**No. 25-11089**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

Scott MacIntyre,

Plaintiff-Appellant,

v.

City of Palm Bay, Officer Juan Castro Escandon, Officer Cole McDonald, and Officer Derrick Mitchell,

Defendants-Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Middle District of Florida,
Orlando Division
Case No. 6:24-cv-988-JSS-RMN, Hon. Julie S. Sneed

# OPENING BRIEF FOR PLAINTIFF-APPELLANT SCOTT MACINTYRE

Elizabeth Brownstein
Nathaniel Allen Deacon
Student Counsel

Brian Wolfman
Becca Steinberg
Regina Wang
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW, Suite 312
Washington, D.C. 20001
(202) 661-6582

Counsel for Plaintiff-Appellant Scott MacIntyre

May 12, 2025

No. 25-11089

Scott MacIntyre, Plaintiff-Appellant

v.

City of Palm Bay, et al., Defendants-Appellees

**Certificate of Interested Persons**

Under this Court's Rule 26.1-1, Plaintiff-Appellant MacIntyre states that the following people and entities have an interest in the outcome of this appeal:

Brownstein, Elizabeth

City of Palm Bay

City of Palm Bay, City Attorney's Office

Deacon, Nathaniel Allen

Doyle, Donna

Escandon, Juan Castro

Faherty, Daniel Patrick

Grosholz, Jeffrey J.

MacIntyre, Scott

Marsey, J. David

McDonald, Scott

Messenger, Erich Benjamin

Mitchell, Derrick

Norway, Hon. Robert M., U.S. Magistrate Judge

Rumberger Kirk

Smith, Patricia Denise

Sneed, Hon. Julie S., U.S. District Court Judge

Steinberg, Becca

Wang, Regina

Wolfman, Brian

May 12, 2025 Respectfully submitted,

/s/Brian Wolfman

Brian Wolfman
GEORGETOWN LAW APPELLATE COURTS
IMMERSION CLINIC
600 New Jersey Ave., NW, Suite 312
Washington, D.C. 20001
(202) 661-6582
wolfmanb@georgetown.edu

Counsel for Plaintiff-Appellant Scott MacIntyre

## Statement Regarding Oral Argument

Plaintiff-Appellant Scott MacIntyre requests oral argument. This case involves multiple Fourth Amendment claims and their relationship to the proper construction of pleadings at the motion-to-dismiss stage. Oral argument would aid the Court in assessing how the facts relate to MacIntyre's claims and to the proper pleading standard.

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## Introduction

The Fourth Amendment, if it stands for anything, means that the police can't stop a law-abiding person on the street, physically assault him, and then arrest and shackle him, without reason to think he'd done anything wrong or posed a threat to anyone. That point seems to have been lost on the police officers here.

The allegations in Scott MacIntyre's complaint are straightforward. MacIntyre was on a residential street with his Segway (an electric personal mobility device) minding his own business when he was stopped by the police for no apparent reason. The police say that they stopped MacIntyre based on purported defects in the Segway's lighting—facts that appear nowhere in the complaint. In fact, MacIntyre's Segway was fully lit and clearly visible to the officers who stopped him. During the stop, MacIntyre voluntarily placed his hands on the hood of the police car to warm them up. When MacIntyre then lifted up his hands in a non-threatening manner, officers violently threw him to the ground and handcuffed him. He was then arrested, purportedly for committing the misdemeanor of resisting without violence. The tackle exacerbated MacIntyre's hernia. He was taken to the hospital, where he was cuffed by the police to a hospital bed. The police later released MacIntyre. Criminal charges were never brought.

Despite all this, the district court found that the police officers involved did not violate any clearly established Fourth Amendment right.

That was wrong. First, as to the initial stop, police lack arguable reasonable suspicion to stop someone who is simply on a residential street with his fully lit vehicle minding his own business. Second, contrary to the district court's conclusion, no per se rule gives police probable cause to arrest a person for lifting up his hands. Quite the opposite. Simply lifting one's hands does not establish even arguable probable cause. Third, as to the officers' use of force, it is clearly established that police may not violently throw someone to the ground just because they make non-violent, non-threatening movements.

Any plausible qualified-immunity defense would require the officers to rebut the facts alleged in MacIntyre's complaint, but that may not be done on a motion to dismiss. This Court should reverse and remand for further proceedings that may, if the officers choose, test MacIntyre's allegations.

## Statement of Jurisdiction

Plaintiff-Appellant MacIntyre sued Defendants—the City of Palm Bay, Florida, and Officers Escandon, McDonald, and Mitchell—in the Middle District of Florida under 42 U.S.C. § 1983 and state law. App. 6-16. The district court had subject-matter jurisdiction over MacIntyre's Section 1983 claims under 28 U.S.C. § 1331 and supplemental jurisdiction over his state-law claims under 28 U.S.C. § 1367(a). App. 6. The district court's order (App. 41-64) and separate judgment (App. 65), entered on March 6, 2025, and March 7, 2025, respectively, *see* App. 5,

disposed of all of MacIntyre's claims. MacIntyre filed a timely notice of appeal on April 3, 2025. App. 66. This Court has jurisdiction under 28 U.S.C. § 1291.

## Issues Presented

**I.** Whether the police had arguable reasonable suspicion to conduct a stop when all the police knew was that MacIntyre was on a residential street with his fully lit Segway.

**II.** Whether MacIntyre's lifting of his hands in a non-threatening manner gave the police arguable probable cause to arrest him for the crime of resisting without violence.

**III.** Whether the defendant police officers used excessive force in violation of clearly established law when they violently threw MacIntyre to the ground, sending him to the hospital.

**IV.** If this Court reverses on any of MacIntyre's Section 1983 claims, whether MacIntyre's state-law claims should be reinstated and remanded for consideration of their merits.

## Statement of the Case

### I. Factual background

One evening in December 2022 in Palm Bay, Florida, Scott MacIntyre took a break from helping a friend move by riding his Segway around a residential neighborhood. App. 8. MacIntyre's Segway was fully lit and could be easily viewed by others. App. 8. He was complying with

all "applicable laws, including those regulating the use of Segway vehicles." App. 48 (Dist. Ct. Op. (citing Compl. 3-4)).

Palm Bay Police Officer Juan Castro Escandon was in the neighborhood along with Officers Cole McDonald and Derrick Mitchell. App. 8, 41-42, 48 (Dist. Ct. Op. (citing Compl. 3-4)). Escandon encountered MacIntyre and ordered him to stop for "no reason." App. 8, 48 (Dist. Ct. Op. (citing Compl. 3)). MacIntyre complied with Escandon's instruction to stop. App. 41 (Dist. Ct. Op. (citing Compl. 3)). MacIntyre then placed his hands on the hood of the police vehicle to warm them. App. 42 (Dist. Ct. Op. 2 (citing Compl. 3)).

During the encounter, MacIntyre lifted his hands off the hood in a non-threatening manner. App. 42, 57 (Dist. Ct. Op. (citing Compl. 3, 10-11)). McDonald and Mitchell then violently threw MacIntyre to the ground and handcuffed him. App. 42 (Dist. Ct. Op. (citing Compl. 4)). "At the time of the incident, [MacIntyre] did not pose any threat … to the Defendants or anyone else." App. 57 (Dist. Ct. Op. (citing Compl. 10-11)). Escandon then "arrested [MacIntyre] without a warrant for resisting arrest." App. 42 (Dist. Ct. Op. (citing Compl. 3-4)).

McDonald and Mitchell's "take down maneuver," App. 27, aggravated MacIntyre's hernia, requiring him to be transported to the hospital. App. 42 (Dist. Ct. Op. (citing Compl. 4)). At the hospital, the police handcuffed MacIntyre to a hospital bed and "treated [him] like a criminal." App. 42 (Dist. Ct. Op. (quoting Compl. 3-4)). The police

eventually released MacIntyre, and charges were never filed. App. 42 (Dist. Ct. Op. (citing Compl. 4)).

## II. Proceedings below

MacIntyre sued Officers Escandon, McDonald, and Mitchell in the Middle District of Florida under 42 U.S.C. § 1983. App. 6. As relevant here, MacIntyre alleged three violations of his Fourth Amendment rights: that (1) Escandon's initial stop was an unlawful seizure because Escandon lacked reasonable suspicion that MacIntyre had committed a crime, App. 9-10; (2) Escandon arrested him without probable cause, App. 10-11; and (3) McDonald and Mitchell used excessive force in violently throwing him to the ground, App. 14-16. MacIntyre also brought state-law claims against the City of Palm Bay for false arrest and false imprisonment and against McDonald and Mitchell for battery. App. 6, 11-13.

Escandon moved to dismiss MacIntyre's unreasonable-stop claim, asserting qualified immunity based on a purported fact that does not appear in MacIntyre's complaint: that "the light on the scooter was insufficient based on applicable lighting laws" and so no clearly established law prevented him from seizing MacIntyre. App. 37. The district court ignored Escandon's argument but nevertheless dismissed the claim. Notwithstanding MacIntyre's allegation that his "fully lit personal transportation device … was easily viewed by the Palm Bay

Police in the neighborhood," the court reasoned that "the facts alleged do not show that the stop was unreasonable under the totality of the circumstances." App. 50.

Escandon moved to dismiss MacIntyre's unlawful-arrest claim, seeking qualified immunity, also based on purported facts appearing nowhere in the complaint: that MacIntyre "resisted arrest by removing his hands from the hood of a car against a fellow officers' [sic] instructions." App. 37. The district court dismissed this claim, but, again, not for the reason given by Escandon. The court held that MacIntyre gave Escandon probable cause to arrest him for misdemeanor "resisting without violence" by raising his hands "without instruction." App. 52-53; *see* Fla. Stat. § 843.02. The court held alternatively that MacIntyre's "conclusory allegations" failed to state a claim. App. 53-54.

McDonald and Mitchell moved to dismiss MacIntyre's excessive-force claim. App. 22. They maintained that they were entitled to qualified immunity because "the maneuver to take down the Plaintiff was not plainly unreasonable, considering the Plaintiff's failure to keep his hands on the patrol vehicle which detainees are often instructed to do, thereby creating the reasonable fear that the Plaintiff posed a threat to officers or was attempting to flee." App. 27-28. The district court accepted as true that MacIntyre "'did not pose any threat … to … Defendants or anyone else.'" App. 57 (Dist. Ct. Op. (citing Compl. 10-11)). But it nonetheless granted the officers' motion, not on the basis offered by McDonald and

Mitchell, but because the complaint "d[id] not show that the force employed by McDonald and Mitchell was objectively unreasonable." App. 57.

Because no federal claims remained, the district court declined to exercise supplemental jurisdiction over the state-law claims, without prejudice to refiling in state court. App. 63-64 (citing 28 U.S.C. § 1367(c)).

## III. Standard of review

This Court reviews the district court's grant of a motion to dismiss under Rule 12(b)(6) de novo. *Davis v. City of Apopka*, 78 F.4th 1326, 1331 (11th Cir. 2023). This Court must "accept the factual allegations in the complaint as true and construe them in the light most favorable" to MacIntyre, the non-moving party. *Id.* (cleaned up).

## Summary of Argument

**I.** MacIntyre was on a residential street on his fully lit Segway, minding his own business, when Officer Escandon stopped him. These facts did not provide Escandon arguable reasonable suspicion that MacIntyre was engaging in or was about to engage in criminal activity, so Escandon is not entitled to qualified immunity. And contrary to the district court's suggestion, MacIntyre didn't have to plead detailed facts about laws he was *not* breaking and potentially suspicious behavior he was *not* engaged in to avoid a qualified-immunity dismissal.

**II.** Officer Escandon lacked arguable probable cause when he arrested MacIntyre for resisting without violence, a Florida misdemeanor. MacIntyre cannot have unlawfully resisted Escandon because Escandon was conducting an unlawful stop without reasonable suspicion. What's more, MacIntyre took no action during the stop that could be considered resistance. He voluntarily placed his hands on the hood of the police car and then voluntarily lifted them. That conduct would not provide a reasonable officer arguable probable cause to arrest MacIntyre for resisting without violence, so Escandon is not entitled to qualified immunity. MacIntyre pleaded more than conclusory allegations and stated a claim for false arrest.

**III.** Officers McDonald and Mitchell used excessive force when they violently tackled MacIntyre to the ground to handcuff him for allegedly resisting without violence, sending MacIntyre to the hospital. MacIntyre was suspected of a minor, non-violent misdemeanor, did not pose a threat, and was not resisting arrest. Under longstanding, clearly established precedent and general Fourth Amendment principles police may not use gratuitous, unnecessary force in this context. McDonald and Mitchell therefore are not entitled to qualified immunity.

**IV.** If this Court reverses on any of MacIntyre's Section 1983 claims, it should reinstate MacIntyre's state-law claims and remand them for further consideration.

## Argument

"No right is held more sacred, or is more carefully guarded … than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (quoting *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891)). The officers here intruded on this right when they stopped MacIntyre for no reason, arrested him, and threw him to the ground so violently that it required his hospitalization.

The district court held otherwise, granting the officers' motions to dismiss based on qualified immunity. That was wrong. Dismissal on qualified-immunity grounds would have been appropriate only if the complaint had failed to allege a violation of clearly established law. *Chandler v. Sec'y of Fla. Dep't of Transp.*, 695 F.3d 1194, 1201 (11th Cir. 2012). The only possible way to conclude that the officers' conduct here did not violate clearly established Fourth Amendment doctrine is by accepting their version of events or by drawing inferences against MacIntyre, both of which are impermissible on a motion to dismiss. This Court should reverse.

### I. Officer Escandon seized MacIntyre without arguable reasonable suspicion by stopping him for no reason.

When police officers conduct an investigatory stop without "arguable reasonable suspicion," they violate a clearly established Fourth

Amendment right and are not entitled to qualified immunity. *Jackson v. Sauls*, 206 F.3d 1156, 1165-66 (11th Cir. 2000); *Meshal v. Comm'r., Ga. Dept. of Pub. Safety*, 117 F.4th 1273, 1287-88 (11th Cir. 2024). MacIntyre alleges, and Escandon does not dispute, that Escandon stopped MacIntyre. App. 8, 37-38; *see* App. 47-51 (Dist. Ct. Op.). So, the only issue is whether Escandon had "arguable reasonable suspicion" to do so. *See Sauls*, 206 F.3d at 1165-66; App. 47-48 (Dist. Ct. Op.). This standard, though less demanding than reasonable suspicion unadorned by "arguable," still requires that police have some objective and particularized justification for believing that the suspect was committing a crime. *See Brent v. Ashley*, 247 F.3d 1294, 1304-05 (11th Cir. 2001).

MacIntyre was minding his own business, using his Segway in compliance with all applicable laws, when Escandon stopped him for no apparent reason. App. 41, 48 (Dist. Ct. Op. (citing Compl. 3-4)). Under these circumstances, no objective and particularized justification could provide arguable reasonable suspicion. *Sauls*, 206 F.3d at 1164-66; *Jackson v. City of Atlanta*, 97 F.4th 1343, 1359 (11th Cir. 2024).

The only particularized justification that Escandon offers for having arguable reasonable suspicion is that "the light on [MacIntyre's] Segway was insufficient based on applicable lighting laws." App. 37. That argument gets Escandon nowhere. On a motion to dismiss, Escandon may not introduce new facts about the Segway's lighting that are not within the "four corners" of MacIntyre's complaint, *see St. George v.*

*Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002), much less dispute the complaint's explicit factual allegation that the Segway was "fully lit," App. 50 (Dist. Ct. Op. (citing Compl. 3)). To the extent that Escandon wishes to introduce new facts or dispute MacIntyre's characterization of the lighting or any other fact, the motion-to-dismiss phase is the wrong time to do so. *See St. George*, 285 F.3d at 1337; *City of Atlanta*, 97 F.4th at 1359.

Though the district court rightly did not credit Escandon's extra-pleading assertions about the lighting, it erroneously employed *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009), to hold that Escandon was entitled to qualified immunity. App. 48-51. First, it characterized MacIntyre's allegation that he was stopped "for no reason" as a "legal conclusion" not entitled to a presumption of truth. App. 48-49. Second, it found that MacIntyre's remaining allegations "do not show that the stop was unreasonable under the totality of the circumstances." App. 49-51. The district court misapplied *Iqbal* at both steps.

At step one, the district court correctly acknowledged that MacIntyre's allegation that he was stopped for "no reason," interpreted in the light most favorable to him, meant that MacIntyre "was complying with all applicable laws, including those regulating the use of Segway vehicles, at the time Escandon stopped him." App. 48. But it incorrectly labeled this allegation a "legal conclusion." App. 49 (quoting *Iqbal*, 556 U.S. at 678).

An allegation is a "legal conclusion" if it asserts a position on an ultimate legal issue in the case, such as a "threadbare recital[] of the elements of a cause of action." *Iqbal*, 556 U.S. at 678. But an allegation is not a "legal conclusion" just because it references legal concepts in aid of describing facts. *See id.* at 681. *Iqbal* recognizes as much by characterizing the allegation that the FBI Director "arrested and detained thousands of Arab Muslim men" as factual. *Id.* Though whether these men were arrested is a "legal conclusion" in a literal sense, *Iqbal* understood that the word "arrested" served as a useful shorthand for describing facts about people being taken into custody. *See id.* Similarly, in the unreasonable-traffic-stop context, this Court has understood that a plaintiff does not allege a "legal conclusion" by referencing compliance with traffic laws as a shorthand for more basic factual allegations about his vehicle's break lights, speed, tire pressure, etc. *See City of Atlanta*, 97 F.4th at 1359; *Floyd v. City of Miami Beach*, 730 F. App'x 838, 839, 842 (11th Cir. 2018); *see also Sauls*, 206 F.3d at 1166 (discussing plaintiffs' evidence that they "obeyed all traffic laws" on a motion for summary judgment).

At step two, the district court failed to recognize that even putting aside the allegation about compliance with applicable laws, MacIntyre's complaint still states a claim that Escandon executed a stop without arguable reasonable suspicion. A complaint must provide "a short and plain statement of the claim showing the pleader is entitled to relief."

Fed. R. Civ. P. 8(a). That statement need not include "detailed factual allegations." *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). Rather, it need only include facts that, if true, show that the plaintiff's claim is "plausible." *Iqbal*, 556 U.S. at 678. In the unreasonable-stop context, then, this standard means that plaintiffs may simply describe in general terms their nonsuspicious activity preceding the stop. *See City of Atlanta*, 97 F.4th at 1359; *Martin v. Miami Dade Cnty.*, 2024 WL 1434329, at *1, *4 (11th Cir. Apr. 3, 2024). MacIntyre met that standard here by describing his unsuspicious activity: riding his Segway in the neighborhood before the stop. And MacIntyre went further by anticipating Escandon's purported faulty-lighting justification and describing his Segway as "fully lit." App. 41-42, 50.

Yet, without identifying a fact that could have provided Escandon with arguable reasonable suspicion or otherwise explaining its reasoning, the district court held MacIntyre's complaint deficient because "the facts alleged do not show that the stop was unreasonable under the totality of the circumstances." App. 50. True, the facts alleged in MacIntyre's complaint do not definitively show that police did not have arguable reasonable suspicion. The facts as pleaded do not negate, for example, that the police had received a tip that MacIntyre did not know about. But MacIntyre did not need to plead facts showing that Escandon lacked arguable reasonable suspicion by anticipating and rebutting every potential justification that Escandon might later offer. *See Iqbal*, 556

U.S. at 678. Rather, MacIntyre needed to provide only enough facts for it to be plausible that Escandon lacked arguable reasonable suspicion after drawing all inferences in MacIntyre's favor. *See id.* The district court appears to have inverted this standard by dismissing MacIntyre's claim on the apparent ground that facts not mentioned in the complaint could have provided a basis for arguable reasonable suspicion. App. 50-51.

The district court's understanding of the pleading rules would create serious problems in cases like MacIntyre's. On the one hand, plaintiffs could not plead they were "complying with all applicable laws," because the court would disregard that allegation as a "legal conclusion." App. 48-49. But on the other, a pleading without information about what applicable laws the plaintiff was *not* violating could mean that "the facts alleged do not show that the stop was unreasonable under the totality of the circumstances." App. 50. A plaintiff's only option would appear to be pleading detailed facts about why the police did not have reasonable suspicion to stop him for violations of potentially applicable laws. Under that view of the pleading requirements, complaints could hardly be "short and plain." Fed. R. Civ. P. 8(a). A plaintiff might have to plead, for example, that "my tire pressure was adequate," "my vehicle did not smell like marijuana," and so forth.

We recognize that courts don't typically demand this type of detailed anticipatory pleading and that the district court here didn't explain what, exactly, was lacking in MacIntyre's complaint. *See* App. 47-

51. But the district court's decision raises considerable line-drawing concerns about how far a law-abiding plaintiff's complaint would have to go to negate a defendant's potential justifications for alleged civil-rights violations. Rule 8 is designed to avoid these issues by requiring no more than enough facts to allow for a "reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. For the reasons explained above, MacIntyre did that here, so the dismissal of his unreasonable-stop claim should be reversed.

## II. Officer Escandon falsely arrested MacIntyre without arguable probable cause that a crime had been committed.

When an officer arrests someone without "arguable probable cause" that a crime has been committed, he violates clearly established Fourth Amendment rights and is not entitled to qualified immunity. *Edger v. McCabe*, 84 F.4th 1230, 1235-37 (11th Cir. 2023). Officer Escandon does not dispute that MacIntyre was in fact arrested for the misdemeanor of resisting without violence. App. 39; *see* App. 52-54 (Dist. Ct. Op. 12-14). Thus, the issue here turns on whether Escandon had arguable probable cause to arrest MacIntyre for this offense. He did not, and MacIntyre adequately pleaded as much.

Whether an officer possesses arguable probable cause "depends on the elements of the alleged crime and the operative fact pattern." *Edger*, 84 F.4th at 1237 (quoting *Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 735 (11th Cir. 2010)). Arguable probable cause is lacking unless "'a

reasonable officer, looking at the entire legal landscape at the time of the arrest[], could have interpreted the law as permitting the arrest[].'" *Id.* at 1236-37 (quoting *Garcia v. Casey*, 75 F.4th 1176, 1186 (11th Cir. 2023)). Looking at the entire legal landscape includes considering the text of the statute said to have authorized the arrest and existing state and federal precedent interpreting that statute. *Id.* at 1237-40.

### A. Escandon had no reason to think MacIntyre resisted without violence.

Escandon maintains that he arrested MacIntyre for committing the Florida misdemeanor of resisting without violence. A person commits that offense if he "resist[s], obstruct[s], or oppose[s] any officer … in the lawful execution of any legal duty, without offering or doing violence to the person of the officer." Fla. Stat. § 843.02. To prove a violation of Section 843.02, the state must show that "(1) the officer was engaged in the lawful execution of a legal duty; and (2) the actions of the defendant obstructed, resisted, or opposed the officer in the performance of that duty." *Alston v. Swarbrick,* 954 F.3d 1312, 1319 (11th Cir. 2020) (quoting *V.L. v. State*, 790 So. 2d 1140, 1142 (Fla. Dist. Ct. App. 2001)). The statute "is intended to apply [when] a person willfully interferes with the lawful activities of the police." *See, e.g.*, *Reynolds v. State*, 283 So. 3d 885, 886 n.1 (Fla. Dist. Ct. App. 2019) (quoting *N.H. v. State*, 890 So. 2d 514, 516 (Fla. Dist. Ct. App. 2005)).

**Lawful execution of a legal duty.** When someone is charged with resisting without violence, the threshold question is whether the officer was engaged in the lawful execution of a legal duty when the alleged act of resistance occurred. *C.E.L. v. State*, 24 So. 3d 1181, 1186, 1189 (Fla. 2009). Here, in the context of an investigatory stop, the officer must—consistent with the Fourth Amendment—have had reasonable suspicion justifying the initial stop. *See, e.g.*, *id.*; *Moore v. Pederson*, 806 F.3d 1036, 1044-45 (11th Cir. 2015) (finding no probable cause for Section 843.02 violation where the officer lacked reasonable suspicion to initiate a *Terry* stop that the suspect purportedly resisted). After all, in Florida "one *can* resist an officer who is not lawfully performing a duty, so long as that resistance is without violence." *B.L.M. v. State*, 684 So. 2d 853, 854 (Fla. Dist. Ct. App. 1996); *see also Illinois v. Wardlow*, 528 U.S. 119, 125 (2000) (suggesting that a state statute codifying the opposite rule would be unconstitutional).

As explained above (at 9-15), Escandon lacked even arguable reasonable suspicion to stop MacIntyre and therefore necessarily lacked reasonable suspicion. The case law is clear. Without reasonable suspicion to stop MacIntyre in the first place, Escandon was not engaged in the lawful execution of a legal duty and could not have arrested MacIntyre for resisting without violence during the unlawful stop. *See, e.g.*, *W.B. v. State*, 179 So. 3d 411, 412-13 (Fla. Dist. Ct. App. 2015). Put in terms of arguable probable cause, no reasonable officer here could have concluded

that he was executing a lawful duty; thus, no reasonable officer could have interpreted Section 843.02 to permit MacIntyre's arrest.

**Resist, obstruct, or oppose.** Even assuming (counterfactually) that the traffic stop was lawful, MacIntyre did not do anything that could reasonably be interpreted as "resist[ing], obstruct[ing], or oppos[ing]" under Section 843.02. So Escandon did not have arguable probable cause to arrest MacIntyre.

When a person complies with police during a lawful encounter, even if that person does not behave exactly how police prefer he behave, he has not "obstructed, resisted, or opposed." *See Cenieus v. State*, 758 So. 2d 1250, 1252 (Fla. Dist. Ct. App. 2000). In other words, taking a commonplace action does not violate Section 843.02 unless that action is contrary to a lawful police order. *Powell v. Haddock*, 366 F. App'x 29, 30-31 (11th Cir. 2010); *see also Harris v. Wingo*, 845 F. App'x 892, 896 (11th Cir. 2021) (holding that arguable probable cause to arrest Harris under Section 843.02 was lacking when Harris failed to provide his birthday because the officer never asked for his birthday); *McClain v. State*, 202 So. 3d 140, 143 (Fla. Dist. Ct. App. 2016) (holding that a suspect leaving without being commanded to stop does not oppose a lawful order).

For example, in *Powell v. Haddock*, a suspect voluntarily lifted up her hands and questioned the officer's actions. 366 F. App'x at 30-31. This Court rejected the officer's argument that he had arguable probable cause to arrest Powell under Section 843.02 for failing to follow instructions

because "there was no instruction given that Powell failed to obey" by lifting her hands up and questioning the officer's actions. *Id.* The events here mirror *Powell*. MacIntyre's complaint states that he "complied" with the police stop and then non-threateningly lifted his hands during the stop after voluntarily placing them on the hood of the car to warm them. App. 8, 15-16. After lifting his hands, he was arrested. App. 8-9. But as in *Powell*, there's no allegation that MacIntyre had received an order about what to do with his hands before he lifted them.

Nevertheless, the district court concluded that MacIntyre resisted the police simply by raising his hands. App. 53. In doing so, the district court misread this Court's precedent.

The district court observed that the "Eleventh Circuit has found arguable probable cause for resisting arrest when a person spontaneously raised their hands during an encounter with law enforcement." App. 53 (citing *Post v. City of Fort Lauderdale*, 7 F.3d 1552, 1559 (11th Cir. 1993)). But, in *Post*, the plaintiff raised his hands "to [the officer] *after* being told he was under arrest" for a *prior act of resistance*. 7 F.3d at 1559 (emphasis added). The *Post* plaintiff's raising of his hands could thus be interpreted as an action in defiance of the lawful order that he was under arrest—that is, he was literally resisting arrest. *Id.*

*Post* does not stand for the proposition that merely lifting one's hands during a police encounter, regardless of any other circumstances, creates probable cause to arrest someone for resisting without violence.

Nor could it. As explained above, Section 843.02's text and precedent confirm as a matter of Florida law that a person cannot resist without violence unless he actually takes an action to resist or oppose the police in the lawful execution of their duties, like the plaintiff's failure in *Post* to abide by a lawful order, 7 F.3d at 1559, and unlike MacIntyre's lifting of his hands here.

Escandon maintained below that he had arguable probable cause because MacIntyre "had resisted arrest by removing his hands from the hood of a car against a fellow officers' [sic] instructions." App. 37. Curiously, the only other officers allegedly present—McDonald and Mitchell—didn't themselves assert that they gave those instructions. App. 31-32. In any event, this case is at the motion-to-dismiss stage, so the court may not look beyond the "four corners of the complaint," *St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002), and nothing in the complaint suggests that any officer gave any command about where MacIntyre should place his hands before he lifted them.[1]

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[1] McDonald and Mitchell argued in their motion to dismiss MacIntyre's excessive-force claim that they had arguable probable cause to believe MacIntyre resisted an order to keep his hands in place because *other* officers often give orders to *other* suspects to keep their "hands in a place that [is] clearly visible to all." App. 31. The assertion that these kinds of orders are generally given (and thus potentially bear on the lawfulness of McDonalds's and Mitchell's conduct) is one that might be considered at a later stage of the case, but it cannot be considered at the motion-to dismiss stage because it appears nowhere in the complaint. *St. George*, 285 F. 3d at 1337.

In sum, MacIntyre was arrested for resisting without violence, even though he did not resist, obstruct, or oppose a lawful police order. So, no reasonable officer could conclude that he had probable cause to arrest MacIntyre. *See Edger v. McCabe*, 84 F.4th 1230, 1237-38 (11th Cir. 2023).

### B. MacIntyre's false-arrest claim was adequately pleaded.

The district court alternatively held that MacIntyre's "allegations of fact and conclusory allegation that his arrest was effected 'without any arguable probable cause' fail to state a claim." App. 53 (quoting Compl. 3-5). That's wrong. As explained above (at 11-15), Rule 8's pleading standard does not require detailed factual allegations. A plaintiff need plead only enough facts to show his right to relief is non-speculative. *See Butler v. Sheriff of Palm Beach Cnty.*, 685 F.3d 1261, 1265 (11th Cir. 2012). MacIntyre made more than a conclusory statement that he was arrested without probable cause. *See Amato v. Cardelle*, 56 F. Supp. 3d 1332, 1333-34 (S.D. Fla. 2014).

MacIntyre did not plead simply that "I was arrested without probable cause." Rather, MacIntyre pleaded that his Segway was fully lit and clearly visible when he was stopped by police for no reason. App. 8. And he alleged that during the stop he voluntarily placed his hands on the hood of the police car and then non-threateningly lifted them up, leading to his arrest for resisting without violence. App. 8-9, 15-16. These facts are sufficient to give rise to the Fourth Amendment violation.

Indeed, that these facts can be judged against the elements of the crime for which MacIntyre was arrested, *see supra* at 17-21, demonstrates that MacIntyre's complaint is not conclusory. The dismissal of MacIntyre's false-arrest claim should be reversed.

## III. Officers McDonald and Mitchell used excessive force in violation of clearly established law by violently throwing MacIntyre to the ground.

The Fourth Amendment protects citizens from being subjected to excessive force at the hands of the police. *Stephens v. DeGiovanni*, 852 F.3d 1298, 1321 (11th Cir. 2017). A court will deny qualified immunity on an excessive-force claim at the motion-to-dismiss phase if the plaintiff's allegations "establish a constitutional violation" and the right violated was "clearly established." *Ingram v. Kubik,* 30 F.4th 1241, 1251 (11th Cir. 2022) (quoting *Sebastian v. Ortiz*, 918 F.3d 1301, 1307 (11th Cir. 2019)). Officers McDonald and Mitchell violated MacIntyre's right to be free from excessive force when they violently tackled him to the ground for allegedly resisting without violence, sending him to the hospital. It was clearly established at the time of the incident that officers may not throw to the ground a non-threatening person suspected of a "minor transgression" like non-violent resistance. *See Patel v. City of Madison*, 959 F.3d 1330, 1332-34, 1340 (11th Cir. 2020).

### A. The officers used excessive force.

To determine whether the use of force was objectively excessive, courts balance "the nature and quality of the intrusion on the individual against the government justification for using force." *Richmond v. Badia*, 47 F.4th 1172, 1182 (11th Cir. 2022). The three "*Graham* factors" are especially relevant to this objective analysis: (1) the severity of the crime at issue, (2) whether the suspect posed an immediate safety threat to officers or others, and (3) whether the suspect was actively resisting arrest or attempting to flee arrest. *Graham v. Connor*, 490 U.S. 386, 396 (1989). This Court also looks to "the justification for the application of force, the relationship between the justification and the amount of force used, and the extent of any injury inflicted." *Richmond*, 47 F.4th at 1182. All *Graham* factors favor MacIntyre.

*First*, MacIntyre was arrested (purportedly) for resisting *without violence*. By its terms, this crime is a minor, non-violent misdemeanor, the kind of crime for which less force is generally appropriate to carry out an arrest. *See Fils v. City of Aventura*, 647 F.3d 1272, 1288 (11th Cir. 2011) (discussing resisting without violence).

*Second*, MacIntyre did not pose a threat to the officers or anyone else. *See, e.g.*, *Richmond*, 47 F.4th at 1183; *Lee v. Ferraro*, 284 F.3d 1188, 1197 (11th Cir. 2002). MacIntyre was simply on a residential street with his Segway when he was stopped by the police. App. 41-42. MacIntyre complied with the police stop, during which he voluntarily placed his

hands on the hood of the police car and then lifted them in a non-threatening manner. App. 41-42. At no point did he pose "any threat … to [the officers] or anyone else." App. 57 (Dist. Ct. Op. (citing Compl. 10-11).

The district court erred in relying on *Prescott v. Oakley*, 2016 WL 8919458, at *3 (M.D. Fla. Dec. 6, 2016), where the plaintiff failed to allege facts indicating that he was non-threatening when force was applied. *See* App. 57. To begin with, MacIntyre's complaint states that "at the time of the incident" he "did not pose any threat … to the [officers] or anyone else." App. 15-16. This allegation is sufficient to establish that MacIntyre did not pose a threat throughout the encounter, including when he was violently thrown to the ground. *See Saunders v. Duke*, 766 F.3d 1262, 1269 (11th Cir. 2014).

Moreover, apart from this specific allegation, it is reasonable to infer based on all the facts alleged—including that MacIntyre was stopped "for no reason" and that all he did before the violent take down was "lift[] his hands back up," App. 8—that MacIntyre did not pose a threat. By contrast, the officers in *Prescott* were "executing a warrant for [Prescott's] arrest for aggravated battery with a deadly weapon and carrying a concealed firearm." 2016 WL 8919458, at *3. In that different context, the court held that Prescott needed to allege facts indicating that he didn't pose a threat when force was applied because that could not reasonably be inferred from other facts. *See id.*

The officers argued below that MacIntyre posed a threat because "it is critical that persons detained keep their hands visible" to police and that moving one's hands without instruction "*may* be a threat." App. 27 (emphasis added). But (again) MacIntyre never posed a threat. App. 57. Further, nothing in the complaint suggests that MacIntyre's hands were not visible. If anything, the complaint alleges that MacIntyre's hands were visible. App. 8-9. In any case, it does not follow that a person simply moving his hands poses a threat. *See Fils*, 647 F.3d at 1289.

*Third*, as explained above (at 19-21), no facts pleaded show that MacIntyre was resisting before the officers arrested him. And, even if (contrary to law) lifting one's hands during a stop could always be "interpreted as resistance, that 'minor transgression does not mean that the force allegedly used was a constitutionally permissible response, or that the agent [is] entitled to qualified immunity.'" *Richmond*, 47 F.4th at 1183 (quoting *Saunders*, 766 F.3d at 1269). Importantly, the facts do not show that MacIntyre made any move to resist the arrest itself or to flee, so the officers needed less force to effectuate the arrest than if he had done so. *See, e.g.*, *Fils*, 647 F.3d at 1289.

In the district court, McDonald and Mitchell sought to justify their decision to violently tackle MacIntyre to the ground based on their perceived need to "subdue him in order to place handcuffs on him." App. 27. No facts in the complaint support the assertion that MacIntyre needed to be subdued. He had done nothing to threaten the police during

the stop and was not attempting to flee. McDonald and Mitchell could have handcuffed MacIntyre without a "takedown maneuver." App. 27; *see Collins v. Ensley*, 498 F. App'x 908, 912-13 (11th Cir. 2012). In any event, this justification does not explain why McDonald and Mitchell needed to throw MacIntyre, who was alone and outnumbered, to the ground so forcefully that he was sent to the hospital.

All told, McDonald and Mitchell tackled a non-violent, non-threatening, non-resisting person when it was not necessary to effectuate his arrest. App. 27. That's classic, unmistakable excessive force. *See, e.g.*, *Richmond*, 47 F.4th at 1183; *Ingram*, 30 F.4th at 1254; *Fils*, 647 F.3d at 1289; *Lee*, 284 F.3d at 1198; *Colon v. Smith*, 2024 WL 3898011, at *7 (11th Cir. Aug. 22, 2024).

### B. It was clearly established that no reasonable officer could believe that the force used was reasonable.

Having established that McDonald and Mitchell used excessive force, MacIntyre can defeat their qualified-immunity defense in either of two ways. *See Patel v. City of Madison*, 959 F.3d 1330, 1343 (11th Cir. 2020). First, he can point to a "materially similar case that has already decided that what the police officer was doing was unlawful." *Id.* (quoting *Lee v. Ferraro,* 284 F.3d 1188, 1198 (11th Cir. 2002)) (cleaned up). Second, he can demonstrate that even if there wasn't a case directly on point, "broader, clearly established principle[s]" show the force was excessive.

*Id.* (quoting *Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005)).

**Materially similar case.** This Court's decision in *Patel,* 959 F.3d 1330, is a mirror image of this case. There, officers "thr[ew] [Patel] to the ground" because they suspected he had resisted their efforts to secure him. *Id.* at 1332-33. This Court determined that even if Patel's "minor foot adjustment[s] and the turn of his head" could have been reasonably interpreted as resistance, throwing him to the ground was a grossly disproportionate reaction to those "minor transgressions." *Id.* at 1340 (quoting *Saunders v. Duke*, 766 F.3d 1262, 1269 (11th Cir. 2014)) (cleaned up). Here, the force applied (a throw to the ground) is the same as in *Patel*, as is the purported infraction (non-threatening, non-violent, movements that the officers supposedly interpreted as resistance). So even indulging the unreasonable assumption that McDonald and Mitchell could have reasonably interpreted MacIntyre's lifting of his hands as non-violent resistance, violently throwing MacIntyre to the ground for this minor transgression is excessive under *Patel*.

**Broader, clearly established principles.** Two broad, clearly established principles also demonstrate that the force used against MacIntyre was excessive.

First, qualified immunity is not appropriate where "none of the *Graham* factors" cut in the officers' favor. *See Stephens v. DeGiovanni*,

852 F.3d 1298, 1324 (11th Cir. 2017); *Lee*, 284 F.3d at 1200. As explained (at 23-26), all three *Graham* factors cut in MacIntyre's favor.

Second, a "police officer violates the Fourth Amendment, and is denied qualified immunity, if he or she uses gratuitous and excessive force against a suspect who is under control, not resisting, and obeying commands." *Richmond v. Badia*, 47 F.4th 1172, 1184 (11th Cir. 2022) (collecting cases). The officers violated that "broader, clearly established principle" here. *Id.* (quoting *Mercado*, 407 F.3d at 1159). Nothing in MacIntyre's complaint suggests he was out-of-control, resisting, or disobeying commands. The officers point to only one fact to justify the takedown: that MacIntyre was "raising his hands without instruction." App. 27. But because MacIntyre's movement "pos[ed] [no] threat … to Defendants … or anyone else," App. 57 (Dist. Ct. Op. (citing Compl. 10-11), violently throwing him to the ground was gratuitous and excessive. *See, e.g.*, *Patel*, 959 F.3d at 1339; *Ingram v. Kubik*, 30 F.4th 1241, 1254 (11th Cir. 2022); *see also Raiche v. Pietroski,* 623 F.3d 30, 39 (1st Cir. 2010); *Brown v. Lewis*, 779 F.3d 401, 419 (6th Cir. 2015); *Meredith v. Erath*, 342 F.3d 1057, 1061 (9th Cir. 2003); *Morris v. Noe*, 672 F.3d 1185, 1197-98 (10th Cir. 2012).

## IV. MacIntyre's state-law claims should be reinstated and remanded.

After dismissing MacIntyre's Section 1983 claims, the district court declined to exercise supplemental jurisdiction over his state-law claims

and thus did not address their merits. App. 62-63 (citing 28 U.S.C. §1367(c)). If this Court reverses on any of MacIntyre's Section 1983 claims, it should reinstate his state-law claims and remand so that the district court can address them in the first instance. *See Stephens v. DeGiovanni*, 852 F.3d 1298, 1329 (11th Cir. 2017).

## Conclusion

The district court's judgment should be reversed on all of MacIntyre's claims and the case remanded for further proceedings.

Respectfully submitted,

Elizabeth Brownstein
Nathaniel Allen Deacon
Student Counsel

/s/Brian Wolfman
Brian Wolfman
Becca Steinberg
Regina Wang
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave. NW, Suite 312
Washington, D.C. 20001
(202) 661-6746
wolfmanb@georgetown.edu

Counsel for Plaintiff-Appellant Scott MacIntyre

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