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

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

BRITTANY COLEMAN, et al., Plaintiffs, v. THE TOWN OF BROOKSIDE, ALABAMA, et al., Defendants.	Civil Action No. 2:22-cv-423-RDP **CLASS ACTION** **ORAL ARGUMENT REQUESTED**

PLAINTIFF BRITTANY COLEMAN'S RESPONSE IN OPPOSITION TO DEFENDANTS SELLERS, MOSES, AND RAGSDALE'S MOTION FOR SUMMARY JUDGMENT (Doc. 52)

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INTRODUCTION

Following a traffic stop, Brookside police officers Marcus Sellers, Mareshah Moses, and Anthony Ragsdale kept Brittany Coleman handcuffed without valid reason. They then impounded her car—"incident to arrest," even though Coleman was not custodially arrested and could have safely and legally driven away. Those actions violated Coleman's Fourth Amendment rights, and her claim against the Officers should proceed.

Nothing in the Officers' summary-judgment submission suggests otherwise. Regarding the legality of their cuffing Coleman, the Officers have offered no evidence that the cuffing was anything but unconstitutional. No declarations. No video. Nothing. As for the towing, the account in the Officers' legal brief is unsupported by record evidence and defies their bodycam footage. With no record support, the Officers represent that they towed Coleman's car because her sobriety tests were "inconclusive." MSJ Br. (Doc. 53, p. 9). But the bodycam footage shows Officer Sellers telling Officer Ragsdale, "I don't think she is DUI." Defs.' Ex. A (Doc. 51 at 13:15–13:19). It shows Coleman passing three sobriety tests. Defs.' Ex. A (Doc. 51 at 14:15–20:21). It shows Officer Sellers confirming, "I don't believe you're going to be under the influence to operate your car safely." Defs.' Ex. A (Doc. 51 at 20:26–20:37). It shows Officer Ragsdale concurring. Defs.' Ex. A (Doc. 51 at 20:26–20:37). And it shows the Officers repeatedly stating that Coleman's car would be towed "incident to arrest"—even though she was not being custodially arrested. Defs.' Ex. A (Doc. 51 at 21:13–21:28); Defs.' Ex. C (Doc. 51 at 22:17–23:43) ("[T]he car still goes.").

On this record, the Officers' motion for summary judgment is a clear candidate for denial. They had no valid reason to cuff Brittany Coleman. Cuffing people with no valid reason is a clear violation of the Fourth Amendment. They had no reason to tow her car. Towing cars with no valid reason is a clear violation of the Fourth Amendment. Any reasonable officer would have known as much, and the summary-judgment motion should be denied.

STATEMENT OF FACTS

A. Response to movants' statement of facts

The Court's initial order directs parties who move for summary judgment to "list in *separately numbered paragraphs* each material fact the movant contends is true and not in genuine dispute, and upon which the moving party relies to demonstrate that it is entitled to summary judgment." Initial Order (Doc. 26, App'x II, p. 3). All such statements must be followed by "a specific reference to those portions of the evidentiary record that the movant claims support it." Initial Order (Doc. 26, App'x II, p. 3). In turn, parties responding to the motion must address those itemized facts "in *separately numbered paragraphs* that coincide with those of the moving party's claimed undisputed facts." Initial Order (Doc. 26, App'x II, p. 3).

The Officers' summary-judgment filing does not comply with the initial order. It does not contain numbered facts. MSJ Br. (Doc. 53). It lacks even a background section. There is no statement of facts for Brittany Coleman to address. We note, however, two factual points that alone warrant the Court's denial of the Officers' summary-judgment motion:

First, the Officers have submitted no record evidence about Officer Sellers's initial decision to handcuff Coleman. No sworn declaration. No bodycam footage. Defs.' Ex. A (Doc. 51) (Ragsdale footage, beginning after Coleman has already been cuffed); Defs.' Ex. C (Doc. 51) (Moses footage, beginning after Coleman has already been cuffed).

Second, the Officers' account of their decision to tow Coleman's car is without record support. The Officers' brief asserts that because Coleman's "field sobriety tests" were "somewhat inconclusive," Officer Sellers "erred on the side of caution and decided to tow her vehicle." MSJ Br. (Doc. 53, p. 9). But the Officers have submitted no declarations or affidavits supporting that account. And it is contradicted by their bodycam footage, which shows the following:

- That before conducting sobriety tests of Coleman, Officer Sellers said: "I don't think she is DUI . . . ." Defs.' Ex. A (Doc. 51 at 13:15–13:19).
- That Coleman passed three sobriety tests—the nystagmus test, the Rhomberg balance test, and the finger-to-nose test. Defs.' Ex. A (Doc. 51 at 14:15–20:21); Defs.' Ex. C (Doc. 51 at 6:06–12:20).
- That after the sobriety tests, Officer Sellers stated: "I don't believe you're going to be under the influence to operate your car safely, okay?" Defs.' Ex. A (Doc. 51 at 20:26–20:37); Defs.' Ex. C (Doc. 51 at 12:14–12:25).
- That Officer Ragsdale concurred with Officer Sellers's assessment. Defs.' Ex. A (Doc. 51 at 20:15–20:37).
- That the Officers decided not to custodially arrest Coleman and released her after the traffic stop. Defs.' Ex. A (Doc. 51 at 22:11–22:51); Defs.' Ex. C (Doc. 51 at 22:04–23:40, 33:49–34:45).
- That the Officers repeatedly said that they intended to tow Coleman's car, not because of doubts about her sobriety, but because they could custodially arrest her for misdemeanor marijuana possession and the tow was thus "incident to arrest." Defs.' Ex. A (Doc. 51 at 21:13–21:28) ("[Sellers]: I know the Chief is wanting to tow on these incidents – I mean – [Ragsdale]: Yeah. She's the driver. It's her marijuana. Obviously – yeah, we're still gonna tow 'cause it's incident to arrest. [Sellers]: I got you. Just making sure that's still – [Ragsdale]: Yeah yeah."); *see also* Defs.' Ex. C (Doc. 51 at 22:59–23:40) ("[Moses]: [W]hen you make an arrest, the vehicle goes with the arrest. Alright, she has been arrested, okay? But since the governor's passed down the stipulations about the coronavirus, we are not taking her into our

facility at this time. That's why she's receiving a citation and a summons to come to court for the – for the possession of marijuana. But the car still goes. Basically, it's like an arrest, but she's not being – but she's not going to our facility.").

B. Additional undisputed facts

1. On April 4, 2020, Brittany Coleman was driving to her own birthday breakfast in a vehicle for which she was the registered owner. Pl.'s Ex. 1 (Doc. 60-1, ¶ 1).

2. Officer Marcus Sellers pulled Coleman over on the side of the highway. Pl.'s Ex. 1 (Doc. 60-1, ¶ 2).

3. Within seconds, Officer Sellers claimed to smell marijuana in Coleman's car and ordered Coleman to exit the vehicle. Pl.'s Ex. 1 (Doc. 60-1, ¶ 3).

4. Officer Sellers immediately handcuffed Coleman. Pl.'s Ex. 1 (Doc. 60-1, ¶ 4).

5. Coleman did not understand why she was being handcuffed and asked for an explanation. Pl.'s Ex. 1 (Doc. 60-1, ¶ 5). Officer Sellers explained that it was "standard procedure" to handcuff drivers upon searching their vehicles. Pl.'s Ex. 1 (Doc. 60-1, ¶ 5).

6. Other than his explanation that it was "standard procedure," Officer Sellers had no reason to handcuff Coleman. Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 5, 11–13).

7. At all times before and during the time of the handcuffing, Officer Sellers was the only officer present. Pl.'s Ex. 1 (Doc. 60-1, ¶ 6).

8. Officer Sellers proceeded to thoroughly search Coleman's car. Pl.'s Ex. 1 (Doc. 60-1, ¶ 7).

9. Before Officers Moses and Ragsdale arrived on scene, Officer Sellers claimed that he found marijuana in the car. Pl.'s Ex. 1 (Doc. 60-1, ¶ 8); Defs.' Ex. C (Doc. 51 at 24:35–24:46).

10. Coleman did not see the marijuana Officer Sellers allegedly found. Pl.'s Ex. 1 (Doc. 60-1, ¶ 9).

11. In the Officers' Exhibit A, Officer Sellers himself gives varying answers for where he allegedly found the marijuana. *Compare* Defs.' Ex. A (Doc. 51 at 11:54–12:02) (Officer Sellers stating he found a "roach" in the center part of the dash of the car), *with* Defs.' Ex. A (Doc. 51 at 20:40–20:52) (Officer Sellers stating that the marijuana was in the driver's and passenger's seats).

12. After Officers Moses and Ragsdale arrived, Coleman remained handcuffed. Pl.'s Ex. 1 (Doc. 60-1, ¶ 10); Defs.' Ex. A (Doc. 51 at 0:01–0:34); Defs.' Ex. C (Doc. 51 at 0:01–0:13). She remained handcuffed for about fifteen minutes after Officer Ragsdale arrived. Pl.'s Ex. 1 (Doc. 60-1, ¶ 10).

13. At no point did Coleman give Officer Sellers, or any other officer, any reason to believe she posed a threat in any way, including threats to them, herself, or their investigation. Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 11–13).

14. At no point did Officers Sellers, Moses, or Ragsdale suggest that Coleman posed a threat or that there was anything dangerous on her person or in her car. Pl.'s Ex. 1 (Doc. 60-1, ¶ 13); *see also* Defs.' Ex. C (Doc. 51 at 3:40–4:20) (Officer Moses confirming with Coleman that there was "nothing" in her car or on her person). Even so, they kept her handcuffed. Pl.'s Ex. 1 (Doc. 60-1, ¶ 13).

15. After he arrived on the scene, Officer Ragsdale joined Officer Sellers in searching Coleman's car. Defs.' Ex. A (Doc. 51 at 9:15–14:00). The officers finished the search a few minutes later. Defs.' Ex. A (Doc. 51 at 9:15–14:00).

16. After the officers finished searching the car, Officer Sellers—aided by Officers Moses and Ragsdale—uncuffed Coleman and had her complete three field sobriety tests. Defs.' Ex. A (Doc. 51 at 14:15–20:25).

17. Coleman successfully completed all three sobriety tests (the nystagmus test, the Rhomberg balance test, and the finger-to-nose test). Defs.' Ex. A (Doc. 51 at 14:15–20:25); *see also* Pl.'s Ex. 1 (Doc. 60-1, ¶ 14). Right after the final test, Officer Sellers said: "I don't believe you're going to be under the influence to operate your car safely, okay?" Defs.' Ex. A (Doc. 51 at 20:25–20:36). Officer Ragsdale concurred. *See* Defs.' Ex. A (Doc. 51 at 20:15–20:36).

18. At no point did the Officers suggest that they thought Coleman could not safely and legally drive her vehicle away from the scene. Pl.'s Ex. 1 (Doc. 60-1, ¶ 15); *see also* Defs.' Ex. A (Doc. 51 at 20:25–20:36).

19. Seconds after Coleman successfully completed the sobriety tests, Officers Sellers and Ragsdale privately discussed whether to tow her car. Officer Ragsdale's bodycam captured the following exchange:

> [Sellers]: I know the Chief is wanting to tow on these incidents – I mean –
>
> [Ragsdale]: Yeah. She's the driver. It's her marijuana. Obviously – yeah, we're still gonna tow 'cause it's incident to arrest.
>
> [Sellers]: I got you. Just making sure that's still –
>
> [Ragsdale]: Yeah yeah.

Defs.' Ex. A (Doc. 51 at 21:10–21:30).

20. Later, Officer Moses confirmed that the reason they were towing Coleman's car was that she was purportedly "arrested"—even though she would not be taken to jail or otherwise disabled from driving her car from the scene. Defs.' Ex. C (Doc. 51 at 22:04–23:40). Officer Moses's bodycam recorded him making the following statement:

> This [is] how everything works, okay? . . . [W]e still have to carry out what we've been trained to by the State of Alabama, okay? Which is, go ahead on, cite, and arrest, and when you make an arrest, the vehicle goes with the arrest. Alright. She is – she has been arrested, okay, but since the governor's passed down the stipulations about the coronavirus, okay, we're not taking her to our facility at this time. . . . But the car still goes. It basically, it's like an arrest, but she's not being – but she's not going to our facility.

Defs.' Ex. C (Doc. 51 at 22:17–23:43).

21. At no time did any of the Officers indicate that they were towing Coleman's car for any reason other than that the tow was "incident to arrest." Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 15, 18); Defs.' Ex. A (Doc. 51 at 21:10–21:30); Defs.' Ex. C (Doc. 51 at 22:04–23:40).

22. Coleman could have safely and legally driven the car from the scene. Pl.'s Ex. 1 (Doc. 60-1, ¶ 14). She had all the necessary paperwork—for example, her license and registration—to do so. Pl.'s Ex. 1 (Doc. 60-1, ¶ 14). And as the Officers acknowledged, she was not under the influence of any intoxicating substance. Pl.'s Ex. 1 (Doc. 60-1, ¶ 15); Defs.' Ex. A (Doc. 51 at 20:25–20:36).

23. Even so, the Officers decided to tow the car. Defs.' Ex. A (Doc. 51 at 21:10–21:30). Coleman's boyfriend had to retrieve her from a nearby gas station. Pl.'s Ex. 1 (Doc. 60-1, ¶ 17).

24. Coleman's marijuana charge was ultimately dropped for lack of evidence. Pl.'s Ex. 1 (Doc. 60-1, ¶ 19).

25. At no point during the criminal proceedings did the Officers produce the marijuana Officer Sellers allegedly found, even though Coleman's criminal-defense attorney asked for the evidence that supported the marijuana charge several times. Pl.'s Ex. 1 (Doc. 60-1, ¶ 20).

STANDARD

Under Rule 56, a party may be entitled to summary judgment if the party "shows that there is no genuine dispute as to any material fact and [it] is entitled to judgment as a matter of law." Whatever the substantive burden of proof, "[t]he 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." *Lowery v. Sanofi-Aventis LLC*, 535 F. Supp. 3d 1157, 1169–70 (N.D. Ala. 2021). If the movant would bear the burden of proof at trial, he or she "must show *affirmatively* the absence of a genuine issue of material fact." *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1438 (11th Cir. 1991) (en banc). If, by contrast, that burden would rest with the non-moving party, the movant need not affirmatively "negat[e]" their opponent's claim but still "must point to specific portions of the record in order to demonstrate that the nonmoving party cannot meet its burden of proof at trial." *Id.* at 1437, 1438 n.19.

A final point on the summary-judgment standard. At the risk of saying the obvious, statements in legal briefs unsupported by the factual record are "not evidence." *Chao v. Tyson Foods, Inc.*, 568 F. Supp. 2d 1300, 1313 n.12 (N.D. Ala. 2008). And ones that are "blatantly contradicted" by, for example, the movant's bodycam footage are also not a valid ground for summary judgment. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

ARGUMENT

Officers Sellers, Ragsdale, and Moses violated Brittany Coleman's Fourth Amendment rights and may properly be held liable.

Officers Sellers, Ragsdale, and Moses kept Brittany Coleman handcuffed without valid reason. They then towed her car without valid reason. Those actions violated her rights. And nothing in the Officers' summary-judgment submission suggests otherwise. On the cuffing, the Officers have offered no evidence at all. No declarations. No affidavits. No video. As for the towing, the factual account in the Officers' legal brief is unsupported by record evidence and belied by the Officers' bodycam footage. Bluntly, the Officers violated the Fourth Amendment. Any reasonable officer would have known as much. The motion for summary judgment should therefore be denied.

A. The Officers may properly be held liable for handcuffing Coleman.

Viewing the record in the light most favorable to Brittany Coleman, the Officers' choice to handcuff her violated her Fourth Amendment rights and qualified immunity does not insulate them from accountability.

1. The cuffing violated the Fourth Amendment.

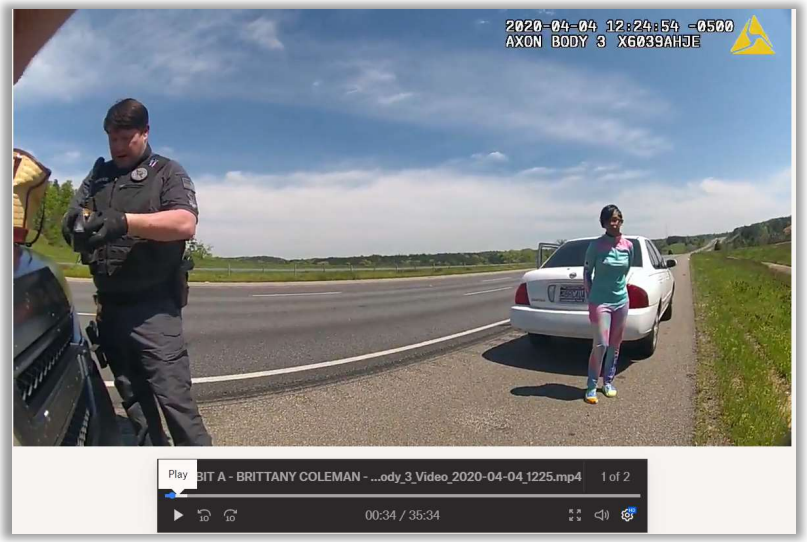
The Officers violated Brittany Coleman's Fourth Amendment rights by handcuffing her without valid reason. *See generally* Am. Compl. (Doc. 32, ¶ 420) ("This Count is brought against Marcus Sellers for handcuffing Brittany Coleman in violation of the Fourth Amendment and for seizing, towing, and impounding Brittany Coleman's car in violation of the Fourth Amendment."); Am. Compl. (Doc. 32 ¶ 421) (similar, as to Ragsdale and Moses). The Officers' brief all but ignores the cuffing, and they give no basis for entering summary judgment in their favor.

a. Upon pulling over Coleman for tailgating, Officer Sellers "briefly detain[ed] and handcuff[ed]" her while he searched her vehicle. *See* MSJ Br. (Doc. 53, p. 6); *see also* MSJ Br. (Doc. 53, p. 8) ("Appellate courts examine the reasonableness of a temporary investigative detention in light of the totality of the circumstances . . . ."). Coleman posed no danger to Sellers. Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 11–13). Physically, she's tiny. Pl.'s Ex. 1 (Doc. 60-1, ¶ 11). She had no weapons. Pl.'s Ex. 1 (Doc. 60-1, ¶ 12). She was fully cooperative. Pl.'s Ex. 1 (Doc. 60-1, ¶ 11). Officer Sellers had no cause to think differently. Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 12–13). Yet he cuffed her hands behind her back anyway because—as he told her—it was "standard procedure" for him to cuff people while searching their cars. Pl.'s Ex. 1 (Doc. 60-1, ¶ 5). Even after two more officers arrived, Coleman remained cuffed by the side of the road. Pl.'s Ex. 1 (Doc. 60-1, ¶ 10); Defs.' Ex. A (Doc. 51 at 0:01–0:34); Defs.' Ex. C (Doc. 51 at 0:01–0:13). All told, she was restrained in this way for at least a quarter of an hour. *See* Pl.'s Ex. 1 (Doc. 60-1, ¶ 10); Defs.' Ex. A (Doc. 51 at 0:01–14:40).

These circumstances amount to a Fourth Amendment violation. The Fourth Amendment protects against "unreasonable searches and seizures." And as part of that guarantee, "[i]t is well settled that . . . '[t]he scope of a detention must be carefully tailored to its underlying justification' and that the 'investigatory methods employed [during a detention] should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.'" *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1306 (11th Cir. 2006). During an investigatory stop, then, officers do not have a blank check to cuff people. Rather, they can deploy handcuffs only if they "reasonably believe[] that the detainee presents a potential threat to safety." *Id.* at 1305–06; *see also Harris v. Byner*, No. 2:12-cv-591-MHT, 2014 WL 129040, at *3 (M.D. Ala. Jan. 14, 2014) ("The use of handcuffs in a *Terry* stop without any justification is a Fourth Amendment violation."), *aff'd sub nom. Harris v. City of Montgomery*, 580 F. App'x 874 (11th Cir. 2014).

Those principles control here. On the summary-judgment record, Coleman presented no "potential threat to safety." *See Gray*, 458 F.3d at 1305–06. Officer Sellers had no reason to think she possessed weapons. Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 12–13). Or that she would be uncooperative. Pl.'s Ex. 1 (Doc. 60-1, ¶ 11). Or that she would present any other risk to him. Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 11–13). That's doubly true once two additional, armed police officers arrived on the scene. And critically, the Officers' motion contests none of this. They have "offered no explanation for the handcuffing whatsoever." *See Harris*, 2014 WL 129040, at *3. They have "not contended . . . that [they] or anyone else was in danger." *See id.* They have "not contended that [Coleman] constituted a flight risk." *See id.* They "ha[ve] not contended that the handcuffs were required to maintain the status quo." *See id.* Simply—and as in *Harris*—they "ha[ve] not articulated any justification for the use of handcuffs at all." *See id.*

In fact, the Officers' summary-judgment submission contains no evidence—none—about Officer Sellers's decision to cuff Coleman. While the Officers opted to file bodycam footage belonging to two of them (Ragsdale and Moses), those videos begin *after* Officer Sellers had removed Coleman from her car and cuffed her.



Defs.' Ex. A (Doc. 51 at 0:01–0:34); *see also* Defs.' Ex. C (Doc. 51 at 0:01–0:13) (similar). For reasons unexplained, the Officers elected not to submit bodycam footage from Officer Sellers himself—who was alone with Coleman when he cuffed her. Nor have the Officers submitted a declaration or affidavit from Officer Sellers. Nor, for that matter, have they submitted *any* evidence that might justify his decision to restrain Brittany Coleman with handcuffs.

That should be the end of the matter. As the summary-judgment movants, the Officers "bear[] the initial responsibility of informing the court of the basis for [their] motion and identifying those portions of the pleadings or filings which [they] believe[] demonstrate the absence of a genuine issue of material fact." *Lowery*, 535 F. Supp. 3d at 1169–70. And on the merits, they bear the burden of showing that the cuffing was justified under the Fourth Amendment. *See United States v. Kapperman*, 764 F.2d 786, 790 n.4 (11th Cir. 1985). They have defaulted on that burden

entirely. *See Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1116 (11th Cir. 1993) ("If the party moving for summary judgment fails to discharge the initial burden, then the motion must be denied and the court need not consider what, if any, showing the non-movant has made."). Not only that, but Coleman's declaration raises—at minimum—a fact question about whether Officer Sellers's decision to cuff her was unconstitutional. The Officers' motion is thus a straightforward candidate for denial.

b. The Officers' arguments only reinforce that their motion should be denied. Foremost, the Officers observe that Coleman does not contest the validity of the initial traffic stop. MSJ Br. (Doc. 53, p. 6). Yet even if the initial stop for tailgating were valid, cuffing Coleman was not. *See Harris*, 2014 WL 129040, at *3 ("[A]s the Supreme Court explained in *Terry* itself, even where sufficient initial justification exists, a seizure may still be found to be unreasonably intrusive."). And as discussed, the Officers' summary-judgment submission barely acknowledges the cuffing—much less justifies it under Fourth Amendment precedent.

Also without merit is the Officers' explanation that Officer Sellers smelled marijuana and therefore could validly search Coleman's car and belongings. MSJ Br. (Doc. 53, pp. 6–9). As the amended complaint makes plain, Coleman does not challenge the search. Rather, she contests the separate decision to physically restrain her with handcuffs. Am. Compl. (Doc. 32, ¶¶ 420–29). The Officers bear the burden to justify that intrusion on her physical security, *Kapperman*, 764 F.2d at 790 n.4, and they have failed to do so.

2. The Officers are not entitled to qualified immunity for the cuffing.

a. Qualified immunity does not alter the analysis. Under the qualified-immunity doctrine, an officer may escape liability for constitutional violations if the plaintiff's right was not "'clearly established' at the time of the violation." *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (per curiam). "Rights may be clearly established for qualified immunity purposes by . . . 'a broad

statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right . . . .'" *Crocker v. Beatty*, 886 F.3d 1132, 1137 (11th Cir. 2018) (per curiam). And against that backdrop, the Officers are not entitled to qualified immunity. Their summary-judgment record offers no justification for (or evidence on) their decision to keep Brittany Coleman handcuffed, and cuffing detainees with no justification clearly violates the Fourth Amendment. *See generally Tolan*, 572 U.S. at 657 ("Our qualified-immunity cases illustrate the importance of drawing inferences in favor of the nonmovant, even when . . . a court decides only the clearly-established prong of the standard.").

Eleventh Circuit precedent illustrates the point. In 2006, for example—well before Coleman's seizure in 2020—the Eleventh Circuit denied qualified immunity to an officer who cuffed a child despite "no indication of a potential threat to anyone's safety." *Gray*, 458 F.3d at 1305–06. Despite the "absence of factually similar case law," the court held it "obvious" that "[e]very reasonable officer would have known that handcuffing a compliant nine-year-old child for purely punitive purposes is unreasonable." *Id.* at 1306, 1307. More recently, Judge Thompson of the Middle District observed that "the Eleventh Circuit has repeatedly made it clear that officers must justify the use of handcuffs with some legitimate rationale above and beyond the existence of mere reasonable suspicion." *Harris*, 2014 WL 129040, at *4. Drawing on *Gray*, Judge Thompson then held that "the use of handcuffing during a *Terry* stop with *no justification* is 'well beyond the hazy border that sometimes separates lawful conduct from unlawful conduct, such that every objectively reasonable officer would have known that the conduct was unlawful.'" *Id.* at *6. Other courts agree. *E.g.*, *El-Ghazzawy v. Berthiaume*, 636 F.3d 452, 458–60 (8th Cir. 2011). On this record, the Officers' unjustified—and as-yet unexplained—choice to cuff Brittany Coleman is not entitled to qualified immunity.

b. The Officers develop no meaningful argument on this point, which streamlines the analysis substantially. *See Long v. City of Bessemer*, No. 2:09-cv-4-VEH, 2009 WL 10703307, at *1 (N.D. Ala. Apr. 15, 2009) ("[T]he onus is upon the parties to formulate arguments." (citation omitted)). The Officers devote most of their analysis to reciting qualified-immunity truisms. MSJ Br. (Doc. 53, pp. 10–11). They also comment on causes of action for false imprisonment, a doctrine not implicated in this lawsuit. MSJ Br. (Doc. 53, p. 11). Beyond that, their qualified-immunity analysis distills to the view that Coleman's factual allegations are "patently false" and contradicted by bodycam footage. MSJ Br. (Doc. 53, p. 11). As detailed above, however, the bodycam footage does not record Officer Sellers's decision to cuff Coleman. On top of that, the facts set forth in Coleman's declaration are entirely consistent with the footage submitted. Viewing the record in the light most favorable to Coleman, Officer Sellers cuffed her for no valid reason. She was kept cuffed even after two more officers arrived on the scene. And still the Officers "ha[ve] not articulated any justification for the use of handcuffs at all." *See Harris*, 2014 WL 129040, at *3. Given this record—and the lack of argument from the Officers—qualified immunity does not apply.

B. The Officers may properly be held liable for towing Coleman's car.

The Officers compounded their Fourth Amendment violation by towing Coleman's car. Here also, qualified immunity does not apply.

1. The vehicle tow violated the Fourth Amendment.

a. The Fourth Amendment violations persisted after Coleman was uncuffed. Having released her hands, the Officers conducted three successive sobriety tests. Defs.' Ex. A (Doc. 51 at 14:15–20:25). Officer Sellers then acknowledged that Coleman was not under the influence of controlled substances and could safely operate her vehicle. Defs.' Ex. A (Doc. 51 at 20:25–20:36). Officer Ragsdale agreed. Defs.' Ex. A (Doc. 51 at 20:15–20:36). The Officers then issued Coleman two citations—one for tailgating, the other for marijuana possession. Defs.' Ex. A (Doc. 51 at

29:55–30:05). And they advised that they would not be taking her into custody. Defs.' Ex. A (Doc. 51 at 22:10–22:52). But her car was a different matter. Even though she could safely and lawfully drive her car away, the Officers—paradoxically—insisted on impounding it "incident to arrest." Defs.' Ex. A (Doc. 51 at 21:10–21:30). She had to wait until the next business day (two days later) to recover it, after paying the requisite fees to Brookside and the towing company. Pl.'s Ex. 1 (Doc. 60-1, ¶ 18).

Here, too, the Fourth Amendment analysis is straightforward. "The right to be free from warrantless seizures of personal property, absent an applicable exception," has been "clearly established to the point of obvious clarity" for years. *Crocker*, 886 F.3d at 1138. The burden of justifying such a seizure "lies with the Government." *United States v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002). And on this record, the Officers have not shown (and cannot show) that an exception to the warrant requirement let them tow Coleman's car. *When a driver is custodially arrested* it is of course true that their vehicle can sometimes be impounded if it would otherwise be "left without a licensed driver" by the roadside. *Sammons v. Taylor*, 967 F.2d 1533, 1543 (11th Cir. 1992) (citation omitted); *see also South Dakota v. Opperman*, 428 U.S. 364, 369 (1976) ("The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge."). But here, Brittany Coleman was *not* custodially arrested. The Officers had searched the car thoroughly at the scene. Pl.'s Ex. 1 (Doc. 60-1, ¶ 7). They issued her citations. Defs.' Ex. A (Doc. 51 at 29:55–30:05); Defs.' Ex. C (Doc. 51 at 22:17–23:43). They confirmed she was sober. Pl.'s Ex. 1 (Doc. 60-1, ¶¶ 14–15); Defs.' Ex. A (Doc. 51 at 20:15–20:36). They let her go. Defs.' Ex. C (Doc. 51 at 33:50–34:30). And besides saying that they *could have* taken her to jail—but didn't—they had no reason for seizing her car. *See* Defs.' Ex. A (Doc. 51 at 21:10–21:30); Pl.'s Ex. 1 (Doc 60-1, ¶¶ 14–15).

Such a seizure is beyond "the realm of reason" and violates the Fourth Amendment. *See Sammons*, 967 F.2d at 1543 (citation omitted). "Without question, a person who is subject only to a non-custodial arrest may not have his property seized on the basis of that same arrest." *Morton v. State*, 452 So. 2d 1361, 1364 (Ala. Crim. App. 1984), *overruled on other grounds*, *Cannon v. State*, 601 So. 2d 1112, 1115 (Ala. Crim. App. 1992); *see also id.* ("Absent some extenuating circumstances, such a seizure would be unreasonable and in violation of the Fourth Amendment."). Such a seizure is squarely at odds with Fourth Amendment doctrine. *See, e.g.*, *United States v. Sanders*, 796 F.3d 1241, 1249–50 (10th Cir. 2015) (noting that "even if the police were to adopt a standardized policy of impounding all vehicles whose owners receive traffic citations," the impoundments would be "unreasonable" under the Fourth Amendment); *United States v. Duguay*, 93 F.3d 346, 353 (7th Cir. 1996) ("The policy of impounding the car without regard to whether the defendant can provide for its removal is patently unreasonable if the ostensible purpose for impoundment is for the 'caretaking' of the streets."). This Court and others have permitted challenges to impounds to proceed in circumstances far less outlandish than Coleman's.[1] In fact, the Officers' impound was not even authorized by Alabama state law. *See, e.g.*, Ala. Op. Att'y Gen. No. 2002-032, 2001 WL 1421631, at *2 (Oct. 18, 2001) ("[I]n instances of non-custodial arrests . . . a person's vehicle cannot be seized and . . . the person, after signing the traffic ticket, must be allowed to proceed."); Ala. Code § 32-13-2 (authorizing impoundment when vehicle is "left unattended" due to driver's arrest). Simply, the Officers could not tow Coleman's car "incident to arrest" *when*

[1] *United States v. Curry*, No. 7:18-cr-27-MHH-SGC, 2019 WL 2325946, at *13 (N.D. Ala. May 31, 2019) ("[Tuscaloosa's] 'always tow' incident to arrest policy is not 'tailored to the community-caretaking functions which, per *Opperman*, provide the foundation for impoundment.'"); *Dawson v. City of Montgomery*, No. 2:06-cv-1057-WKW, 2008 WL 659800, at *7 (M.D. Ala. Mar. 6, 2008) (denying summary-judgment motion seeking qualified immunity because "a genuine issue of material fact exists as to whether [the officer] had *any* basis for seizing [the plaintiff's] vehicle and driver's license in order to prevent him from driving").

she had not been custodially arrested and posed no risk to herself or others. Because the record shows they did just that, summary judgment in their favor is not warranted.

b. The Officers' motion drives home the point. The Officers no longer rationalize the tow as a seizure "incident to arrest." They present no sworn declarations to justify the tow under any exception to the warrant requirement. Instead, they offer up a different version of the facts entirely: Coleman's sobriety tests were "inconclusive"—they say—so the Officers "erred on the side of caution and decided to tow her vehicle." MSJ Br. (Doc. 53, p. 9).

Respectfully, nothing about that account adds up. It appears in the Officers' legal brief alone. It is supported by no declarations. It is supported by no affidavit. And it defies the Officers' bodycam footage at every turn. The footage reveals that even before conducting the sobriety tests, Officer Sellers did not believe Coleman was under the influence of controlled substances. Defs.' Ex. A (Doc. 51 at 13:15–13:19) ("I don't think she is DUI . . . ."). The footage shows Coleman passing three successive sobriety tests. Defs.' Ex. A (Doc. 51 at 14:15–20:21); Defs.' Ex. C (Doc. 51 at 6:06–12:20). Right after, the footage reveals Officer Sellers stating, "I don't believe you're going to be under the influence to operate your car safely, okay?" Defs.' Ex. A (Doc. 51 at 20:26–20:37); Defs.' Ex. C (Doc. 51 at 12:14–12:25). The footage reveals Officer Ragsdale voicing his agreement. Defs.' Ex. A (Doc. 51 at 20:15–20:37). Seconds later, the footage displays the two officers confirming privately that they will tow Coleman's car anyway—not because her sobriety is in doubt, but because they *could* custodially arrest her for the marijuana citation and thus the

tow can be chalked up as "incident to arrest."[2] The footage then reveals Officer Moses reiterating that position minutes later ("when you make an arrest, the vehicle goes with the arrest").[3]

That's the record. The Officers did not "err[] on the side of caution." MSJ Br. (Doc. 53, p. 9). Brittany Coleman's three sobriety tests were not "inconclusive." MSJ Br. (Doc. 53, p. 9). The Officers harbored no doubts about her sobriety. Their legal brief's statements to the contrary—bare of any record support—are "not evidence." *Chao*, 568 F. Supp. 2d at 1313 n.12. And in any case, the brief is "blatantly contradicted" by the Officers' own bodycams. *Scott*, 550 U.S. at 380. The record makes clear that the Officers towed Coleman's car incident to a custodial arrest that did not take place, and such a seizure fits within no exception to the warrant requirement.[4]

2. The Officers are not entitled to qualified immunity for the vehicle tow.

As with the cuffing, the Officers develop no coherent argument that qualified immunity excuses the vehicle tow. MSJ Br. (Doc. 53, pp. 10–11). Nor, on this record, is there any basis for

[2] Defs.' Ex. A (Doc. 51 at 21:13–21:28) ("[Sellers]: I know the Chief is wanting to tow on these incidents – I mean – [Ragsdale]: Yeah. She's the driver. It's her marijuana. Obviously – yeah, we're still gonna tow 'cause it's incident to arrest. [Sellers]: I got you. Just making sure that's still – [Ragsdale]: Yeah yeah.").

[3] Defs.' Ex. C (Doc. 51 at 22:57–23:40) ("[Moses]: [W]hen you make an arrest, the vehicle goes with the arrest. Alright. She is – she has been arrested, okay? But since the governor's passed down the stipulations about the coronavirus, we are not taking her into our facility at this time. That's why she's receiving a citation and a summons to come to court for the – for the possession of marijuana. But the car still goes. Basically, it's like an arrest, but she's not being – but she's not going to our facility.").

[4] The Officers' brief also notes that Coleman "admitted she had smoked three joints in her car." MSJ Br. (Doc. 53, p. 9). But as the bodycam footage shows, Coleman acknowledged smoking marijuana at around 5:00 that morning—seven to eight hours before the traffic stop. Defs.' Ex. A (Doc. 51 at 0:46–01:05); Defs.' Ex. C (Doc. 51 at 1:55–2:10); *see also* Pl.'s Ex. 1 (Doc. 60-1, ¶ 16) ("At no point did I tell officers that I had smoked marijuana one or two hours prior to the stop."). Even with that information, moreover, the Officers repeatedly stated that they believed she was not under the influence and that the basis for the vehicle tow was that it was "incident to arrest." (Doc. 51 Ex. A at 20:15–20:36, 21:10–21:30).

affording them immunity. *See Tolan*, 572 U.S. at 656 (qualified immunity appropriate only if the plaintiff's right was not "clearly established" at the time of the violation).

The Supreme Court's Fourth Amendment doctrines define bright-line rules precisely so that police officers can do their jobs without infringing on the rights of the citizenry. *See Virginia v. Moore*, 553 U.S. 164, 175 (2008). This is a bright-line case. "The right to be free from warrantless seizures of personal property, absent an applicable exception, was clearly established to the point of obvious clarity" long before the Brookside Police Department stopped Brittany Coleman. *See Crocker*, 886 F.3d at 1138; *see also United States v. Virden*, 488 F.3d 1317, 1321 (11th Cir. 2007) (applying this rule to vehicle seizure). Because no exception to the warrant requirement even arguably applies—and because the Officers have defaulted on their burden to show otherwise—seizing Coleman's car was clearly unconstitutional. As the Officers confirmed on video, Coleman was not under the influence of controlled substances. Defs.' Ex. A (Doc. 51 at 20:26–20:37); Defs.' Ex. C (Doc. 51 at 12:14–12:25). She was released at the end of the stop. Defs.' Ex. C (Doc. 51 at 33:50–34:30). Nothing would have prevented her from safely driving her car away. And a robust

(Continued on page 20, below)

consensus of authority—from the federal courts[5] to the Alabama courts[6] to then-Attorney General Pryor[7]—confirms that officers can't tow a car "incident to arrest" *when there hasn't been a custodial arrest* and there's no other threat to property or public safety. Nor (for much the same reason) would the community-caretaking doctrine even arguably apply when, as here, the driver can safely and legally drive their car from the scene. *Opperman*, 428 U.S. at 368 (justifying the community-caretaking function as "[i]n the interests of public safety").[8] This is a painfully obvious application of bright-line Fourth Amendment rules. No reasonable officer could think otherwise.

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[5] *See, e.g.*, *Sanders*, 796 F.3d at 1249–50; *Miranda v. City of Cornelius*, 429 F.3d 858, 864, 866 (9th Cir. 2005) ("A driver's arrest, or citation for a non-criminal traffic violation . . . is not relevant [to impoundment] except insofar as it affects the driver's ability to remove the vehicle from a location at which it jeopardizes the public safety or is at risk of loss."); *Duguay*, 93 F.3d at 353; *Curry*, 2019 WL 2325946, at *13 ("In every appellate decision that this Court located concerning policies akin to [Tuscaloosa's] 'always tow' policy, the court of appeals held that the impoundment practice or policy violated the Fourth Amendment because the practice/policy was unreasonable in that it was not sufficiently related to caretaking of public streets or the vehicle itself."); *Redlich v. Leen,* No. 16-cv-20001, 2016 WL 3670575, at *14 (S.D. Fla. May 20, 2016) ("Based on the allegations of the Complaint that the owner and another passenger were present, willing and able to drive the vehicle, the necessity of impoundment may not exist.") (report & recommendation); *United States v. Bridges,* 245 F. Supp. 2d 1034, 1037 (S.D. Iowa 2003) (holding that impoundment violated the Fourth Amendment because "Defendant was only given a citation; there was no arrest, and he was not in police custody" and thus "there is no indication what community caretaking or public safety function the impoundment . . . served"); *United States v. Goodrich*, 183 F. Supp. 2d 135, 139 (D. Mass. 2001) ("A review of the caselaw supports the view that what distinguishes a permissible from an impermissible seizure of a legally parked car is whether the police had reason to believe that someone was available who could be entrusted with the car.").

[6] *Morton v. State*, 452 So.2d 1361, 1364 (Ala. Crim. App. 1984), *overruled on other grounds*, *Cannon v. State*, 601 So.2d 1112, 1115 (Ala. Crim. App. 1992), *cited at* p. 16, above.

[7] Ala. Op. Att'y Gen. No. 2002-032, 2001 WL 1421631, at *2 (Oct. 18, 2001) ("[I]n instances of non-custodial arrests . . . a person's vehicle cannot be seized and th[e] the person, after signing the traffic ticket, must be allowed to proceed.").

[8] *See also United States v. Woodard*, 5 F.4th 1148, 1151, 1155–58 (10th Cir. 2021) (holding impoundment unlawful when the car was safely parked in a private parking lot and the arrestee asked if someone else could retrieve the car); *United States v. Del Rosario*, 968 F.3d 123, 127–28 (1st Cir. 2020) (holding impoundment unlawful when the car was legally and safely parked on a "quiet residential street" near the arrestee's home and there was no other need to move the car); *Sanders*, 796 F.3d at 1250–51 (holding impoundment unlawful when the car was legally and safely parked

In short, the Officers' summary-judgment record takes qualified immunity off the table. Every possible source of clearly established law—binding precedent, obviousness, a consensus of persuasive authority—put Officers Sellers, Ragsdale, and Moses on notice. *See generally District of Columbia v. Wesby*, 138 S. Ct. 577, 589–90 (2018); *Taylor v. Riojas*, 141 S. Ct. 52, 53–54 (2020) (per curiam). Whatever difficulties vehicle-impound doctrines may raise at the margins, no reasonable officer would think that he could impound a car without a warrant when no exception to the warrant requirement applies. Nor would any reasonable officer think he could tow Brittany Coleman's car immediately after confirming her sobriety and releasing her to go about her business. Even the Officers are unwilling to defend what they actually did that day; that their legal brief resorts to rewriting history speaks volumes. *See* pp. 17–18, above. The Officers' reimagined version of the incident defies the words and actions recorded on their bodycams, and it stands against a statewide backdrop of doubts about their department's credibility. *See* Am. Compl. (Doc. 32, ¶¶ 314–16) (quoting state judge, county prosecutor, and lieutenant governor); *see also Walton v. Neptune Tech. Grp., Inc.*, No. 2:08-cv-005-MEF, 2009 WL 3379916, at *2 (M.D. Ala. Oct. 19, 2009) ("[T]he Eleventh Circuit has repeatedly recognized that inadmissible evidence may be used to oppose summary judgment so long as there is no indication that the facts could not be reduced to admissible evidence at trial."). Rule 56 does not countenance summary judgment in these circumstances. Brittany Coleman's claim should proceed.[9]

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on private property and the arrestee was willing to arrange for someone else to retrieve it); *Miranda*, 429 F.3d at 865–66 (holding impoundment unlawful when the car was parked in the owner's driveway); *Duguay*, 93 F.3d at 353–54 (holding impoundment unlawful when the driver was able and willing to move the car off of the street).

[9] The Officers devote much of their brief to arguments that have no bearing on the above analysis. For example, the Officers offer views on class certification. MSJ Br. (Doc. 53, pp. 4–5). But the claim against the Officers is not a class claim. Am. Compl. (Doc. 32, ¶ 419). The Officers also contend that Coleman "cannot articulate a Fourteenth Amendment violation." MSJ Br. (Doc. 53, p. 9). But Coleman's claim arises under the Fourteenth Amendment only insofar as that

CONCLUSION

The Officers' motion for summary judgment should be denied.

Dated: August 12, 2022

Respectfully submitted,

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Amendment incorporates the Fourth Amendment against the states. *E.g.*, Am. Compl. (Doc. 32, ¶ 422). Lastly, the Officers comment on the state-law doctrines of state-agent immunity and peace-officer immunity. MSJ Br. (Doc. 53, pp. 12–15). But as the Officers appear to agree, those doctrines do not apply to claims arising under Section 1983 and the federal Constitution. *Martinez v. California*, 444 U.S. 277, 284 n.8 (1980).

CERTIFICATE OF NON-FRIVOLOUS SUBMISSIONS

I hereby certify that I have affirmatively sought to submit to the court only those documents, factual allegations, and arguments that are material to the issues to be resolved in the motion, that careful consideration has been given to the contents of all submissions to ensure that the submissions do not include vague language or an overly broad citation of evidence or misstatements of the law, and that all submissions are non-frivolous in nature.

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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