UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

NIA MILLS — CIVIL ACTION

VERSUS

WILLIAM ALLEN CONNELLY, ET AL. — NO. 22-00193-BAJ-EWD

RULING AND ORDER

This is a civil rights case. Plaintiff Nia Mills sued the West Baton Rouge Sheriff's Office (WBRSO) and several individual Defendants for alleged violations of state and federal law committed during a traffic stop in March 2021. Now before the Court is Defendants William Connelly, Mike Cazes, and John Gaudet's **Motion For Summary Judgment (Doc. 168, the "Motion")**, seeking summary judgment on all Plaintiff's claims and asserting the defense of qualified immunity. The Motion is opposed. (Doc. 173). For the reasons that follow, the Motion will be denied.

I. BACKGROUND

a. Summary Judgment Evidence

The facts set forth below are drawn from the parties' competing statements of material fact, (Docs. 115-3 (*hereinafter*, Defendants' SOF), 130-1 (*hereinafter*, Plaintiff's SOF), 181-1 (*hereinafter*, Reply SOF), and the competent summary judgment evidence submitted in support of these pleadings.

On March 26, 2021, Plaintiff and her partner, Cory Catchings, drove from Mississippi toward Texas in a rental car. (Reply SOF ¶ 1). While driving through

Louisiana, Plaintiff was subject to a traffic stop conducted by Defendant William Connelly, a Deputy employed by WBRSO. (Plaintiff's SOF ¶ 1). Connelly testified that before the stop, he "observed Plaintiff's vehicle make multiple lane changes without signaling[,] cross the solid yellow line of the roadway[,] and partially leave the roadway." (Defendants' SOF ¶ 2). Plaintiff denies this and testified that she committed no traffic violations prior to the stop. (Plaintiff's SOF ¶ 2). When Connelly approached the driver's side of Plaintiff's vehicle, he testified that he "immediately detected the odor of marijuana based upon his training and experience as a narcotics deputy." (Defendants' SOF ¶ 3). Plaintiff denies that there was any odor of marijuana and testified that "at no point did any member of the West Baton Rouge Sheriff's Office communicate to Ms. Mills that a marijuana odor had been detected in or coming from her vehicle." (Plaintiff's SOF ¶ 3).

Next, according to Connelly, he explained to Plaintiff why he had pulled her over and asked her to produce "her driver's license, insurance documentation, [and] vehicle registration[,] and to exit the car." (Defendants' SOF ¶ 4). Plaintiff testified that Connelly explained that he had pulled her over because her tires had "touched the yellow line" and said he was looking for stolen cars in the area. (Plaintiff's SOF ¶ 4). Plaintiff provided the rental agreement for the car. (*Id.* ¶ 5). Connelly testified that he advised Plaintiff of her *Miranda* rights[1] and asked if there was anything

[1] To give force to the Constitution's protection against compelled self-incrimination, the Court established in *Miranda v. Arizona*, 384 U.S. 436 (1966), "certain procedural safeguards that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation." *Duckworth v. Eagan*, 492 U.S. 195, 201 (1989).

illegal in the car, and Plaintiff responded in the negative. (Defendants' SOF ¶ 6). Plaintiff denies that she was ever told her *Miranda* rights. (Plaintiff's SOF ¶ 6). According to Connelly, he informed Plaintiff that he could smell marijuana, asked Plaintiff where she was travelling, and that Plaintiff responded, "[w]e are on our way to Texas to buy weed, I mean a car." (Defendants' SOF ¶ 7). Plaintiff denies that Connelly ever mentioned marijuana and that she ever said anything about buying marijuana. (Plaintiff's SOF ¶ 7). Connelly testified that because of Plaintiff's statement, he believed that Plaintiff and Catchings may have been trafficking drugs. (Defendants' SOF ¶ 8). Connelly also testified that Plaintiff refused to identify her passenger, (*Id.* ¶ 9), which Plaintiff again denies, (Plaintiff's SOF ¶ 9).

Next, Connelly approached the passenger side of the vehicle to speak with Catchings and testified that he "observed marijuana residue in plain view on the center console of the vehicle." (Defendants' SOF ¶ 12).[2] Plaintiff denies that there was any marijuana residue or marijuana in the car. (Plaintiff's SOF ¶ 12).[3] Connelly then asked Catchings to exit the car for a frisk search. (Defendants' SOF ¶ 13).

The parties dispute much of the following events. Connelly alleges that Catchings struck him and then fled. (Reply SOF ¶ 18). Plaintiff alleges that during the frisk, Connelley pressed a black object against Catchings' back after which Catchings ran. (*See id.* ¶ 18). What is undisputed is that Catchings ran from the

[2] Defendant Gaudet described "marijuana residue" as "just small pieces of marijuana." (Doc. 173-12 at 62).

[3] Apart from disputed testimony, there is no evidence that any marijuana was ever seized, and no charges were filed against Plaintiff for marijuana possession.

traffic stop, Defendant John Gaudet—another WBRSO Deputy—was engaged to pursue Catchings, and Catchings was ultimately arrested and charged with multiple crimes related to his flight. (*See* Plaintiff's SOF ¶¶ 14–23, 34). Catchings was not found to have any drugs or weapons when he was arrested.

After detaining Catchings, Gaudet returned to the traffic stop where Plaintiff and Connelly remained. (*Id.* ¶ 24). Plaintiff testified, but Defendants deny, that when she asked Gaudet why she was being held, he responded, "for you being you." (*See* Reply SOF ¶ 31). She also testified, and Defendants similarly deny, that Gaudet told her "that he had shot and killed [Catchings]," (*see id.* ¶ 32), and that when she asked for confirmation, he said, "I didn't shoot him[,] but I wanted to," (*see id.* ¶ 33). She also testified that Gaudet said something like, "your boyfriend isn't going to look much like your boyfriend when you see him again," which Defendants again deny. (*See id.* ¶ 34). Connelly's police dog was at the scene, and Plaintiff testified that Connelly told her that so long as she was complying, "he would not allow the [dog] to bite her." (*See id.* ¶ 37).

Connelly then began a warrantless search of the interior of the vehicle, based on probable cause from the alleged smell of marijuana. (Plaintiff's SOF ¶ 25). Connelly testified that he found a bag of marijuana in the car on the passenger side, which Plaintiff disputes. (*Id.*). Gaudet does not remember seeing a bag of marijuana but testified that he did see marijuana residue. (*See* Reply SOF ¶ 47). According to Connelly's declaration, the Louisiana State Crime Lab tested the contents of the bag found in the vehicle and identified its contents as marijuana. (Defendants' SOF ¶

38).[4] No evidence log or photos support the existence of the marijuana. (Doc. 173 at 14). Plaintiff's purse, which was in the car, was searched as well. (Plaintiff's SOF ¶ 28). It is undisputed that Connelly removed Plaintiff's "personal banking cards" from her purse at the traffic stop and took those cards with him to the Narcotics Office. (Reply SOF ¶ 41). Plaintiff herself was never searched. (*See id.* ¶ 43). Plaintiff testified, and Defendants deny, that during the search, Gaudet and Connelly "remarked on the potential resale or personal use of . . . [the] belongings" in the car. (*See id.* ¶ 45).

Plaintiff was taken to the Narcotics Office of WBRSO and handcuffed. (Plaintiff's SOF ¶ 29). Plaintiff testified that she asked for the opportunity to speak to her lawyer, but she was denied. (*See* Reply SOF ¶ 50). Connelly alleges that he told Plaintiff that "he believed he had probable cause to search her phone, laptop and purse to seek evidence of drug trafficking." (Defendants' SOF ¶ 29). Plaintiff denies that Connelly said this, and instead testified that he told her that "she had to consent to the search of her phone and laptop." (*See* Plaintiff's SOF ¶ 29). Connelly also testified that he told Plaintiff that she could either consent to the search, or she could leave the office without the items while he obtained a search warrant based on his "reasonable suspicion" that she was involved in drug trafficking. (Reply SOF ¶ 64). Plaintiff denies Connelly made any mention of a warrant, and that instead, Connelly told her that "if she wanted to leave with those items, she would have to consent to a

[4] Gaudet testified that the quantity of marijuana allegedly found in the car most likely would not have been a sufficient quantity for the Lab to test. (Doc. 173-12 at 62).

search." (*See* Plaintiff's SOF ¶ 30). Connelly testified that Plaintiff then consented to the searches. (Defendants' SOF ¶ 31). For her part, Plaintiff testified that while she did consent to the search of the cell phone and laptop, she felt coerced into doing so, and that Connelly never asked permission to search the cards he had removed from her purse. (Plaintiff's SOF ¶ 30). Connelly searched Plaintiff's text messages and messaging apps and her laptop for evidence of drug trafficking but found none. (Reply SOF ¶¶ 70–72).

In addition to searching Plaintiff's purse, phone, and laptop, it is undisputed that Connelly also ran Plaintiff's CashApp card through a card reader looking for large sums of money, which, according to his declaration, "would have provided evidentiary support as to his suspicion Plaintiff was involved in the illegal trafficking of drugs." (Reply SOF ¶ 51). Plaintiff's purse also contained a Chase debit card and three personal credit cards, but no prepaid or gift cards. (*See id.* ¶ 52). Plaintiff objected to Connelly's actions and said that "attempting withdrawals from her account was illegal," to which an unidentified deputy told her to "shut up." (*See id.* ¶ 53). Plaintiff testified that a WBRSO deputy then told her that "she was an immigrant without the rights of a U.S. citizen" and "threatened to deport [Plaintiff] if she continued to object to the search of her bank accounts." (*See id.* ¶ 54–55).[5] Connelly did not find that Plaintiff possessed significant sums in her CashApp account. (*See id* ¶ 57). Plaintiff testified, and submitted notifications from her bank

[5] It is undisputed that Plaintiff is a U.S. citizen. (*See* Reply SOF ¶ 54).

in support, that the deputies attempted two withdrawals from her CashApp card amounting to $6,000. (*See* Doc. 173 at 15).

Finally, Plaintiff was forced to leave the WBRSO office on foot without her rental car, (*see* Reply SOF ¶ 79), which had been towed from the location of the traffic stop to the WBRSO office, (Doc. 173 at 43). The car was impounded by WBRSO "because it was involved in criminal activity," (Reply SOF ¶ 79), although Connelly admitted that the "car itself wasn't evidence." (Doc. 173-11 at 54). Connelly also testified that someone contacted the rental car company, which wanted the car seized and impounded because of its involvement in criminal activity. (*Id.*). Plaintiff affirms that WBRSO does not maintain a policy with respect to the impound or towing of roadside vehicles. (*See* Reply SOF ¶ 82). Defendants qualify this by saying that WBRSO does not maintain any *written* such policy. (*Id.*). At some point, the car was delivered by an unknown person to an impound lot, but the lot has no record of receiving the car. (*See* Doc. 173 at 44).

Plaintiff was unable to retrieve the car after it was impounded and was later charged nearly $6,000 in late fees by the rental company and more than $1,000 in fees by the towing company. (*Id.* 84–84).

As Plaintiff left the WBRSO office on the day of the traffic stop, she was issued a summons for misdemeanor possession of marijuana and a traffic violation. (Plaintiff's SOF ¶ 26). She was never prosecuted. (*Id.*). When she appeared in court for the marijuana charge pursuant to the date on the summons, she was informed

that the case against her did not exist—in other words, no charges had ever been filed against her. (Doc. 173-10 at 47).

b. Procedural History

In March 2022, Plaintiff sued numerous WBRSO Defendants for their role in the events surrounding the traffic stop. (Doc. 1). In November 2023, with leave of the Court, Plaintiff filed a First Amended Complaint naming Defendants Connelly, Gaudet, Sheriff Michael Cazes, and John Does 1–10. (Doc. 130). Relevant here, Plaintiff alleges claims under 42 U.S.C. § 1983 for violations of the Fourth Amendment for: (1) unlawfully prolonged detention against Connelly; (2–5) unreasonable searches of the car, purse, Cash App Account, phone and computer against Connelly, Gaudet, and Doe Defendants; and (7) unreasonable seizure of the car against Connelly and Doe Defendants. Plaintiff also alleges state law claims against all defendants for: (6) invasion of privacy and (8) conversion. Plaintiff's Count Nine, for unlawful seizure of cash, was stayed pending the outcome of state forfeiture proceedings. (*See* Doc. 185).[6] Plaintiff's Count Ten, for municipal liability against Cazes, was dismissed with prejudice. (*See id.*).

Defendants move for summary judgment on all remaining claims, asserting the defense of qualified immunity. (Doc. 168). Plaintiff opposes the Defendants' Motion. (Doc. 173).

[6] As indicated in Plaintiff's opposition to the Motion, on May 2, 2024, Plaintiff and Catchings settled the forfeiture proceedings with the District Attorney's Office for the Eighteenth Judicial District, receiving around $1,300 of the $3,500 seized. (Doc. 173 at 36 n.129). Defendants have since moved to lift the stay and dismiss the claim for unlawful seizure of the cash. (Doc. 188).

II. LAW AND ANALYSIS

a. Standard

Federal Rule of Civil Procedure ("Rule") 56(a) provides that the Court may grant summary judgment only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

> In considering a motion for summary judgment, the district court must view the evidence through the prism of the substantive evidentiary burden. All justifiable inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. If the record, viewed in this light, could not lead a rational trier of fact to find for the nonmovant, summary judgment is proper. On the other hand, if the factfinder could reasonably find in the nonmovant's favor, then summary judgment is improper.
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> Finally, even if the standards of Rule 56 are met, a court has discretion to deny a motion for summary judgment if it believes that a better course would be to proceed to a full trial.

Kunin v. Feofanov, 69 F.3d 59, 61–62 (5th Cir. 1995) (quotation marks, alterations, and citations omitted); *see also Firman v. Life Ins. Co. of N. Am.*, 684 F.3d 533, 538 (5th Cir. 2012) (same); *accord Black v. J.I. Case Co.*, 22 F.3d 568, 572 (5th Cir. 1994) ("The Supreme Court has recognized that, even in the absence of a factual dispute, a district court has the power to 'deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.'" (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

Importantly, when conducting the summary judgment analysis, the Court is prohibited from evaluating the credibility of the witnesses, weighing the evidence, or

resolving factual disputes. *Guzman v. Allstate Assurance Co.*, 18 F.4th 157, 160 (5th Cir. 2021). Put differently, the Court may *not* credit certain witness testimony over other evidence: "By choosing which testimony to credit and which to discard, a court improperly weighs the evidence and resolves disputed issues in favor of the moving party. Doing so is tantamount to making a credibility determination, and—at this summary judgment stage—a court may make no credibility determinations." *Heinsohn v. Carabin & Shaw, P.C.*, 832 F.3d 224, 245 (5th Cir. 2016) (quotation marks, alterations, and citations omitted).

b. Analysis

Defendants seek dismissal of Plaintiffs' claims against Connelly and Gaudet, arguing that the claims cannot withstand a qualified immunity analysis. (Doc. 168-1 at 23).

The qualified immunity doctrine turns the traditional summary judgment burden on its head, requiring Plaintiff—the *non-moving* party—to "demonstrate the inapplicability of the defense."[7] *Rogers v. Jarrett*, 63 F.4th 971, 975 (5th Cir. 2023)

[7] The qualified immunity defense remains "the law of the land." *Jamison v. McClendon*, 476 F. Supp. 3d 386, 409 (S.D. Miss. 2020) (Reeves, J.) (reviewing the history and expansion of the qualified immunity doctrine, and calling for its elimination). But for how long? Scholars and at least one jurist of the U.S. Court of Appeals for the Fifth Circuit have recently called for its ouster because the doctrine is founded on a legal fiction derived from a reconstruction-era scrivener's error that removed a determinative 16-word clause from the published version of 42 U.S.C. § 1983. *See* Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 CAL. L. REV. 201 (2023). Restored to its proper place, this clause "unequivocally negate[s] the original interpretive premise for qualified immunity." *See Rogers v. Jarrett*, 63 F.4th 971, 979 (5th Cir. 2023) (Willett, J., concurring). It is not this Court's role to cast aside qualified immunity here, particularly absent any argument from the parties. Indeed, only the Supreme Court can definitively "overrule" the defense. *Id.* at 981. For now, the undersigned commends

(quotation marks omitted). To meet her burden, Plaintiff must "(1) raise a fact dispute on whether [her] constitutional rights were violated by [Connelly and Gaudet's] conduct, and (2) show those rights were clearly established at the time of the violation." *Id.* (quotation marks omitted). Still, even when conducting a qualified immunity analysis, the Court views all evidence and makes all reasonable inferences in the light most favorable to Plaintiff. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

i. Unlawfully Prolonged Traffic Stop

First, Plaintiff claims that she was subjected to an unlawfully prolonged traffic stop and detention, in violation of the Fourth Amendment. As a preliminary matter, the parties do not dispute that the initial traffic stop was justified. Because the initial stop was justified, the next step is to determine whether Defendant's subsequent actions were reasonably related in scope to the circumstances that justified the stop.

"A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). But "[i]f the officer develops reasonable suspicion of additional criminal activity during his investigation of the circumstances that originally caused the stop, he may further detain [the] occupants [of the vehicle] for a reasonable time while appropriately attempting to dispel this reasonable suspicion." *United States v. Andres*, 703 F.3d

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Professor Reinert's scholarship, and joins Judge Willett's call for the Supreme Court to "definitively grapple with § 1983's enacted text and decide whether it means what it says—and what, if anything, that means for § 1983 immunity jurisprudence." *Id.*

828, 833 (5th Cir. 2013). Reasonable suspicion exists when the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the search and seizure. *United States v. Santiago*, 310 F.3d 336, 340 (5th Cir. 2002). "The reasonable suspicion inquiry falls considerably short of 51% accuracy ... to be reasonable is not to be perfect." *Kansas v. Glover*, 589 U.S. 376, 381 (2020) (internal marks omitted). Courts must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005) (internal marks omitted).

Here, Defendants argue that the extension of the stop beyond the time necessary to deal with the minor traffic violation was justified because Connelly claims that he smelled marijuana, Plaintiff allegedly admitted she was on her way to buy weed before correcting herself, Connelly claims that he observed marijuana residue in the vehicle, Plaintiff allegedly refused to identify Catchings, and Catchings struck Connelly and then fled the scene. (*See* Doc. 168-1 at 11–14). Of course, but for Catchings' flight, Plaintiff flatly denies all of this. (*See* Doc. 173 at 20–24).

Defendants urge the Court to reject Plaintiff's denial that marijuana was present in the vehicle, arguing that Plaintiff has made conflicting statements regarding the presence of marijuana and that the court should disregard Plaintiff's self-serving declaration. (Doc. 168-1 at 12). The Court finds that Plaintiff does adequately deny that marijuana was present in the car. (*See* Doc. 173-2 ¶¶ 5, 7). Not only this, but Plaintiff also denies that the car smelled like marijuana, (*see id.* ¶ 4),

and that there was any marijuana visible anywhere in the car, including where Connelly and Gaudet said they saw it, (*see id.* ¶ 5). A court at summary judgment "may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). With respect to alleged discrepancies in Plaintiff's evidence, Defendants will have the opportunity to challenge Plaintiff's bias, credibility, and personal knowledge at trial. Regarding Plaintiff's declaration, "[a] party's own testimony is often 'self-serving,' but [courts] do not exclude it as incompetent for that reason alone." *C.R. Pittman Const. Co. v. Nat'l Fire Ins. Co. of Hartford*, 453 F. App'x 439, 443 (5th Cir. 2011). Indeed, as described above, but for Connelly and Gaudet's own declarations and testimony, no evidence whatsoever supports a finding that marijuana residue was visible in the car. And there are discrepancies in Defendants' *own* account of the events of the traffic stop. For instance, Gaudet testified that the amount of marijuana found in the car would not meet the threshold sufficient for testing by the State Crime Laboratory, (Doc. 173-12 at 62), whereas Connelly insists, without a shred of documentary evidence, that the marijuana was tested and came back positive for marijuana. Additionally, Gaudet never saw the alleged bag of marijuana in the vehicle. (*See* Reply SOF ¶ 47). In sum, the Court finds that there are genuine disputes of fact as to whether the car smelled like marijuana, whether marijuana was visible in the car, and whether marijuana was found in the car at all.

For this reason, viewing all evidence and making all reasonable inferences in the light most favorable to Plaintiff, *see Tolan*, 572 U.S. at 657, the Court finds that

Plaintiff has raised a fact dispute on whether her Fourth Amendment rights were violated by a prolonged traffic stop. Simply put, if events proceeded as Plaintiff testified, Connelly lacked reasonable suspicion to extend the stop to conduct a frisk of Catchings. Defendants essentially admit that when "viewing the facts [regarding the presence of marijuana] in a light most favorable to Plaintiff," justification for the stop must depend on later events, namely when Catchings allegedly struck Connelly. (Doc. 168-1 at 12).

But to even get Catchings out of the car for a frisk required reasonable suspicion, which, according to Plaintiff, was not present. "To justify a patdown of the driver or a passenger during a traffic stop . . . just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous." *Arizona v. Johnson*, 555 U.S. 323, 327 (2009). According to Plaintiff's competently supported version of events, which the Court must credit at this stage, she was pulled over for a minor traffic violation, the car did not smell like marijuana, no marijuana or other evidence of illegal activity was present in the vehicle, and nothing was irregular about her responses to Connelly's questions or with her documents. In other words, there was no reasonable suspicion to justify a patdown of Catchings.

Granted, Catchings did say, when asked, that he did not have identification, but this alone is not sufficient to establish reasonable suspicion to justify a frisk. In *United States v. Hill*, 752 F.3d 1029, 1038 (5th Cir. 2014), when police officers approached a vehicle in a "high crime area," one occupant walked away quickly, and

the other remained in the vehicle. *Id.* The U.S. Court of Appeals for the Fifth Circuit declined to find reasonable suspicion for a seizure and frisk of the person who remained in the vehicle when he told an officer that he did not have a driver's license. *Id.* ("We do not see how any of Hill's three answers [to the officer] here [—that the car window did not work, that he did not have a gun, and that he did not have a driver's license—] "support a reasonable suspicion that Hill was engaged in a drug crime."). Compared to *Hill*, Plaintiff's version of events provides even less support for Connelly's reasonable suspicion of Catchings. In sum, the stop was unconstitutionally prolonged because according to competent summary judgment evidence, Connelly was not justified in prolonging the traffic stop to frisk Catchings.

Having found that Plaintiff has raised a fact dispute as to whether the stop was unconstitutionally prolonged, the Court looks to the second step of the qualified immunity analysis—whether the right to a stop of appropriate length was "clearly established" at the time. *Jarrett*, 63 F.4th at 975. It was, and Defendants, who only argue that Plaintiff's right was not violated, do not meaningfully dispute this. (*See* Doc. 168-1 at 25). The requirements to justify a frisk have been set for more than half a century, *see Terry v. Ohio*, 392 U.S. 1, 19–20 (1968), and no undisputed facts here give rise to a reasonable suspicion that Catchings was armed and dangerous. Connelly's qualified immunity defense fails.

ii. Unlawful Search of Car and Purse

Next, Plaintiff claims that the searches of her car and purse violated the Fourth Amendment. (*See* Doc. 173 at 25). After Gaudet arrived at the scene of the

traffic stop, he and Connelly conducted a warrantless search of Plaintiff's car and purse, which, Defendants argue, was justified by the odor of marijuana allegedly emanating from the vehicle. (*See* Doc. 168-1 at 14).

Warrantless searches are unconstitutional unless they meet one of a limited number of exceptions. *United States v. Jenkins,* 46 F.3d 447, 451 (5th Cir. 1995). The automobile exception to the warrant requirement permits officers to search a vehicle "if they have probable cause to believe that the vehicle contains contraband or evidence of a crime." *United States v. Ned*, 637 F.3d 562, 567 (5th Cir. 2011) (citing *United States v. Buchner*, 7 F.3d 1149, 1154 (5th Cir. 1993)). "A probable cause determination should be based on the totality of the circumstances," and "[t]he evidence in support of probable cause 'must be viewed in light of the observations, knowledge, and training of the law enforcement officers involved in the warrantless search.'" *Id.* (first citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983), and then quoting *United States v. Muniz-Melchor*, 894 F.2d 1430, 1438 (5th Cir. 1990)).

The Court's decision on this claim, as with most of the remaining claims, hinges on the presence of marijuana and marijuana odor in the vehicle. As Defendants note, it is settled that the odor of marijuana provides probable cause to conduct a warrantless search of an automobile. (Doc. 168-1 at 14 (citing *United States v. Lork*, 132 F. App'x 34, 35–36 (5th Cir. 2005)). But here, as explained above, Plaintiff has successfully put into dispute whether there was marijuana in the car at all, and, relatedly, whether there was any marijuana odor emanating from the car. As further outlined above, the *only* support for the presence of marijuana is the testimony of

Connelly and Gaudet. There are no photos from the search, no lab report from the State Crime Lab, and no evidence log. No charges were filed against Plaintiff for marijuana possession.

This dispute precludes summary judgment and defeats qualified immunity, for now. If no marijuana was seen or smelled, the searches of both the car and purse must be deemed unconstitutional for the absence of probable cause pursuant to clearly established law. If marijuana was smelled or seen, the searches were constitutional. *See United States v. Phillips*, 261 F. App'x 740, 741 (per curiam) (5th Cir. 2008) (holding that marijuana lying in plain view on dashboard provided probable cause for warrantless search of vehicle). Viewing all evidence and making all reasonable inferences in the light most favorable to Plaintiff, *see Tolan*, 572 U.S. at 657, the Court must deny qualified immunity to Gaudet and Connelly at this stage on this claim.

iii. Unlawful Search of Phone and Laptop

Next, Plaintiff alleges that Defendants' search of her phone and laptop at the WBRSO Narcotics Office was unconstitutional because there was no probable cause for the search and her consent to the search was not voluntary.

In addition to the automobile exception, another exception to the Fourth Amendment's warrant requirement is a search conducted pursuant to voluntary consent. *United States v. Zavala*, 459 F. App'x 429, 433 (5th Cir. 2012). Courts examine six factors to determine the voluntariness of consent. *Id.* The six factors include (1) the voluntariness of the defendant's custodial status, (2) whether the

police engaged in coercive conduct, (3) the extent and degree of the defendant's cooperation with the police, (4) the defendant's knowledge of her right to refuse consent, (5) the defendant's level of intelligence and education, and (6) the belief of the defendant that a search will not reveal incriminating evidence. *Id.* "[N]o single factor is dispositive or controlling of the voluntariness issue." *U.S. v. Olivier-Becerril,* 861 F.2d 424, 426 (5th Cir. 1988). Instead, "[c]onsent will be found voluntary if after considering all the circumstances then obtaining, it may be established that it was the product of an essentially free and unconstrained choice by its maker." *Schneckloth v. Bustamonte,* 412 U.S. 218, 224 (1973) (quotations omitted). In most cases, some of these factors will not be seriously implicated, and only one or a subset of the factors will truly be at issue and drive the ultimate conclusion. *See, e.g., United States v. Kelley,* 981 F.2d 1464, 1470 (5th Cir. 1993); *United States v. Tedford,* 875 F.2d 446, 451–52 (5th Cir. 1989); *Olivier–Becerril,* 861 F.2d at 426.

1. Voluntariness of custodial status

The first factor, voluntariness of custodial status, militates against Defendants because Plaintiff was in custody at the WBRSO office and was even handcuffed at times. *United States v. Glenn*, 204 F. Supp. 3d 893, 904 (M.D. La. 2016), *aff'd sub nom. United States v. Walker*, 706 F. App'x 152 (5th Cir. 2017), and *aff'd sub nom. United States v. James*, 770 F. App'x 700 (5th Cir. 2019), and *aff'd*, 931 F.3d 424 (5th Cir. 2019).

2. Coercive police conduct

The second factor, coercive police conduct, also militates against Defendants. The primary disputed issue with respect to coercion is how Connelly sought Plaintiff's consent. Connelly says he told Plaintiff that she could either consent to the search or he would keep the items and get a search warrant to search them. (Defendants' SOF ¶ 29). In contrast, Plaintiff testified that he told her that "if she wanted to leave with those items, she would have to consent to a search." (*See* Plaintiff's SOF ¶ 30).

Plaintiff's version represents the quintessential coercive threat. *United States v. Alkheqani*, 78 F.4th 707, 720 (5th Cir. 2023) ("Conduct falling under [the coercion] category includes threats of force, promises, trickery, or deceit designed to pressure a suspect into consenting to searches"). On the other hand Connelly's version—consent now or warrant later—has been found to be *not* coercive, but only if the facts are sufficient to support the issuance of a search warrant. *See United States v. Williams*, 365 F.3d 399 (5th Cir. 2004); *United States v. Tompkins*, 130 F.3d 117 (5th Cir. 1997) (advising defendant that his hotel room would be secured and the officer would obtain a search warrant for the room when informing defendant of the consequences of his refusal to consent, did not render consent involuntary where officer had probable cause to obtain warrant). But here, too many disputed facts exist to determine whether Connelly had probable cause for a warrant. Certainly, if no marijuana was found in the car, Connelly would not have had probable cause to search Plaintiff's phone and laptop for evidence of drug trafficking, nor would any reasonable officer have thought he had probable cause. In fact, the entire detention

would be unconstitutional, vitiating consent independently of the coercive statement. *See United States v. Chavez-Villarreal*, 3 F.3d 124, 128 (5th Cir. 1993) ("[C]onsent does not remove the taint of an illegal detention if it is the product of that detention and not an independent act of free will.").

Even if marijuana was found in the car, absent any other incriminating information, Connelly did not have probable cause to search for evidence of drug trafficking because the quantity was so small. Consider what information Connelly possessed at that point if most of Plaintiff's version of events is true: a minor traffic violation; a passenger who fled and was later arrested but not found with contraband or weapons; a normal amount of credit cards and debit cards; cash for purchase of a vehicle in Texas; and an amount of marijuana under five grams, which at the time was punishable by no more than fifteen days in jail, La. Stat. Ann. § 40:966 (amended 2021).

Put simply, absolutely no evidence was found to suggest drug trafficking. Instead, all signs pointed to simple marijuana possession and personal use, and therefore far more would be required to establish probable cause to search Plaintiff's electronic devices. *See United States v. Ballard*, 384 F. App'x 358, 360 (5th Cir. 2010) (holding probable cause existed to search travel trailer behind truck where defendant was arrested for marijuana possession, had a prepaid phone, provided mistaken information about the truck's registration, had only one key, and acted defensive, among several other indicators of possible drug trafficking); *United States v. Morton*, 46 F.4th 331, 337 (5th Cir. 2022), *cert. denied,* 143 S. Ct. 2467, 216 L. Ed. 2d 435

(2023) (applying good faith exception to warrant requirement without reaching "close" question of probable cause where warrant to search phones for evidence of drug trafficking was issued and defendant was found with small quantities of ecstasy, marijuana, and *multiple* cell phones, which can indicate use of the phones for criminal activity). Defendants do not even attempt to argue otherwise, ignoring completely whether Connelly's threat of a warrant was justified. (*See* Doc. 168-1 at 16–17). In sum, under either version of how consent was sought, and whether marijuana was actually present in the vehicle or not, coercive tactics appear to be present that militate against consent.

3. Remaining factors

Under Plaintiff's version of events but adding marijuana to the equation, the Court finds that the remaining factors—cooperation, knowledge of the right to refuse, intelligence and education, and belief that the search would reveal incriminating evidence—do not compel a finding of voluntariness. Although Plaintiff may have been cooperative, or at least not uncooperative, this does not militate strongly for Defendants because Plaintiff's competent summary judgment evidence shows that she endured an extended period of detention that included threats from deputies about deportation, handcuffing, and the threat from Connelly that she could not leave with her electronics unless she consented to the search. Additionally, her knowledge of the right to refuse, her education level, and her belief that the search would reveal incriminating evidence were made irrelevant by the coercive threat from Connelly.

In sum, even if marijuana was found in the vehicle, which nothing but disputed testimony supports, but taking the rest of Plaintiff's competent evidence as true, her consent was clearly not voluntary. As explained above, Connelly did not have probable cause to otherwise search the phone and laptop, and therefore a fact dispute exists as to whether Plaintiff's constitutional rights were violated.

Under Plaintiff's complete version of events, in which no marijuana was found in the car, and which therefore describes an extended illegal detention, the Court finds that the remaining factors—cooperation, knowledge of the right to refuse, intelligence and education, and the belief that the search would reveal incriminating evidence—do nothing to scrub the taint of the illegal detention. Here, the consent was given during the illegal detention, there were no intervening circumstances, and the initial misconduct was inarguably flagrant. *See United States v. Macias*, 658 F.3d 509, 524 (5th Cir. 2011). For these reasons, under Plaintiff's version of events, consent was not voluntary. *See id.* (vacating denial of motion to suppress based on involuntary consent because "the causal chain between the illegal detention and Macias's consent to Trooper Barragan was not broken, and therefore the search was nonconsensual"). Because under Plaintiff's version, Connelly had no probable cause to search the laptop and phone, the search was unconstitutional.

The next question for qualified immunity purposes is whether Plaintiffs rights was "clearly established" at the time. *Jarrett*, 63 F.4th at 975. The Court finds that they were. First, taking Plaintiff's competent summary judgment evidence as true, the law was clearly established that consent given during a flagrantly

unconstitutional prolonged detention is not voluntary. *See, e.g. Macias*, 658 F.3d at 524. Second, even if marijuana was found in the vehicle, but taking all the rest of Plaintiff's competent summary judgment evidence as true, the law was clearly established that Plaintiff's consent was not voluntary, and that the search was therefore unconstitutional. As explained above, taking numerous versions of the disputed events as true, Connelly had no probable cause to search the phone and laptop for evidence of drug trafficking and therefore his threat to obtain a warrant if Plaintiff did not provide consent was quintessential coercion.

Qualified immunity poses the question of whether Connelly could have reasonably thought his actions were lawful, as "[p]olice officers who reasonably but mistakenly conclude that probable cause is present are entitled to qualified immunity." *Reitz v. Woods*, 85 F.4th 780, 792 (5th Cir. 2023) (quotations omitted). This inquiry asks "whether [t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates the right." *Id.* (quotations omitted). The Court concludes that Connelly could not reasonably have thought his threat to obtain a warrant was based on probable cause, *even if he did find* the small amount of marijuana in the vehicle. Crucially, "this is not a situation in which [the Court] must be concerned with second-guessing an officer's decision that was required to be made in a split second." *Evett v. DETNTFF*, 330 F.3d 681, 689 (5th Cir. 2003). Plaintiff had been in detention for hours at this point, and there was no exigency whatsoever. Moreover, searches of the vehicle and purse had already turned up nothing and Plaintiff's story was not controverted in any way. For these

reasons, Connelly's decision was not reasonable. *See Reitz*, 85 F.4th at 793 ("We cannot conclude that based on such minuscule information in an unhurried setting such as in this case, that arresting [Reitz] was objectively reasonable.").

It was likewise clearly established law that threatening a warrant where there was no probable cause to secure one is coercive police behavior that makes consent involuntary. *See Bumper v. North Carolina* 391 U.S. 543, 548–49 (1968) (noting that the government's burden of proving voluntariness of consent "cannot be discharged by showing no more than acquiescence to a claim of lawful authority" and finding such acquiescence where "consent" to search was given only after the investigating officer falsely asserted that he had a warrant). And, regardless, Plaintiff's competent summary judgment evidence puts into dispute whether Connelly threatened a warrant at all. Under the circumstances, it was not reasonable to think that Plaintiff's consent was voluntary.

For the foregoing reasons, Connelly's qualified immunity defense fails as to this claim.

iv. State Law Invasion of Privacy Claim

Defendants also move for summary judgment on Plaintiff's invasion of privacy claim related to the search of the phone and laptop. Louisiana courts have allowed tort actions for invasion of privacy which involves the basic right of a person to be let alone in his private affairs. *Walker-Jones v. Louisiana Ass'n of Educators*, No. CV 15-584, 2016 WL 1169473, at *2 (M.D. La. Mar. 22, 2016). To be actionable, a defendant's

conduct must be unreasonable and must seriously interfere with the plaintiff's privacy interest. *Id.*

Defendants' argument on this claim comes down to the validity of Plaintiff's consent to the search. (*See* Doc. 168-1 at 27–28). As the Court found above, however, numerous disputes of fact exist which preclude a finding that Plaintiff's consent was voluntary. Because summary judgment is not available on the constitutional claim, it is likewise unavailable on the invasion of privacy claim. Here, it is undisputed for purposes of summary judgment that Connelly searched Plaintiff's text messages, apps, emails, and other personal correspondence. (*See* Doc. 173 at 30). Plaintiff testified that she was "scared and traumatized" as a result. (*See id.*). Based on the circumstances, summary judgment is inappropriate on Plaintiff's invasion of privacy claim. Moreover, Defendants do not otherwise contest that Plaintiff's competent summary judgment evidence supports invasion of privacy. (*See* Doc. 168-1 at 27–28).

Summary judgment is likewise inappropriate on Plaintiff's vicarious liability claim against Sheriff Cazes for the invasion of privacy. The principle of vicarious liability is codified in Louisiana Civil Code article 2320, which provides that an employer is liable for the tortious acts of its employees "in the exercise of the functions in which they are employed." *Russell v. Noullet*, 98-0816 (La. 12/1/98) 721 So.2d 868, 871. Here, a jury could find that a tortious act occurred in the exercise of Connelly's functions as a law enforcement officer. This would necessarily implicate vicarious liability.

v. Search of Plaintiff's CashApp Card

Defendants next move for summary judgment on Plaintiff's claim under § 1983 that the search of her CashApp card and other cards was unconstitutional. Defendants base their argument on *United States v. Turner*, 839 F.3d 429 (5th Cir. 2016), in which the Fifth Circuit held that the defendant had no reasonable expectation of privacy in the magnetic strips on gift cards lawfully seized from his vehicle. The key words here are 'lawfully seized.' As explained above, if Plaintiff's version of events is true, there was no marijuana in the vehicle and no legal justification whatsoever for the seizure of Plaintiff's CashApp card. *See Kelly*, 302 F.3d at 293 ("Warrantless searches and seizures are per se unreasonable unless they fall within a few narrowly defined exceptions."). Under such circumstances, Defendant's seizure and subsequent search of the CashApp card was unconstitutional under clearly defined law, and therefore summary judgment is inappropriate.

vi. Seizure of Plaintiff's Rental Car

Next, Defendants move for summary judgment on Plaintiff's claim that the seizure of her rental car violated the Fourth Amendment.

To address this claim, the Court returns to Defendants' stated justification for impounding the car, which was that "it was involved in criminal activity," (Reply SOF ¶ 79), and, allegedly, rental car companies want a car seized under the circumstances, (Doc. 173-11 at 54). First off, under Plaintiff's version of evidence, the car was not involved in criminal activity at all because no marijuana was found in the vehicle. Under these circumstances there was absolutely no justification for the seizure and

qualified immunity fails. *See United States v. Kelly*, 302 F.3d 291, 293 (5th Cir. 2002) ("Warrantless searches and seizures are per se unreasonable unless they fall within a few narrowly defined exceptions.").

Even if there was marijuana in the car, the seizure has no basis in law. Defendants offer no legal authority whatsoever to support the seizure of a vehicle in which a small, misdemeanor level of marijuana is found. Plaintiff was issued a summons, never charged with a crime, and was permitted to walk out of the WBRSO Narcotics Office. The car had been towed from the scene of the traffic stop and was available for her to drive. No evidence suggests she was intoxicated, impaired, or unable to operate a vehicle.

It is clearly established law that under the automobile exception to the Fourth Amendment's warrant requirement, "[t]he police may seize a car from a public place without a warrant when they have probable cause to believe that the car itself is an instrument or evidence of crime." *Rountree v. Lopinto*, 976 F.3d 606, 609 (5th Cir. 2020) (citations omitted). But Connelly admitted that the "car itself wasn't evidence." (Doc. 173-11 at 54). And the car had been thoroughly searched to reveal no evidence of a crime aside from potentially a misdemeanor quantity of marijuana, which was no longer in the vehicle.

That leaves Connelly's testimony that the rental car company wanted the car impounded. (Doc. 168-7 at 107). But Connelly admittedly did not speak to the rental car company, nor does he recall who did so. He testified that someone said the rental car company wanted the car, and this is classic hearsay—excludable at summary

judgment. *See Bellard v. Gautreaux*, 675 F.3d 454, 461 (5th Cir. 2012) (holding that a district court may *sua sponte* exclude hearsay evidence at summary judgment even in the absence of any objection or briefing by the opposing party). Moreover, as Plaintiff argues, "Defendants' written discovery disavows any knowledge of any contact with the Hertz rental company." (Doc. 173 at 44 (citing interrogatory responses)). Connelly did testify that rental car companies generally "want the car sent to the [impound lot]" if things happen to the car "outside the scope of what [the company] want[s]," (Doc. 168-7 at 107), but absent any details or more specific information about when and under what circumstances rental car companies seek impoundment, this is pure speculation.

Nor do Defendants even attempt to argue that the community caretaking exception to the warrant requirement for seizure applies. (*See* Doc. 168 at 20–21). That doctrine, which allows for seizure of a vehicle to ensure that it does not become a nuisance on a public street where it could be stolen or damaged, *see United States v. McKinnon*, 681 F.3d 203, 209 (5th Cir. 2012), does not apply here because Plaintiff was allowed to leave of her own accord and indisputably could have taken the car with her.

In sum, a fact dispute remains as to whether Plaintiff's constitutional rights were violated by the seizure of her vehicle, even if marijuana was discovered in it. The question now is whether qualified immunity applies. The Court finds that it does not.

As explained above, the law is settled that warrantless seizures of vehicles are allowed under certain exceptions, none of which were present here. If no marijuana was found in the car, qualified immunity clearly fails. Even if marijuana was found in the car, qualified immunity still fails. Again, Connelly admitted that the "car itself wasn't evidence," (Doc. 173-11 at 54), and Defendants do not even attempt to argue that the community caretaking exception applied. Defendants merely state without any legal or factual authority that "Plaintiff did not have any right to have the rental vehicle released to her considering that the vehicle was involved in criminal activity." (Doc. 168-1 at 21). This will not suffice. Nor is there competent summary judgment evidence that the rental car company was ever contacted.

The Fifth Circuit recently afforded qualified immunity to a law enforcement officer who had impounded a vehicle after issuing a summons because the plaintiffs "fail[ed] to show that it is clearly established that impounding a vehicle when the available drivers were cited for a crime for which they could be arrested but were not amounted to an unconstitutional seizure." *Degenhardt v. Bintliff*, 117 F.4th 747, 757 (5th Cir. 2024). But this decision was made in the context of whether probable cause for an arrest alone justified the use of the community caretaker exception. *Id.* Here, there is no dispute that the community caretaker exception did not apply, and Defendants do not assert it to justify the seizure. Under the circumstances, the law was clearly established that the seizure was not allowed, and no competent summary judgment evidence or law supports Defendants argument that the rental car company was entitled to the car. The defense of qualified immunity fails.

vii. State Law Conversion of Plaintiff's Rental Car

Finally, Defendants move for summary judgment on Plaintiff's state law claim for conversion of the rental car, arguing that the tort cannot apply to a rental car because the lessee is not its owner. (Doc. 168-1 at 22). In Louisiana, conversion "is grounded on the unlawful interference with the ownership or possession of a movable." *Dual Drilling Co. v. Mills Equip. Invs., Inc.*, 98-0343 (La. 12/1/98), 721 So. 2d 853, 857; *see Louisiana Health Care Grp., Inc. v. Allegiance Health Mgmt., Inc.*, 2009-1093 (La. App. 3 Cir. 3/10/10), 32 So. 3d 1138, 1143 ("[C]onversion is an intentional act done in derogation of the plaintiff's possessory rights." (citation omitted)). The key words here are "ownership *or* possession." *Dual Drilling Co.*, 721 So. 2d at 857 (emphasis added). Defendants correctly argue that Plaintiff was not the owner of the rental car, (Doc. 168-1 at 22), but it is nevertheless undisputed that Plaintiff was the legally authorized lessor *in possession* of the car.

Because the Court has found that summary judgment is inappropriate on Plaintiff's claim that Defendants unlawfully seized the car, summary judgment is also inappropriate on whether Defendants committed conversion when they unlawfully interfered with Plaintiff's possession of the car. Defendants Motion on this claim is therefore denied.

III. CONCLUSION

Accordingly,

IT IS ORDERED that Defendants William Connelly, Sheriff Mike Cazes, and John Gaudet's **Motion For Summary Judgment (Doc. 168, the "Motion")** be and

is hereby **DENIED**. Plaintiff's claim for unlawful seizure of $3,567 has been stayed pending resolution of forfeiture proceedings in state court, (*see* Doc. 185), and therefore the Court withholds ruling on Defendant's Motion to the extent it seeks resolution of such claim.

IT IS FURTHER ORDERED that this matter be and is hereby **REFERRED** to the Magistrate Judge for the issuance of a scheduling order setting trial and any related deadlines.

Baton Rouge, Louisiana, this 21st day of November, 2024

JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA