlined in Appendix II of the courts Initial Order 15 . Signed by Judge R David Proctor on 4/20/2023. (KAM) (Entered: 04/20/2023)
05/08/2023	42	Unopposed MOTION for Leave to File Excess Pages by Jeremy Brooks, Justin Gable, Christopher Smith. (Stubbs, C) (Entered: 05/08/2023)
05/09/2023	43	**TEXT ORDER** - Before the court is Defendants Christopher Smith, Justin Gable, and Jeremy Brooks' Unopposed Motion for Excess Pages 42 . The Motion 42 is **GRANTED**. Defendants Smith, Gable, and Brooks brief in support of their forthcoming motion for summary judgment **MAY** exceed 30 pages but **SHALL NOT** exceed 35 pages. Signed by Judge R David Proctor on 5/9/2023. (KAM) (Entered: 05/09/2023)
05/10/2023	44	Unopposed MOTION for Leave to File Excess Pages by Michael Jerome Jennings. (Attachments: # 1 Exhibit Complaint, # 2 Exhibit Amended Complaint, # 3 Exhibit Initial Order - Appendix II)(Embry Jones, Bethaney) (Entered: 05/10/2023)
05/10/2023	45	**TEXT ORDER** - Before the court is Plaintiff Michael Jennings' Unopposed Motion for Excess Pages 44 . The Motion 44 is **GRANTED**. Plaintiff's brief in support of his forthcoming motion for summary judgment **MAY** exceed 30 pages but **SHALL NOT** exceed 35 pages. Signed by Judge R David Proctor on 5/10/2023. (KSS) (Entered: 05/10/2023)
05/12/2023	46	MOTION to Dismiss by Childersburg, Alabama, City of. (Attachments: # 1 Brief in Support of Motion to Dismiss)(Stubbs, C) (Entered: 05/12/2023)

05/12/2023	47	*Evidentiary Submission in Support of Motion for Summary Judgment* by Jeremy Brooks, Justin Gable, Christopher Smith. (Attachments: # 1 Exhibit Exhibit 1 - E-911 Recording (filed conventionally), # 2 Exhibit Exhibit 2 - Talladega County 911 CFS Report, # 3 Exhibit Exhibit 3 - Officer Christopher Smith Deposition, # 4 Exhibit Exhibit 4 - Officer Christopher Smith Body Worn Camera Video (filed conventionally), # 5 Exhibit Exhibit 5 - Officer Justin Gable Deposition, # 6 Exhibit Exhibit 6 - Officer Justin Gable Body Worn Camera Video (filed conventionally), # 7 Exhibit Exhibit 7 - Sergeant Jeremy Brooks Deposition, # 8 Exhibit Exhibit 8 - Sergeant Jeremy Brooks Body Worn Camera Video (filed conventionally))(Stubbs, C) Modified on 5/12/2023 (correcting docket- not a motion (KAM). (Entered: 05/12/2023)
05/12/2023	48	MOTION for Summary Judgment by Jeremy Brooks, Justin Gable, Christopher Smith. (Attachments: # 1 Brief in Support of Motion for Summary Judgment)(Stubbs, C) (Entered: 05/12/2023)
05/12/2023	49	**TEXT ORDER**: Before the court are the Motion to Dismiss filed by the City of Childersburg 46 and the Motion for Summary Judgment filed by Jeremy Brooks, Justin Gable, and Christopher Smith 48 . The parties are **REMINDED** to brief the Motions 46 , 48 in accordance with Exhibit B and Appendix II to the court's Initial Order 15 . Signed by Judge R David Proctor on 5/12/2023. (KAM) (Entered: 05/12/2023)
05/16/2023	50	Evidentiary Material *In Opposition to Defendants Smith, Gable and Brooks' Motion for Summary Judgment*. (Attachments: # 1 Exhibit Exhibit 1 - E-911Certified Transcript of Amandas 911 call on May 22, 2022., # 2 Exhibit Exhibit 2 - Pages 1-7 Incident report; Page 8-Arrest Warrant for Plaintiff; Page 9-Plaintiffs Case Summary; Page 10-Defendant Smiths written statement; Page 11- Defendant Brooks written statement; Page 12- Defendant Gables written statement., # 3 Exhibit Exhibit 3 - AL Code § 15-5-30., # 4 Exhibit Exhibit 4 - Officer Christopher Smith Worn Body Camera Video. Previously filed by Defendants (See 47-4)., # 5 Exhibit Exhibit 5 - Officer Justin Gable Body Worn Camera Video Previously filed by Defendants (See 47-6) jgable@20220523093345@MOVI0040., # 6 Exhibit Exhibit 6 - AL Code § 13A-10-2, # 7 Exhibit Exhibit 7 - Declaration of Michael Jennings dated 5.16.2023., # 8 Exhibit Exhibit 8 (Exhibit A to Declaration of Michael Jennings dated 5.16.2023)Video surveillance mounted on Roys home that depicts Plaintiff watering flowers on May 22, 2022. Manually filed with the Clerk of Court.)(Daniels, Harry) (Entered: 05/16/2023)
05/26/2023	51	RESPONSE in Opposition re 48 MOTION for Summary Judgment filed by Michael Jerome Jennings. (Attachments: # 1 Brief in Opposition to Defendant Officer's Motion For Summary Judgment) (Daniels, Harry) (Entered: 05/26/2023)
05/26/2023	52	RESPONSE in Opposition re 46 MOTION to Dismiss filed by Michael Jerome Jennings. (Attachments: # 1 Brief in Opposition to Defendant City's Motion to Dismiss)(Daniels, Harry) (Entered: 05/26/2023)
06/01/2023	53	Unopposed MOTION for Leave to File Excess Pages *in Reply to Plaintiff's Response to MSJ* by Jeremy Brooks, Justin Gable, Christopher Smith. (Stubbs, C) (Entered: 06/01/2023)
06/02/2023	54	**TEXT ORDER** - This matter is before the court on Defendants Unopposed Motion for Leave to File Excess Pages 53 to reply to Plaintiffs Response in Opposition to Defendants Motion for Summary Judgment 52 . The Motion 53 is **GRANTED**. Signed by Judge R David Proctor on 6/2/2023. (KAM) (Entered: 06/02/2023)
06/02/2023	55	REPLY to Response to Motion re 46 MOTION to Dismiss filed by Childersburg, Alabama, City of. (Stubbs, C) (Entered: 06/02/2023)
06/02/2023	56	REPLY to Response to Motion re 48 MOTION for Summary Judgment filed by Jeremy Brooks, Justin Gable, Christopher Smith. (Stubbs, C) (Entered: 06/02/2023)
09/28/2023	57	**TEXT ORDER** - The Eleventh Circuit recently published a decision in *Edger v. McCabe* (No. 21-14396). **On or before Thursday, October 12, 2023**, the parties are **DIRECTED** to submit supplemental briefs addressing what effect that the *Edger* decision has on the motion currently before the court. Signed by Judge R David Proctor on 9/28/2023. (KAM) (Entered: 09/28/2023)
10/04/2023	58	Brief re 57 Order, *Plaintiffs Supplemental Brief addressing what effect that the Edger decision has on Defendant officers Motion for Summary Judgment* filed by Michael Jerome Jennings. (Daniels, Harry) (Entered: 10/04/2023)

10/10/2023	59	Brief re 57 Order, . (Stubbs, C) (Entered: 10/10/2023)
12/21/2023	60	MEMORANDUM OPINION. Signed by Judge R David Proctor on 12/21/2023. (KAM) (Entered: 12/21/2023)
12/21/2023	61	ORDER This matter is before the court on Defendants Christopher Smith, Justin Gable, and Jeremy Brooks' Motion for Summary Judgment. (Doc. # 48). For the reasons provided in the contemporaneously filed memorandum opinion, Defendants' Motion for Summary Judgment (Doc. # 48) is **GRANTED**. Plaintiff's claims against Defendants Smith, Gable, and Brooks are **DISMISSED WITH PREJUDICE**. Costs are taxed against Plaintiff. Signed by Judge R David Proctor on 12/21/2023. (KAM) (Entered: 12/21/2023)
12/21/2023	62	MEMORANDUM OPINION. Signed by Judge R David Proctor on 12/21/2023. (KAM) (Entered: 12/21/2023)
12/21/2023	63	ORDER This matter is before the court on Defendant City of Childersburg's Motion to Dismiss. (Doc. # 46). For the reasons outlined in the accompanying Memorandum Opinion, Defendant City of Childersburg's Motion to Dismiss (Doc. # 46) is **GRANTED**. Plaintiff's claim against Defendant City of Childersburg is **DISMISSED WITH PREJUDICE**. Costs are taxed against Plaintiff. Signed by Judge R David Proctor on 12/21/2023. (KAM) (Entered: 12/21/2023)
12/21/2023	64	NOTICE OF APPEAL by Michael Jerome Jennings. Filing fee $ 605, receipt number AALNDC-4495311. (Daniels, Harry) Modified on 12/27/2023.NDAL rec# B-9212 (KAM). (Entered: 12/21/2023)
12/27/2023	65	NOTICE of transmittal letter to the Eleventh Circuit Court of Appeals. (KAM) (Entered: 12/27/2023)
12/27/2023	66	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 64 Notice of Appeal (KAM) (Entered: 12/27/2023)
01/08/2024		USCA Case Number 23-14171 for 64 Notice of Appeal filed by Michael Jerome Jennings. (KAM) (Entered: 01/08/2024)
04/03/2024		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Northern District of Alabama certifies that the record is complete for purposes of this appeal re: 64 Notice of Appeal, Appeal No. 23-14171-DD. The entire record on appeal is available electronically. (KAM) (Entered: 04/03/2024)
10/22/2024	67	ORDER of USCA: The Appellees' "Motion to Suspend or Stay Timed for Filing Objection to Appellant's Motion for Attorneys' Fees" is **GRANTED**. The Appellees' response to the motion for attorneys' fees is due fourteen (14) days from the date of the Court's decision on the petition for rehearing en banc. 34 ENTERED FOR THE COURT - BY DIRECTION. (CLD) (Entered: 10/23/2024)
11/26/2024	68	ORDER:Appellee's "Motion forExtension of time to File Objection to Appellant's Motion for Attorneys' Fees" until December 11, 2024, is GRANTED. 39 ;. 38 Response due on 12/11/2024. ENTERED FOR THE COURT - BY DIRECTION. (CLD) (Entered: 11/26/2024)
12/03/2024	69	USCA JUDGMENT Before WILSON, ROSENBAUM, and GRANT, Circuit Judges. as to 64 Notice of Appeal filed by Michael Jerome Jennings: It is hereby ordered, adjudged, and decreed that the opinion is-sued on this date in this appeal is entered as the judgment of this Court. REVERSED and REMANDED. Issued as a mandate 12/03/2024. With per curiam opinion attached. (Attachments: # 1 11th Circuit Opinion)(CLD) (Entered: 12/03/2024)
01/16/2025	70	**ORDER of USCA**: Appellant's motions for attorney's fees are **TRANSFERRED** to the district court for its consideration of whether Appellant is entitled to appellate attorneys fees and the amount of appellate attorneys fees to which Appellant is entitled, if any. See 11th Cir. R. 39-2(d)-(e). Appellees' motion for leave to file a response with excess words is **DENIED AS MOOT**. 42 RSR, BCG and CRW. (CLD) (Entered: 01/17/2025)
01/17/2025	71	**ORDER**: This matter is before the court on the Circuit's mandate (Doc. # 69) and the transfer of appellant's motions for attorneys' fees to the district court (Doc. # 70). The parties are **DIRECTED** to file a joint report on or before **February 17, 2025** as to how they believe this case should proceed and how the court should resolve the motions for fees. Additionally, the matter is **SET** for a status

		conference about these remaining motions on **March 3, 2025 at 10:00 A.M.** in the chambers of the undersigned. Signed by Judge R David Proctor on 01/17/2025. (CLD) (Entered: 01/17/2025)
02/12/2025	72	STATUS REPORT *Joint Status Report Regarding Case and Plaintiffs' Counsels' Motions for Attorneys' Fees* by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith. filed by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith (Stubbs, Charles) (Entered: 02/12/2025)
03/02/2025	73	MOTION for Summary Judgment *Plaintiffs Motion for Partial Summary Judgment and Brief in Support* by Michael Jerome Jennings. (Daniels, Harry) (Entered: 03/02/2025)
03/03/2025		Minute Entry for proceedings held before Judge R David Proctor: Status Conference held on 3/3/2025. (Court Reporter Pamela Weyant) (KSS) (Entered: 03/03/2025)
03/04/2025	74	**ORDER**: This matter is before the court on the Circuits mandate (Doc. # 69). For the reasons within, the parties are **DIRECTED**, on or before **March 31, 2025**, to file briefs that address whether the court should certify a question and provide their respective proposals on how the court should frame any certified question on this issue to the Supreme Court of Alabama. The parties **SHALL** also file reply briefs on or before **April 14, 2025**. Signed by Judge R David Proctor on 03/04/2025. (CLD) (Entered: 03/04/2025)
03/04/2025	75	**ORDER**: This matter is before the court on the Circuit's mandate (Doc. # 69), the transfer of appellant's motions for attorneys' fees to the district court (Doc. # 70), and Plaintiff's Motion for Summary Judgment (Doc. # 73). For the reasons within, this case will proceed to discovery on the merits as to all claims. Therefore, **on or before March 31, 2025**, the parties **SHALL** meet and confer and submit a joint proposed amended scheduling order as set out. All other instructions and orders within the Scheduling Order (Doc. # 32) will continue to be in effect unless the court otherwise orders. Additionally, Plaintiff's Motion for Summary Judgment (Doc. # 73) is **DENIED WITHOUT PREJUDICE**. Signed by Judge R David Proctor on 03/04/2025. (CLD) (Entered: 03/04/2025)
03/20/2025	76	Brief re 74 Order,, *Plaintiff's brief that address whether the court should certify a question*. (Daniels, Harry) (Entered: 03/20/2025)
03/20/2025	77	Brief re 75 Order,,,, Terminate Motions,,, *Amended Plaintiff's brief that address whether the court should certify a question.*. (Attachments: # 1 Exhibit 1)(Daniels, Harry) (Entered: 03/20/2025)
03/24/2025	78	Unopposed MOTION for Extension of Time by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith. (Ivey, Lisa) (Entered: 03/24/2025)
03/24/2025	79	**TEXT ORDER** - This matter is before the court on Defendants' Unopposed Motion to Extend Briefing Deadline 78 . The Motion 78 is **GRANTED**. Defendants **SHALL** file their briefing on how the court should frame a certified question to the Supreme Court of Alabama on or before **April 7, 2025**. Signed by Judge R David Proctor on 03/24/2025. (CLD) (Entered: 03/24/2025)
04/04/2025	80	MOTION re 75 Order,,,, Terminate Motions,,, *Defendants' Response to Court's Order and Motion to Certify Controlling Question to the Supreme Court of Alabama* by Jeremy Brooks, Childersburg, Alabama, City of, Justin Gable, Christopher Smith. (Ivey, Lisa) (Entered: 04/04/2025)
04/07/2025	81	Brief re 77 Brief *Defendants' Response to Plaintiff's Brief Regarding Certified Question to the Supreme Court of Alabama*. (Ivey, Lisa) (Entered: 04/07/2025)
04/16/2025	82	**TEXT ORDER** - Plaintiff is **REMINDED** to file a reply brief to Defendants' Motion 80 . The original deadline for doing so was April 14, 2025, but the court had granted Defendants an extension of time for filing their opening brief. Therefore, Plaintiff **SHALL** file any reply brief on or before **April 18, 2025**. Signed by Judge R David Proctor on 04/16/2025. (CLD) (Entered: 04/16/2025)
05/19/2025	83	**MEMORANDUM OPINION AND ORDER**: This matter is before the court on Defendants' Motion to Certify Controlling Question to the Supreme Court of Alabama. (Doc. # 80). For the reasons within, the Motion (Doc. # 80) is **GRANTED** and this court respectfully asks the Supreme Court of Alabama to answer the question certified. This case is **STAYED** until further order of this court. Signed by Judge R David Proctor on 05/19/2025. (CLD) (Entered: 05/19/2025)
05/22/2025	84	**CERTIFICATION OF QUESTION FROM UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA TO THE SUPREME COURT OF ALABAMA,**

		PURSUANT TO RULE 18 OF THE ALABAMA RULES OF APPELLATE PROCEDURE. Signed by Judge R David Proctor on 05/22/2025. (CLD) (Entered: 05/22/2025)

PACER Service Center			
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05/26/2025 09:43:49			
PACER Login:	bb0160bhm	**Client Code:**	0163111303.151
Description:	Docket Report	**Search Criteria:**	1:22-cv-01165-RDP
Billable Pages:	9	**Cost:**	0.90

Appendix M
(Videos on Thumb Drive)

Appendix N

IN THE SUPREME COURT OF ALABAMA

June 27, 2025

SC-2025-0372

Michael Jerome Jennings v. Christopher Smith, et al. (Certified Question from the U.S. District Court for the Northern District of Alabama, Eastern Division: 1:22-cv-01165-RDP).

ORDER

The Certified Question from the United States District Court for the Northern District of Alabama, Eastern Division, filed on May 27, 2025, having been submitted to this Court,

IT IS ORDERED that the Court CONSENTS TO ANSWER the following Certified Question —

1. Under Alabama Code § 15-5-30, when a law enforcement officer asks a person for his name, address, and explanation of his actions, and the person gives an incomplete or unsatisfactory oral response, does the statute prohibit the officer from demanding or requesting physical identification?

IT IS FURTHER ORDERED as follows:

1. that Appellant shall file with the Clerk of this Court an original and two (2) copies of his brief on the question certified within twenty-eight (28) days from the date of this Order, and **no later than on July 25, 2025**;

2. that Appellees shall then file with the Clerk of this Court an original and two (2) copies of their response brief within **twenty-one (21) days** from the filing of Appellant's brief; and

3. that Appellant may then file with the Clerk of this Court an original and two (2) copies of his reply brief within **fourteen (14) days** from the filing of Appellees' response brief.

IN THE SUPREME COURT OF ALABAMA

June 27, 2025

Stewart, C.J., and Shaw, Bryan, Sellers, Cook, McCool, and Lewis, JJ., concur.

Mendheim, J., dissents.

Witness my hand and seal this 27th day of June, 2025.

Megan B. Rhodeheck

Clerk of Court,
Supreme Court of Alabama

FILED
June 27, 2025

Clerk of Court
Supreme Court of Alabama

Appendix O

84 F.4th 1230
United States Court of Appeals, Eleventh Circuit.

Roland EDGER, Plaintiff-Appellant,
v.
Krista MCCABE, The City of Huntsville, Alabama, Cameron Perillat, Defendants-Appellees.

No. 21-14396
|
Filed: 10/20/2023

Synopsis

Background: Arrestee brought action against police officers and city asserting false arrest claims under § 1983 and state law arising from incident in which arrestee, who was a mechanic, was approached by the officers while he was working on a customer's car that had broken down in parking lot of church where she worked. The United States District Court for the Northern District of Alabama, No. 5:19-cv-01977-LCB, Liles Clifton Burke, J., 572 F.Supp.3d 1143, denied arrestee's motion for summary judgment and granted summary judgment to the officers and city. Arrestee appealed.

Holdings: The Court of Appeals, Wilson, Circuit Judge, held that:

[1] officers did not have arguable probable cause, for qualified immunity purposes, to make arrest for obstructing governmental function by means of intimidation, physical force, or interference;

[2] officers did not have probable cause to make arrest for obstructing a governmental function by committing independently unlawful act of violating Alabama's Stop-and-Identify statute;

[3] officer violated clearly established law when she demanded arrestee produce an "ID" or a driver's license; and

[4] arrestee was not driving when approached by officers, within meaning of Alabama statute requiring those "driving" to display a driver's license upon demand of an officer.

Reversed and vacated.

Opinion, 83 F.4th 858, vacated.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (20)

[1] **Federal Courts** Summary judgment

Court of Appeals reviews summary judgment rulings de novo, applying the same legal tests as the district court.

[2] **Public Employment** Qualified immunity

In general, when government officials are performing discretionary duties, they are entitled to qualified immunity.

3 Cases that cite this headnote

[3] **Civil Rights** Government Agencies and Officers

Civil Rights Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

A plaintiff may rebut government officials' entitlement to qualified immunity when they are performing discretionary duties by showing that the government officials (1) committed a constitutional violation; and (2) that this violation was clearly established in law at the time of the alleged misconduct.

6 Cases that cite this headnote

[4] **Civil Rights** Government Agencies and Officers

Civil Rights Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

The test for defeating a qualified immunity defense is conjunctive, and if a plaintiff fails either prong of the qualified immunity analysis, namely a constitutional violation that was clearly established, his claim is barred.

4 Cases that cite this headnote

[5] **Civil Rights** Sheriffs, police, and other peace officers

A plaintiff may show that a law is clearly established for qualified immunity purposes by showing a materially similar case has already been decided, whose facts are similar enough to give the police notice.

5 Cases that cite this headnote

[6] **Civil Rights** Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

A plaintiff may show that a law is clearly established for qualified immunity purposes by showing that a broader, clearly established principle should control the novel facts of his case; this broader principle may be derived from general statements of the law contained within the Constitution, statute, or caselaw.

7 Cases that cite this headnote

[7] **Civil Rights** Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

A plaintiff may show that a law is clearly established for qualified immunity purposes by showing that an officer's conduct so obviously violates the constitution that prior case law is unnecessary.

6 Cases that cite this headnote

[8] **Civil Rights** Good faith and reasonableness; knowledge and clarity of law; motive and intent, in general

While the court must be mindful of the specific context of the case, it does not require a case directly on point for a right to be clearly established for qualified immunity purposes.

[9] **Civil Rights** Sheriffs, police, and other peace officers

Police officers who approached arrestee, a mechanic, while he was working on a customer's car that had broken down in parking lot of church where she worked, did not have arguable probable cause to make an arrest under Alabama law for obstructing a governmental function by means of intimidation, physical force, or interference, for purposes of officers' qualified immunity defense to arrestee's § 1983 false arrest claims; although after the car slipped off a jack and slammed into the ground, arrestee stood up, slapped his leg, and turned to answer first officer's questions while frustrated and gesturing as he spoke, his hands were empty, and he stood in one spot without walking towards the officer. U.S. Const. Amend. 4; 42 U.S.C.A. § 1983; Ala. Code § 13A-10-2(a)(1).

1 Case that cites this headnote

[10] **Search, Seizure, and Arrest** Arrest in general

Search, Seizure, and Arrest Necessity in general

For Fourth Amendment purposes, arrests are seizures and are unreasonable unless supported by probable cause. U.S. Const. Amend. 4.

2 Cases that cite this headnote

[11] **Search, Seizure, and Arrest** Totality of circumstances in general

Probable cause to arrest exists where a reasonable officer could conclude, considering all of the surrounding circumstances, including the plausibility of the explanation itself, that there was a substantial chance of criminal activity.

11 Cases that cite this headnote

[12] **False Imprisonment** Probable cause

In the false arrest context, arguable probable cause exists where a reasonable officer, looking at the entire legal landscape at the time of the arrests, could have interpreted the law as permitting the arrests; however this inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition.

20 Cases that cite this headnote

[13] **Search, Seizure, and Arrest** What constitutes probable cause in general

Whether officer possesses either actual or arguable probable cause to arrest depends on elements of the alleged crime and the operative fact pattern.

22 Cases that cite this headnote

[14] **Obstructing Justice** Interfering with Performance of Official Duties

Words alone fail to provide culpability under Alabama's obstructing governmental operations statute. Ala. Code § 13A-10-2(a)(1).

[15] **Search, Seizure, and Arrest** Obstructing justice, bribery, and perjury

Police officers who approached arrestee, a mechanic, while he was working on a customer's car that had broken down in parking lot of church where she worked did not have probable cause to make an arrest for obstructing a governmental function by committing the independently unlawful act of violating Alabama's Stop-and-Identify statute, based on arrestee's refusal to provide physical identification in response to the officers' requests; the statute did not permit the officers to demand physical identification, but instead it only granted Alabama police authority to request three specific pieces of information from arrestee, namely his name, his address, and an explanation of his actions. U.S. Const. Amend. 4; Ala. Code §§ 13A-10-2(a)(1), 15-5-30.

1 Case that cites this headnote

[16] **Civil Rights** Sheriffs, police, and other peace officers

Police officer's demands that arrestee, a mechanic who was working on a customer's car that had broken down in parking lot of church where she worked, produce an "ID" or a driver's license went beyond what Alabama's Stop-and-Identify statute and state law clearly required of arrestee, and thus, officer violated clearly established law, for purposes of qualified immunity defense to arrestee's § 1983 false arrest claim; statute listed only three things that officer could ask about, namely arrestee's name, address, and an explanation of his actions, and information contained in a driver's license went beyond the information required to be revealed under the statute.

U.S. Const. Amend. 4; 42 U.S.C.A. § 1983; Ala. Code §§ 13A-10-2(a)(1), 15-5-30, 22-19-72, 32-6-6.

1 Case that cites this headnote

[17] **Search, Seizure, and Arrest** What constitutes consensual encounter in general

The police may ask members of the public questions and make consensual requests of them, as long as the police do not convey a message that compliance is required.

[18] **Search, Seizure, and Arrest** Consensual Encounters in General

A person need not answer any question put to him by the police; he may decline to listen to questions at all and may go on his way.

[19] **Search, Seizure, and Arrest** Application of Fourth Amendment and state equivalents

While the Fourth Amendment permits the police to briefly detain a person to investigate criminal activity, any obligation to answer police questions arises from state—not federal Constitutional—law. U.S. Const. Amend. 4.

1 Case that cites this headnote

[20] **Automobiles** License and registration

Search, Seizure, and Arrest License or registration offenses in general

Arrestee, who was a mechanic, was not "driving" within meaning of Alabama driver's license statute, which required those "driving" to display a driver's license upon demand of a peace officer, when officers approached him as he was working on a customer's car that had broken down in parking lot of church where she worked, and thus, arrestee's refusal to provide his driver's license upon officer's request did not provide probable cause for his arrest either for violating driver's license statute or for obstructing a governmental function by violating the statute; although arrestee admitted to officers that another car in parking lot was his, that car was approximately two parking spaces away, and customer's car had a wheel removed and was thus disabled and incapable of being driven. U.S. Const. Amend. 4; Ala. Code §§ 32-1-1.1(14), 32-6-9(a).

***1232** Appeal from the United States District Court for the Northern District of Alabama, D.C. Docket No. 5:19-cv-01977-LCB

Attorneys and Law Firms

Henry F. Sherrod, III, Henry F. Sherrod III, PC, Florence, AL, for Plaintiff-Appellant.

C. Gregory Burgess, Stephanie Margaret Hall, Lanier Ford Shaver & Payne, PC, Huntsville, AL, for Defendants-Appellees.

Before Wilson, Jill Pryor, Circuit Judges, and Covington,* District Judge.

Opinion

Wilson, Circuit Judge:

***1233** We sua sponte vacate our previous opinion and substitute the following in lieu thereof.

* * *

Roland Edger brought both a § 1983 false arrest claim and a state law false arrest claim against two Huntsville, Alabama police officers and the City itself. After the district court concluded that the officers were entitled to qualified immunity because they had arguable probable cause to arrest Mr. Edger, he appealed. After careful review of the record and with the benefit of oral argument, we **REVERSE** the district court's grant of qualified immunity.

I.

A.

The facts of this case are not in dispute, as the entirety of the encounter between Mr. Edger and the police was captured on the police officers' body-worn and dash cameras. Both Mr. Edger and the defendants agree that the video and audio evidence from these cameras is authentic. Before turning to that evidence, we must first detail the events leading up to the start of the recordings.

Mr. Edger is a mechanic in Huntsville, Alabama, where he manages the Auto Collision Doc store. One of Mr. Edger's long-time clients is Kajal Ghosh, who owns a red Toyota Camry.[1] The Camry is primarily driven by Mr. Ghosh's wife, who works as a teacher at Progressive Union Missionary Baptist Church. One or two days before June 10, 2019, Mr. Ghosh called Mr. Edger and reported that the Camry had broken down while his wife was working at the Church. He asked Mr. Edger to fix the car and told him the keys would be waiting for him at the Church's front office.

On June 10, around 2 p.m., Mr. Edger went to the Church to pick up the keys and to inspect the Camry. He determined something was wrong with either the car's steering or its tires, and he concluded he would need to come back later with tools to fix the car. That evening, he returned to the Church with his stepson, Justin Nuby, in tow, intending to either fix the Camry on-site or to take it back to the shop for further repairs. Mr. Edger and Mr. Nuby drove a black hatchback to the Church.

After Mr. Edger and his stepson entered the Church's lot, the Church's security guard observed them and grew concerned. From here on, the facts of this case were captured by audio and visual recording devices. At about 8:05 p.m., the security guard called 911 and told dispatch: "I have two Hispanic males, messing with an employee's car that was left on the lot." He also noted that he observed them remove a tire from the car. During the 911 call, the guard identified himself as a security guard for the Church, gave his phone number, noted his employer, and gave a description of Mr. Edger and Mr. Nuby. About 30 minutes later, at 8:36 p.m., Officer Krista McCabe arrived at the Church in her patrol car.

***1234** As Officer McCabe's body camera shows, she pulled into the Church parking lot and parked in front of where Mr. Edger and Mr. Nuby were working. McCabe Body Camera at 0:00:30.[2] As she stepped out of the squad car, Mr. Edger was laying on the ground next to the car, with the Camry's tire removed. *Id.* at 0:00:36. Mr. Nuby greeted Officer McCabe as she exited her vehicle and approached the Camry. *Id.* at 0:00:36–0:00:46. Mr. Edger continued to work, and the following conversation began:

> **Officer McCabe:** What are y'all doing?
>
> **Mr. Edger:** Getting the car fixed.
>
> **Officer McCabe:** Is this your car?
>
> **Mr. Edger:** Yeah, well, it is one of my customer's.
>
> **Officer McCabe:** One of your customer's?
>
> **Mr. Edger:** Ghosh Patel, yep. I was over here earlier.

Id. at 0:00:47. At this point Officer McCabe gestured towards the black hatchback.

> **Officer McCabe:** Whose car is that?
>
> **Mr. Edger:** That's mine.
>
> **Officer McCabe:** The black one?
>
> **Mr. Edger:** Yeah.

Id. at 0:01:03. Officer McCabe then watched in silence as Mr. Edger attempted to jack the Camry up. Eventually the car slipped from the jack and slammed into the ground. *Id.* at 0:01:08–0:01:48. Immediately after the Camry slipped, Officer Perillat arrived at the scene in a squad car. He exited his car and approached on foot, positioning himself behind Mr. Edger, out of Mr. Edger's line of vision. From here, the interaction rapidly escalated:

> **Officer McCabe:** Alright. Take a break for me real fast and do y'all have driver's license or IDs on you?

Mr. Edger: I ain't going to submit to no ID. Listen, you call the lady right now. Listen I don't have time for this. I don't mean to be rude, or ugly, but ...

Officer McCabe: Okay. No, you need to—

Mr. Edger: I don't mean to be—

Officer McCabe: —give me your ID or driver's license.

Mr. Edger: No. I don't. Listen, I don't want you to run me in for nothing.

Officer McCabe: Are you refusing me—are you refusing to give me your ID or driver's license?

Mr. Edger: I'm telling you that if you will call this lady that owns this car—

In the middle of Mr. Edger's sentence, as he was attempting to explain the situation to Officer McCabe, Officer Perillat seized Mr. Edger from behind. He led Mr. Edger to the side of the Camry and started handcuffing him. As Mr. Edger protested, Officer Perillat told Mr. Edger: "We don't have time for this," and, "You don't understand the law." During this time, the video shows that Mr. Edger offered his driver's license at least three times before the officers could finish handcuffing him. Eventually, the officers managed to handcuff and search Mr. Edger, and then detain him in a squad car. Throughout this process, the officers never asked Mr. Edger or his stepson for their names or addresses. *Id.* at 0:00:44–0:02:16.

B.

Mr. Edger was charged with obstructing governmental operations in violation of Alabama Code § 13A-10-2(a)(1). The City of Huntsville dropped all charges relating to this incident.

***1235** After the dismissal of the charges, Mr. Edger filed a § 1983 civil rights lawsuit, alleging a false arrest in violation of his Fourth Amendment rights against unlawful searches and seizures, as well as a state law false arrest claim. On cross-motions for summary judgment, the district court found that the defendants were entitled to federal and state law immunities. It reasoned that even though Mr. Edger committed no acts giving rise to *actual* probable cause, a reasonable but mistaken officer could nonetheless have believed his refusal to produce physical identification was a crime, and the officers thus had *arguable* probable cause to make the arrest. This appeal followed.

II.

[1] We review summary judgment rulings de novo, applying the same legal tests as the district court. *Smith v. Owens*, 848 F.3d 975, 978 (11th Cir. 2017).

III.

[2] **[3]** **[4]** We focus on the federal claims first. In general, when government officials are performing discretionary duties, as all parties concede they were in this case, they are entitled to qualified immunity. *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002). A plaintiff may rebut this entitlement by showing that the government officials (1) committed a constitutional violation; and (2) that this violation was "clearly established" in law at the time of the alleged misconduct. *See Pearson v. Callahan*, 555 U.S. 223, 232, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009). In theory, this judge-made doctrine is designed to protect government officials from the consequences of their reasonable mistakes made in the exercise of their official duties. *See id.* at 231, 129 S.Ct. 808. The test is conjunctive, and if a plaintiff fails either prong of the qualified immunity analysis, his claim is barred.

[5] **[6]** **[7]** **[8]** There are three recognized ways to show that a law is "clearly established." First, a plaintiff may show that a "materially similar case has already been decided," whose facts are similar enough to give the police notice. *See Keating v. City of Miami*, 598 F.3d 753, 766 (11th Cir. 2010). Second, he may show that a "broader, clearly established principle should control the novel facts" of his case. *Id.* This "broader" principle may be derived from "general statements of the law contained within the Constitution, *statute*, or caselaw." *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005) (alteration adopted) (emphasis added) (quoting *Willingham v. Loughnan*, 321 F.3d 1299, 1301 (11th

Cir. 2003)). Finally, a plaintiff may show that the officer's conduct "so obviously violates [the] constitution that prior case law is unnecessary." *Keating*, 598 F.3d at 766 (quoting *Mercado*, 407 F.3d at 1159). While we must be mindful of the "specific context of the case," we "do[ ] not require a case directly on point for a right to be clearly established." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 142 S. Ct. 4, 7–8, 211 L.Ed.2d 164 (2021) (per curiam).

[9] **[10]** Mr. Edger alleges that he was falsely arrested in violation of his Fourth Amendment rights against unreasonable searches and seizures. For Fourth Amendment purposes, arrests are seizures and are unreasonable unless supported by probable cause. *See Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir. 2007). Furthermore, we have often said that an officer is entitled to qualified immunity if he had even "arguable probable cause." *Brown v. City of Huntsville*, 608 F.3d 724, 734 (11th Cir. 2010). However our inconsistent expositions of either standard—actual or arguable probable cause—complicates proper application on appeal. *See, e.g.*, ***1236** *Washington v. Howard*, 25 F.4th 891, 898 (11th Cir. 2022); *Garcia v. Casey,* 75 F.4th 1176, 1180 (11th Cir. 2023). Accordingly, we synthesize the standards' formulations from *Washington* and *Garcia* below.

In *Washington*, we adopted the probable cause standard articulated in *District of Columbia v. Wesby*, 583 U.S. 48, 138 S. Ct. 577, 199 L.Ed.2d 453 (2018). After conducting our "well-established approach to resolving conflicts in our precedent," we explicitly held that "the correct legal standard to evaluate whether an officer had probable cause to seize a suspect is to 'ask whether a reasonable officer *could conclude* ... that there was a substantial chance of criminal activity.' " *Washington*, 25 F.4th at 899–902 (quoting *Wesby*, 138 S. Ct. at 588) (emphasis added). However, this exposition is strikingly similar to our well-established *arguable* probable cause standard: whether " 'reasonable officers in the same circumstances and possessing the same knowledge as the Defendants *could have believed* that probable cause existed to arrest' the plaintiff." *Richmond v. Badia*, 47 F.4th 1172, 1181 (11th Cir. 2022) (quoting *Von Stein v. Brescher*, 904 F.2d 572, 579 (11th Cir. 1990)) (emphasis added). We continued to apply that same arguable probable cause standard despite *Washington*'s publication. [3]

Due to this confusion, we clarified the proper arguable probable cause standard in light of *Washington*'s holding. In *Garcia*, we explained that "[a]n officer has *arguable* probable cause if 'a reasonable officer, looking at the entire legal landscape at the time of the arrests, could have interpreted the law as permitting the arrests.' " *Garcia*, 75 F.4th at 1186 (quoting *Wesby*, 138 S. Ct. at 593). We further confirmed that "the arguable probable cause inquiry in a false arrest case is no different from the clearly established law inquiry." *Id.* at 1187. [4] Thus, if we conclude that the officers had arguable probable cause then we conclude that their violation of the law was not clearly established and vice-versa.

[11] **[12]** **[13]** Accordingly, probable cause exists where "a reasonable officer could conclude—considering all of the surrounding circumstances, including the plausibility of the explanation itself—that there was a 'substantial chance of criminal activity.' " *Wesby*, 138 S. Ct. at 588 (quoting *Illinois v. Gates*, 462 U.S. 213, 244 n.13, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)); *see Washington*, 25 F.4th at 902. In the false arrest context, arguable probable cause exists where " 'a reasonable officer, looking at the entire legal landscape at the time of ***1237** the arrests, could have interpreted the law as permitting the arrests.' " *See Garcia*, 75 F.4th at 1186 (quoting *Wesby*, 138 S.Ct. at 593). However "[t]his inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." *Rivas-Villegas*, 142 S. Ct. at 8 (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S.Ct. 596, 160 L.Ed.2d 583 (2004) (per curiam)). Importantly, whether an officer possesses either actual or arguable probable cause "depends on the elements of the alleged crime and the operative fact pattern." *Brown*, 608 F.3d at 735.

Applying these principles to this case, Mr. Edger was charged with obstructing governmental operations in violation of Alabama Code § 13A-10-2(a)(1). A person violates this section if, "by means of intimidation, physical force or interference or by any other *independently unlawful act*, he" obstructs a governmental function. *Id.* (emphasis added). Our inquiry therefore asks whether the officers had

probable cause to believe Mr. Edger obstructed governmental operations in violation of this statute. If not, our inquiry is whether no reasonable officer could interpret § 13A-10-2(a)(1) as permitting his arrest—or in other words, whether it was clearly established that there was no probable cause to arrest Mr. Edger for this crime.

The defendants argue that they had probable cause to arrest Mr. Edger for violating § 13A-10-2(a)(1) on two theories. First, they argue that Mr. Edger used "physical force or interference" to obstruct the officer's investigation. Second, in the alternative, they argue that Mr. Edger committed an "independently unlawful act" by refusing to identify himself as Officer McCabe ordered. They propose two different statutes, the Alabama Stop-and-Identify statute § 15-5-30, and the Alabama driver's license statute § 32-6-9, for why Mr. Edger was required to produce his identification. The officers are entitled to qualified immunity if they had arguable probable cause to arrest Mr. Edger based on any of these theories. We address whether the officers had arguable probable cause for each of these theories in turn.

A.

Turning first to the theory that Mr. Edger obstructed the officers by using "intimidation" or "physical force." First, the defendants suggest that Mr. Edger physically threatened Officer McCabe in the moments following the Camry slipping off the jack and hitting the ground because he "jumped up" and "waved his hands," among other things. But the video evidence in this case speaks for itself. *See Lewis v. City of W. Palm Beach*, 561 F.3d 1288, 1290 n.3 (11th Cir. 2009) (noting we review video evidence de novo); *Scott v. Harris*, 550 U.S. 372, 380–81, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007) (explaining that where one party's account is contradicted by the video evidence "[t]he Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape"). The final interaction between Mr. Edger and Officers McCabe and Perillat is depicted from four separate angles on four separate cameras—two body-worn police cameras and two dash cameras. In each video, the Camry slips off the jack, slamming into the ground in front of Mr. Edger. In each, he stands up, slapping his leg, and turns to answer Officer McCabe's questions. Though he is clearly frustrated and gesturing as he speaks, his hands are empty. He stands in one spot without walking towards Officer McCabe. Looking to all the facts within the surrounding circumstances, no reasonable officer could have observed Mr. Edger and concluded he was using "intimidation" or "physical force" to "intentionally obstruct[ ]" Officer ***1238** McCabe's investigation. Accordingly, no reasonable police officer could conclude that Mr. Edger violated this portion of the obstruction statute, and therefore there was no probable cause to support Mr. Edger's arrest.

[14] Second, the defendants argue that Mr. Edger's noncompliance and "aggressive demeanor" obstructed Officer McCabe's investigation and provided her probable cause to arrest Mr. Edger. But "words alone fail to provide culpability under" Alabama's obstruction statute. *D.A.D.O. v. State*, 57 So. 3d 798, 806 (Ala. Crim. App. 2009). So, Mr. Edger's statements and noncompliance without more do not begin to support arguable probable cause—much less actual probable cause—for arrest under § 13A-10-2(a)(1). This theory does not support the grant of qualified immunity to the officers.

B.

[15] Turning now to the defendant's theory that probable cause existed to support Mr. Edger's arrest because he violated Alabama's Stop-and-Identify statute, Alabama Code § 15-5-30. The Stop-and-Identify statute allows an Alabama police officer who "reasonably suspects" a crime is being, has been, or is about to be committed to stop a person in public and "demand of him his name, address and an explanation of his actions." *Id.*

Mr. Edger argues that he cannot possibly have violated § 15-5-30, because it clearly delineates three things the police may ask him for: his name, his address, and an explanation of his actions. He argues nothing in the statute requires him to produce physical identification, and that Officer McCabe's question, "Do y'all have driver's license or IDs on you?" and repeated references to "IDs" were clearly demands for

him to produce physical identification of some kind. He notes that physical identification is not one of the three enumerated things that the police may ask for under Alabama law, and that he was never asked for his name or address.

We agree with the district court's assessment that Mr. Edger did not actually violate § 15-5-30 and thus did not actually commit an "independently unlawful act" justifying arrest under § 13A-10-2(a)(1). Section 15-5-30 does not require anyone to produce an "ID" or "driver's license" as Officer McCabe demanded. Indeed, it does not require anyone to produce anything. Instead, it grants Alabama police the authority to request three specific pieces of information. Here, the video evidence is clear that neither Officer McCabe nor Officer Perillat asked for Mr. Edger's name or address. Additionally, Mr. Edger's objection was clearly related to the unlawful demand that he produce physical identification. When asked, "What are y'all doing?" he responded to Officer McCabe and explained they were fixing the car and that it belonged to a customer. When he stood up to answer more of her questions, the video shows he continued explaining who the owner of the car was and began explaining how they could verify the information before he was abruptly arrested by Officer Perillat. Because the Alabama statute, by its plain text, does not permit the police to demand physical identification, the officers lacked probable cause and thus violated Mr. Edger's Fourth Amendment rights by arresting him. The first prong of the qualified immunity analysis is therefore satisfied.

[16] Where we part ways with the district court is on the issue of arguable probable cause or the "clearly established law" prong of the qualified immunity analysis. We hold that the plain text of the Alabama statute is so clear that no reasonable officer could have interpreted it to ***1239** permit Mr. Edger's arrest for failing to produce his "ID" or "driver's license" under § 15-5-30.

[17] **[18]** Three related premises lead us to this conclusion. First, the broad background rule is that the police may ask members of the public questions and make consensual requests of them, *Florida v. Bostick*, 501 U.S. 429, 434–35, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) (collecting cases and examples), "as long as the police do not convey a message that compliance ... is required." *Id.* at 435, 111 S.Ct. 2382. But the person "need not answer any question put to him; indeed, he may decline to listen to questions at all and may go on his way." *Florida v. Royer*, 460 U.S. 491, 497–98, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).

[19] Second, while the Fourth Amendment permits the police to briefly detain a person to investigate criminal activity, any obligation to answer police questions arises from state—not federal Constitutional—law. *See Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177, 187, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004) (analyzing Nevada's Stop-and-Identify statute and noting "the source of the legal obligation [to answer] arises from Nevada state law, not the Fourth Amendment").

Finally, as noted, the Alabama statute is clear. It lists only three things that the police may ask about. This is not an issue of "magic words" that must be uttered. There is a difference between asking for specific information: "What is your name? Where do you live?" and demanding a physical license or ID. The information contained in a driver's license goes beyond the information required to be revealed under § 15-5-30. *Compare* Ala. Code § 32-6-6 ("Each driver license ... shall contain a distinguishing number assigned to the licensee and a color photograph of the licensee, the name, birthdate, address, and a description of the licensee ...."), *and* Ala. Code § 22-19-72 (requiring that there be "a space on each driver's license ... to indicate in appropriate language that the [licensee] desires to be an organ donor"), *with* Ala. Code § 15-5-30 ("A [police officer] may stop any person abroad in a public place whom he reasonably suspects is committing ... a [crime] and may demand of him his name, address and an explanation of his actions."). Further, neither the parties nor our own research can identify any Alabama law that generally requires the public to *carry* physical identification—much less an Alabama law requiring them to produce it upon demand of a police officer. There simply is no state law foundation for Officer McCabe's demand that Mr. Edger produce physical identification.

So to summarize, it has been clearly established for decades prior to Mr. Edger's arrest that the police are free to ask questions, and the public is free to ignore them. It has been clearly established prior to Mr.

Edger's arrest that any legal obligation to speak to the police and answer their questions arises as a matter of state law. And the state statute itself in this case is clear and requires no additional construction: police are empowered to demand from an individual three things: "name, address and an explanation of his actions." Ala. Code § 15-5-30. It was thus clearly established at the time of Mr. Edger's arrest that she could not demand he produce physical identification. And because Officer McCabe's demands for an "ID" or a "driver's license" went beyond what the statute and state law required of Mr. Edger, she violated clearly established law. Under this set of facts and these precedents, no reasonable officer could interpret the law to permit Mr. Edger's arrest for obstructing governmental operations by violating § 15-5-30. And this theory cannot ***1240** support the grant of qualified immunity to the officers.

C.

[20] Finally, the defendants also argue that Mr. Edger violated the Alabama driver's license statute, Ala. Code § 32-6-9(a), which requires those "driving" to "display the [license], upon demand of a ... peace officer." *Id.* The defendants argue that because Mr. Edger admitted that the black hatchback was his, that he must have driven it there and he was therefore "driving" and subject to the requirement to display his license. They argue this constitutes an "independently unlawful act" under § 13A-10-2(a)(1) and a crime in and of itself justifying the arrest.

The defendants argue that "driving" is a broad term also encompassing those with "actual physical control" of the vehicle. Appellee Br. at 33 (citing Ala. Code § 32-1-1.1(14) (defining "driver")). The test for "actual physical control" means the "exclusive physical power, and present ability, to operate, move, park, or direct" the vehicle under the totality of the circumstances. *Davis v. State*, 505 So. 2d 1303, 1305 (Ala. Crim. App. 1987). Assuming without deciding that this is the appropriate test for determining if someone is "driving" under § 32-6-9,[5] under the totality of the circumstances, Mr. Edger was not driving. When Officer McCabe arrived on scene, she found Mr. Edger partially under the Camry attempting to jack it up. The Camry itself had a wheel removed and was thus disabled and incapable of being driven. The black hatchback was approximately two parking spaces away from where Mr. Edger was, and he was engaged in working on the Camry. No reasonable person could believe that Mr. Edger had the "present ability ... to operate, move, park, or direct" the black hatchback from two parking spaces away and underneath another car. *See Davis*, 505 So. 2d at 1305. The only case analyzing § 32-6-9 cited by the defendants is from this court, *Cantu v. City of Dothan*, 974 F.3d 1217, 1230 (11th Cir. 2020), where we concluded the police *may* have had probable cause to arrest someone for failure to display their license. But that case's facts are materially different because, there, the arrest attempt occurred after the individual walked towards their vehicle and attempted to get in before being stopped by the officer. *Id.* at 1223.

In sum, there was not actual probable cause to conclude that Mr. Edger was driving a car without displaying his license at the time Officer McCabe arrived. Nor could any reasonable officer interpret the law as permitting arrest in this case, and therefore there was no arguable probable cause either. Thus, this final theory cannot support the grant of qualified immunity to the officers.

* * *

In summary, Officers McCabe and Perillat violated Mr. Edger's clearly established Fourth Amendment rights when they arrested him with neither actual, nor arguable, probable cause. Accordingly, we **REVERSE** the district court's grant of qualified immunity to the officers and remand for further proceedings.

IV.

The district court dismissed Mr. Edger's state law claims against Officer McCabe, Officer Perillat, and the City because it determined that arguable probable cause was a defense to those claims as well. It did not conduct any independent analysis ***1241** on these claims and instead linked its decision directly to the finding of arguable probable cause on the federal claims. Accordingly, because we hold that there was no arguable probable cause—i.e., the lack of probable cause was clearly established—we **VACATE** the district court's dismissal of the state law claims and remand for further proceedings.

REVERSED and VACATED.

All Citations

84 F.4th 1230, 30 Fla. L. Weekly Fed. C 305

Footnotes

* Honorable Virginia M. Hernandez Covington, United States District Judge for the Middle District of Florida, sitting by designation.

1 In the record, the owner of the car on which Mr. Edger was working is referred to by various combinations of the names "Ghosh," "Kajal," "Ghosh Patel," and "Mr. Patel." For consistency, we will refer to this individual as Kajal Ghosh, or Mr. Ghosh, as that is the name by which he identified himself in his deposition.

2 Officer McCabe's body camera footage is available online. *See* Video – Investigating Officer Body Camera, Doc. 28-9 (https://www.ca11.uscourts.gov/media-sources).

3 *See, e.g.*, *Richmond*, 47 F.4th at 1181; *Rickerson v. Jeter*, No. 21-12563, 2022 WL 2136017, at *2 (11th Cir. June 14, 2022) (per curiam); *Jackson v. Cowan*, No. 19-13181, 2022 WL 3973705, at *5 (11th Cir. Sept. 1, 2022) (per curiam); *Boyette v. Adams*, No. 22-10288, 2022 WL 7296567, at *5 (11th Cir. Oct. 13, 2022) (per curiam); *Sosa v. Martin Cnty.*, No. 20-12781, 2023 WL 1776253, at *4 (11th Cir. Feb. 6, 2023) (per curiam); *Duncan v. City of Sandy Springs*, No. 20-13867, 2023 WL 3862579, at *4 (11th Cir. June 7, 2023) (per curiam); *Paulk v. Benson*, No. 22-11635, 2023 WL 5624537, at *3 (11th Cir. Aug. 31, 2023) (per curiam).

4 *See also* *Case v. Eslinger*, 555 F.3d 1317, 1327 (11th Cir. 2009) (explaining "arguable probable cause" exists if officer's actions "did not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known' ") (quoting *Hope v. Pelzer*, 536 U.S. 730, 739, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002)); *Scarbrough v. Myles*, 245 F.3d 1299, 1303 (11th Cir. 2001) (per curiam) ("Because [the defendant] had arguable probable cause to arrest [plaintiffs], he violated no clearly established law ...."); *Pickens v. Hollowell*, 59 F.3d 1203, 1206 (11th Cir. 1995) (explaining that the qualified immunity inquiry under "clearly established law" is whether there was "arguable probable cause").

5 We note that the defined term "driver" does not appear in § 32-6-9, and the term "driving" is undefined in § 32-1-1.1. *Compare* Ala. Code § 32-6-9, *with id.* § 32-1-1.1(14).

Appendix P

TELECOMMUNICATOR: E-911, where is your emergency?

CALLER: At 401 6th Court Southwest in Childersburg.

TELECOMMUNICATOR: 501 5th Court Southwest in Childersburg? What's your name?

CALLER: It's 401. My name is Amanda.

TELECOMMUNICATOR: 401. Amanda. What's your phone number?

CALLER: (256) 267-6441.

TELECOMMUNICATOR: What's going on, Amanda?

CALLER: Well, I just wanted somebody to come over here and check. My neighbors went out of town this morning to Gatlinburg, and there's a vehicle over there with people I don't think are supposed to be over there.

TELECOMMUNICATOR: Which neighbor is it?

CALLER: Well, if you're looking at my house, it would be the neighbor to the left, got a white house with a blue roof. She come over here today and asked me -- oh my gosh, my dog. Just stop licking my face.

TELECOMMUNICATOR: What kind of vehicle is over there?

CALLER: A gold SUV of some sort. I can't see because it's through the lattice work.

TELECOMMUNICATOR: Uh-huh.

CALLER: But they're an elderly couple and it's a -- I know I saw a younger black male over there.

TELECOMMUNICATOR: Okay. You saw a younger black male.

CALLER: They're an elderly white couple. Huh? And I'm not saying they don't have -- it just doesn't -- I would just like for somebody to come check and make sure they're supposed to be there.

TELECOMMUNICATOR: Are they in the vehicle or are they out of the vehicle?

CALLER: They're outside the vehicle. They're outside the vehicle.

TELECOMMUNICATOR: Where are they exactly?

CALLER: Ah, I can't see because there's a fence, but I heard them talking in the -- I heard them talking a minute ago out like in their back door, and I can't hear them talking anymore, so they may be in the house now. I don't know.

TELECOMMUNICATOR: Are you able to get a tag on the vehicle?

CALLER: No, ma'am. I'm on the other side.

TELECOMMUNICATOR: It's okay. That's all right. And all you can tell it's a gold vehicle?

CALLER: Yeah, it's a gold vehicle, an SUV type vehicle of some sort.

TELECOMMUNICATOR: How long has the vehicle been there, do you know?

CALLER: Well, I come out, me and my mom were going to go walk around a little

bit, like around the neighborhood, and when we walked out, I heard talking.

TELECOMMUNICATOR: Okay. You never --

CALLER: And I just never could see her.

(Talking at same time.)

TELECOMMUNICATOR: -- saw the vehicle there before.

CALLER: Huh-huh, not like that on, huh-huh.

TELECOMMUNICATOR: Do you want to speak to the officers when they come out?

CALLER: It doesn't -- it doesn't matter to me. Not really. I mean, I don't have to.

TELECOMMUNICATOR: Yeah.

CALLER: I don't mind it.

TELECOMMUNICATOR: It's up to you. It's completely up to you. We've got someone that's got them dispatched already. You just stay in a safe location. Don't attempt to approach or investigate the vehicle. Just

watch the vehicle for anybody that's returning or leaving or if they leave, which way they go. If you get any additional information, just give us a call back immediately, okay?

CALLER: Okay. Thank you.

TELECOMMUNICATOR: Uh-huh, bye bye.

CALLER: All right. Bye bye.

(Phone call ends.)