

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

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Lyle W. Cayce
Clerk

No. 25-30650

MARIO ROSALES; GRACIE LASYONE,

Plaintiffs—Appellees,

versus

JIM LEWIS, *sued in his individual and official capacity*; SAMUEL
TERRELL, *sued in his individual and official capacity*,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:22-CV-5838

Before KING, SMITH, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Officers Jim Lewis and Samuel Terrell appeal the denial of their motion for judgment on the pleadings, asserting entitlement to qualified immunity from claims that they violated the First and Fourth Amendment rights of Mario Rosales and Gracie Lasyone during a traffic stop. We AFFIRM in part and REVERSE in part.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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I

A

Around 5:00 P.M. in June 2022, Rosales was driving his Mustang, which had New Mexico license plates. He changed lanes, approached a red light at an intersection, activated the Mustang's left turn signal, and stopped at the light. An Alexandria Police Department vehicle stopped behind the Mustang and, after the light changed and the Mustang turned left, pulled it over.

Officer Terrell approached the Mustang and told Rosales to step out, and he did. Rosales handed over his driver's license and car registration and began pulling up his insurance information on his phone. When Officer Lewis approached the passenger side of the Mustang, Rosales calmly told Officer Terrell that he was "getting agitated" and asked why he was pulled over. Officer Terrell said he would "tell [Rosales] in a second."

Officer Lewis stated that he saw ammunition in the open glove box. He then asked the passenger, Lasyone, for her identification, which she provided. Officer Lewis asked whether there were any weapons in the car, and she shook her head.

Officer Lewis then approached Rosales—who was standing with Officer Terrell in front of the police car—and asked if he had a gun in the car. Rosales said he had a gun in a bag in the back seat of the Mustang. He denied having a gun on his person. Officer Terrell told Rosales to put his phone on the hood of the police car and his hands on the bumper, and he did. While Officer Terrell frisked Rosales, Officer Lewis asked if he could get the gun from the Mustang. Rosales denied him permission.

Officer Lewis then instructed Lasyone to "leave everything" in the Mustang and step out of the vehicle. He asked if she had any guns "on [her,]"

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and after she said “no,” he directed her to wait in front of the police car. He said, “Hey, 32:104 and 32:352 uh, for the uh, P[robable] C[ause]”¹ to Officer Terrell and then walked back to the Mustang and peered inside, while Officer Terrell put Rosales’s phone and registration documents in the police car.

Officer Lewis gave Rosales *Miranda*² warnings. He asked how long Rosales had been in Louisiana; Rosales said that “he had been there off and on; was originally from Roswell, New Mexico; was trying to establish residency in Louisiana; worked at Atlas Home Service; and was trying to buy a home.” Rosales denied ever having been arrested.

At Officer Lewis’s request, Rosales emptied his pockets, revealing only a wallet and keys. When Officer Lewis asked whether he could “check,” Rosales said he had already been “checked,” but Officer Terrell said he “only patted [Rosales] down” and did not “check” or “search” him, Officer Lewis again asked if he could “check” and whether Rosales “ha[d] something” he was “not supposed to.” Rosales responded he did not have anything on him, and he would “feel a lot safer if [Lasyone] had her phone and she was able to record while [Officer Lewis] check[ed] [him].” When told that the officers were recording on their body cameras, Rosales said he did not “trust” body camera footage. Lasyone requested and was denied permission to get her phone from the Mustang while the officers watched. Ultimately, Officer Lewis did not “check” or pat down Rosales.

Officer Lewis continued questioning Rosales in front of the police vehicle while Officer Terrell took Lasyone to the side. Officer Lewis again

¹ Louisiana Revised Statute § 32:104 addresses “[t]urning movements and required signals,” and Louisiana Revised Statute § 32:352 addresses “[m]ufflers, . . . prevention of excessive noise, fumes, and smoke.”

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

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asked if Rosales had anything in his car that he “shouldn’t have” or whether he had ever been arrested, and Rosales answered “no.” He denied having any of the various drugs Officer Lewis asked him about. Rosales said he sometimes stayed at Lasyone’s sister’s house in Louisiana, and sometimes in Roswell, New Mexico; Lasyone was his girlfriend; they were coming from work; and they had stopped at the bank and were heading to pick up a car part. Officer Lewis told Rosales he was “detained on a traffic stop” before telling Officer Terrell to “switch places with him.”

Meanwhile, Officer Terrell gave Lasyone *Miranda* warnings and questioned her. He asked if there was “anything illegal” in the Mustang, and she said, “[n]ot to [her] knowledge.” In response to continued questioning, Lasyone stated she was from Louisiana and had been dating Rosales for a year; Rosales was from Roswell but came back and forth to Louisiana every few months; and she had never been arrested or done drugs. Lasyone then asked why she was being questioned, and Officer Terrell responded that he was “curious.” Lasyone asked if he “pull[s] people over because [he is] curious,” and he responded that he pulled them over because Rosales “failed to signal.” After answering a question about where Rosales worked, Lasyone asked if she could get her phone, and Officer Terrell declined, again assuring her he was recording on his body camera. Officer Terrell then switched places with Officer Lewis.

As Officer Terrell approached, Rosales asked about his phone, and Officer Terrell said it was in the police vehicle. Officer Terrell told Rosales he had been stopped for “[f]ailure to signal.” When asked where he lived, Rosales said he was staying in Louisiana and was trying to move there. Officer Terrell retrieved Rosales’s phone, put it on the hood of the police car, and told Rosales not to touch it. When Rosales asked if he could record, Officer Terrell maintained that the officers’ body cameras were recording and said to “hold tight,” as Rosales was being “legally detained.”

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Simultaneously, Officer Lewis began questioning Lasyone. She responded that she had never been arrested; she and Rosales were coming from work and had stopped at the bank; there was nothing in Rosales's car that he should not have; she had never done any of the drugs Officer Lewis asked about; and she had never been in any trouble. He said he "believe[d]" her and went to peer inside the Mustang again. Lasyone again asked for her phone while Rosales asked if they could leave. "Officer Lewis answered no to both questions." He also explained that Lasyone was asked to exit the Mustang because there was a firearm inside.

The officers returned to their vehicle while Rosales and Lasyone remained standing in front of it. Criminal history checks were "negative." After several minutes, they cited Rosales for failure to signal under LA. REV. STAT. § 32:104, failure to register a vehicle under LA. REV. STAT. § 47:501, and a vehicle registration violation.³ About twenty-one minutes had elapsed from the time the officers stopped the Mustang. All citations were ultimately dismissed.

B

Rosales and Lasyone (Appellees) sued Lewis and Terrell (Officers) in their individual capacities, alleging they (1) violated the Fourth Amendment by initiating the traffic stop without reasonable suspicion of criminal activity and by expanding its duration and scope without reasonable suspicion; and (2) violated the First Amendment by prohibiting them from recording on

³ The complaint alleges that the exact nature of the third citation is unclear because the body camera footage and the police records are inconsistent.

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their phones.⁴ Rosales also alleged that Officers violated the Fourth Amendment by conducting unreasonable searches.

Officers moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), asserting qualified immunity. A Magistrate Judge recommended denial of their motions. Over Officers' objections, the district court adopted the recommendation in full, noting that the parties had "conflicting factual accounts" and that "the video evidence . . . is not objectively clear." Officers timely appealed.

II

A

This court "review[s] the denial of a motion for judgment on the pleadings *de novo*," using the same standard for Rule 12(b)(6) motions to dismiss for failure to state a claim. *Lewis v. Walley*, 168 F.4th 327, 330 (5th Cir. 2026). "To survive a motion for a judgment on the pleadings, 'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Waller v. Hanlon*, 922 F.3d 590, 599 (5th Cir. 2019) (citation modified) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

"Facial plausibility is satisfied 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Benfer v. City of Baytown*, 120 F.4th 1272, 1279 (5th Cir. 2024) (quoting *Terwilliger v. Reyna*, 4 F.4th 270, 279 (5th Cir. 2021)), *cert. denied*, 145 S. Ct. 1313 (2025). But "where video recordings are included in the pleadings, . . . the video depictions of

⁴ The official capacity claims against Officers and the claims against the City of Alexandria under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), are not at issue in this appeal.

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events, viewed in the light most favorable to the plaintiff, should be adopted over the factual allegations in the complaint if the video ‘blatantly contradict[s]’ those allegations.” *Harmon v. City of Arlington*, 16 F.4th 1159, 1163 (5th Cir. 2021) (alteration in original) (footnote omitted) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

B

When a Rule 12(c) motion is based on qualified immunity, “a complaint survives dismissal if it ‘pleads facts that, if true, would permit the inference that defendants are liable under [42 U.S.C.] § 1983 and would overcome their qualified immunity defense.’” *Benfer*, 120 F.4th at 1279 (quoting *Terwilliger*, 4 F.4th at 280).

“[A] plaintiff seeking to defeat qualified immunity must show that (1) the official violated a statutory or constitutional right and (2) the right was clearly established at the time of the challenged conduct.” *Burnside v. Kaelin*, 773 F.3d 624, 626–27 (5th Cir. 2014). “For a right to be clearly established, the ‘constitutional question’ must be ‘beyond debate.’” *Dilworth v. Tucker*, 179 F.4th 992, 996 (5th Cir. 2026) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). To demonstrate this, “a plaintiff may ‘identify’ controlling authority ‘where an officer acting under similar circumstances . . . was held to have violated the [Constitution].’” *Id.* at 996–97 (alteration in original) (quoting *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 337 (5th Cir. 2020)). If there is no controlling authority, “a plaintiff may instead identify a robust consensus of cases of persuasive authority in which officers acting under similar circumstances were found to have violated the Constitution.” *Id.* at 997 (citation modified). Alternatively, “a plaintiff may demonstrate ‘the rare obvious case, where the unlawfulness of the officer’s conduct is sufficiently clear even though existing precedent does not address similar

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circumstances.’” *Id.* (citation modified) (quoting *Batyukova v. Doege*, 994 F.3d 717, 726 (5th Cir. 2021)).

“We examine each officer’s actions independently to determine whether he is entitled to qualified immunity.” *Solis v. Serrett*, 31 F.4th 975, 981 (5th Cir. 2022). But “[s]eparate consideration does not require courts to conduct a separate analysis for each officer in those cases where their actions are materially indistinguishable, it merely requires them to *consider* each officer’s actions.” *Meadours v. Ermel*, 483 F.3d 417, 422 n.3 (5th Cir. 2007).⁵

III

Officers maintain they are entitled to qualified immunity from the Fourth Amendment claims based on the traffic stop.

A

As to the first prong of qualified immunity, Officers assert that the traffic stop does not implicate any constitutional violation because its initiation was based on reasonable suspicion of traffic violations, and its

⁵ Appellees suggest that, because Officers “insist that they are entitled to qualified immunity on their own, counterfactual narrative,” rather than the “version of the facts” alleged in the complaint, this court lacks appellate jurisdiction beyond answering “whether the . . . district court correctly concluded that the videos do not ‘clearly’ or ‘blatantly’ contradict the complaint.” We have appellate jurisdiction over an interlocutory appeal of a denial of a Rule 12(c) motion asserting qualified immunity, but “only to the extent that [the denial of qualified immunity] turns on an issue of law.” *Burnside v. Kaelin*, 773 F.3d 624, 626 n.1 (5th Cir. 2014) (alteration in original) (quoting *Juarez v. Aguilar*, 666 F.3d 325, 331 (5th Cir. 2011)). We do not have “jurisdiction over arguments unrelated to the denial of qualified immunity or over factual disputes,” *see id.*, so we review only “whether the facts pleaded establish a violation of clearly-established law,” *Ramirez v. Escajeda*, 921 F.3d 497, 501 (5th Cir. 2019) (citation modified) (quoting *Iqbal*, 556 U.S. at 673).

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prolonging was justified because they “developed reasonable suspicion that additional criminal activity was afoot.” We disagree.

“Warrantless searches and seizures are ‘per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.’” *United States v. Hill*, 752 F.3d 1029, 1033 (5th Cir. 2014) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One “narrow exception” was “carved out” in *Terry v. Ohio*, 392 U.S. 1 (1968). *Alexander v. City of Round Rock*, 854 F.3d 298, 303 (5th Cir. 2017). Because “[a] Fourth Amendment ‘seizure’ occurs when an officer stops a vehicle and detains its occupants,” *United States v. Smith*, 952 F.3d 642, 647 (5th Cir. 2020), “[t]his court, following the Supreme Court, has treated routine traffic stops . . . as *Terry* stops,” *United States v. Brigham*, 382 F.3d 500, 506 (5th Cir. 2004) (en banc). Evaluating a *Terry* stop “involves two steps.” *Smith*, 952 F.3d at 647. First, we ask “whether the stop was justified at its inception.” *Id.* “Second, if the stop was justified, we ask whether ‘the officer’s subsequent actions were reasonably related in scope to the circumstances that caused him to stop the vehicle in the first place.’” *Id.* (quoting *United States v. Pack*, 612 F.3d 341, 350 (5th Cir. 2010), *modified on denial of reh’g*, 622 F.3d 383 (5th Cir. 2010)). Failure at either prong gives rise to a Fourth Amendment violation.

1

As to the first *Terry* step, Officers argue that Appellees have not sufficiently alleged that the initial traffic stop violated the Fourth Amendment because “reasonable suspicion that Rosales had committed a traffic offense was established when [they] observed Rosales fail to first signal a lane change . . . and [then] fail to signal within 100 feet of his turn.”

“For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as

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a traffic violation, occurred, or is about to occur, before stopping the vehicle.” *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005). “While ‘reasonable suspicion’ is a less demanding standard than probable cause . . . the Fourth Amendment requires at least a minimal level of objective justification for making the stop. The officer must be able to articulate more than an ‘inchoate and unparticularized suspicion or hunch’ of criminal activity.” *Alexander*, 854 F.3d at 303–04 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123–24 (2000)). “Reasonable suspicion of any traffic violation justifies a traffic stop” *Degenhardt v. Bintliff*, 117 F.4th 747,755 (5th Cir. 2024). “[B]ecause a traffic violation provides an objective basis for the initial stop of an automobile, the subjective motivations of the police in making a stop do not affect the constitutional analysis.” *Webb v. Arbuckle*, 456 F. App’x 374, 380 (5th Cir. 2011) (per curiam) (unpublished); *see also Whren v. United States*, 517 U.S. 806, 813 (1996) (“[W]e have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers . . .”).

Here, the central question is whether the complaint, coupled with the video evidence, plausibly alleges that Officers lacked reasonable suspicion of a traffic violation—that Rosales failed to use his left turn signal to indicate a lane change and a left turn at least one hundred feet before turning.⁶

Although the video evidence clearly demonstrates that Rosales changed lanes before being pulled over, the complaint does not explicitly mention a lane change, and whether the Mustang’s left turn signal was activated in accordance with Louisiana law is not apparent from the video. According to the complaint, however, Officers “lacked reasonable suspicion

⁶ Either action constitutes a violation of Louisiana law. *See* LA. REV. STAT. § 32:104.

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to pull [the Mustang] over” because they had no “particularized and objective basis to suspect [Appellees] of criminal activity.” The complaint also asserts that Officers “concoct[ed] a baseless traffic infraction after the fact to support their actions,” and issued Rosales an “invalid traffic ticket.” These alleged facts, coupled with the “video depictions” that must be viewed “in the light most favorable to [Appellees],” support a reasonable inference that Rosales changed lanes legally. *See Harmon*, 16 F.4th at 1163; *see also Degenhardt*, 117 F.4th at 755 (noting that, at the pleadings stage, we must “draw[] reasonable inferences in [the plaintiffs’] favor rather than [the defendants’]”).

As for the left turn shortly before Officers initiated the traffic stop, Appellees allege that Rosales used his blinker to indicate a left turn and “legally turned left” at an intersection. Although the complaint does not explicitly state that the left turn was signaled at least 100 feet before the turn, again, it may be reasonably inferred from these allegations that Rosales used his turn signal to execute a “legal” left turn and that Officers fabricated a traffic violation. *See Degenhardt*, 117 F.4th at 755. This version of events is not “‘blatantly contradicted’ by the video recording.” *See Harmon*, 16 F.4th at 1164 n.2 (quoting *Scott*, 550 U.S. at 380). It shows Officers pull behind the Mustang as it approached an intersection, and the left turn signal was already activated as the Mustang’s lights come into view. It is not clear from the video *when* Rosales activated the signal—i.e., whether it was activated at least one hundred feet before the turn. But we view the video “in the light most favorable to the [Appellees],” which supports the inference that the left turn signal was activated in accordance with Louisiana law. *See id.* at 1163.⁷

⁷ Officers suggest that they had reasonable suspicion of a traffic violation based on a reasonable, but *mistaken*, belief that Rosales failed to signal. Although “[r]easonable suspicion can rest on a mistake of law or fact,” the mistake must be “objectively

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At the pleading stage, we are “required to ‘accept[] all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiffs.’” *Degenhardt*, 117 F.4th at 754 (alterations in original) (quoting *Anderson v. Valdez*, 845 F.3d 580, 589 (5th Cir. 2016)). “Doing so requires us to credit [Appellees’] account of” the lane change and left turn “over [Officers’] contention that” Rosales failed to comply with Louisiana traffic laws. *See id.* “Taking the allegations of the complaint as true, there is no clear and articulable fact indicating that [he] committed a traffic violation.” *See id.* at 755. Because Appellees have plausibly alleged Officers “lacked reasonable suspicion . . . [they] have stated a claim for a violation of their Fourth Amendment rights as a result of the [initiation of the] traffic stop.” *See id.*⁸

2

As to *Terry*’s second step, Officers argue that Appellees failed to plausibly allege a Fourth Amendment violation because Officers “developed reasonable suspicion that additional criminal activity was afoot,” justifying a prolonged stop.

As a threshold matter, we typically do not reach the second *Terry* prong if the first *Terry* prong is not satisfied, i.e., the traffic stop was not justified at the outset. *See Lopez-Moreno*, 420 F.3d at 430. Here, we conclude that Appellees plausibly alleged the traffic stop was not justified at its

reasonable.” *United States v. Henry*, 853 F.3d 754, 757 (5th Cir. 2017). Crediting the complaint’s allegations that Officers concocted a baseless traffic violation, no mistake of fact could be “objectively reasonable” or otherwise made in good faith. *Id.*

⁸ Officers argue that Appellees fail to allege a constitutional violation because their “complaint referred to ‘pretextual traffic stops’ for narcotics investigations.” We agree that an officer’s subjective or pretextual “motive” does not “invalidate[] objectively justifiable behavior under the Fourth Amendment.” *Whren*, 517 U.S. at 812. But as we have explained, the objective basis for the traffic stop is not visible in the video evidence, and the complaint alleges that Rosales drove lawfully. *Whren* is inapplicable.

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inception. But the complaint alleges *independent* claims under the first and second prongs of the *Terry* inquiry, presumably as alternative theories.⁹ Accordingly, we evaluate whether, even if the stop was “justified at its inception,” Appellees have sufficiently alleged a Fourth Amendment claim under *Terry*’s second prong, which challenges the scope and duration of the stop. *See id.*

Under “the second prong of the *Terry* inquiry, generally, the ‘detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.’” *Lopez-Moreno*, 420 F.3d at 430 (citation modified) (quoting *Brigham*, 382 F.3d at 507). “There is no hard-and-fast time limit . . .” *Smith*, 952 F.3d at 647. “If the officer develops reasonable suspicion of additional criminal activity during his investigation of the circumstances that originally caused the stop, he may further detain its occupants for a reasonable time while appropriately attempting to dispel this reasonable suspicion.” *Id.* (quoting *Pack*, 612 F.3d at 350).

Here, Appellees assert that Officers unlawfully prolonged the stop when they (1) ordered computer checks; (2) separated Appellees to question them about “drugs and other unrelated topics”; and (3) frisked Rosales and searched his pockets. Our precedent allows computer checks. *See Lopez-Moreno*, 420 F.3d at 430 (“In the course of effectuating [a traffic] stop, a police officer may permissibly . . . run a computer check.”).¹⁰ It also allows

⁹ In fact, the complaint asserts that the duration and scope of the traffic stop was unlawfully prolonged “*if* the officers had reasonable suspicion to believe that [Rosales] had violated a traffic law”—i.e., only if the first *Terry* prong is satisfied. Likewise, Officers’ arguments regarding the second *Terry* prong appear to be premised on a presumption of the legality of the traffic stop at its inception.

¹⁰ For the first time on appeal, Appellees assert that Officers prolonged the traffic stop by ordering *nonroutine* computer checks. We do not address this argument because they “may not rely on allegations [they] did not make in [their] complaint to survive” Officers’ Rule 12(c) motion. *See Partners & Friends Holding Corp. v. Cottonwood Mins.*,

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the questioning, even to the extent it concerned drugs and other illegal items, because it was an “appropriate[] attempt[] to dispel [any] reasonable suspicion,” *see Smith*, 952 F.3d at 647 (citation modified), after Rosales admitted there was firearm in the vehicle and gave vague answers regarding his residency, *see United States v. Palmer*, 111 F.4th 588, 595 (5th Cir. 2024) (noting “questions about the presence of drugs and other illegal items in the vehicle . . . are common questions for a traffic stop”).

That leaves only the claim that Officers unlawfully prolonged the traffic stop by searching Rosales. As discussed, he plausibly alleged those searches were unlawful under the Fourth Amendment. As a result, prolonging the traffic stop to conduct them was also unlawful because they were unrelated to the traffic stop’s purpose and unsupported by reasonable suspicion of additional criminal activity. *See Smith*, 952 F.3d at 647. Even if the traffic stop was justified at its inception, Appellees have plausibly alleged that Officers violated the Fourth Amendment by prolonging the traffic stop to the extent that claim is premised on the searches of Rosales.

B

Officers also assert that they are entitled to qualified immunity because any constitutional violation arising from the traffic stop was not clearly established. Again, we disagree.

First, as to the claim that the initial traffic stop was unconstitutional, Officers assert that “the clearly established law at the time of the stop required that an investigative stop be based on reasonable suspicion of a criminal offense,” and here, they observed traffic violations.

L.L.C., No. 23-10192, 2023 WL 8649880, at *3 (5th Cir. Dec. 14, 2023) (per curiam) (unpublished).

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It is clearly established that an officer cannot pull someone over without reasonable suspicion and thereafter concoct a fabricated traffic violation. *See, e.g., Blankenship v. Kerr Cnty.*, 878 F.2d 893, 895 (5th Cir. 1989) (“It is well established that a policeman may not stop the driver of an automobile for investigation without at least some reasonable basis for suspecting the driver of a violation of law.”); *Terry*, 392 U.S. at 19–20; *Lopez-Moreno*, 420 F.3d at 430. So are the “factors . . . relevant” to determining whether an officer has reasonable suspicion. *See Alexander*, 854 F.3d at 305. For example, in *Alexander*, this court held that an officer violates clearly established law if he pulls over a motorist, without any “tip or information that could have led him to suspect [the motorist] of criminal activity,” after simply observing the motorist “go[ing] about his business” and not engaging in evasive behavior, all in a well-lit and non-high crime area. *See id.* (citation modified).

Here, Officers’ arguments largely depend on their version of events—that they observed Rosales commit traffic violations. But “taking the facts as alleged, the lack of reasonable suspicion was clearly established” because Officers observed, “at most,” Appellees complying with traffic laws and “going about [their] business” during the day and in a non-high crime area *See id.* (citation modified). Because the law was sufficiently established to put Officers on notice that their conduct, as alleged in the complaint, violated the Fourth Amendment, the district court did not err in denying their Rule 12(c) motions asserting qualified immunity with respect to the claim that the initial stop violated the Fourth Amendment under *Terry*’s first prong.

Second, Officers argue that the law was not clearly established with respect to the claim premised on the scope and duration of the stop. As discussed, however, the law that prohibited Officers from searching Rosales has long been clearly established. Likewise, the law regarding the reasonable suspicion required to prolong detention has also long been clearly

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established. *See, e.g., Smith*, 952 F.3d at 647. As a result, even if the initial stop was justified, Officers are not entitled to qualified immunity as to the Fourth Amendment claim premised on the extension of the traffic stop to conduct the searches under *Terry*'s second prong at this pleading stage.

IV

Officers next argue that the district court erred in denying their Rule 12(c) motion as to Rosales's claim that they violated the Fourth Amendment when they searched him. Because Officer Terrell conducted a pat-down and Officer Lewis later searched Rosales's pockets, "[w]e examine each officer's [search] . . . independently." *Solis*, 31 F.4th at 981.

A

Officer Terrell argues that Rosales failed to plausibly allege an unlawful frisk or to show that the law was clearly established. We disagree.

1

Officer Terrell asserts that he had reasonable suspicion that Rosales was armed and dangerous, giving rise to a lawful frisk, because Rosales (1) stated he was agitated, (2) did not disclose the weapon in the Mustang until asked, and (3) was wearing baggy clothing.¹¹

"When a reviewing court determines that an initial investigatory stop was lawful, it must apply a different, more onerous standard to determine

¹¹ Officer Terrell also asserts that Appellees gave inconsistent answers regarding a firearm in the Mustang. But Lasyone indicated that there was no gun in the Mustang *to Officer Lewis*, who did not share that information with Officer Terrell until well *after* the frisk, so this fact is not relevant to the analysis. *See United States v. Ducksworth*, 168 F.4th 764, 768 (5th Cir. 2026) ("Whether reasonable suspicion exists is an objective question that considers . . . what the officers knew before initiating the pat-down." (citation modified)).

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whether an ensuing frisk for weapons was lawful,” understanding that a frisk “is ‘a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.’” *United States v. Monsivais*, 848 F.3d 353, 357 n.1 (5th Cir. 2017) (quoting *Terry*, 392 U.S. at 17). “[T]o proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous.” *Arizona v. Johnson*, 555 U.S. 323, 326–27 (2009). “The officer need not be absolutely certain that the individual is armed[.]” *Terry*, 392 U.S. at 27. “Instead, an officer needs only an objective basis . . . that is specific and somewhat individualized to the subject.” *Ducksworth*, 168 F.4th at 768 (citation modified). “The question is ‘whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.’” *Id.* (quoting *United States v. Baker*, 47 F.3d 691, 693 (5th Cir. 1995)). But if a “stop or detention” is “unlawful in the first place, the officers [*can*] not constitutionally proceed to frisk [a suspect] or pat him down.” *Monsivais*, 848 F.3d at 357 n.1 (emphasis added).

Here, Appellees plausibly alleged that the traffic stop was not lawful, so Officer Terrell “could not constitutionally proceed to frisk [Rosales] or pat him down.” *See id.*; *see also Johnson*, 555 U.S. at 326 (explaining, for a frisk to be constitutional, “the investigatory stop must be lawful”). That aside, Rosales also sufficiently pleaded that he lacked reasonable suspicion. He frisked Rosales during daytime, in a non-dangerous area. *Cf. Hill*, 752 F.3d at 1035–36 (noting that, although “a person’s presence in a high crime area at night is relevant,” “it is not in and of itself enough to support an officer’s decision to stop or frisk” (citation modified)). Rosales admitted he had a gun in the vehicle, but “an officer cannot search or seize a person simply because he is keeping or bearing a firearm.” *United States v. Wilson*, 143 F.4th 647, 655 (5th Cir. 2025). Nor does “baggy” clothing alone justify a pat-down. *See United States v. Roberson*, 496 F. App’x 390, 393 n.2 (5th Cir.

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2012) (per curiam) (unpublished) (noting “attire constitute[s] only one factor in a litany of factors that [may] serve[] the basis for officers’ reasonable suspicion”). The only remaining factor Officer Terrell identifies is Rosales’s statement that he was “agitated” after observing Officer Lewis approach the passenger side of the Mustang. But viewed in a light most favorable to Rosales, this statement at best suggests “nervousness,” which does not necessarily “carr[y] . . . readily discernible connection to criminal activity.” See *Monsivais*, 848 F.3d at 359. Because these facts do not support a reasonable suspicion—either in isolation or under the totality of the circumstances—that Rosales was armed and dangerous, he has plausibly alleged Officer Terrell frisked him unlawfully.

2

Officer Terrell also argues that Rosales failed to “point to clearly established law that would have given fair warning to [him] that such a frisking, under these circumstances, would be unconstitutional.”

It has long been clearly established that, if a “stop or detention” is “unlawful in the first place, the officers [can] not constitutionally proceed to frisk [a suspect].” *Monsivais*, 848 F.3d at 357 n.1; *Adams v. Williams*, 407 U.S. 143, 146 (1972) (“So long as the officer is entitled to make a forcible stop, *and* has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose.” (emphasis added) (footnote omitted)). Officer Terrell also does “not contest that the Fourth Amendment’s . . . reasonableness requirements” and “*Terry*’s requirement of specific, articulable facts giving rise to reasonable suspicions that criminal activity is afoot and that the suspect is armed and dangerous . . . were well-established at [the] time” he frisked Rosales. See *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 210–11 (5th Cir. 2009). “Nor ha[s] [Officer Terrell] presented any other basis on which to conclude that [he]

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acted reasonably.” *See id.* at 211. As a result, the second prong of the qualified immunity analysis is also satisfied. *See id.*

Officer Terrell is not entitled to qualified immunity on Rosales’s Fourth Amendment claim premised on the frisk at this pleading stage.¹²

B

Officer Lewis argues that the district court erred in denying his Rule 12(c) motion because asking Rosales to empty his pockets did not constitute a clearly established Fourth Amendment violation. We disagree.

1

Officer Lewis maintains that Rosales failed to plausibly allege that the pocket search was unlawful because he consented and the request was justified for officer safety in a search for weapons.

a

“To determine whether consent [to a search] was validly given, we ask (1) whether consent was voluntary and (2) whether it was an independent act of free will.” *United States v. Jenson*, 462 F.3d 399, 406 (5th Cir. 2006). The “purpose” of the second “inquiry is to determine whether there was a ‘break in the causal chain’ between the constitutional violation and the consent; that is to say, *consent cannot be the product of [an] illegal detention.*” *Id.* at 407 (emphasis added) (quoting *United States v. Santiago*, 310 F.3d 336,

¹² Rosales suggests that Officer Lewis should also be held liable for Officer Terrell’s frisk, but he has “waived this issue by inadequately briefing it and relegating it to a footnote.” *See Holden v. U.S. United Ocean Servs., L.L.C.*, 582 F. App’x 271, 274 n.2 (5th Cir. 2014) (per curiam) (unpublished) (citing *Bridas S.A.P.I.C. v. Gov’t of Turkmenistan*, 345 F.3d 347, 356 n.7 (5th Cir. 2003) (holding that an issue the plaintiff “attempted to appeal[] in a footnote” was waived because “[a]rguments that are insufficiently addressed in the body of the brief . . . are waived”)).

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343 (5th Cir. 2002)). “To determine whether consent was independent,” this court “consider[s]”: (1) “the temporal proximity of the illegal conduct and the consent”; (2) “the presence of intervening circumstances”; and (3) “the purpose and flagrancy of the initial misconduct.” *Id.* (citation modified).

We need not address whether Rosales’s consent was “voluntary” because, even if it was, that consent was not an independent act of free will. As explained, Appellees have plausibly alleged the traffic stop was unlawful at its inception—giving rise to an “illegal detention.” *See id.* The close temporal proximity between the “illegal detention” and Rosales’s consent—less than three and a half minutes—favors a finding that consent was not independently given. *See id.* So does the lack of intervening circumstances, as “there is no evidence that (a) [Rosales] knew he was free to leave or (b) . . . his license had been returned to him.” *See id.* The “purpose and flagrancy” of the initial stop also favors Appellees—they allege that Officer Lewis’s “misconduct was investigatory in design and purpose and executed ‘in the hope that something might turn up.’” *See United States v. Simpson*, 439 F.3d 490, 496 (8th Cir. 2006) (first quoting *Brown v. Illinois*, 422 U.S. 590, 605 (1975); then citing *United States v. Cantu*, 230 F.3d 148, 160 (5th Cir. 2000) (KING, C.J., specially concurring); and then citing *United States v. Causey*, 818 F.2d 354, 358–59 (5th Cir. 1987)). Because there was no “break in the causal chain between the constitutional violation” (the unlawful traffic stop) “and [Rosales’s] consent,” it was not “an independent act of free will.” *See Jensen*, 462 F.3d at 407 (citation modified). Any consent was invalid.

b

As for whether Officer Lewis was otherwise justified in searching Rosales’s pockets, we follow the same *Terry* framework. *See United States v. Reyes*, 349 F.3d 219, 225 (5th Cir. 2003) (“Agent Morales’ request that

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defendant empty his pockets and lift his shirt was permissible under *Terry*.”); *United States v. Zavala*, 541 F.3d 562, 576 n.4 (5th Cir. 2008) (“Under *Terry*, the police officer could order Zavala to empty his pockets and place the contents on the roof of the Taurus to confirm that he was not carrying a weapon.”).

A *Terry* search is a “protective search—permitted without a warrant and on the basis of reasonable suspicion less than probable cause—[and] must be strictly ‘limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.’” *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993) (quoting *Terry*, 392 U.S. at 26). “If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry*” *Id.* An officer “overstep[s] the bounds of the ‘strictly circumscribed’ search for weapons allowed under *Terry*” when he “continue[s] exploration of [a] respondent’s pocket after having concluded that it contained no weapon.” *Id.* at 378 (emphasis added) (quoting *Terry*, 392 U.S. at 26). That continued exploration is necessarily “unrelated to ‘[t]he sole justification of the search [under *Terry*:] . . . the protection of the police officer and others nearby.’” *Id.* (alterations in original) (quoting *Terry*, 392 U.S. at 29).

As with Officer Terrell, Rosales plausibly alleged Officer Lewis “*could not* constitutionally proceed to frisk or pat him down” because the traffic stop itself was unlawful. *See Monsivais*, 848 F.3d at 357 n.1 (emphasis added). That aside, Officer Lewis searched Rosales’s pockets *after* he observed Officer Terrell conduct a pat-down that revealed no weapons. Under *Dickerson*, Officer Lewis’s “continued exploration” of Rosales’s pockets exceeded “the bounds of the strictly circumscribed search for weapons allowed under *Terry*” because it was “unrelated to the sole justification of the search under *Terry*: . . . the protection of the police officer and others nearby.” *See* 508

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U.S. at 378 (citation modified). Rosales plausibly alleged a Fourth Amendment violation.

2

Officer Lewis also argues he is entitled to qualified immunity on Rosales's unlawful search claim because the law was not clearly established.

As discussed, Rosales's right to be free from a search during an unlawful traffic stop was clearly established. *See Monsivais*, 848 F.3d at 357 n.1; *Adams*, 407 U.S. at 146. Under *Dickerson*, so was his right to be free from a pocket search after Officers frisked him and concluded he had no weapons. *See* 508 U.S. at 378. The district court did not err in also denying Officer Lewis's motion as to Rosales's unlawful search claim.

V

Finally, Officers argue that the district court erred in denying their Rule 12(c) motion as to Appellees' First Amendment claim because their bar on recording was a reasonable time, place, and manner restriction. They also assert that Appellees did not meet their burden to show it was clearly established that they had a "First Amendment right to film their own detention during a traffic stop with their cell phones." Because we agree, we pretermitted discussion of whether they sufficiently alleged a First Amendment violation. *See Cleveland v. Bell*, 938 F.3d 672, 676 (5th Cir. 2019) ("If the plaintiff fails at either step, the federal court can grant qualified immunity by addressing either step or both of them.").

Appellees rely exclusively on *Turner v. Lieutenant Driver*, 848 F.3d 678 (5th Cir. 2017), which involved a plaintiff who was video recording a police station from a public sidewalk, *id.* at 683. He was not "videotaping an arrest, a traffic stop, or any other action or activity being performed by the police in the course of their duties." *Id.* at 691. The officers detained him to

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investigate, and when he refused to identify himself, they handcuffed him and took his camera. *Id.* at 683. *Turner* held that the plaintiff’s asserted First Amendment right to record police was *not* clearly established at the time of the incidents giving rise to the lawsuit, so the officers were entitled to qualified immunity. *Id.* at 686–87. But it determined that “[h]enceforth,” a “First Amendment right to record the police . . . subject only to reasonable time, place, and manner restrictions” would be clearly established. *Id.* at 687–88. *Turner* did not “decide which specific time, place, and manner restrictions would be reasonable.” *Id.* at 690.

Turner does not clearly establish the First Amendment right Appellees assert in this case—that persons detained during a traffic stop have a right to record. *See Durant v. Gretna City*, No. CV 19-147, 2020 WL 263669, at *25 (E.D. La. Jan. 17, 2020) (“*Durant* does not point to any Fifth Circuit precedent or persuasive authority to demonstrate that a person detained pending investigation has a First Amendment right to use a device to record police activity.” (footnote omitted)), *aff’d sub nom.*, *Durant v. Brooks*, 826 F. App’x 331 (5th Cir. 2020) (per curiam); *Kelly v. Borough of Carlisle*, 622 F.3d 248, 262–63 (3d Cir. 2010) (distinguishing the “broad right to videotape police” from the non-clearly established “right to videotape police officers during traffic stops,” which are “inherently dangerous situations”); *Sandberg v. Englewood, Colo.*, 727 F. App’x 950, 953, 963 (10th Cir. 2018) (distinguishing *Turner* and other circuit decisions establishing a First Amendment right to film police because, in *Sandberg*, the plaintiff asserted his First Amendment rights were violated when, *after being detained*, officers did not allow him “to use his cell phone to record”).¹³

¹³ *See also Dave v. Laird*, No. 1:20-CV-209, 2021 WL 7367084, at *12 (S.D. Tex. Nov. 30, 2021) (“Although the general right to film the police is clearly established in this circuit, Dave has cited no Fifth Circuit precedent or persuasive authority indicating that he

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Appellees cite no authority that would have put Officers on notice that denying them permission to record while detained was objectively unreasonable in light of clearly established law. Nor do they argue this is the “rare obvious case.” *See Dilworth*, 179 F.4th at 997 (citation modified). The district court erred in denying Officers’ Rule 12(c) motion as to the First Amendment claims.

VI

The district court’s order is **AFFIRMED** as to the Fourth Amendment claims and **REVERSED** as to the First Amendment claims.

had the right to personally film his own detention, with his own hand-held camera phone, while it was happening.”), *report and recommendation adopted*, 2022 WL 684556 (S.D. Tex. Mar. 8, 2022), *and report and recommendation adopted*, 2022 WL 889989 (S.D. Tex. Mar. 25, 2022); *Guyton v. City of Stockton*, No. 2:24-CV-0922 DC AC PS, 2025 WL 3754136, at *6 (E.D. Cal. Dec. 29, 2025) (“[T]here is no established First Amendment right for a person detained during a traffic stop to record the interaction. . . . [T]he established law regarding the right to record police interactions does not directly address the right of an individual to record while detained.”).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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September 22, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 25-30650 Rosales v. Terrell
USDC No. 1:22-CV-5838

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bear its own costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk

Amanda M. Duroncelet

By:

Amanda M. Duroncelet, Deputy Clerk
504-310-7636

Enclosure(s)

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Ms. Anna Bidwell
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