United States Court of Appeals

for the

Fifth Circuit

Case No. 24-30121

RAYNALDO MARKEITH SAMPY, JR.,

Plaintiff-Appellant,

v.

JONATHAN PRICE RABB, ASHER REAUX, BRANDON LAMAR DUGAS, IAN JAMES JOURNET, SEGUS RAMON JOLIVETTE, JORDAN KAMAL COLLA, LAFAYETTE CONSOLIDATED GOVERNMENT,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, LAFAYETTE, CASE NO. 6:19-CV-580 HONORABLE DAVID CLEVELAND JOSEPH, U.S. DISTRICT JUDGE

BRIEF FOR PLAINTIFF-APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made to allow the judges of this Court to evaluate possible disqualification or recusal.

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Raynaldo Markeith Sampy Jr.

Defendants-Appellees:
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Brandon Lamar Dugas
Segus Ramon Jolivette
Ian James Journet
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STATEMENT REGARDING ORAL ARGUMENT

Appellant Raynaldo Markeith Sampy Jr. waives oral argument. Decisions from this Court and circuit courts nationwide show that *Heck v. Humphrey*, 512 U.S. 477 (1994) does not bar an excessive force claim regarding force used after consummation of a plaintiff's criminal act. This is true even when the force is used immediately after the criminal act occurred and in response to it. It is readily apparent, then, that the lower court erred here by dismissing Plaintiff's excessive force claims regarding two uses of force that even Defendants concede occurred after Plaintiff's criminal act concluded. The law and its application to this case are thus clear and thereby render oral argument unnecessary.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes **Page(s)**

Other Authorities **Page(s)**

INTRODUCTION

This appeal concerns two alleged excessive force violations that the jury was barred from considering due to the lower court's erroneous application of *Heck v. Humphrey*, 512 U.S. 477 (1994) at the motion to dismiss stage.[1] At bottom, despite Plaintiff-Appellant's ("Plaintiff" or "Mr. Sampy") criminal conviction for "simple battery" of an officer, the two instances of excessive force at issue occurred *subsequent* to events underlying Mr. Sampy's conviction. Because these alleged excessive force violations are temporally and conceptually distinct from Mr. Sampy's conviction, they are not barred by *Heck* and should have been presented to the jury. Since they were not, this case should be remanded and a new trial granted as to these two excessive force claims and their attendant retaliation and bystander liability claims.

By way of background, on May 5, 2018, Plaintiff-Appellant Raynaldo Sampy Jr. was asleep in his truck in the parking lot of a Sid's One Stop convenience store in Lafayette, Louisiana. Mr. Sampy awoke to seven police officers surrounding his vehicle: Defendant officers Jonathan Rabb, Asher Reaux, Ian Journet, Segus Jolivette, Michael Darbonne, Jordan Colla, and Brandon Dugas. These officers

[1] This appeal does not concern the third alleged instance of excessive force that the jury adjudicated in Defendants' favor. For the avoidance of any doubt, no challenge to the sufficiency of the evidence presented at trial on that count is being made in this appeal. No motion for summary judgment was ever filed by Defendants.

promptly dragged Mr. Sampy from his truck, threw him facedown onto the concrete, handcuffed his hands behind his back; and then dragged him to a nearby police vehicle, where they threw him, once again facedown, onto the hood.

With multiple officers pinning him to the hood of the police car, Mr. Sampy was understandably disoriented. He kicked backward and struck Rabb in the shin. Rabb then proceeded to take three actions. *First*, he grabbed and bound both of Mr. Sampy's legs with his hands. *Second*, he lifted Mr. Sampy's now hand-bound legs into the air. At this juncture, Mr. Sampy's weight was resting entirely on his face, which was still pressed to the hood of the police cruiser. *Third*, and subsequent to the previous two actions of binding of Mr. Sampy's legs and raising them into the air, Rabb pulled Mr. Sampy's hand-bound legs further up and then yanked them backwards so as to pull Mr. Sampy off the hood of the car and onto the ground—a maneuver known as "snapping the sheet." Mr. Sampy's body slammed face-first onto the pavement. Because Mr. Sampy's arms were handcuffed behind his back, he was unable to break his fall or in any way prevent his face from crashing into the concrete. The "snapping the sheet" maneuver that Rabb executed was so egregious and unusual that Rabb's supervisor, Lieutenant William White, testified that he had never before in his 20 years of policing heard of an officer executing the maneuver. ROA.3742 [lines 12–20].

But the officers' use of force did not stop there. As Mr. Sampy lay facedown, now severely cut and bleeding from his chin, Reaux shoved his leg onto Mr. Sampy's left knee, while Rabb, now kneeling on Mr. Sampy's back, pressed his knee and entire body weight into Mr. Sampy's neck. Through panicked and terrified screams, Mr. Sampy tearfully begged Rabb to get off his neck. Rabb and Reaux ignored these pleas, only removing their knees from the facedown Mr. Sampy sometime later to aid in the search of Mr. Sampy's truck. Notwithstanding this brief respite, Mr. Sampy was shortly thereafter again mounted by Rabb, who this time pressed his knee into Mr. Sampy's upper back.

Over a year later, in September 2019, the City Court of Lafayette, Louisiana (the "Criminal Court") convicted Mr. Sampy of simple battery of a police officer. To support the conviction, the Criminal Court found that Mr. Sampy had intentionally kicked backward as he lay facedown and handcuffed on the police cruiser, striking Rabb; the Criminal Court also observed that Rabb grabbed Mr. Sampy's legs; and that Rabb said "stop kicking" after pulling Mr. Sampy off the hood of the car. While the Criminal Court found that Mr. Sampy's action of kicking backward met the requirements for simple battery, the judge also said that in his "twenty something years" on the bench he had never "had to deal with a detention that got [as] out of hand as this one did."

In Mr. Sampy's Second Amended Complaint, filed in February 2021, he acknowledged his conviction and act of simple battery. He also alleged, *inter alia*, that Rabb thereafter used excessive force by *subsequently* "snapping the sheet" in order to pull Mr. Sampy off the hood of the police car; that Reaux and Rabb next used excessive force when they knelt on his leg and neck; and that Rabb again used excessive force when he knelt on Mr. Sampy's back while the other officers searched his truck. Mr. Sampy alleged that each of these three acts constituted excessive force (in violation of the Fourth Amendment) and retaliation (in violation of the First Amendment).

The first two of these three acts—Rabb "snapping the sheet" and the first kneeling—were erroneously dismissed by the District Court pursuant to *Heck*. But *Heck* only bars alleged excessive force claims that are necessarily inconsistent with a plaintiff's conviction, not claims that are temporally and conceptually distinct from that conviction. In short, *Heck* does not bar excessive force claims tethered to force used by police subsequent to the events underlying a plaintiff's criminal conviction. Challenging such subsequent uses of force is not "inherently at odds" with the facts underlying the conviction. This is true even when the force at issue occurs immediately after the culmination of the criminal act and in response to it, or if the timeline of events distinguishing the criminal act from the subsequent use of force is ambiguous.

Here, Mr. Sampy's excessive force claim regarding Rabb "snapping the sheet" is temporally and conceptually distinct from his conviction. The fact is, Rabb pulled Mr. Sampy from the hood of the car *after* Mr. Sampy kicked him, and after Rabb had already bound and raised Mr. Sampy's legs up in the air. The most natural reading of the Criminal Court's findings supports this timeline, as does the video evidence and Defendants' own admissions. But even if the Criminal Court's factual findings are ambiguous regarding the timeline of events, Mr. Sampy's claim as to Rabb's "snapping the sheet" still survives *Heck*. The factual findings would only be "*necessarily* inconsistent" with Mr. Sampy's claim if the findings definitively established that Rabb snapped the sheet simultaneously with, or before, Mr. Sampy's kick. The Criminal Court made no such finding.

To reiterate, Mr. Sampy's claim regarding Rabb "snapping the sheet" does not undermine his conviction because it can both be true that: (1) Mr. Sampy committed simple battery by kicking Rabb without consent, and (2) Rabb's subsequent use of force in "snapping the sheet" was objectively unreasonable and excessive to the need of the situation. The same goes for Mr. Sampy's excessive force claim concerning Reaux and Rabb kneeling on him thereafter. Mr. Sampy could prevail on one or both of these excessive force claims without calling into question any aspect of his simple battery conviction. Therefore, neither claim is barred by *Heck*.

The lower court nonetheless erroneously applied *Heck* in dismissing both claims. In doing so, the lower court committed two errors. It first erred by looking to when Mr. Sampy "ceased resisting" to determine if his excessive force claims were temporally distinct from his criminal act. But Mr. Sampy was not charged with or convicted of resisting arrest; he was convicted only of simple battery. Moreover, no resistance can be ascertained from the video during the time when Rabb is holding Mr. Sampy's legs in the air. Second, the district court erred by finding that Mr. Sampy's kick occurred "simultaneously" with the "snapping of the sheet" and the subsequent first kneeling of Reaux and Rabb. But that sequence of events is contradicted by both the video evidence and the factual findings made by the Criminal Court. The district court substantiated its flawed *Heck* conclusion by misinterpreting an ancillary statement made by the Criminal Court—in which it stated that Mr. Sampy's kick and the two subsequent uses of force at issue in this appeal occurred "within the same span of thirty (30) seconds" and were "directly within the timeline of the . . . alleged kicking." There is a world of difference between force occurring "within 30 seconds" of Mr. Sampy's kick and force occurring "simultaneously" with his kick. It was wrong for the district court to conclude otherwise.

Mr. Sampy's excessive force claims concerning Rabb "snapping the sheet" and the first Reaux and Rabb kneeling incident are not barred by *Heck*. Remand is

warranted to account for the erroneous dismissal of these two excessive force claims. Mr. Sampy is entitled to try these claims and his attendant retaliation and bystander liability claims, which were erroneously excluded from jury consideration.

JURISDICTIONAL STATEMENT

Mr. Sampy appeals from the jury verdict entered on December 21, 2023, ROA.3411, the final judgment entered on December 22, 2023, ROA.3061, the final judgment entered on January 24, 2024, ROA.3291, and the clerk's taxation of costs entered on February 6, 2024, ROA.3397–3402. The district court had jurisdiction over these federal claims pursuant to 42 U.S.C. §§ 1983 and 1988.

Mr. Sampy filed a timely notice of appeal on February 22, 2024. ROA.3403. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

I. Did the lower court err in dismissing Mr. Sampy's excessive force claim concerning Rabb "snapping the sheet," when the factual basis underlying the claim could truthfully coexist with the factual basis underlying Mr. Sampy's simple battery conviction?

II. To the extent the use of force claim premised on Rabb's "snapping the sheet" was improperly dismissed, was it also error to dismiss Mr. Sampy's attendant retaliation and bystander liability claims?

III. Did the lower court err in dismissing Mr. Sampy's excessive force claim concerning Reaux and Rabb's first instance of kneeling on Mr. Sampy, when the factual basis underlying this claim could truthfully coexist with the factual basis underlying Mr. Sampy's simple battery conviction?

IV. To the extent the use of force claim premised on Reaux and Rabb's first instance of kneeling on Mr. Sampy was improperly dismissed, was it also error to dismiss Mr. Sampy's attendant retaliation and bystander liability claims?

STATEMENT OF THE CASE

I. Factual Background

A. Mr. Sampy's Arrest

On May 5, 2018, Plaintiff-Appellant Raynaldo Sampy Jr. was asleep in his truck in the parking lot of Sid's One Stop in Lafayette, Louisiana. ROA.405 [¶ 18]. A security guard called 911 to report that a Black male was seated in his truck and "appeared to have run into the ice cooler" outside the convenience store. ROA.406 [¶ 19]. This was not true. The cooler had been damaged in a separate incident. ROA.405–406 [¶ 19].

Shortly after Lafayette Parish Communication District dispatch received the report, Defendants Jonathan Rabb, Asher Reaux, Ian Journet, Segus Jolivette, Michael Darbonne, Jordan Colla, and Brandon Dugas (the "Defendant Officers"),

all officers of the Lafayette Police Department, arrived on the scene. Despite Lafayette Police Department policy requiring officers to activate their body cameras when interacting with citizens, only Reaux activated his camera during the encounter with Mr. Sampy. ROA.406 [¶ 20].

Darbonne made first contact, waking Mr. Sampy through the open driver's side window. Darbonne repeated to Mr. Sampy the false information officers received from the alarm company and said that a security camera had caught Mr. Sampy striking the ice cooler with his truck. ROA.407 [¶ 22]. Darbonne demanded Mr. Sampy's identification and, uninvited, opened the door to Mr. Sampy's vehicle. ROA.407 [¶ 23]. Still disoriented and drowsy from just having been awakened, Mr. Sampy reached toward his pocket to retrieve his driver's license. ROA.407 [¶ 23]. In response, Dugas grabbed Mr. Sampy's arm and threw him facedown onto the concrete parking lot. ROA.407 [¶ 23]. Mr. Sampy complained that Dugas was using unnecessary and excessive force. ROA.407 [¶ 23]. But rather than attempt to deescalate the situation, Defendants Dugas, Reaux, and Colla immediately pulled Mr. Sampy's arms behind his back and handcuffed him. ROA.407 [¶ 23]. Mr. Sampy remained handcuffed throughout the remainder of the incident, including when he was placed in a patrol car and driven away to receive medical care. ROA.407 [¶ 23].

After handcuffing Mr. Sampy, the officers dragged him to a nearby police vehicle where Dugas threw Mr. Sampy facedown onto the cruiser's hood, pinning him down by pressing his hand into Mr. Sampy's neck while Jolivette held Mr. Sampy's left arm. ROA.408 [¶¶ 25–26]. Dugas shouted at Mr. Sampy that he had encountered "the wrong fucking crew," implying that Mr. Sampy was in store for a brutal encounter because these Defendant Officers were a particularly aggressive unit. ROA.408–409 [¶ 26].

While Mr. Sampy was pinned facedown on the police car, he kicked his leg backwards, striking Rabb in the shin. ROA.410 [¶ 29]. This kick would become the basis for Mr. Sampy's simple battery conviction. ROA.410 [¶ 29].

After the kick, as clearly shown on Reaux's bodycam footage, Rabb abruptly grabbed both of Mr. Sampy's legs so that Mr. Sampy's body weight rested on his torso and face, which was still pressed to the hood of the police cruiser. ROA.409–410 [¶ 28], ROA.1098 [2:21–2:22]. Rabb then pulled Mr. Sampy's legs up and proceeded to yank him off the hood of the car, ROA.409 [¶ 28], a maneuver known as "snapping the sheet." Because his hands were still handcuffed behind his back, Mr. Sampy was unable to brace himself and landed face first on the concrete. ROA.409 [¶ 28]. The force of the fall split open Mr. Sampy's chin (which later required stitches) and chipped his tooth and blood from Mr. Sampy's wounds began

to pool around his head. ROA.409 [¶ 28]. Rabb screamed at Mr. Sampy "Don't fucking kick!" *See* ROA.1098 [2:24].

After Mr. Sampy's violent, bloodied landing, Rabb proceeded to climb on top of Mr. Sampy, who verbally protested Rabb's actions. ROA.410 [¶ 30]. Reaux then also mounted Mr. Sampy, placing his full body weight on Mr. Sampy's left knee; Rabb repositioned his body weight and knee to press into Mr. Sampy's neck. ROA.410 [¶ 30]. Through screams of pain, Mr. Sampy repeatedly begged Rabb and Reaux to stop, pleading with Rabb to get off his neck. ROA.410 [¶ 30], ROA.1098 [2:34–3:03]. Defendants ignored Mr. Sampy's pleas. ROA.410 [¶ 31]. Rabb, for his part, moved his knee from Mr. Sampy's neck to his head, further pressing Mr. Sampy's face into the concrete. ROA.410 [¶ 30].

Reaux eventually got off Mr. Sampy and began searching Mr. Sampy's vehicle with Defendants Darbonne and Dugas. ROA.410–411 [¶ 32]. Although it cannot be seen in the body camera footage, Rabb stood up at some point after Reaux left. ROA.411 [¶ 33]. Nonetheless, while the search of Mr. Sampy's truck was ongoing, Rabb decided to again climb on top of Mr. Sampy; this time, pressing his knee into Mr. Sampy's upper back. ROA.411 [¶ 33]. Mr. Sampy again howled in pain and protest. ROA.411 [¶ 33].

At no point in Defendant Officers' interaction with Mr. Sampy did a single officer make any effort to intervene, deter, or otherwise mitigate Rabb or Reaux's uses of force against Mr. Sampy. ROA.410 [¶¶ 24, 31].

Defendant Officers instead called Driving Under the Influence ("DUI") Officer Robert Mitcham to the scene. ROA.411 [¶ 34]. They did this despite the fact that nowhere in any audible body camera footage does an officer assert detecting an odor of alcohol from Mr. Sampy or his vehicle. ROA.411 [¶ 34]. Mitcham's own body camera footage recorded his initial statement that he perceived no odor of alcohol. ROA.411 [¶ 34]. He confirmed his initial statement at Mr. Sampy's criminal trial but noted that he subsequently changed his mind about smelling alcohol on Mr. Sampy's breath after speaking with Defendant Officers at the scene. ROA.411–12 [¶ 34]. Mitcham also confirmed there was no alcohol found in Mr. Sampy's car. ROA.412 [¶ 34]. Several minutes after arriving on the scene, Mitcham put Mr. Sampy in his police cruiser and drove him to the local University Hospital and Clinic for medical treatment. ROA.412 [¶ 35]. At the hospital—to conceal the fact that the Defendant Officers had severely injured Mr. Sampy—Mitcham offered a fabricated story, claiming to hospital staff that he found Mr. Sampy in this condition in the midst of "a yelling argument with a friend." ROA.412 [¶ 35], ROA.426.

B. Mr. Sampy's Criminal Conviction

Mr. Sampy was charged with two misdemeanors: operating a vehicle while intoxicated (first offense) under La. R.S. 14:98, and simple battery of a police officer under La. R.S. 14:34.2. ROA.412 [¶ 36], ROA.1089 [lines 20–22], ROA.1089 [line 32]–1090 [line 3]. To convict someone for simple battery of an officer under La. R.S. 14:34.2 the State must prove three elements: "[1] An intentional striking of the officer [2] without consent [3] knowing that the officer is acting in his official capacity as an officer." ROA.1090 [lines 3–5]; *see also State v. Ceaser*, 859 So. 2d 639, 643 (La. 2003).

The Criminal Court convicted Mr. Sampy of both misdemeanors in September 2019 after a bench trial. ROA.412 [¶ 36]. At the close of proceedings, the Criminal Court handed down its simple battery conviction and set forth the facts in support of its ruling. The Court found that Mr. Sampy's "legs kicked out," that he was "trying to kick somebody," and that "simultaneously Officer Rabb grabbed [his] leg." ROA.1093 [lines 2–3], ROA.1093 [lines 14–16]. The Criminal Court said that, then:

> somebody yells, "You like to kick?" And then obviously, Officer Rabb after he pulls you off the car and put you on the ground the second time is when he clearly says, "Stop Kicking." . . . And, so, I find him GUILTY of the Battery on the Police Officer for those reasons.

ROA.1093 [lines 17–20], ROA.1094 [lines 15–16]. The Criminal Court sentenced Mr. Sampy to 125 days in prison, with 110 days of the sentence suspended. ROA.412 [¶ 36]. The Criminal Court ordered Mr. Sampy to serve his sentence under home

confinement, finding nothing "so egregious that I would not consider home incarceration under the battery." ROA.1096 [lines 6–8]. The Criminal Court added, "I don't know that we've ever had a situation like this in my twenty something years that we've had to deal with a detention that got [as] out of hand as this one did." ROA.1094 [lines 11–14].

C. Mr. Sampy's Injuries

Mr. Sampy suffered severe injuries as a direct result of Defendants' conduct. Mr. Sampy lost consciousness during the incident. ROA.412–413 [¶ 38]. He suffered a lacerated chin, which required stitches, a chipped tooth, and short-term memory loss as a result of the head injuries he endured when Rabb "snapped the sheet" and slammed him into the concrete. ROA.412–413 [¶ 38]. Mr. Sampy also suffered a herniated disc and a dislocated shoulder as a result of Reaux and Rabb kneeling on his knee and neck, which has continued to cause Mr. Sampy pain and limit his ability to work. ROA.412–413 [¶ 38].

II. Procedural Background

A. Mr. Sampy's Second Amended Complaint

On May 4, 2019, Mr. Sampy brought an action pursuant to 42 U.S.C. § 1983 ("Section 1983") against Defendant Officers and the Lafayette Consolidated Government. Mr. Sampy amended his complaint on February 24, 2021. *See* ROA.401. Mr. Sampy acknowledged in his Second Amended Complaint that he had

been convicted of simple battery for kicking Rabb. ROA.410 [¶ 29]. Mr. Sampy nevertheless alleged three uses of force that occurred ***after*** the kick, the first two of which are relevant to this appeal:

- First, Rabb "snapping the sheet*"* by "abruptly pull[ing] Mr. Sampy . . . by his legs" off the hood of a police car while he was handcuffed, causing him to "fall face first on the concrete." ROA.409 [¶ 28].
- Second, Reaux and Rabb kneeling on Mr. Sampy's knee and neck after Rabb "snapped the sheet." ROA.410 [¶ 29].
- Third, Rabb's final kneeling, where "Rabb again mounted Mr. Sampy with his knees firmly planted in Mr. Sampy's upper back" while the other officers were searching Mr. Sampy's truck. ROA.410 [¶ 31].

Mr. Sampy asserted Fourth Amendment excessive force claims against Rabb and Reaux based on, *inter alia*, these three uses of force, alleging each instance was excessive and objectively unreasonable. ROA.414 [¶¶ 50–51]. Mr. Sampy also asserted Fourth Amendment claims for failure to intervene against each of the Defendant Officers, alleging that each violated his Fourth Amendment rights by failing to intervene while Rabb and Reaux used excessive force against him on three distinct occasions. ROA.415 [¶ 54]. Mr. Sampy asserted First Amendment retaliation claims against each Defendant Officer as well, alleging that they violated his First Amendment rights by using excessive force against him, or by failing to prevent other officers from using such force, in retaliation for his protected speech. ROA.416–418 [¶¶ 64–80].

Mr. Sampy also brought claims for intentional infliction of emotional distress under Louisiana state law against the Defendant Officers and a claim for *respondeat superior* against Defendant Parish Communication District and Defendant Lafayette City Parish Consolidated Government. ROA.418–419 [¶¶ 81–90].

B. The Magistrate Judge's Report & Recommendation on Defendants' Motion to Dismiss

On June 4, 2021, Defendants moved to dismiss, arguing that Mr. Sampy's claims should be dismissed in their entirety under *Heck v. Humphrey*, 512 U.S. 477 (1994), due to Mr. Sampy's underlying battery conviction. ROA.837–841. Mr. Sampy opposed the motion on July 23, 2021. ROA.1118.

On August 26, 2021, the magistrate judge issued a report and recommendation, ROA.1234 ("Report and Recommendation" or "R&R"). The R&R held that "claims for excessive force occurring after Mr. Sampy ceased resistance are not barred by *Heck*" and that "[t]he question is thus one of timing." ROA.1247. To determine the timing of events, the magistrate judge looked to statements made by the Criminal Court during the underlying bench trial while ruling on an objection. ROA.1247. Specifically, in trying to shut down questions that would reveal the excessive force incidents, the prosecutor argued that defense counsel should not be allowed to inquire into Reaux and Rabb kneeling on Mr. Sampy's neck after Rabb "snapped the sheets." ROA.1247. The Criminal Court overruled the objection because Mr. Sampy's kick, Rabb "snapping the sheet," and Reaux and Rabb

kneeling on Mr. Sampy occurred "within the same span of thirty (30) seconds," and the two uses of force were "directly within the timeline of the . . . alleged kicking . . . ." ROA.1248. This exchange was not a factual finding by the Criminal Court, let alone a factual finding made to sustain Mr. Sampy's conviction; rather, it was merely a basis for overruling an objection so as to provide Mr. Sampy's criminal defense attorney leeway in questioning on cross examination.

The magistrate nonetheless relied on this exchange to conclude that:

> It is obvious to this Court, as it was to Criminal Court Judge Saloom, that the kicking and [Mr. Sampy's] resistance occurred simultaneously with the officers' actions of pulling [Mr. Sampy] from the hood onto the ground where he cut his chin. Therefore, the Court finds that any claims arising out of excessive force up to that moment are barred by *Heck*.

ROA.1248. The Magistrate Judge acknowledged it was "[l]ess clear" whether claims arising from conduct after that point were precluded by *Heck*. ROA.1248. She explained that, while she was "bound by Judge Saloom's suggestion that [Mr. Sampy's] kicking and [Rabb's] subsequent kneeling on him cannot be temporally separated," that suggestion "must be considered in the context of the criminal proceedings," and the fact that "Judge Saloom explicitly did not consider any issue or argument relevant to [Mr. Sampy's] civil claims." ROA.1248–1249. She thus decided that she "[would] not at this stage of the proceedings draw the line between [Mr. Sampy's] last moment of resistance and Officer Rabb's allegedly excessive

force" because such was "a question of fact, which is inappropriate for resolution upon a Rule 12(b)(6) motion to dismiss." ROA.1249.

Based on this reasoning, the Magistrate Judge found that "[Mr. Sampy's] claims arising out of officer conduct which commenced after [Mr. Sampy] ceased resisting (whenever the jury determines that to be) are not *Heck* barred," and that the point when Mr. Sampy ceased resisting "occurred after the officers brought [Mr. Sampy] from the hood of the unit to the ground." ROA.1249. She then decided that the only excessive force claim not barred by *Heck* was Mr. Sampy's claim based on "Officer Rabb's second instance of kneeling on [Mr. Sampy's] upper back during other officers' search of the truck." ROA.1249, 1251. She proceeded to analyze whether Mr. Sampy had sufficiently pled a Fourth Amendment excessive force claim regarding Rabb's second kneeling and found that he had. ROA.1258.

The magistrate ultimately recommended that the district court dismiss Mr. Sampy's Fourth Amendment excessive force claim "for any alleged use of force prior to the moment [Mr. Sampy] ceased resisting (whenever the jury determines that to be)." ROA.1262–1263. The Magistrate Judge also recommended that Mr. Sampy's First Amendment claim be dismissed in its entirety, but that Defendants' motion to dismiss "be DENIED in all other respects." ROA.1263

C. The District Judge's Order on Defendants' Motion to Dismiss

On September 29, 2021, the District Judge conducted an "independent review of the record" and adopted the magistrate's findings and conclusions regarding Mr. Sampy's Fourth Amendment excessive force claim concerning the second kneeling incident. ROA.1288, 1290. The District Judge thus dismissed Mr. Sampy's Fourth Amendment excessive force claim "for any alleged use of force prior to the moment [Mr. Sampy] ceased resisting (whenever the jury determines that to be)." ROA.1290. Based on the R&R's reasoning, which the district court adopted, this amounted to a dismissal of all Mr. Sampy's excessive force claims except those stemming from Rabb's second kneeling.

The District Judge modified the magistrate's recommendation regarding Mr. Sampy's First Amendment retaliation claim, holding that "[a]fter the point where [Mr. Sampy] ceased to resist, . . . this Court finds that [Mr. Sampy] has alleged a plausible claim that officers used excessive force in retaliation for his protected speech." ROA.1290. The District Judge accordingly dismissed Mr. Sampy's First Amendment retaliation claim "for any alleged use of force prior to the moment [Mr. Sampy] ceased resisting (whenever the jury determines that to be)." ROA.1290.

D. Trial

The case was tried before a jury on December 18–21, 2023. Regarding Mr. Sampy's claims for excessive force, the District Judge instructed the jury "only to determine whether Officer Rabb used objectively excessive force during his second encounter with [Mr. Sampy]"—*i.e.*, Rabb's second instance of kneeling on Mr. Sampy while the other Defendant Officers searched Mr. Sampy's truck. ROA.3024. The district court further instructed the jury that they were "not to determine whether excessive force was used at any earlier point in time." ROA.3024. The jury was thus never permitted to consider whether the first two uses of force at issue in this appeal—the "snapping of the sheet" and the first kneeling incident—constituted excessive force. *See* ROA.3024, ROA.3411.

On December 21, 2023, the jury returned a verdict, finding that Rabb did not use excessive force against Mr. Sampy during the second kneeling incident. ROA.3411–3415. The First Amendment and bystander liability claims against all other Defendants were accordingly denied. ROA.3411–3413. Finally, the jury concluded that none of the Defendants took any actions constituting intentional infliction of emotional distress. ROA.3411, 3414.

E. Appeal

Mr. Sampy now appeals the lower court's dismissal of his Fourth Amendment excessive force claims, his Fourth Amendment failure to intervene claims, and his

First Amendment retaliation claims stemming from Rabb "snapping the sheet" and Reaux and Rabb's first kneeling. ROA.1249, 1251.

SUMMARY OF ARGUMENT

The district court erred in its application of *Heck* concerning two of Mr. Sampy's excessive force claims. The first involved Rabb's use of the "snapping the sheet" maneuver, and the second involved Reaux and Rabb's kneeling on Mr. Sampy with their full body weight as Mr. Sampy lay in a puddle of his own blood. The misapplication of *Heck* as to these two excessive force claims additionally led to the improper dismissal of Mr. Sampy's attendant First Amendment retaliation and bystander liability claims.

As a threshold matter, *Heck* only bars excessive force claims that are "'*necessarily* inconsistent' with [a criminal] conviction." *Smith v. Hood*, 900 F.3d 180, 185 (5th Cir. 2018) (quoting *Ballard v. Burton*, 444 F.3d 391, 400–01 (5th Cir. 2006)) (emphasis added). *Heck* does not bar a claim if a finding in the plaintiff's favor would not "necessarily imply that his conviction is invalid," *Ballard*, 444 F.3d at 397 (citing *Heck*, 512 U.S. at 487)—such as where the claim is "temporally and conceptually distinct" from the conviction. *Bush v. Strain*, 513 F.3d 492, 498 (5th Cir. 2008). An excessive force claim is temporally and conceptually distinct from a battery conviction if the force at issue was used after the battery occurred. This is because, when force is used *after* a battery, the force can be found to be excessive

and objectively unreasonable without calling into question any element of the battery conviction.

Further, *Heck* does not bar an excessive force claim even if the order of events concerning the force and actions relating to the conviction is ambiguous. Where the timeline of events relating to the criminal conviction is ambiguous, a related excessive force claim cannot be deemed "inherently at odds" or "*necessarily* inconsistent" with the (ambiguous) factual findings upon which the conviction is based. *Bush*, 513 F.3d at 500; *Smith*, 900 F.3d at 185 (emphasis added) (quoting *Ballard*, 444 F.3d at 400–01). So long as the plaintiff asserts that the force occurred after the battery was consummated, *Heck* is not offended. This is true even if the force is used in response to the criminal act and occurs immediately after the criminal act concludes.

Here, Mr. Sampy's excessive force claims regarding Rabb "snapping the sheet" and Reaux and Rabb's first kneeling incident are temporally and conceptually distinct from his conviction. There is no legitimate dispute that Rabb pulled Mr. Sampy from the hood of the car *after* Mr. Sampy kicked him. Defendants, indeed, conceded to the lower court that "Sampy kicked [Rabb] ***before*** he removed Sampy from the hood of the unit." ROA.832 (emphasis original). It was then, only after Mr. Sampy was on the ground, lying in a pool of his own blood, that Reaux and Rabb kneeled on him. The order of events is as follows: Mr. Sampy kicked Rabb; Rabb

then grabbed Mr. Sampy's legs and held them bound in the air as Mr. Sampy's face remained pressed to the hood of the police cruiser; Rabb next snapped Mr. Sampy like a sheet, slamming him into the concrete with his arms handcuffed behind his back; Reaux and Rabb then knelt and pressed their full body weight onto Mr. Sampy, who lay facedown in his own blood.

Despite this clear chronology of events, the lower court found that "[Mr. Sampy] kicked Officer Rabb in the shin/knee. The officers then immediately brought [Mr. Sampy] from the hood onto the ground." ROA.1240. The lower court omits certain actions that took place in between the kick and Rabb "snapping the sheet"; but still confirms that Rabb committed this use of force ***after*** Sampy kicked him. The prosecutor at Mr. Sampy's criminal trial similarly conceded that the battery had already occurred by the time Mr. Sampy was "snapped like a sheet" and brought to the ground. ROA.1004 [lines 18–19]. The video evidence confirms this, ROA.1098 [2:10–2:25], Defendants have admitted to this sequence of events, ROA.832, and the most natural reading of the Criminal Court's factual findings supports this sequence as well, ROA.1093 [lines 17–20].

But even if the Criminal Court's factual findings are ambiguous concerning the exact timeline of events, Mr. Sampy's excessive force claims at issue on this appeal—the "snapping of the sheet" and the first kneeling incident—still survive *Heck*. Indeed, the factual findings that form the basis of Mr. Sampy's simple battery

conviction can only be "inherently at odds" with these two excessive force claims if they definitively establish that the two uses of force occurred simultaneously with, or before, Mr. Sampy's kick. Because the Criminal Court made no such findings, *Heck* does not bar Mr. Sampy from presenting these two excessive force claims to a jury. It can be true that Mr. Sampy committed a battery by kicking Rabb without consent. And it can also be true that Rabb's snapping of the sheet and Reaux and Rabb's subsequent kneeling on Mr. Sampy was excessive and an objectively unreasonable response to the kick. As such, Mr. Sampy could prevail on this claim before a jury without calling into question any aspect of his battery conviction.

The lower court's focus on Mr. Sampy's alleged resistance is of no moment to the *Heck* analysis, no criminal charge for resisting arrest was ever filed. Equally flawed is the lower court's focus on the Criminal Court's observation that the two uses of force occurred "within the same span of thirty (30) seconds" and "within the timeline" of the kick. ROA.1248. These statements cannot reasonably be interpreted to mean that the two uses of force occurred ***simultaneously*** with Mr. Sampy's kick. In any event, the Criminal Court's statements to this effect were ancillary and in response to a ruling in Mr. Sampy's favor regarding the prosecutor's objection to a line of questioning. ROA.964–966. Observations made when ruling on an objection to questioning do not constitute facts "underlying [Plaintiff's] criminal conviction" as *Heck* requires. *Bush*, 513 F.3d at 497 (citing *Ballard*, 444 F.3d at 400-01).

Finally, because Mr. Sampy's excessive force claims at issue on this appeal were wrongly dismissed, the lower court's dismissal of his related retaliation and failure to intervene claims was also error. For these reasons and those outlined below, it is appropriate for this to Court reverse the lower court's *Heck* grant of Defendants' motion to dismiss relating to Rabb's "snapping the sheet" and Reaux and Rabb's first kneeling incident and remand for trial.

STANDARD OF REVIEW

This Court reviews a district court's grant of a Rule 12(b)(6) motion *de novo*. *Smith*, 900 F.3d at 184, and in doing so accepts "all well-pleaded facts in the complaint as true and view[s] [them] in the light most favorable to the plaintiff." *Haskett v. T.S. Dudley Land Co.*, 648 F. App'x 492, 494 (5th Cir. 2016). The Court also views video evidence "in the light most favorable to Plaintiffs." *Joseph v. Bartlett*, 981 F.3d 319, 344 (5th Cir. 2020) "The dismissal will be upheld only if 'it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief.'" *Herrmann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 557–58 (5th Cir. 2002) (quoting *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 901 (5th Cir. 1997).

When a party fails to object to a magistrate judge's R&R and the district court accepts the recommendation, this Court generally reviews for plain error. *Alexander v. Verizon Wireless Servs., L.L.C.*, 875 F.3d 243, 248 (5th Cir. 2017). "When,

however, the district court undertakes an independent review of the record, [the Court's] review is *de novo*, despite any lack of objection." *Id.*; *see also Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 n.5 (5th Cir. 2005) (conducting *de novo* review of 12(b)(6) motion on appeal despite lack of objection to R&R because district court stated it had conducted "an independent review of the record"); *Hatcher v. Bement*, 676 F. App'x 238, 241–42 (5th Cir. 2017) ("The district court explicitly stated that it had made 'an independent review of the pleadings, files, and records in this case,' and, accordingly, even if [the party] did not file specific written objections, we review the district court's decision *de novo*."); *Alexander*, 875 F.3d at 248 (reviewing *de novo* because district court "stated in its judgment that it found the magistrate judge's report and recommendation to be 'supported by the law and the record in this matter.'"). This Court can thus review the lower court's order on Defendants' 12(b)(6) motion *de novo* without regard to whether Mr. Sampy objected to the report and recommendation because the district court stated that it undertook "an independent review of the record" before issuing its decision. ROA.1292.

ARGUMENT

I. The Lower Court Erred by Dismissing the Excessive Force Claim Related to Rabb Snapping Mr. Sampy Like a Sheet.

It was error for the lower court to dismiss Mr. Sampy's claim related to Rabb "snapping the sheet" because Rabb used this force *after* Mr. Sampy kicked Rabb. The court wrongly predicated its ruling on a conclusion that the kick and the

"snapping the sheet" maneuver occurred simultaneously. It substantiated this conclusion by, first, improperly looking to when Mr. Sampy "ceased resisting," despite no criminal charge of resisting arrest ever being filed against Mr. Sampy. The court then also erroneously relied on, and misinterpreted, ancillary statements amounting to dicta uttered by the Criminal Court about the temporal proximity of the kick to the "snapping the sheet" maneuver. In the end, the "snapping the sheet" maneuver is temporally and conceptually distinct from Mr. Sampy's battery conviction. The lower court held otherwise only because it misapplied *Heck*.

A. Rabb's "Snapping of the Sheet" Maneuver Is a Temporally and Conceptually Distinct, Non-Heck-Barred Use of Force That Should Have Been Presented to the Jury for Consideration.

The lower court incorrectly held that the only excessive force claims not precluded by *Heck* were those related to the "final alleged use of force," ROA.1251, in other words, "Officer Rabb's second instance of kneeling on [Mr. Sampy's] upper back during other officers' search of the truck." ROA.1249. This wrongly excluded the excessive force claim regarding Rabb's "snapping the sheet" maneuver. That maneuver was temporally and conceptually distinct from Mr. Sampy's conviction because it occurred *after* Mr. Sampy ceased kicking Rabb. The video evidence, the Criminal Court's findings, and Defendants' concessions support this timeline of events, which is not inherently at odds with the basis for Mr. Sampy's battery

conviction. Mr. Sampy's "snapping the sheet" excessive force claim is thus not barred by *Heck*.

Under *Heck*, a plaintiff who has been convicted of a crime cannot bring a Section 1983 claim if "judgment in the plaintiff's favor would necessarily imply that his conviction is invalid." *Ballard*, 444 F.3d at 398 (quoting *Heck*, 512 U.S. at 486). But "[if] the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed." *Smith*, 900 F.3d at 185 (quoting *Heck*, 512 U.S. at 487).

"Determining whether a particular claim is barred by *Heck* is 'analytical and fact-intensive' and requires the court to consider the specifics of the individual claim." *Smith*, 900 F.3d at 185 (quoting *Bush*, 513 F.3d at 497). The Court "conducts this analysis by assessing whether a claim is 'temporally and conceptually distinct' from the related conviction," *Smith*, 900 F.3d at 185 (quoting *Ballard*, 444 F.3d at 400–01). *Heck* only bars a claim if it is "*necessarily* inconsistent with the conviction"; otherwise, the claim can "'coexist' with the conviction or sentence without 'calling [it] into question.'" *Id*. (emphasis added) (quoting *Ballard*, 444 F.3d at 400–01). A claim is "necessarily inconsistent" with a conviction if facts supporting it are "inherently at odds with the facts actually or necessarily adjudicated adversely to [the plaintiff] in the criminal proceeding." *Bush*, 513 F.3d at 498.

This Court's case law demonstrates that *Heck* does not bar an excessive force claim concerning events that occurred *after* the plaintiff's criminal act occurs.[2]

Ballard v. Burton is particularly instructive. 444 F.3d 391 (5th Cir. 2006). There, Ballard had been convicted of simple assault for firing his rifle "near officers." *Id.* at 394, 398. Ballard nonetheless filed suit and alleged that, after the assault occurred, the defendant officer used excessive force by shooting Ballard when he "knew Ballard's rifle was empty." *Id*. at 395. Based on the facts set forth in the indictment to which Ballard pled guilty, *id*. at 398, this Court held that "[n]ot a single element of Ballard's simple assault conviction would be undermined if he were to prevail in his excessive force claim" because "Ballard's behavior satisfied the elements for simple assault . . . both before and after" the defendant arrived on the scene and used the alleged excessive force, *id*. at 399–400.

[2] There is one exception to this rule but it is not relevant here: where an officer is allowed to use *any* amount of force in response to the crime for which the Plaintiff was convicted. In that case, a finding that the force was excessive would necessarily imply that the plaintiff did not actually commit the offense. *In Sappington v. Bartee*, for example, Sappington was convicted of aggravated assault which "required proof that Sappington caused 'serious bodily injury.'" 195 F.3d 234, 237 (5th Cir. 1999). "Under Texas law, any person can use force up to and including deadly force 'to protect himself against'" force that could cause serious bodily injury. *Id*. Thus, a finding that the defendant-officer's subsequent use of force was excessive would have necessarily meant that Sappington did not cause serious bodily injury and would have undermined his conviction. *See id*; *see also Hainze v. Richards*, 207 F.3d 795, 798-799 (5th Cir. 2000) (holding the same where plaintiff was convicted of aggravated assault). But this scenario is not at issue in this case. Simply put, an officer is not entitled to use *any* amount of force in response to a simple battery.

Because the Court could interpret the indictment to refer to the plaintiff's actions as occurring prior to the defendant's alleged use of excessive force, a finding in Ballard's favor would not imply "that Ballard did not [commit assault], nor that Ballard's assault on [the officer] was in necessary self defense." *Id*. at 400. Accordingly, the Court reversed the district court's dismissal of Ballard's claim under *Heck*. *Id*. at 401.

Other circuit courts have also held that *Heck* does not bar an excessive force claim where the force is used after a plaintiff's criminal act occurs. This holds true even when the force is used *immediately* after a criminal act or in response to it. A prominent example is the Ninth Circuit's decision in *Smithart v. Towery*, 79 F.3d 951, 952–53 (9th Cir. 1996), "a case that the Fifth Circuit [has] discussed with approval," *Bramlett v. Buell*, 2004 WL 2988486, at *5 (E.D. La. Dec. 9, 2004); *see also Ballard*, 444 F.3d at 401 ("[W]e find this *Smithart* reasoning applicable to the unique factual scenario at bar.").

The plaintiff in *Smithart* was convicted of assault with a deadly weapon for driving his truck at officers performing a traffic stop. *Smithart*, 79 F.3d at 952. The plaintiff sued, alleging that after the assault occurred, defendants "used force far greater than that required for his arrest and out of proportion to the threat which he posed." *Id*. Because the officers used the force after the plaintiff committed the actions underlying his conviction, the Ninth Circuit held that "a successful section

1983 action for excessive force would not necessarily imply the invalidity of [plaintiff's] arrest or conviction" and allowed the claim to proceed. *Id*.; *see also Swangin v. Ca. State Police*, 168 F.3d 501, at 2 (9th Cir. 1999) (reversing dismissal under *Heck* because "the assault that served as the basis of [plaintiff's] conviction occurred prior to the alleged use of excessive force") (citing *Smithart*, 79 F.3d at 952).

The Seventh Circuit reached a similar conclusion in *Brengettcy v. Horton*, 423 F.3d 674 (7th Cir. 2005), another case that this Court has cited with approval, *Bush*, 513 F.3d at 498 n.13, and which dealt with alleged excessive force used in immediate response to a criminal act. The plaintiff in *Brengettcy* was convicted of aggravated battery for punching an officer several times; he nonetheless alleged officers used excessive force by "beat[ing] and kick[ing]" him in response. *Id*. at 678. Defendant Horton moved for summary judgment under *Heck*, arguing that the excessive force claim was barred by plaintiff's conviction. *Id* at 679. The Seventh Circuit disagreed, finding this argument "easily answered." *Id* at 683. Even though the force was used immediately after and in response to the plaintiff's battery, the court held that the excessive force claim was "not barred by *Heck* because [plaintiff's] challenge that [the officers] used excessive force after he hit [the officer] does not undermine his conviction or punishment for his own acts of aggravated battery." *Id*. The court ruled that, while the plaintiff "cannot dispute the legitimacy of the state's sentencing him

to three years in prison for striking [the officer]," he can "dispute the legitimacy of the alleged extrajudicial 'punishment' inflicted" by the officers afterward. *Id*. at 678.

District courts in this circuit have likewise consistently held that *Heck* does not bar an excessive force claim if the force is used immediately *after* the plaintiff's criminal act of battery. In *Curran v. Aleshire*, *Heck* did not bar an excessive force claim relating to "[t]wo incidents [that] allegedly occurred after the completion of the battery of [the officer]." 67 F. Supp. 3d 741, 748–50 (E.D. La. 2014). The same conclusion was reached in *Broussard v. Kowalski*. There too a battery conviction did not *Heck*-bar an excessive force claim because the plaintiff alleged that officers "used excessive force beyond what was reasonably necessary *after* the battery." 2007 WL 1461023, at *4 (E.D. La. May 15, 2007) (emphasis added). The same goes for *Bramlett v. Buell*, where the court held that an aggravated battery conviction did not *Heck*-bar an excessive force claim because "notwithstanding the fact that the entire matter transpired in a matter of seconds, . . . all of the elements necessary to complete the aggravated battery occurred before the [officers' use of force]." 2004 WL 2988486, at *4.

Even if the factual findings and timeline of events relating to the criminal conviction and subsequent excessive force claim are ambiguous, such an assertion is not "inherently at odds" with the factual findings upon which his conviction is based. This Court's decision in *Bush v. Strain* is illustrative. 513 F.3d 492. There,

Bush had been convicted of resisting arrest. But Bush asserted that, after she ceased resisting and was handcuffed, the defendant used excessive force by pushing her face into a car window. *Id.* at 496. To determine whether Bush's claim was barred by *Heck*, the Court asked whether Bush's asserted timeline contradicted the "very narrow fact findings" issued by the criminal court "[i]n rendering judgment" and "to sustain the conviction." *Id*. at 499. The criminal court's determinations, however, did not include any "findings regarding how long Bush's resistance lasted or at what point Bush was injured." *Id*. The Court accordingly held in *Bush* that, because it was possible "that the alleged excessive force occurred after [Bush] stopped resisting arrest, and the fact findings essential to her criminal conviction are not inherently at odds with this claim, a favorable verdict on her excessive force claims will not undermine her criminal conviction." *Id*. at 500.

District courts in the Fifth Circuit have ruled similarly. In *Pratt v. Giroir* the court held that a battery conviction did not pose a *Heck* bar to an excessive force claim "because the excessive force *may have* occurred after the battery was over." 2008 WL 975052, at *5 (E.D. La. Apr. 8, 2008) (emphasis added). In *Howard v. Del Castillo,* the court likewise held that an excessive force claim "does not necessarily imply the invalidity of [plaintiff's] battery conviction because this beating *may have* occurred after the battery was over." 2001 WL 1090797, at *4 (E.D. La. Sept. 17, 2001) (emphasis added).

From *Ballard* to *Smithart*, to *Brengettcy*, and *Bramlett*, and to the lower court cases decided in between, one clear principle emerges: *Heck* does not bar an excessive force claim if the plaintiff asserts that the excessive force occurred *after* consummation of the criminal act in question, and this assertion is not "inherently at odds with the facts actually or necessarily adjudicated adversely to [the plaintiff] in the criminal proceeding." *Bush*, 513 F.3d at 498. This is true even when officers use the force *immediately* after the criminal act and in response to it. *Brengettcy*, 423 F.3d at 683; *Bramlett*, 2004 WL 2988486, at *4. This reasoning is sound, as it can be both true that a plaintiff committed an offense and that officers thereafter used excessive force in response to it. *Ballard*, 444 F.3d at 401 (finding excessive force claim "could easily coexist with Ballard's conviction for simple assault" because the force was used after the assault).

The present case fits squarely within the above precedent. To sustain the conviction for simple battery, the Criminal Court found that Mr. Sampy's "legs kicked out," he was "trying to kick somebody," and that "simultaneously Officer Rabb grabbed [his] leg[s]." ROA.1093 [lines 2–3, 14–16]. The Criminal Court said that, then "somebody yells, 'You like to kick?' And then obviously, Officer Rabb after he pulls [Mr. Sampy] off the car and put [Mr. Sampy] on the ground the second time is when he clearly says, 'Stop Kicking.'" ROA.1093 [lines 17–20].

The most natural meaning of these statements presents the following chronology: Mr. Sampy kicked Rabb; Rabb then grabbed Mr. Sampy's legs; Rabb next executed a maneuver where he snapped Mr. Sampy like a sheet, such that Mr. Sampy's body was yanked quickly upwards and then downwards in such a way that he crashed face first into the concrete; Rabb thereafter, venting his anger at Mr. Sampy in response to the kick, screamed at Mr. Sampy to "stop fucking kicking!" ROA.1098 [2:24–2:25]. The Criminal Court made no mention of any kick occurring during or after Rabb's "snapping of the sheet" maneuver; the judge said only that Rabb had said to "stop kicking" after throwing Mr. Sampy to the ground. The lower court's interpretation of the chronology of events is incorrect in its characterization of the kick and "snapping of the sheet" maneuver occurring "simultaneously." ROA.1248. Indeed, the Criminal Court found that Rabb's simultaneous response to the kick was limited to grabbing Mr. Sampy's legs, not snapping him like a sheet. ROA.1093. The lower court itself elsewhere recognized that Mr. Sampy's kick occurred prior to Rabb "snapping the sheet." ROA.1240 ("[Mr. Sampy] kicked Officer Rabb in the shin/knee. The officers then immediately brought [Mr. Sampy] from the hood onto the ground."). Even Defendants concede that "Sampy kicked [Rabb] ***before*** he removed Sampy from the hood of the unit." ROA.832 (emphasis original).

This timeline of events is confirmed by Reaux's body camera footage. The table below lists the events as depicted in that footage, showing conclusively that Rabb snapped Mr. Sampy like a sheet *after* Mr. Sampy kicked backward. *See* ROA.1098 [2:10–2:25].[3]

Action	Time
Defendants press Mr. Sampy facedown onto the hood of the police car.	2:10
Dugas tells Mr. Sampy he encountered the "wrong fucking crew."	2:13
Mr. Sampy's leg kicks out.	2:19
Rabb grabs Mr. Sampy's legs.	2:20–21
Rabb holds Mr. Sampy's legs in the air.	2:21–23
Rabb "snaps the sheet"; pulling Mr. Sampy from the car; Mr. Sampy's face is heard slamming into the car's hood before his body plummets face first into the concrete.	2:23
Mr. Sampy lands facedown on the concrete and Rabb yells "Don't fucking kick!"	2:24–25

Two things can thus truthfully coexist. First, that Mr. Sampy's kick satisfied the elements of simple battery, in that he intentionally kicked Rabb without consent

[3] Even if this Court's interpretation of the footage stands at odds with the above sequence of events and the Criminal Court's own assessment of the footage, the *Heck* inquiry does not end there. It simply underscores that there is an issue of fact concerning the *Heck* analysis that the jury must first decide—specifically, whether the kick and "snapping of the sheet" maneuver occurred simultaneously. FED. R. CIV. P. 38. As long as the timeline of events is not both clearly and "inherently at odds" with Mr. Sampy's simple battery conviction, his allegation that Rabb's "snapping of the sheet" amounts to excessive force under the Fourth Amendment should be tried by a jury. *See Bush*, 513 F.3d at 500 (holding claim not barred by *Heck* because plaintiff claimed the "excessive force occurred after [Bush] stopped resisting, and the fact findings essential to her criminal conviction are not inherently at odds with this claim").

knowing that Rabb was a peace officer. *See* ROA.1090 [lines 3–5]. And second, that Rabb's subsequent use of force, which resulted in injury, violated the Fourth Amendment because it was excessive to the needs of the situation and therefore objectively unreasonable. *See Ballard*, 444 F.3d at 399 (holding that where the force was used after the criminal act, "[n]ot a single element of Ballard's simple assault conviction would be undermined if Ballard were to prevail in his excessive force claim against Burton…."); *Brengettcy*, 423 F.3d at 678 ("Brengettcy's conviction necessarily implies that he struck Horton . . . . It by no means necessarily implies that Horton's [subsequent] use of force against Brengettcy was lawful."). Thus, "the fact findings essential to [plaintiff's] criminal conviction are not inherently at odds with" the factual basis for plaintiff's excessive force claim and is therefore not *Heck* barred. *Bush*, 513 F.3d at 500. While Mr. Sampy "cannot dispute the legitimacy of the state's sentencing him . . . for striking" Rabb, he can "dispute the legitimacy of the alleged extrajudicial 'punishment' inflicted" by Rabb in response. *Brengettcy*, 423 F.3d at 678.

In sum, case law establishes conclusively that *Heck* does not shield an officer from a Fourth Amendment excessive force claim merely because an individual assaulted the officer ***prior*** to a use of force. A holding otherwise would necessarily mean that a battered officer has free reign under the Fourth Amendment to respond in any way he chooses, up to and including the use of lethal force. The district judge

in *Broussard v. Kowalski* recognized the absurdity of such a result, noting that "[t]he Court would be hard pressed to interpret *Heck* and *Hudson* as allowing excess force, possibly punitive in nature, after the occurrence of the crime for which Plaintiff was convicted." 2007 WL 1461023, at *4. Such an interpretation would also contradict this Circuit's Fourth Amendment jurisprudence, which clearly holds that "[a] disproportionate response is unreasonable," and requires officers to respond to threats and violence in proportion to the danger posed. *Bartlett*, 981 F.3d at 324; *see also Poole v. City of Shreveport*, 691 F.3d 624, 629 (5th Cir. 2012).

Heck does not stand as a bar to Mr. Sampy's excessive force claim against Rabb for "snapping the sheet." This claim, which the jury was precluded from adjudicating, should now be allowed to proceed to trial.

B. The Lower Court Misapplied *Heck*.

In dismissing Mr. Sampy's "snapping of the sheet" claim under *Heck*, the district court erred in two ways. First, when determining if Mr. Sampy's claims were temporally distinct from his conviction, the court erroneously analyzed a conviction for which Mr. Sampy was never charged, let alone convicted—resisting arrest. Mr. Sampy was convicted of simple battery. As adjudicated by the Criminal Court, this act (a "kick") occurred at a singular and finite moment in time. Second, the lower court misinterpreted ancillary statements made by the Criminal Court (functionally, dicta) when ruling in Mr. Sampy's favor on an objection to a cross-examination

question by his counsel. These statements do not have any bearing on the *Heck* analysis because they do not constitute determinations made "[t]o sustain the conviction…." *Bush*, 513 F.3d at 499.

Point I. The District Court erred by finding that the only claim for excessive force that could survive a motion to dismiss was the one that occurred "after [Mr. Sampy] *ceased resistance*." ROA.1247, ROA.1262–1263 (emphasis added); ROA.1290 (emphasis added). Dismissing Mr. Sampy's claims "for any alleged use of force prior to the moment [Mr. Sampy] *ceased resisting* (whenever the jury determines that to be)," ROA.1290 (emphasis added), was error because Mr. Sampy was not convicted of resisting arrest; he was convicted only of a simple battery that occurred at a finite moment in time. *See* ROA.1093 [lines 14–16] (finding that Mr. Sampy's "legs kicked out").

Whereas convictions for resisting arrest prompt courts adjudicating *Heck* actions to look only at force used after the resistance ceases, battery convictions prompt a different analysis. *Compare Bush*, 513 F.3d at 498 (looking to when "the arrestee has ceased his or her resistance"); *Arnold v. Town of Slaughter*, 100 F. App'x 321, 324 (5th Cir. 2004); *and Pratt v. Giroir*, 2008 WL 975052, at *5 (E.D. La. Apr. 8, 2008) *with Brengettcy v. Horton*, 423 F.3d 674, 683 (7th Cir. 2005) (looking to whether force was used "after [the plaintiff] hit [the officer]"); *Curran*, 67 F. Supp. 3d at 750; *and Bramlett v. Buell*, 2004 WL 2988486 at *4 (E.D. La. Dec.

9, 2004). In sum, courts adjudicating excessive force claims in the battery conviction context look at any alleged excessive force used after the battery ended. Here, that would be the point immediately after Mr. Sampy's leg, which he kicked backward into Rabb's shin, retracted from contact with Rabb's shin. *See Ballard*, 444 F.3d at 400 (looking to when "Ballard's behavior [that] satisfied the elements for simple assault" occurred); *see also Smithart*, 79 F.3d at 952.

When the lower court here looked to the moment Mr. Sampy "ceased resistance," it wrongly relied on *Bush v. Strain* and *Arnold v. Town of Slaughter*. *See* ROA.1247. In *Bush* and *Arnold*, each plaintiff had been convicted of resisting an officer under La. Rev. Stat. Ann. § 14:108. *Bush*, 513 F.3d at 498; *Arnold*, 100 F. App'x at 323. It thus made sense in those cases to look at when the person arrested ceased resisting to determine if a successful claim would "necessarily imply the invalidity of a conviction for the earlier resistance." *Bush*, 513 F.3d at 498. But such an analysis in this case is incorrect for the simple reason that Mr. Sampy was not convicted of resisting an officer. Instead, he was convicted of simple battery under La. R.S. 14:34.2—a petty misdemeanor.[4] It is not relevant for purposes of *Heck*

[4] Under Louisiana law, a misdemeanor is any crime not punishable by death or hard labor. La. R.S. 14:2(4), (6). A petty misdemeanor is one in which the punishment may not be a fined "in excess of one thousand dollars or imprisonment for more than six months." La. R.S. 779. Battery of a police officer is a petty misdemeanor because those convicted "shall be fined not more than five hundred dollars and imprisoned not less than fifteen days nor more than six months." La. R.S. 14:34.2(B)(1).

when Mr. Sampy "ceased resisting"; it is only relevant when the battery for which Mr. Sampy was convicted occurred.

The lower court's conflation of resisting and simple battery is material. While simple battery requires that an individual intentionally strike an officer, La. R.S. 14:34.2, resisting an officer encompasses a much broader range of ongoing behavioral actions, such as "struggl[ing] to get free," *Bush*, 513 F.3d at 499, or "being hostile and threatening," *Arnold*, 100 F. App'x at 324. An excessive force claim regarding force used while a plaintiff was not striking an officer but rather "struggling to get free," for example, might (but will not necessarily) be inherently inconsistent with a conviction for resisting arrest. But such a claim would not in any way invalidate a conviction for battery because struggling to get free is not an element of a battery conviction. Conflating a resisting arrest conviction with a battery conviction would thus lead a court to inappropriately bar claims under *Heck* that do not contradict the plaintiff's actual conviction. That is what happened here.

In sum, the lower court ultimately erred by looking to when Mr. Sampy "ceased resisting" when determining whether his distinct excessive force claims, including the "snapping of the sheet" claim, were barred by *Heck*. *See Smith*, 900 F.3d at 185 (quoting *Ballard*, 444 F.3d at 400–01); *Ballard*, 444 F.3d at 396 (quoting *Heck*, 512 U.S. at 486–87). The court should have instead looked to when Mr.

Sampy's act of simple battery occurred. *Bush*, 513 F.3d at 497. Had it done so, it would not have barred the "snapping of the sheet" claim from going to the jury.

Point II. The above error was compounded when the lower court misinterpreted and erroneously relied on ancillary statements that amount to no more than dicta made by the Criminal Court. Based on its misinterpretation of these statements, the lower court incorrectly held that "[Mr. Sampy's] kicking and [Mr. Sampy's] resistance occurred simultaneously with the officers' actions of pulling [Mr. Sampy] from the hood onto the ground." ROA.1248.

Bush v. Strain is again on point. There, the defendants argued that a court's credibility determination regarding an officer's testimony was sufficient to establish that resistance and force were used simultaneously. 513 F.3d at 498–99. This Court disagreed, holding that it was only appropriate to look at the "very narrow fact findings" issued by the court "[i]n rendering judgment." *Id*. at 499. The Court thus asked whether the criminal court "[t]o sustain the conviction . . . [made] findings regarding how long Bush's resistance lasted or at what point Bush was injured." *Id*.; *Cf. Ballard*. 444 F.3d at 398 (looking to factual assertions in the indictment to which the plaintiff pled guilty, not merely any ruling by the court); *Nelson v. Jashurek*, 109 F.3d 142, 145 (3d Cir. 1997) (looking to "the charge to the jury" to determine the facts underlying plaintiff's conviction, not merely any statement made by the judge during trial). Because the Criminal Court made no findings as to the length of the

resistance in sustaining Bush's conviction, the plaintiff's excessive force claim in that case was not deemed to have been simultaneous with his resistance and therefore was not barred by *Heck*. *Bush*, 513 F.3d at 498–99.

The Criminal Court's statements here were similarly not facts "underlying" Mr. Sampy's conviction or facts necessary to "sustain [his] conviction." *Bush*, 513 F.3d at 499. During Mr. Sampy's criminal bench trial, the prosecutor objected to questions from defense counsel about Rabb taking Mr. Sampy to the ground and Reaux and Rabb kneeling on Mr. Sampy's neck. ROA.239. The prosecutor argued that the questions were improper because "the battery ha[d] already occurred" by that time. ROA.239 [lines 18–19]. The Criminal Court ruled in Mr. Sampy's favor, allowing the questioning and stating, "it's all within the same span of thirty (30) seconds" and the uses of force were "directly within the timeline of the . . . alleged kicking . . ." ROA.239 [lines 21–26]. This was consistent with the Criminal Court's general practice of allowing "leeway" during cross examination. *See* ROA.599 [line 26] ("I give leeway in cross examination."), *see also, e.g.*, ROA.554 [lines 26–27], ROA.560 [lines 21–22], ROA.599 [lines 29–30], ROA.648 [lines 11–12] (granting leeway during cross examination).

As an initial matter, a plain reading of these statements shows (and indeed, the prosecutor's statements confirm) that they do not imply, let alone establish, that Mr. Sampy's kick occurred simultaneously with Rabb violently tearing Mr. Sampy

from the hood of the car—"snapping the sheet." An action occurring "within thirty seconds" or "within the timeline" of a second action is obviously not the same as the two actions occurring simultaneously. These statements, at the very least, do not *necessarily* mean that the two events happened simultaneously. *Smith*, 900 F.3d at 185 ("We must ask whether the claims are '*necessarily* inconsistent' with the conviction") (emphasis added) (quoting *Ballard*, 444 F.3d at 400–01). Furthermore, courts have held that *Heck* does not necessarily bar an excessive force claim where (i) criminal conduct and excessive force all "transpir[e] in a matter of seconds," *Bramlett*, 2004 WL 2988486, at *4; or (ii) officers use excessive force in immediate response to a battery, *Brengettcy*, 423 F.3d at 683. *See also Asante-Chioke v. Dowdle*, 103 F.4th 1126, 1131 (5th Cir. 2024) (holding that each sequential use of force requires individual reasonableness evaluation even when used in immediate succession); *Roque v. Harvel*, 993 F.3d 325, 329 (5th Cir. 2021) (same). The lower court thus erred by interpreting the Criminal Court's statements to mean something they simply do not.

But even if these statements could be read to mean that the Criminal Court interpreted the kick and force to have occurred simultaneous with one another, it was still error for the lower court to rely on these statements to establish a timeline under *Heck*. Observations made when ruling on an objection to questioning do not constitute facts "underlying [Plaintiff's] criminal conviction." *Bush*, 513 F.3d at 497.

They are not within the "narrow factual findings" made "[t]o sustain [Plaintiff's] criminal conviction." *Id.* at 499. And this is not a mere technicality: a finding that Rabb pulled Mr. Sampy from the hood of the police cruiser *after* Mr. Sampy's kick will in no way undermine Mr. Sampy's conviction for battery simply because the Criminal Court relied on purportedly conflicting grounds to allow Mr. Sampy's defense attorney to pursue a certain line of inquiry.

It was clear error for the lower court to rely on ancillary statements made by the Criminal Court to determine that Rabb "simultaneously" snapped Mr. Sampy like a sheet when he was kicked by Mr. Sampy in the shin. It is clear that Rabb's lifting of Mr. Sampy's legs occurred after the kick. But even if that action was nearly simultaneous with the kick, Rabb's subsequent decision to thereafter snap the handcuffed Mr. Sampy like a sheet, causing him to crash face first on the ground, was not. *See supra* Section I.A.

II. The Lower Court Erred by Dismissing the Excessive Force Claim Related to Reaux and Rabb's First Instance of Kneeling on Mr. Sampy.

The lower court also erred in dismissing Plaintiff's excessive force claim regarding Reaux and Rabb's first instance of kneeling on Mr. Sampy. This event clearly occurred after Rabb snapped Mr. Sampy like a sheet, rendering this use of force even more temporally and conceptually distinct from Mr. Sampy's simple battery conviction. The lower court made the same errors in its analysis here as it did with Rabb "snapping the sheet." The court again incorrectly analyzed a

conviction for which Mr. Sampy was never convicted, let alone charged (*i.e.*, resisting arrest). And again, it improperly relied on ancillary statements made by the Criminal Court, which it nonetheless misinterpreted.

A. Reaux and Rabb Kneeling on Mr. Sampy Amounts to a Temporally and Conceptually Distinct, Non-Heck-Barred Use of Force That Should Have Been Presented to the Jury for Consideration.

It is undisputed that Reaux and Rabb's first instance of kneeling on Mr. Sampy occurred after Mr. Sampy was torn from the hood of the car; in short, after Rabb snapped Mr. Sampy like a sheet. *See* ROA.842 ("Sampy is pulled from the hood . . . . Thereafter . . . Sampy says, "get your knee off my neck."). This use of force is thus even more temporally and conceptually distinct from the facts underlying Mr. Sampy's simple battery conviction than Rabb's "snapping the sheets" maneuver.

Because Reaux and Rabb indisputably knelt on Mr. Sampy *after* Mr. Sampy kicked Rabb (*i.e.*, the simple battery), his conviction and his excessive force claim can coexist. It can be true that Mr. Sampy's kick satisfied the elements of simple battery, in that he intentionally struck Rabb without consent knowing that Rabb was a peace officer. *See* ROA.325 [lines 3–5]. And it can also be true that Reaux and Rabb's subsequent use of force violated the Fourth Amendment because it resulted in injury and was excessive to the need of the situation, and therefore objectively unreasonable. *See Ballard*, 444 F.3d at 399 ("Not a single element of Ballard's

simple assault conviction would be undermined if Ballard were to prevail in his excessive force claim against Burton.").

In sum, for the same reasons that Mr. Sampy's "snapping of the sheet" claim is not barred, Reaux and Rabb's first instance of kneeling on Mr. Sampy is also not *Heck* barred. *See supra* Section I.A.

B. The Lower Court Misapplied *Heck*.

The same analytical errors that caused the lower court to erroneously dismiss the excessive force claim concerning Rabb's "snapping of the sheet" maneuver, *see supra* Section I.B, also infected its analysis of the first kneeling incident. Here too, the lower court incorrectly looked to an erroneous conviction for which Mr. Sampy was never convicted, all the while relying on irrelevant ancillary statements made by the Criminal Court, which the lower court in any event misinterpreted. ROA.1247–1248. For the reasons outlined in Section I.B, these errors are material and, similar to the "snapping of the sheet" claim, militate in favor of reversing the lower court's dismissal of Mr. Sampy's excessive force claim for the first kneeling incident.

III. The Lower Court Erred by Dismissing Retaliation and Failure to Intervene Claims Related to the Two Wrongly Dismissed Excessive Force Claims.

Because the District Court wrongly found that the "snapping of the sheet" and the first kneeling incident were *Heck* barred, it erroneously dismissed Mr. Sampy's

retaliation and failure to intervene claims related to these two uses of force. ROA.1290. The jury was thereby incorrectly instructed at trial to only consider Rabb's *final* kneeling on Mr. Sampy when evaluating Mr. Sampy's retaliation and failure to intervene claims. ROA.3024, ROA.3028–3029. Reversal is thus warranted as to the retaliation and failure to intervene claims relating to the "snapping of the sheet" maneuver and Reaux and Rabb's first instance of kneeling on Mr. Sampy.

IV. The Lower Court's Errors Harmed Mr. Sampy.

For an error to be considered harmless, "it must be made to appear clearly that the party complaining of it was not prejudiced." *Aero Int'l., Inc. v. U.S. Fire Ins. Co.*, 713 F.2d 1106, 1113 (5th Cir. 1983). This Court regularly finds prejudice sufficient to warrant reversal when an excessive force claim is erroneously dismissed under *Heck*. *See, e.g.*, *Bush*, 513 F.3d at 502; *Thomas v. Pohlmann*, 681 F. App'x 401, 409 (5th Cir. 2017). Here, two excessive force claims were erroneously dismissed by the lower court. *See supra* Sections I and II.

Mr. Sampy was prejudiced by this error because the jury was instructed to act in accordance with these rulings and "only to determine whether Officer Rabb used objectively excessive force" when he knelt on Mr. Sampy while the other officers searched Mr. Sampy's truck. The jury was specifically instructed that they were "not to determine whether excessive force was used at any earlier point in time." ROA.3012. As a result, the jury was not permitted to determine the excessive force

claims at issue on this appeal, particularly whether Rabb snapping Mr. Sampy like a sheet and Reaux and Rabb's first instance of kneeling on Mr. Sampy constituted excessive force.

Furthermore, a reasonable jury could have found that these two uses of force were excessive. Courts frequently find claims sufficient for trial where it is alleged that officers used significant force against a handcuffed suspect. *See Bush*, 513 F.3d at 499-500 (reversing grant of summary judgment where plaintiff alleged officer pushed her head into a car window after she was handcuffed and had ceased resisting); *Peterson v. City of Fort Worth, Tex.*, 588 F.3d 838, 847 (5th Cir. 2009) (reversing grant of summary judgment where plaintiff alleged that officer struck plaintiff with his knee after plaintiff was handcuffed and ceased resisting).

Even where some level of force is warranted, such as where a suspect is resisting or has struck an officer, the amount of force used must still be reasonable. S*ee Deville v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) ("[O]fficers must assess not only the need for force, but also 'the relationship between the need and the amount of force used.'") (quoting *Gomez v. Chandler*, 163 F.3d 921, 923 (5th Cir. 1999)). If officers respond "disproportionately to [a] threat," they have "applied excessive force in violation of the Fourth Amendment." *Bartlett*, 981 F.3d at 339.

A reasonable jury could certainly find the two uses of force at issue here were a disproportionate response to the shin kick to Rabb that occurred—particularly after

hearing testimony from Rabb's supervisor that in his 20 years of policing he had "never heard of someone being pulled from the hood like [Mr. Sampy]" and that "[he] wanted this looked at by Internal Affairs." ROA.3742 [lines 12–20].

In the end, the lower court's errors were not harmless, as the jury did not adjudicate Mr. Sampy's claims regarding the "snapping of the sheet" maneuver and Reaux and Rabb's initial kneeling incident. Because the jury could reasonably have found that one or both instances amounted to excessive force, reversing the dismissal of both claims is warranted. Remanding this case for a new trial is appropriate in light of these circumstances.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the lower court pertaining to Mr. Sampy's unadjudicated Fourth Amendment "snapping the sheet" and first kneeling claims. These two claims, in addition to their attendant First Amendment retaliation and failure to intervene claims, should proceed to a jury. Remand is accordingly appropriate in this case.

Dated: November 5, 2024

Respectfully submitted,

/s/ *Brandt Henslee*

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that service will be made on opposing counsel.

Dated: November 5, 2024

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7) because this brief contains 12317 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: November 5, 2024

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