

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-14979
Non-Argument Calendar

D.C. Docket No. 6:15-cv-00204-ACC-TBS

JAMES RYDER,

Plaintiff-Appellant,

versus

MATTHEW ANDREWS,
N. KIM,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(March 7, 2017)

Before TJOFLAT, WILLIAM PRYOR, and ROSENBAUM, Circuit Judges.

PER CURIAM:

James Ryder appeals the grant of qualified immunity to Officers Matthew Andrews and Nathan Kim in his 42 U.S.C. § 1983 civil-rights lawsuit alleging that Kim arrested him without probable cause and that Andrews used excessive force in conducting the arrest. We find that genuine issues of material fact remain in the record as to whether Ryder's arrest was supported by arguable probable cause. But we conclude that, if the arrest was valid, the force used during the arrest was not excessive. Therefore, we reverse and remand in part and affirm in part.

I. FACTS

This case concerns an encounter between Ryder and Officers Andrews and Kim during a traffic stop. We present Ryder's version of the facts, which may or may not be the actual facts of the case, recognizing that the officers' version of events differs in material respects. *See Kelly v. Curtis*, 21 F.3d 1544, 1546–47 (11th Cir. 1994).

Ryder was traveling home on his motor scooter at around 5 miles per hour when he noticed a patrol car approaching rapidly from behind. He pulled over to let the patrol car pass, but instead of passing, it pulled up behind him. When the patrol car activated its blue lights, Ryder turned off the ignition to his scooter. He did not put the kickstand down and he remained sitting on the scooter with two feet on the ground.

While Kim remained standing near the patrol car, Andrews approached Ryder and began asking him a number of questions about the scooter, including its horsepower and how fast it would travel. Andrews was investigating whether Ryder had violated a Florida traffic law that required persons to wear protective eyewear when operating motorcycles with motors meeting certain requirements and which are capable of speeds greater than 30 miles per hour. *See Fla. Stat. § 316.211(2), (3)(a).*

Ryder responded to Andrews's questions, telling Andrews what he knew about the scooter's engine. But Ryder was confused by the officer's inquiries, so he asked Andrews the purpose of the stop and why he wanted to know about the scooter. Andrews rudely responded, "We don't have to tell you nothing." Ryder replied that he had constitutional rights and that Andrews needed a legitimate reason to stop him. Andrews retorted, "Not in Florida." Ryder again stressed that he felt he had a right to know why he was stopped. Ryder testified that, throughout this encounter, he was legitimately confused and surprised, not angry, and that he did not use swear words or rude language.

Andrews then asked for Ryder's license and registration for the first time. Ryder said "okay," and he stood up to put the kickstand down on his scooter so that he could get his license from his right front pocket. When Ryder lifted his left leg to engage the kickstand, Andrews grabbed his wrist and tricep area, pushed him

over the scooter onto a grassy area by the side of the road, and jumped on top of him. Kim came up, twisted Ryder's arms behind his back, and handcuffed him. Ryder testified that he did not offer any resistance during this time, though he yelled that he was "not resisting" in response to the officers' repeated demands that he not resist.

Significantly, Ryder testified that he had not refused to give his driver's license or registration at any point during the encounter. And he expressly stated that Kim did not ask him any questions until after he had been arrested and taken to jail. Andrews, Ryder testified, was "the only one who ever asked me any questions" during the traffic stop.

Upon his arrest, Ryder was placed in the back of the patrol car and transported to jail. He received a traffic citation for not wearing protective eyewear, which he paid because he was unable to make the hearing. Neither officer informed him of the basis for his arrest—resisting an officer without violence—before he received the arrest affidavit at the jail. The state prosecutor filed an information charging Ryder with the resisting offense, but the charge was later dropped.

II. PROCEDURAL HISTORY

Ryder filed this civil-rights suit under 42 U.S.C. § 1983 against Officers Andrews and Kim in the United States District Court for the Middle District of

Florida. He alleged a claim of unlawful arrest against Kim and a claim of excessive force against Andrews. Ryder later sought to amend his complaint to add an unlawful-arrest claim against Andrews, but the district court denied leave to amend because of undue delay and futility. The court noted that, even if leave to amend had been granted, its analysis of the unlawful-arrest claim against Andrews would have been identical to its analysis of the claim against Kim.

Andrews and Kim both raised the defense of qualified immunity. They argued that the traffic stop was legal, that they had arguable probable cause to arrest for resisting an officer without violence, Fla. Stat. § 843.02, and that the use of force was not excessive.

The district court concluded that both officers were protected by qualified immunity. In reciting the facts of the case, the court notably stated that Kim “asked Plaintiff for his license and registration but Plaintiff did not provide this information,” at which point Andrews stepped in and again asked Ryder for the information. Based on that fact, the court concluded that Kim had arguable probable cause to arrest because Ryder impeded the execution of a legal traffic stop by “repeatedly demand[ing] to know why he was stopped instead of providing his license and registration.” That fact likewise factored into the court’s evaluation of Ryder’s excessive-force claim against Andrews. The court found that Ryder’s failure to cooperate gave Andrews reason to display a heightened degree of

sensitivity and that the force used to effectuate the arrest was not excessive because Ryder was “not cooperating with Andrews in one of the most fundamental functions of a traffic stop—presenting a valid license and registration.” Accordingly, the court granted summary judgment to both officers on the basis of qualified immunity. Ryder now appeals.

III. STANDARD OF REVIEW

We review *de novo* a district court’s grant of summary judgment on qualified immunity grounds. *Holmes v. Kucynda*, 321 F.3d 1069, 1077 (11th Cir. 2003). Summary judgment is appropriate only when the moving party demonstrates that no disputed issue of material fact exists. *Carter v. Butts Cty., Ga.*, 821 F.3d 1310, 1318 (11th Cir. 2016). In reviewing whether summary judgment was appropriate, this Court, like the district court, must accept the non-movant’s version of the facts as true and draw all reasonable inferences in his favor. *Id.* We do not make credibility determination or choose between conflicting testimony. *Id.* When there is a factual conflict in the evidence, we credit the non-moving party’s version of events. *Id.* Accordingly, the qualified-immunity determination must be based on the plaintiff’s version of the facts. *Id.*

IV. DISCUSSION

The defense of qualified immunity aims to strike a balance between “the need to hold public officials accountable when they exercise power irresponsibly

and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Towards that end, qualified immunity protects government officials from individual liability when they are engaged in their job duties unless they violate “clearly established federal statutory or constitutional rights of which a reasonable person would have known.” *Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2013) (brackets and internal quotation marks omitted). Thus, qualified immunity “does not offer protection if an official knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff].” *Carter*, 821 F.3d at 1319 (internal quotation marks omitted).

Officials asserting qualified immunity must first establish that they were acting within the scope of their discretionary authority at the time of the alleged misconduct. *Id.* Once they do, the burden shifts to the plaintiff to overcome the defense of qualified immunity by showing “both that the officer’s conduct violated a constitutionally protected right and that the right was clearly established at the time of the misconduct.” *Id.*; see *Pearson*, 555 U.S. at 232. The requirement that the right be clearly established is to ensure that “officers are on notice their conduct is unlawful.” *Saucier v. Katz*, 533 U.S. 194, 206 (2001). In other words, the right’s “contours must be sufficiently clear that a reasonable official would

understand that what he is doing violates that right.” *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (internal quotation marks omitted).

There is no dispute that Andrews and Kim were acting within the scope of their discretionary authority as police officers. So we turn to the questions of whether Ryder demonstrated that the officers violated his constitutional rights and that those rights were clearly established.

A. *Unlawful Arrest*

“[I]t is well established that [a] warrantless arrest without probable cause violates the Fourth Amendment and forms a basis for a section 1983 claim.” *Carter*, 821 F.3d at 1319 (internal quotation marks omitted). But where probable cause supports an arrest, it bars a § 1983 unlawful-arrest claim. *Id.* “Probable cause to arrest exists if the facts and circumstances within the officer’s knowledge, of which he has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.” *Id.* (internal quotation marks omitted). Probable-cause determinations are evaluated objectively—that is, without regard to the officer’s subjective intentions—and under the totality of the circumstances. *See id.*

Even if probable cause is lacking, however, an officer is still entitled to qualified immunity if there was *arguable* probable cause to arrest. *Id.* Qualified

immunity therefore protects an officer if he reasonably but mistakenly believed that probable cause was present. *Id.* at 1319–20. But “[w]here an officer arrests without even arguable probable cause, he violates the arrestee’s clearly established Fourth Amendment right to be free from unreasonable seizures.” *Id.* at 1320.

The officers contend that there was arguable probable cause to arrest Ryder for the crime of resisting an officer without violence. Under Florida law, whoever “resist[s], obstruct[s], or oppose[s]” any law enforcement officer “in the lawful execution of any legal duty, without offering or doing violence to the person of the officer,” commits the crime of resisting an officer without violence. Fla. Stat. § 843.02.

To support a conviction under § 843.02, the state must prove the following: “(1) the officer was engaged in the lawful execution of a legal duty; and (2) the defendant’s action, by his words, conduct, or a combination thereof, constituted obstruction or resistance of that lawful duty.” *C.E.L. v. State*, 24 So. 3d 1181, 1185–86 (Fla. 2009); *see Davis v. Williams*, 451 F.3d 759, 764 (11th Cir. 2006). On appeal, Ryder does not dispute that the officers were engaged in the lawful execution of a legal duty in conducting the traffic stop. Therefore, the question is whether Ryder’s actions constituted obstruction or resistance of that lawful duty.

The refusal to comply with an officer’s requests during the lawful execution of a legal duty may constitute resisting without violence. *See J.M. v. State*, 960 So.

2d 813, 815 (Fla. Dist. Ct. App. 2007) (refusing an officer's command to leave an area constituted resisting without violence). Moreover, "words alone" can in some circumstances be sufficient to result in obstruction where the officer is legally detaining a person, even if they are insufficient in the absence of a lawful detention. *See Davis*, 451 F.3d at 765 n.9; *Rumph v. State*, 544 So. 2d 1150, 1152 (Fla. Dist. Ct. App. 1989) (giving a false name after arrest sufficient to sustain a conviction under Fla. Stat. § 843.02). Simple inquiries as to an officer's purpose, however, ordinarily cannot support a conviction under § 843.02. *See Davis*, 451 F.3d at 765–67 (analyzing § 843.02 and holding that "an owner's simple inquiry as to why officers are present on his property . . . [cannot] be construed as obstruction of justice or disorderly conduct. Nor can a citizen be precluded by the threat of arrest from asking to speak to an officer's superior or from asking for an officer's badge number.").

Had Ryder refused to provide his license and registration during a valid traffic stop, as the district court found, the officers certainly would have had at least arguable probable cause to arrest for resisting without violence under Fla. Stat. § 843.02. Under Ryder's version of events, however, which we must accept as true at summary judgment, Ryder never refused to provide his license and registration. Accordingly, the court improperly granted summary judgment in reliance on a fact that contradicts Ryder's version of events.

In Ryder's telling, the stop began with Andrews asking him several questions about the scooter, which Ryder answered as best he could. Then, Ryder inquired several times as to the basis for the traffic stop, which Andrews refused to provide, despite stating in his deposition testimony that it was "perfectly reasonable" for a driver to ask the basis for a traffic stop. Finally, Andrews for the first time asked for Ryder's license and registration, and Ryder's promptly stated, "okay," and attempted to pull his wallet out of his pants pocket before Andrews grabbed him and pushed him over. Additionally, in Ryder's version of events, Kim did not ask him any questions during the traffic stop, notwithstanding Kim's testimony to the contrary. So, Ryder's testimony establishes that he promptly attempted to comply with the officers' first request to provide his license and registration. Ryder's compliance with an officer's request for license and registration cannot reasonably be construed as obstruction under Florida law.

Nor do the other circumstances of the encounter, based on Ryder's version of events, support even arguable probable cause to arrest under § 843.02. Although Ryder was lawfully detained, he did not refuse to comply with a lawful command, he was not belligerent during the stop, and he did not resist at all when the officers tackled and handcuffed him. In addition, his inquiries as to the basis of the traffic stop occurred before Andrews asked him for his license and registration, so it cannot reasonably be said that he "repeatedly demanded to know why he was

stopped *instead* of providing his license and registration.” Without more, a driver’s simple inquiries as to the basis of a traffic stop, coupled with an assertion of constitutional rights, cannot reasonably be construed as obstructing or resisting the exercise of a lawful duty. *See Davis*, 451 F.3d at 765–67 (analyzing § 843.02 and holding that “an owner’s simple inquiry as to why officers are present on his property . . . [cannot] be construed as obstruction of justice or disorderly conduct.”).

Accepting Ryder’s version of the facts as true and drawing all reasonable inferences in his favor, there was not even arguable probable cause to arrest for resisting without violence under Fla. Stat. § 843.02. Therefore, the district court erred in granting summary judgment to Kim on the basis of qualified immunity.

B. Excessive Force

Next, Ryder claims that Andrews used excessive force against him in conducting the arrest when he pushed Ryder over the scooter and jumped on top of him. Ryder appears to rely on two theories of excessive force.

First, Ryder contends that any use of force was excessive because the arrest was illegal. And he is correct that if the arrest was illegal, “then there [was] no basis for any threat or any use of force,” so any force used was excessive. *Jackson v. Sauls*, 206 F.3d 1156, 1171 (11th Cir. 2000). For that reason, an excessive-force claim based on an illegal stop or arrest generally “is subsumed in the illegal stop or

arrest claim and is not a discrete excessive force claim.” *Id.* That rule does not fit easily here because Ryder did not allege a separate unlawful-arrest claim against Andrews. But whether this claim is designated as one of “unlawful arrest” or “excessive force,” the analysis still hinges on the lawfulness of the arrest, about which there are genuine disputes of material fact. Accordingly, we reverse the grant of qualified immunity to Andrews on this claim and remand for further proceedings. This claim on remand should be amended to reflect that it is a claim of unlawful arrest.

Second, Ryder arguably brings a claim for excessive force during a lawful arrest, which is a discrete claim.¹ *See id.* Officers may effectuate a full custodial arrest for any criminal offense, no matter how minor, *Lee v. Ferraro*, 284 F.3d 1188, 1196 (11th Cir. 2002), and the right to make an arrest necessarily carries with it the right to use some degree of physical coercion to effect it, *id.* at 1200. “[T]he use of force is an expected, necessary part of a law enforcement officer’s task of subduing and securing individuals suspected of committing crimes.” *Id.*

“But while some force is permitted in effecting an arrest, whether the force is reasonable depends on a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Brown v. City of Huntsville, Ala.*,

¹ It is unclear whether Ryder intended to proceed on a discrete claim of excessive force during a valid arrest. Nevertheless, we address such a claim out of an abundance of caution.

608 F.3d 724, 737–38 (11th Cir. 2010) (internal quotation marks omitted). This is an objective inquiry that does not take into account the subjective motivations of the officer. *See id.* at 738. In conducting this balancing inquiry, we consider several factors, including (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the officer or others, and (3) whether the suspect is resisting arrest or attempting to flee. *See Lee*, 284 F.3d at 1198 (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

Here, assuming Andrews had probable cause to conduct an arrest, Andrews’s conduct in grabbing Ryder’s arm and then pushing him over his motor scooter onto a grassy area in order to handcuff him is not sufficiently distinct from uses of force that this Court has authorized so as to put a reasonable officer on notice that this conduct was unlawful. *See Saucier*, 533 U.S. at 206. We recognize that the three *Graham* factors all favor Ryder: (1) the crime at issue (resisting without violence) was minor, *see Fils v. City of Aventura*, 647 F.3d 1272, 1288 (11th Cir. 2011); (2) Ryder posed no threat to the officers or others at the time; and (3) Ryder was compliant and was not resisting arrest or attempting to flee. Nevertheless, “[f]or even minor offenses, permissible force includes physical restraint, use of handcuffs, and pushing into walls.” *Brown*, 608 F.3d at 740; *see, e.g., Nolin v. Isbell*, 207 F.3d 1253, 1257 (11th Cir. 2000) (no excessive force where the officer grabbed the plaintiff, threw him against a van three or four feet

away, kneed him in the back, and pushed his head into the van); *Jones v. City of Dothan*, 121 F.3d 1456, 1460 (11th Cir. 1997) (no excessive force where officers slammed the plaintiff against a wall, kicked his legs apart, required him to put his arms above his head). A reasonable officer in Andrews's position could have believed that pushing a suspect onto the ground in a grassy area was not constitutionally distinct from pushing a suspect up against a wall.

Ryder's reliance on *Brown* is unavailing. Although Ryder's conduct was similar to the plaintiff in *Brown*, the officer in *Brown* used far greater force than did Andrews. In *Brown*, we held that the officer used excessive force against a suspect, who was attempting to get out of her car at the officer's request, by "pushing [the suspect] back into the car, gratuitously using pepper spray, and then slamming her to the pavement." 608 F.3d at 739. We specifically focused on the officer's use of pepper spray. *See id.* at 738–39 & n.23. Here, by contrast, Andrews did not use pepper spray or any other weapon, such as a taser. *See Fils*, 647 F.3d at 1289 (holding that the unprovoked use of a taser against a non-hostile and non-violent suspect who had not disobeyed instructions constituted excessive force). Moreover, Andrews pushed Ryder onto grass, rather than pavement, thereby lessening the force of the impact.

In light of the factual differences between *Brown* and this case, as well as our case law recognizing that officers may use some force to conduct an arrest for

even minor offenses, we cannot say that a reasonable officer in Andrews's position would have known that what he was doing—assuming there was probable cause to arrest—violated Ryder's Fourth Amendment right to be free from excessive force.

V. CONCLUSION

In summary, we conclude that genuine issues of material fact remain as to whether the defendant officers had arguable probable cause to arrest Ryder for resisting an officer without violence under Fla. Stat. § 843.02. Accordingly, we reverse the grant of qualified immunity to Kim on Ryder's claim of unlawful arrest under § 1983. For the same reasons, we reverse the grant of qualified immunity to Andrews, at least to the extent Ryder claims that Andrews used excessive force against him during an unlawful arrest. However, we believe this claim should be characterized on remand as one of unlawful arrest rather than excessive force. Finally, to the extent Ryder claims that Andrews used excessive force during a valid arrest, we affirm the grant of qualified immunity to Andrews.

REVERSED AND REMANDED IN PART; AFFIRMED IN PART.