NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-10089

RAFAEL CENDAN,

Plaintiff-Appellant,

versus

OFFICER JOSE TRUJILLO,
M.D.P.D. Badge #04862 Individually and Official Capacity,
OFFICER JASON RODRIGUEZ,
M.D.P.D. Badge #07663 Individually and Official Capacity,
OFFICER JESSICA COELLO,
M.D.P.D. Badge #07914 Individually and Official Capacity,
OFFICER JORGE GONZALEZ,
M.D.P.D. Badge #07959 Individually and Official Capacity,
OFFICER RICHARD PICHARD,
M.D.P.D. Badge #05670 Individually and Official Capacity,
OFFICER MARLOYS MORALES,
M.D.P.D. Badge #05322 Individually and Official Capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:16-cv-21775-KMW

Before NEWSOM, ABUDU, and KIDD, Circuit Judges.

PER CURIAM:

Rafael Cendan was severely beaten by multiple police officers following a high-speed car chase. Though he initially resisted the officers' efforts to subdue him, he eventually stopped resisting and was arrested. Cendan brought suit under 42 U.S.C. § 1983, alleging that the officers' use of force against him was unconstitutionally excessive. The district court granted the officers' summary judgment motion in part and denied it in part, holding that they were entitled to qualified immunity for the period of time when Cendan was resisting arrest but not thereafter. He proceeded to trial on the latter claim, and a jury found that the officers did not use excessive force during the post-resistance phase of the encounter. We must now determine whether Cendan can recover damages for the during-resistance phase. We hold that the officers are entitled to qualified immunity, and therefore affirm.

I

A

Cendan robbed a Dollar Tree store at gunpoint. In an effort to evade the police, he engaged the officers in a ten-minute high-

speed chase: He ran through red lights, drove into oncoming traffic, and whizzed past an elementary school where students and teachers were walking around outside.

The chase ended when officers cornered Cendan in a parking lot that was monitored by video surveillance. Though much of the episode is concealed by the myriad officers' bodies and shadows, here's what the video reveals:

- One of the officers' cars enters the video from below in order to block Cendan's path, with a second officer following closely behind.
- Cendan enters from the left, barreling through the first squad car, and narrowly stopping before hitting the second. He tries to escape by reversing, but five officers surround his truck with guns drawn.
- Within seconds, seven officers surround Cendan's truck, breaking in to pull him out, punching him, and shouting commands. They yank the driver-side door open, grab Cendan, and drag him from the car.
- With Cendan on the ground, the officers surround him and pummel him.
- Cendan's truck is seemingly still in reverse, so one of the increasing number of officers parks it while six others continue to punch and kick him.

- Shortly after the officers stop beating Cendan, the video shows one officer bizarrely flexing his muscles in celebration.
- All told, the video shows 23 officers on the scene and a period of about 45 seconds during which they used force on Cendan.

One thing the video does *not* reveal: whether Cendan resisted and, if so, at what point he stopped.

Cendan suffered serious injuries: His right eye popped out of its socket, and his left eye was severely injured. He is now blind in his right eye and has significantly impaired vision in the left. He had 25 fractured bones in his face alone and part of his skull was caved in. He lost his top front teeth, and a bone still protrudes into his mouth. He had a broken jaw and still has a deviated septum. Now, more than ten years later, his fellow inmates call him "The Martian" on account of his resulting deformities.

Cendan pleaded guilty in state court to, and was convicted of, armed robbery, eluding the police, battery to a police officer, and resisting arrest.

B

Cendan brought suit, pro se, under 42 U.S. § 1983 against more than 30 Miami-Dade police officers, alleging that they used excessive force against him during and after his arrest. The magistrate judge recommended that the district court dismiss the claim

except as to six defendants, and the district court agreed. Those six officers moved for summary judgment.

The district court partially granted and partially denied the officers' summary judgment motion. First, the court held that Cendan could pursue his excessive-force claim even though he was adjudicated guilty of resisting arrest in state court without running afoul of the bar set by *Heck v. Humphrey*, 512 U.S. 477 (1994). In the court's view, there was a plausible factual scenario in which Cendan stopped resisting arrest and the officers thereafter used excessive force. However, the court further held that Cendan was "prohibited from arguing or asserting at trial or to th[at] Court that his actions before police dragged him to the ground were compliant, lawful, or otherwise reasonable under the circumstances." Dist. Ct. Order, Sep. 24, 2018, at 17. He could not "challeng[e] his state court convictions," and he would "have to prove, among other things, that his damages were sustained after he was restrained by officers, not before." *Id*. at 17–18. In essence, the court held that although Cendan's claim was not *Heck*-barred, it was *Heck*-limited.

Second, the court bifurcated its qualified-immunity analysis into two parts: (1) before and during Cendan's resistance to arrest; and (2) after he ceased resisting. Analyzing the former, the court agreed with the officers that Cendan committed serious crimes, posed a substantial threat of harm to the public because of his high-speed chase, and resisted arrest. That authorized the officers, in the court's view, to use force (1) in striking Cendan while he was still in his truck, (2) in yanking him out of his truck and throwing

him onto the ground, and (3) while he was on the ground and still resisting arrest. Therefore, the court granted qualified immunity to the officers for the period during which Cendan was resisting.

Moving to the latter portion of the episode, the court held that there was, at a minimum, a genuine dispute of material fact as to whether the officers used excessive force after Cendan stopped resisting. And, the court held, because circuit precedent clearly establishes the broad principle that "gratuitous use of force when a criminal suspect is not resisting arrest constitutes excessive force," the officers' conduct clearly violated the Fourth Amendment. Accordingly, the court denied qualified immunity to the officers for Cendan's post-resistance conduct. The officers appealed the partial denial of summary judgment. *Cendan v. Trujillo*, 779 F. App'x 688, 689 (11th Cir. 2019). A panel of this Court affirmed the district court on both its *Heck* analysis and its qualified-immunity-for-post-resistance-conduct analysis. *Id*. Following a trial concerning the post-resistance phase of the episode, the jury returned a verdict in favor of the officers, finding that they did not use excessive force after Cendan stopped resisting.

This is Cendan's appeal of the district court's grant of summary judgment to the officers for the period of time during which he was resisting.

II

"We review *de novo* district-court orders on summary judgment, taking the facts in the best light to the nonmoving party and drawing all reasonable inferences in that party's favor." *Hinson v.*

Bias, 927 F.3d 1103, 1115 (11th Cir. 2019). "Summary judgment is appropriate when no genuine issues of material fact exist and the law entitles the movant to judgment on the record." *Brooks v. Miller*, 78 F.4th 1267, 1277 (11th Cir. 2023) (citation modified). Where there is video footage of the relevant events, a court should "view[] the facts in the light depicted by the videotape." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

III

In order to prevail, Cendan must show that, when viewed in the light most favorable to him, (1) there is a genuine dispute of material fact that could show a violation of his Fourth Amendment right to be free from excessive force, and (2) his right was clearly established at the time the officers used the challenged force. *Patel v. City of Madison*, 959 F.3d 1330, 1338 (11th Cir. 2020). We hold that Cendan has not identified a clearly established right, and, therefore, we do not reach the merits of his claim. *See Pearson v. Callahan*, 555 U.S. 223, 236–37 (2009).

In our circuit, "[a] right may be clearly established for qualified immunity purposes in one of three ways: (1) case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law." *Gilmore v. Ga. Dep't of Corr.*, 144 F.4th 1246, 1258 (11th Cir. 2025) (en banc). Cendan expressly conceded at oral argument that he is not claiming that his case fits

into either the first or third "buckets," so he must identify a "broad statement of principle . . . that clearly establishes a constitutional right." *Id*.

He has not done so. Cendan offers a couple of different "principles," but neither suffices. For instance, he contends that "the Constitution has always protected a person's right to be free from a disproportionate use of force during an arrest." Br. of Appellant at 24 (citation modified). But that articulation frames matters at too high a level of generality. The Supreme Court has long required plaintiffs to point to a right clearly established in a "more particularized and hence more relevant, sense"—in particular, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Separately, Cendan highlights the principle that officers cannot use gratuitous force "even where the person [is] resisting arrest." Br. of Appellant at 25. That much is true but insufficient, as it really just re-packages the merits. It may inform an officer that a resisting plaintiff *can* win on an excessive-force claim, but it does not clearly establish for that officer what type or level of force is constitutionally excessive. *See Mercado v. City of Orlando*, 407 F.3d 1152, 1159 (11th Cir. 2005). Cendan has not identified a principle of law that would communicate to the reasonable officer that the force used here was excessive relative to his resistance. Because he has not met his burden at this stage, *Jordan v. Doe*, 38 F.3d 1559, 1565 (11th Cir. 1994), the officers are entitled to qualified immunity.

IV

Because Cendan has not identified clearly established law sufficient to overcome qualified immunity, the district court was correct to grant summary judgment to the officers. For that reason, we **AFFIRM**.[1]

[1] Cendan separately challenges the district court's application of *Heck v. Humphrey*. Because the district court's qualified-immunity holding independently supports its summary judgment ruling, we need not address the *Heck* issue.

ABUDU, Circuit Judge, Dissenting in Part:

This appeal arises from a 42 U.S.C. § 1983 excessive force suit Rafael Cendan filed against several police officers following his arrest and conviction for various state crimes related to an armed robbery and high-speed car chase. The officers moved for summary judgment, asserting they were entitled to qualified immunity because they acted reasonably under the circumstances and violated no clearly established federal law.[1] The district court partially

[1] The officers also argued, and the district court ultimately held, that *Heck v. Humphrey* barred a portion of Cendan's claims. *See* 512 U.S. 477 (1994). *Heck* bars a Section 1983 suit when the plaintiff has a criminal conviction for related conduct, and "a judgment in favor of the plaintiff" on his civil claims "would necessarily imply the invalidity of his [prior] conviction or sentence." *Id.* at 487. Here, Cendan has a state court conviction for resisting arrest with violence, but that conviction does not automatically conflict with any part of his civil suit. We have held that "a successful [Section] 1983 claim against an arresting officer for using excessive force does not necessarily negate an element of the underlying charge of resisting arrest with violence. . . . [A]s long as it is possible that a § 1983 suit would not negate the underlying conviction, then the suit is not *Heck*-barred." *Dyer v. Lee*, 488 F.3d 876, 879–80 (11th Cir. 2007). No facts from Cendan's conviction necessarily conflict with this suit. There was no state-court plea colloquy outlining the facts of his criminal offense. In that instance, we refer to the facts in the indictment. *See id.* at 882; *Hadley v. Gutierrez*, 526 F.3d 1324, 1331 n.6 (11th Cir. 2008); *Sconiers v. Lockhart*, 946 F.3d 1256, 1269 (11th Cir. 2020). Cendan's indictment stated that he "did unlawfully, knowingly, willfully and feloniously resist, obstruct or oppose [Officers] Jason Rodriguez and/or Jessica Colello and/or Jorge [G]onzalez or any combination thereof . . . ." Because it was pleaded in the disjunctive, resistance against any one of those officers is sufficient for the conviction. *See Dyer*, 488 F.3d at 882 n.6. So, all we know is that Cendan resisted one of those officers at some point during the arrest. The state court record provides no details on

granted the officers' motion, ruling that they were entitled to qualified immunity for their actions "(i) when they struck [Cendan] while he was still in his truck, refusing to open the door and peacefully exit; (ii) when they brought him out of his car and to the ground; and (iii) *at any other time he was resisting arrest*." The court, however, denied the officers qualified immunity for their behavior "after [Cendan] had ceased resisting arrest and posed no threat." It noted that there was "conflicting evidence on when [Cendan] stopped resisting arrest and what force [the officers] applied to [Cendan] after his resistance ended . . . ." Thus, the court held that a "genuine dispute of material fact exists as to whether Defendants violated Plaintiff's constitutional right to be free from the excessive use of force by beating him even though he had ceased any resistance and posed no possible threat to any officer." Yet, the court never indicated at what point during the timeline it determined that Cendan was no longer resisting arrest and, therefore, no longer posed a threat which would have rendered any use of excessive force unlawful. Moreover, neither the court's written nor oral jury

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how or when he did so. The district court improperly assumed that Cendan must have resisted during the first half of the interaction, before he was secured, but that is unsupported. It could have been while he was still in his truck, once he was on the ground, or even minutes after he was handcuffed. Thus, there is a possibility that Cendan resisted at a time other than when the officers applied excessive force, meaning *Heck* does not bar the claim because a judgment in his favor would not be "logically contradictory" to his criminal conviction. *See id.* at 882–83, 84; *see Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185, 1195–96 (11th Cir. 2020).

instructions identified when in the timeline after the grant of qualified immunity the jury's factual findings should begin.

The district court's opinion should be affirmed as to the grant of qualified immunity at points (i) and (ii), i.e., for everything that occurred between the time Cendan was in the vehicle up until the time the officers forcibly removed him from the truck and threw him to the ground. Beyond that, the record simply is not clear as to when he stopped resisting arrest—and at what point the district court and the jury determined he stopped resisting arrest—for purposes of deciding at what point during the interaction the officers' actions transformed from constitutional behavior to a Fourth Amendment violation. For that reason, we should vacate the partial summary judgment order and remand this case to the district court to clarify its order and for any other proceedings consistent with its revised order.

Cendan contended that he stopped resisting arrest and put his hands in the air after the chase ended and his truck came to a stop. Up until that point, he had sped through the streets of Miami and crashed into a police cruiser. Yet, he averred that, once the police approached his car, he ceased all resistance and attempted to comply with the officers' conflicting demands to raise his arms above his head, shut off his engine, open his door, and lower his window. Cendan further attested that he told the officers that he would yield to their commands, informed them that he was in his 60s, and begged them not to beat him up. While the video itself is not very clear, it does show that officers dragged Cendan from his

truck, threw him on the ground, and that at least eight officers quickly surrounded him. Many of those officers can be seen punching and kicking him multiple times while he was on the ground. By the end of the video, at least 25 officers run up to and gather around Cendan as he appears to remain stationary on the ground.

At summary judgment, we must construe the facts in favor of the non-movant and rely "on his version of the encounter where it is not contradicted by the video recording." *Patel v. City of Madison*, 959 F.3d 1330, 1339 (11th Cir. 2020). As the Majority notes, the video of this encounter is not clear enough to contradict Cendan's account. Maj. Op. at 3–4. We do know that, by the end of the encounter, Cendan "suffered a broken right eye socket, a broken nose, a fractured cheek bone, a fractured jaw, loss of top front teeth, and internal bleeding, among other injuries." *Cendan v. Trujillo*, 779 F. App'x 688, 689 n.1 (11th Cir. 2019).

"The Fourth Amendment's freedom from unreasonable searches and seizures encompasses the plain right to be free from the use of excessive force in the course of an arrest." *Stephens v. DeGiovanni*, 852 F.3d 1298, 1321 (11th Cir. 2017) (emphasis omitted) (quoting *Lee v. Ferraro*, 284 F.3d 1188, 1197 (11th Cir. 2002)). The inquiry into what force is reasonable requires a fact-intensive analysis of the totality of the circumstances.[2] *Barnes v. Felix*, 605 U.S.

[2] We assess the following factors in the totality of the circumstances analysis: (1) the severity of the crime at issue, (2) whether the suspect posed an imme-

73, 80 (2025). Our precedent is clear that a "gratuitous use of force when a criminal suspect is not resisting arrest constitutes excessive force," *Hadley*, 526 F.3d at 1330, even when they are not handcuffed, *see DeGiovanni*, 852 F.3d at 1328 n.33 ("While [many excessive force] cases involve plaintiffs who were handcuffed after their arrest before excessive force was used by the officer, the same rationale applies to the use of gratuitous force when the excessive force is applied prior to the handcuffing but in the course of the investigation and arrest . . . ."); *Patel*, 959 F.3d at 1340 (same); *Ingram v. Kubik*, 30 F.4th 1241, 1252–54 (11th Cir. 2022) ("[U]sing seriously injurious force against even a previously fractious arrestee is unlawful if at the time of arrest he was offering no resistance *at all*. And it is of no moment that [the defendant] was not yet under physical control in that circumstance." (emphasis in original) (citation and quotation marks omitted)), *abrogated on other grounds by Case v. Montana*, 607 U.S. 107 (2026); *see, e.g.*, *Brown v. City of Huntsville*, 608 F.3d 724, 739–40 (11th Cir. 2010).

Because the district court's order is unclear as to when Cendan stopped resisting arrest and when the officers secured him,

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diate threat to officers or others, and (3) whether the suspect was actively resisting or attempting to flee—while also considering related proportionality factors such as (4) the need for force, (5) the relationship between the need and amount of force used, and (6) the extent of the injury inflicted. *See Barnes*, 605 U.S. at 80; *Graham v. Connor*, 490 U.S. 386, 396 (1989); *Acosta v. Miami-Dade Cnty.*, 97 F.4th 1233, 1239 (11th Cir. 2024). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396; *McCullough v. Antolini*, 559 F.3d 1201, 1206 (11th Cir. 2009).

we do not know whether the force officers continued to render was reasonable and proportionate under the totality of the circumstances. Moreover, there was conflicting testimony from the officers and Cendan regarding the level of threat, if any, Cendan continued to pose after the officers pulled him from the truck.

The district court's instructions only asked the jury whether the officers "intentionally committed acts that violated Plaintiff Rafael Cendan's right not to be subjected to excessive or unreasonable force *after* he was subdued and not resisting," not at what point he was subdued. Thus, even after the trial, it remains unclear as to when qualified immunity ended and the potential excessive force began.

Because the district court's opinion is unclear, "we therefore cannot evaluate whether the district court erred in reaching that legal conclusion." *Guevara v. Lafise Corp.*, 127 F.4th 824, 832 (11th Cir. 2025). As an appellate court, we do not know the time period we are supposed to be analyzing when determining if the officers' actions were reasonable. *Cf. Danley v. Allen*, 480 F.3d 1090, 1092 (11th Cir. 2007) (vacating and noting that district court orders "should contain sufficient explanations of their rulings so as to provide this Court with an opportunity to engage in meaningful appellate review"). Therefore, we should vacate the partial summary judgment order granting qualified immunity and remand it to the

district court for clarification as to when the officers were no longer entitled to qualified immunity.[3]

For the foregoing reasons, I respectfully dissent.

[3] Depending on the district court's resolution of the partial summary judgment order, it would then have the opportunity to revisit its related trial rulings and consider whether a new trial is warranted.