

United States Court of Appeals
for the Fifth Circuit

No. 25-50093

United States Court of Appeals
Fifth Circuit

FILED

May 19, 2026

Lyle W. Cayce
Clerk

DENNIS B. ROBERSON,

Plaintiff—Appellant,

versus

ERIC DEANDA; ISHMAEL FLORES; PATRICK GILLIS; DONALD
ALSBROOKS,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:23-CV-145

Before ELROD, *Chief Judge*, and RICHMAN and WILLETT, *Circuit Judges*.

PER CURIAM:*

Dennis B. Roberson sued officers Eric DeAnda, Ishmael Flores, Patrick Gillis, and Donald Alsbrooks under 42 U.S.C. § 1983. The district court granted the officers' motion for summary judgment based on qualified

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

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immunity. Because there was probable cause to arrest Roberson and the officers did not use excessive force during the arrest, we AFFIRM.

I

A

Responding to a call about an intoxicated and reckless driver, officers DeAnda, Flores, Gillis, and Alsbrooks arrived at Roberson's business to investigate. The officers' body cameras recorded the encounter.

Deputy Flores was the first to arrive at the scene, where Roberson and the suspect Joe Redic were in front of a building. Deputy Flores told Roberson to move away, off of the porch, so that he could talk to Redic. Roberson refused to do so, repeatedly telling Deputy Flores to leave his property. Deputy Gillis arrived next and took over Deputy Flores's interaction with Roberson. Deputy Gillis twice asked Roberson to move to the side, as Roberson attempted to continue speaking to Deputy Flores, who was questioning Redic regarding the original call. Roberson did not follow Deputy Gillis's orders. In an effort to stop Roberson from interrupting Deputy Flores and Redic, Deputy Gillis stepped between Roberson and Deputy Flores. Deputy Gillis again asked Roberson to move out of the way, but Roberson did not comply. Roberson and Deputy Gillis stood facing each other for multiple seconds, after which Roberson turned to enter his business behind him. Deputy Gillis at this point grabbed Roberson to arrest him and pushed Roberson onto the railing of the porch to restrain his arms. Roberson cried out in pain as Deputies Gillis and DeAnda handcuffed his wrists behind his back.

Deputies Gillis and DeAnda moved Roberson away from the front door of his business, and Deputy DeAnda pushed Roberson onto the hood of a car. Roberson pulled out his phone to call 9-1-1 because he claimed that the handcuffs were hurting his back due to an alleged pre-existing back injury.

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However, Deputy DeAnda took Roberson's phone from him and threw it onto one of Roberson's vehicles. Both before and after his own attempt to call 9-1-1, Roberson repeatedly requested medical help and asked the officers to call for an ambulance. Deputies Gillis and DeAnda continued to restrain Roberson as Sergeant Alsbrook attempted to explain to Roberson why he was handcuffed. Sergeant Alsbrook, who was present for most of the encounter between Roberson and the deputies, later called the EMTs.

B

Roberson sued the officers for: (1) wrongful arrest by Deputies DeAnda and Gillis; (2) retaliatory arrest by Deputies DeAnda and Gillis; (3) excessive force by Deputies DeAnda and Gillis; (4) failure to intervene by Deputy Flores and Sergeant Alsbrook; and (5) misappropriation of property or property damage by Deputy DeAnda. The officers moved for summary judgment, and the district court granted the motion.

The district court determined that Deputies DeAnda and Gillis had probable cause to arrest Roberson because Roberson was interfering with public duties. The district court also held that Deputies DeAnda and Gillis did not use excessive force during Roberson's arrest. The district court then reasoned that Deputy Flores and Sergeant Alsbrook were not liable as bystanders because no violation of Roberson's constitutional rights had occurred and, separately, that Roberson's claim for deprivation of personal property was abandoned because Roberson failed to address it in his briefing.

Roberson timely appealed. Roberson argues that: (1) the Defendants were not entitled to the protection of qualified immunity because the district court erred in determining that there was probable cause for his arrest; (2) the district court failed to consider video evidence when examining the legality or reasonableness of the force used against him during the alleged unlawful arrest; and (3) the district court did not consider the damage that

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Deputy DeAnda caused to Roberson's personal property when Deputy DeAnda threw Roberson's phone and damaged Roberson's windshield.

II

We review the district court's ruling on summary judgment on the basis of qualified immunity *de novo*. *Westfall v. Luna*, 903 F.3d 534, 542 (5th Cir. 2018) (citation omitted). Summary judgment is appropriate "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). To overcome the defendant's claim of qualified immunity, "the plaintiff 'must rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law.'" *Ramirez v. Killian*, 113 F.4th 415, 421 (5th Cir. 2024) (quoting *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010)).

A police officer is entitled to qualified immunity unless, at the time of the incident, the police officer violated a clearly established constitutional right. *See Inst. for Free Speech v. Johnson*, 148 F.4th 318, 333–34 (5th Cir. 2025). The burden of proof falls on the plaintiff to show "that (1) the official violated a statutory or constitutional right and (2) the right was "'clearly established" at the time of the challenged conduct.'" *Bailey v. Ramos*, 125 F.4th 667, 674 (5th Cir. 2025) (quoting *Perniciaro v. Lea*, 901 F.3d 241, 255 (5th Cir. 2018)). The plaintiff does not need to provide the court with a case *directly* on point to show that the law was clearly established, but the plaintiff must point to an authority "at a sufficiently high level of specificity to put a reasonable official on notice that his conduct is definitively unlawful." *Id.* (quoting *Buehler v. Dear*, 27 F.4th 969, 981 (5th Cir. 2022)).

Where video evidence is available, we "are required to 'view the facts in the light depicted by the videotape.'" *Id.* (quoting *Boyd v. McNamara*, 74 F.4th 662, 665 (5th Cir. 2023)). "[W]e assign greater weight, even at the

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summary judgment stage, to the facts evident from video recordings taken at the scene.” *Id.* (quoting *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011)).

III

The district court correctly dismissed all of Roberson’s claims for: (1) wrongful arrest; (2) retaliatory arrest; (3) excessive force; (4) failure to intervene; and (5) deprivation of property.

A

The Fourth Amendment protects individuals from unlawful arrests by requiring warrantless arrests to be based on probable cause. *Id.* Probable cause exists when the “totality of facts and circumstances within a police officer’s knowledge at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed or was committing an offense.” *Id.* (quoting *Resendiz v. Miller*, 203 F.3d 902, 903 (5th Cir. 2000)). If the police officers at the time reasonably but mistakenly believe that probable cause is present, they are still entitled to qualified immunity because there “must ‘not even arguably be probable cause for the . . . arrest for the immunity to be lost.’” *Id.* at 677 (quoting *Haggerty v. Tex. S. Univ.*, 391 F.3d 653, 656 (5th Cir. 2004)).

The officers had probable cause to arrest Roberson for interference with public duties because Roberson continuously interrupted Deputy Flores’s questioning of Redic—a suspect—and did not comply with the officers’ orders for Roberson to step aside. Texas law is clear: Probable cause exists when a person disrupts, impedes, or otherwise interferes with a police officer while the officer is “performing a duty or exercising authority imposed or granted by law.” Tex. Penal Code Ann. § 38.15(a)(1); *see, e.g., Bailey*, 125 F.4th at 676–78 (determining that an officer, could reasonably, even if mistakenly, find probable cause when a defendant refused to comply

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with the police officer's orders to "go over there"); *Spiller v. Harris County*, 113 F.4th 573, 578–79 (5th Cir. 2024) (stating that a reasonable police officer could think a defendant is interfering with an ongoing investigation by refusing to leave); *Childers v. Iglesias*, 848 F.3d 412, 414–15 (5th Cir. 2017) (concluding that failing to move a truck at police officers' request constituted probable cause for arrest for interference with official duties).

Arguing with officers alone does not constitute an actionable offense under § 38.15. *Westfall*, 903 F.3d at 544; *see also Freeman v. Gore*, 483 F.3d 404, 413–414 (5th Cir. 2007) (holding that the officers did not have probable cause because the plaintiff's actions consisted exclusively of speech). However, Roberson failed on multiple occasions to comply with Deputies DeAnda's and Gillis's requests to move away. Instead, Roberson continued to interrupt Deputy Flores, who was trying to question Redic. Once Roberson refused to move away and interfered with the investigation, Roberson stepped away from the bounds of First Amendment protected speech and violated § 38.15 by interfering with Deputies DeAnda's and Gillis's official duties.

There was also probable cause to arrest Roberson when he started actively resisting his arrest. In the body-camera footage, Roberson yanked his arms away from the officers when they tried to restrain him. Texas law dictates that "pulling out of an officer's grasp is sufficient to constitute resisting arrest" under Texas Penal Code § 38.03. *Ramirez v. Martinez*, 716 F.3d 369, 376 (5th Cir. 2013); *see* Tex. Penal Code § 38.03. Even if the underlying arrest was unlawful, resisting arrest will give rise to probable cause. *Benfer v. City of Baytown*, 120 F.4th 1272, 1281 (5th Cir. 2024). Regardless of the lawfulness of the underlying arrest for interference with official duties, once Roberson pulled his arms away from DeAnda and Gillis, they had probable cause to arrest Roberson. Therefore, Deputies DeAnda

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and Gillis had probable cause to arrest Roberson and are entitled to qualified immunity on the wrongful- and retaliatory-arrest claims.

B

To prove an unconstitutional use of force, Roberson must demonstrate: (1) injury (2) that resulted directly and only from a use of force that was excessive and (3) that the excessiveness of the force was clearly unreasonable. *Killian*, 113 F.4th at 424. To determine if the force used was “excessive” or “unreasonable,” the inquiry is necessarily fact-intensive. *Id.* Roberson, however, does not point to facts in evidence demonstrating *how* an alleged use of excessive force resulted in his injury. Roberson only points to his own sworn declaration as evidence indicating that he sustained injuries to his back. Roberson claims these injuries required surgery and that he has been under the treatment and care of a physician for his physical injuries and for post-traumatic stress disorder. While an injury can be indicative of excessive force, Roberson’s declaration does not clarify the *extent* to which the injury was caused by the officers’ alleged force, as Roberson already had a pre-existing back condition. *See Westfall*, 903 F.3d at 549 (explaining how the defendant’s excessive force caused injury to the plaintiff’s spine that affected her daily life). The severity of the injury cannot be sufficient evidence of excessive force if there is no evidence in the record linking the injury to the events that transpired.

Furthermore, *Graham v. Connor* establishes several factors to help determine if an officer has used excessive force. 490 U.S. 386 (1989). We consider: “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Killian*, 113 F.4th at 424 (quoting *Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009)); *see Graham*, 490 U.S. at 396. Even though the facts are construed in favor of

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the nonmovant—in this case, Roberson—the officers’ use of force must still be evaluated from the perspective of a reasonable officer on the scene. *Id.*

The *Graham* factors suggest that the officers did not use excessive or unreasonable force in arresting Roberson. The first factor, the severity of the offense, arguably weighs against qualified immunity, as both interference and resisting arrest are misdemeanor offenses under Texas law. *See* Tex. Penal Code §§ 38.03(c), 38.15(b); *Westfall*, 903 F.3d at 547–48. But the second factor, whether the suspect poses an immediate threat to the safety of the officers or others, does not indicate a constitutional violation. The investigation of Redic was taking place in an unsecured location with Roberson interrupting agitatedly and refusing to comply with the officers’ orders on multiple occasions. *See Poole v. City of Shreveport*, 691 F.3d 624, 629 (5th Cir. 2012) (explaining that because the plaintiff refused to turn around and be handcuffed, he posed an immediate threat to the safety of the officers and actively resisted the officer’s instructions, thus the use of force was not excessive); *Buehler*, 27 F.4th at 988–89 (concluding that the officer had not used excessive force when the officer arrested an individual who disregarded lawful police orders, even though the individual was accused of minor offenses). The third factor, whether the individual was actively resisting arrest, is particularly applicable here, because Roberson was resisting arrest by pulling his arm away from the officers. Together, the *Graham* factors weigh against Roberson. Therefore, we affirm the district court’s holding that there was no use of excessive force.

C

Roberson’s claims against the bystander officers also fail. An officer is liable for failure to intervene only when that “officer: (1) knew a fellow officer was violating an individual’s constitutional rights, (2) was present at the scene of the constitutional violation, (3) had a reasonable opportunity to

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prevent the harm but nevertheless, (4) chose not to act.” *Joseph ex rel. Joseph v. Barlett*, 981 F.3d 319, 343 (5th Cir. 2020) (citing *Whitley v. Hannah*, 726 F.3d 631, 646 (5th Cir. 2013)). To trigger bystander liability successfully, the plaintiff must show more than “mere presence in the vicinity of the violation,” he must also show that the “officer ‘acquiesced in’ the alleged constitutional violation.” *Id.* (quoting *Whitley*, 726 F.3d at 647).

Nothing in Roberson’s response to the officers’ motion for summary judgment gives rise to bystander liability. Roberson maintains that “it is undisputed that Deputies Flores and Alsbrooks was [sic] present throughout the entire encounter and had ample opportunity to end the unlawful arrest of Mr. Roberson, but they chose not to.” But this does not address the first element of a failure-to-intervene claim: Because there was no constitutional violation, the fellow officers could not have *known* a constitutional violation was occurring. *Compare Joseph*, 981 F.3d at 343–45 (holding that summary judgment was not appropriate because the bystander officers could have known that a constitutional violation occurred when other officers may have used excessive force), *with Buehler*, 27 F.4th at 989 (concluding that bystander liability claim failed because plaintiff could not prove excessive force). Therefore, the district court’s holding that Deputy Flores and Sergeant Alsbrook were not liable as bystanders is affirmed.

D

Finally, Roberson may no longer raise a misappropriation-of-property or property-damage claim against Deputy DeAnda.¹ Roberson has made no

¹ The district court’s opinion stated that “when a party fails to pursue a claim or defense beyond the party’s initial complaint, the claim is deemed abandoned or waived.” Waiver and forfeiture have oftentimes been used interchangeably in our opinions despite differences between the two. Forfeiture is the failure to make a “timely assertion of a right”

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legal arguments in this court to defend this claim, simply arguing the district court should have considered the body-camera footage that depicted Deputy DeAnda throwing the phone. However, his summary judgment filings do not mention damages suffered or the deprivation of property itself. Roberson nonetheless insists the district court should have examined the video evidence to determine if there was property damage, but the court is not required to assess the footage for claims not defended in the party's briefing. *See RSR Corp. v. Int'l Ins. Co.*, 612 F.3d 851, 857 (5th Cir. 2010) (explaining courts have no duty to search the record and the party opposing summary judgment is required to identify "specific evidence in the record and to articulate precisely how this evidence supports his claim"). Because Roberson did not adequately raise his claim in district courts, he may not do so now. *Indigenous Peoples of Coastal Bend v. U. S. Army Corps of Eng'rs*, 132 F.4th 872, 882–83 (5th Cir. 2025); *Rosendale Missionary Baptist Church v. New Orleans City*, 641 F.3d 86, 90 (5th Cir. 2011).

* * *

For the above reasons, we AFFIRM.

while waiver is the "intentional relinquishment or abandonment of a known right." *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).