No. 13-14092

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIAN BERRY, ET AL.,

Plaintiffs-Appellees,

v.

TRAVIS LESLIE, ET AL.,

Defendants-Appellants.

On Appeal from an Interlocutory Order of
the United States District Court for the
the Middle District of Florida

District Judge Charlene Edwards Honeywell
Case No. 6:11-cv-01740-CEH-KRS

EN BANC ANSWERING BRIEF

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CERTIFICATE OF INTERESTED PERSONS

Berry v. Leslie
No. 13-14092

In addition to the persons and entities identified in appellants' en banc opening brief, the following individuals have an interest in the outcome of this appeal:

Edward J. Dumoulin

Jeffrey H. Redfern

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS
(continued)

TABLE OF CITATIONS
(continued)

TABLE OF CITATIONS
(continued)

INTRODUCTION

This case concerns a warrantless, SWAT-style police raid of Strictly Skillz Barbershop—a raid that everyone now agrees violated the Fourth Amendment. The question presented on rehearing is whether Deputy Travis Leslie's active participation in the raid is sufficient to hold him personally liable for violating the rights of Jermario Anderson, Edwyn Durant, and Reginald Trammon, even though Leslie did not personally lay hands on those individuals or their belongings.

Leslie says that he cannot be held individually liable. In his view, the raid was a disconnected series of independent Fourth Amendment violations, each committed in isolation, by individual officers. According to that theory, for any particular plaintiff to have a claim against Leslie, that plaintiff must show that Leslie "physically touched him" or his "property," or maybe just drew his weapon. Opening Br. 10, 19, 22; *see also Berry v. Leslie*, 767 F.3d 1144, 1163 (11th Cir. 2014) (Pryor, J., concurring and dissenting) (similar). In the absence of such evidence, Leslie insists that he cannot be held liable for violating anyone's rights based on his "mere presence" at the raid. Opening Br. 15, 30; *see also id.* at 14, 26-27.

That is incorrect for three independent reasons. *First*, the unconstitutional detention of Anderson, Durant, and Trammon began *before* their hands were cuffed or their persons and property were searched: No

reasonable person standing in their shoes would have believed that he was free to disregard the police and go about his business after a SWAT squad burst into the barbershop. Thus, each was detained from the moment the raid began until the moment it ended. Leslie, clothed both literally and figuratively in the authority of law, was personally involved in the show of force that effected that unlawful detention; he is therefore personally liable for it.

Second, Leslie was not merely "present" at the raid—he was an active participant in it. That makes a difference because every court of appeals to consider a similar case has concluded that, when police officers work together as a unit, each officer who actively participates in a course of conduct that foreseeably results in a constitutional violation is individually liable for the violation, regardless of the particular role he or she plays. *See, e.g.*, *Wesby v. District of Columbia*, 765 F.3d 13 (D.C. Cir. 2014); *Boyd v. Benton County*, 374 F.3d 773, 780 (9th Cir. 2004); *Provost v. City of Newburgh*, 262 F.3d 146, 155 (2d Cir. 2001); *James v. Sadler*, 909 F.2d 834 (5th Cir. 1990); *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553 (1st Cir. 1989); *Melear v. Spears*, 862 F.2d 1177, 1186 (5th Cir. 1989). Because Leslie's personal conduct helped bring about the raid's unlawful objectives, he is personally liable to each of the plaintiffs for each foreseeable constitutional violation committed against them.

Finally, it is well settled that a plaintiff may demonstrate a civil conspiracy to violate constitutional rights by showing that the defendants reached an understanding to deny the plaintiffs' rights. There is just such evidence in this case: Viewing the totality of the officers' actions in the light most favorable to the plaintiffs, a rational jury could conclude that Leslie and his fellow officers tacitly agreed to work together to execute the unlawful raid, including the handcuffings, pat-down searches, and property searches. That, too, is a basis for holding Leslie individually liable for the violations that took place.

And because these rules were all clearly established at the relevant time, Leslie is not entitled to qualified immunity.

STATEMENT*

A. Factual background

This case involves the August, 21, 2010 police raid of Strictly Skillz Barbershop, which was part of a broader law enforcement operation that targeted eight other barbershops in the Pine Hills region of the Orlando metropolitan area. Doc. 98-6, at 22. The raid on Strictly Skillz was

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* This statement, and the legal arguments that follow it, are limited to the questions posed by the Court's order granting en banc rehearing. As to all other issues, appellees stand on their brief before the three-judge panel. The factual background additionally assumes a resolution of all genuine disputes in favor of appellees. *Gennusa v. Canova*, 748 F.3d 1103, 1108 (11th Cir. 2014).

conducted by eight Orange County sheriff's deputies, including some trained as narcotics agents. Doc. 98-2, at 5-7; Doc. 98-6, at 24; Doc. 98-7, at 12. At least four of the officers were dressed in SWAT-style attire, wearing masks and bulletproof vests. Doc. 93-3, at 49-52; Doc. 93-4, at 56. Some had their weapons drawn. Doc. 93-4, at 64. The officers did not have a search warrant. Doc. 94-1, ¶ 6; Doc. 98-3, ¶ 15.

At the outset of the raid, eight or ten officers (Doc. 93-4, at 60; Doc. 93-5, at 61) "rushed in" to the barbershop (Doc. 93-3, at 48; Doc. 93-4, at 56) and began "screaming and yelling" orders at patrons and employees (Doc. 93-4, at 58). Patrons—even those in the middle of receiving haircuts (Doc 93-3, at 55-56; Doc. 93-5, at 64-65)—were told to "get out" and that "[t]he shop is closed down indefinitely" (Doc. 93-4, at 58). *See also* Doc. 93-5, at 65 ("They said, you're done. The shop is closed. Everybody out.").

As for the employees of the shop, officers "went to each barber" and detained him (Doc. 93-4, at 56-57): Reginald Trammon was placed in handcuffs "[w]ithin 15 seconds of the [the police] walking in the door," with "no explanation." Doc. 93-5, at 63-64. Jermario Anderson was told to "put [his] hands behind [his] back" and was "put . . . in handcuffs" after the customer whose hair he had been cutting left the shop. Doc. 93-3, at 56-57. He also was told to "wait" and "don't move." *Id*. at 57. Edwyn Durant similarly was told to "sit down and shut up" and not to "touch anything" on his

counter or in his drawers. Doc. 93-4, at 58, 71. Durant was not handcuffed, however, and was eventually permitted to exit the shop because he "w[as]n't working when [the officers] came in." *Id*. at 71. He remained detained nevertheless because a police vehicle had blocked his truck, preventing him from leaving the scene. *Id*. The officers did not "let [Durant] out" of the shopping center until "probably like a hour later after everything was done." *Id*. at 73.

Officers were also in position at the front and rear entrances to the barbershop. Doc. 93-2, at 63-65; Doc. 93-4, at 60, 74. Beyond that, "six or seven" police vehicles were parked at the front and back entrances of the shop. Doc. 93-2, at 62-63.

The officers and a Department of Business and Professional Regulation inspector took possession of Anderson's, Durant's, and Trammon's driver's and barber's licenses and ran "background check[s]" for arrest warrants and to confirm that their "barbering license[s] were valid at the time." Doc. 93-3, at 63, 65. *See also* Doc. 93-2, at 72-73; Doc. 93-4, at 59. Meanwhile, "the police were searching everyone's stations" (Doc. 93-4, at 59) and searching "the bathrooms and also that storage room . . . in the back" (Doc. 93-3, at 67). *See also* Doc. 93-3, at 65 (one of the deputies "opened the drawers"); Doc. 93-5, at 77 (the inspector was "walking around with the officers" and "[g]oing through drawers and stuff").

Deputy Leslie was among the officers who participated in the raid. Doc. 94-3, ¶ 4; Doc. 98-3, ¶ 3(f). He was wearing his uniform and sidearm. Doc. 94-3, ¶¶ 5, 11; Doc. 98-3, ¶¶ 18-19. Leslie was among the group of officers who entered the barbershop at the outset of the raid (Doc. 94-3, ¶¶ 4, 6; Doc. 93-2, at 69-72; *see also* Doc. 93-4, at 60 and Doc. 98-3, ¶ 3), and he personally handcuffed and searched the barbershop's owner, Brian Berry (Doc. 94-3, ¶ 6; Doc. 98-3, ¶¶ 6-9, 17; Doc. 98-7, at 12).

The raid lasted for 45 minutes or an hour. Doc. 93-3, at 61 (30-45 minutes); Doc. 93-4, at 73 (an hour). No criminal activity was uncovered by the raid (Doc. 98-5, at 5), and "no arrest[s] were made and no citations given" (Doc. 98-6, at 29). A subsequent report written by the Department of Business and Professional Regulation confirmed that "[a]ll persons performing services were licensed and the shop was in compliance with all safety/sanitary rules." Doc. 98-6, at 29.

B. Procedural background

1. Anderson, Berry, Durant, and Trammon filed suit against Orange County, the Orange County Sheriff, the Secretary of the Department of Business and Professional Regulations, and numerous individuals alleged to have been involved in the raid, including Leslie. Doc. 87, ¶¶ 18-29. The complaint alleges that the officers and inspectors "conspired" to conduct an "illegal search [of] the premises without a warrant" (*id.* ¶ 41), and that the

detentions of Anderson, Berry, Durant, and Trammon were "unnecessary, unwarranted, and unlawful" (*id.* ¶ 43).

As relevant here, the complaint alleges in particular that Leslie (among others) "participated in the raid on Strictly Skillz on August 21, 2010" (Doc. 87 ¶ 59) and that his conduct therefore "violated the rights of Plaintiffs under the Fourth Amendment to the United States Constitution by subjecting Plaintiffs to unreasonable and warrantless searches and seizures" (*id.* ¶ 90).

2. The district court denied Leslie qualified immunity, and a divided panel of this Court affirmed. *Berry v. Leslie*, 767 F.3d 1144 (11th Cir. 2014). According to the panel majority, "the August 21 search was executed with a tremendous and disproportionate show of force, and no evidence exists that such force was justified." *Id.* at 1153. In particular, "the record indicates that several OCSO officers entered the barbershop wearing masks and bulletproof vests, and with guns drawn; surrounded the building and blocked all of the exits; forced all of the children and other customers to leave; announced that the business was 'closed down indefinitely'; and handcuffed and conducted pat-down searches of the employees while the officers searched the premises." *Id.*

"Such a search," the majority reasoned, "bears no resemblance to a routine inspection for barbering licenses" and is "not reasonable in scope

and execution." *Berry*, 767 F.3d at 1153. Because the raid "amounted to an unconstitutional search," and "the unconstitutionality of such a search was clearly established at the time that the search was executed," the majority concluded that "the district court properly determined that qualified immunity is inappropriate at this juncture." *Id.* at 1154.

"In affirming the denial of . . . Leslie's qualified-immunity defense" the majority explained that it was "not depart[ing] from the long-standing principle that individual liability under § 1983 must be premised on each defendant's participation in the plaintiff's constitutional injury." *Berry*, 767 F.3d at 1154. The personal participation rule "does not [require] a plaintiff [to] catalog each and every specific action in which a defendant engaged if that defendant was integrally involved in what was, from the outset, clearly an unreasonable search in violation of the plaintiff's Fourth Amendment rights." *Id.* (citing *Swint v. City of Wadley*, 51 F.3d 988, 994 (11th Cir. 1995)).

Because Leslie was an "active and full participant[] in the unconstitutional intrusion, which was unconstitutional from the moment that OCSO burst into Strictly Skillz in raid mode," the majority concluded that he could be held personally liable for the constitutional violations committed during the raid. *Berry,* 767 F.3d at 1155. That is not to hold Leslie liable "for violations of clearly established constitutional rights that

[Leslie] did not commit," but rather to hold him to account "for his core personal participation in what was, according to our binding precedent, clearly from the start, an unlawful, warrantless search that affected each and every one of the plaintiffs." *Id*. at 1156-1157.

3. Judge Pryor concurred in part and dissented in part. At the outset, Judge Pryor "agree[d] with the majority opinion that the search of the barbershop exceeded the scope of a reasonable administrative inspection." *Berry*, 767 F.3d at 1161. He "also agree[d] that Brian Berry presented evidence that Deputy Travis Leslie, who handcuffed Berry and patted him down, violated his clearly established constitutional rights." *Id*. But in Judge Pryor's view, "Edwyn Durant, Reginald Trammon, and Jermario Anderson presented no evidence that Deputy Travis Leslie violated their constitutional rights." *Id*.

Establishing a "causal connection" between Leslie's conduct, in particular, and the alleged violations of Anderson's, Durant's, and Trammon's constitutional rights, Judge Pryor reasoned, would require "record evidence that Leslie touched Durant, Trammon, or Anderson," that he "touched . . . property belonging to Durant, Trammon, or Anderson," or that he "supervised . . . the officers who searched or seized property of Durant, Trammon, and Anderson." *Berry,* 767 F.3d at 1163. Because there was no such evidence in this case, Judge Pryor "would [have] reverse[d]

the denial of summary judgment for the claims brought by Anderson, Durant, and Trammon against Leslie." *Id*. at 1164.

SUMMARY OF THE ARGUMENT

Leslie may be held individually liable for violating the constitutional rights of Anderson, Durant, and Trammon for three alternative reasons.

I. Leslie is individually liable for detaining Anderson, Durant, and Trammon by show of force. An officer effects a seizure by show of authority when the officer's words and actions would convey to a reasonable person that he or she is not free to disregard the police presence and go about his business. Measured against that standard, there is no question that Anderson, Durant, and Trammon were each detained the instant the raid began. Because the detention was unconstitutional from its inception, and because Leslie directly and personally participated in the show of force that effected the unlawful detentions, he is individually liable for them. And because the relevant law was clearly established at the relevant time, Leslie is not immune from liability.

II. Even supposing that Anderson, Durant, and Trammon were not detained until they were later handcuffed or expressly told not to move, Leslie still is individually liable for their detentions and the searches of their persons and property. This Court's decision in *Swint v. City of Wadley*, 51 F.3d 988 (11th Cir. 1995), clearly established that any govern-

ment official who actively participates in a course of conduct that foreseeably results in a constitutional violation is individually liable for the violation. Here, that is what the evidence shows. Leslie was an active participant in the raid: He was armed and uniformed, was a participant in the raid from the start, and personally handcuffed and searched Berry. Thus Leslie actively contributed to the police conduct that resulted in the violations of Anderson's, Durant's, and Trammon's constitutional rights. Every court of appeals to consider the issue has reached the same conclusion that this Court reached in *Swint*. The law was therefore clearly established, and Leslie again is not entitled to immunity.

III. Finally, Leslie may be held individually liable for the violations of Anderson's, Durant's, and Trammon's constitutional rights because he was part of a civil conspiracy to commit those violations. To prove a civil conspiracy under Section 1983, a plaintiff must show that the defendants reached an understanding to deny the plaintiff's rights. The understanding need not be expressly stated and may be inferred from the defendants' conduct. If a conspiracy can be shown, it makes each member of the conspiracy liable for the unconstitutional actions of every other member. Here, viewing the totality of the officers' actions in the light most favorable to the plaintiffs, a rational jury could conclude that Leslie and his fellow officers reached an understanding to work together to execute the un-

lawful raid, including the handcuffings, pat-down searches, and property searches. On that basis, too, Leslie can be held individually liable.

For all of these reasons, the order below should be affirmed.

ARGUMENT

There is no dispute that, drawing all reasonable factual inferences in favor of the plaintiffs, the SWAT-style raid of Strictly Skillz Barbershop violated the Fourth Amendment. Deputy Leslie now concedes as much, acknowledging that "the district court identified alleged facts, if true, that show the administrative inspection violated the Appellees' Fourth Amendment rights." En Banc Br. 18-19.

He hardly could do otherwise. It is fundamental that "the scope and execution of an administrative inspection must be reasonable in order to be constitutional" and, accordingly, that "[a]lthough a statute authorizing administrative searches may be constitutional, actual searches conducted under that authority may not." *Bruce v. Beary*, 498 F.3d 1232, 1241 (11th Cir. 2007). This Court's precedents thus clearly establish that searches like the one at issue—more closely "resembl[ing] a criminal raid . . . than an administrative inspection" and involving a "'massive show of force and excessive intrusion'"—violate the Fourth Amendment. *Id*. at 1244 (quoting *Swint v. City of Wadley*, 51 F.3d 988, 999 (11th Cir. 1995)). On that basis, the three-judge panel unanimously agreed that the raid of Strictly Skillz

Barbershop was unconstitutional. *See Berry*, 767 F.3d at 1152; *id.* at 1161 (Pryor, J., concurring and dissenting).[1]

The question presented before the en banc court is therefore a narrower one: Is Leslie's active participation in the unconstitutional raid sufficient to hold him personally liable for violating Anderson's, Durant's, and Trammon's clearly established rights, even though Leslie did not personally touch those individuals or their property. As we now demonstrate, the answer to that question is *yes*.

I. LESLIE IS INDIVIDUALLY LIABLE FOR DETAINING ANDERSON, DURANT, AND TRAMMON BY SHOW OF FORCE

We begin with the question whether Leslie was personally involved in the initial seizure of Anderson, Durant, and Trammon and, if so, whether that involvement makes him personally liable for violating their clearly established constitutional rights. He was, and it does.

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[1] Leslie suggests towards the end of his en banc brief that the raid may have been lawful after all. He says that the "intelligence gathering" inspection of Strictly Skillz on August 19, 2010, two days before the raid, was not a full administrative inspection, and thus that it did not foreclose conducting an inspection on August 21, 2010. En Banc Br. 28-29. He also notes that he and his colleagues had no prior knowledge of the August 19 "walk-through." *Id.* But that all misses the point: The August 21 raid violated the plaintiffs' constitutional rights as a standalone matter because it "exceeded the scope of a reasonable administrative inspection." *Berry*, 767 F.3d at 1161 (Pryor, J., concurring in part and dissenting in part). Thus the panel unanimously agreed that Leslie, at minimum, "violated [Berry's] clearly established constitutional rights." *Id.*

A. Leslie was personally involved in the show of force that detained each plaintiff

"A person is 'seized' when, by means of physical force or a show of authority, his freedom of movement is restrained such that, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. House*, 684 F.3d 1173, 1199 (11th Cir. 2012) (Pryor, J.) (alteration and internal quotation marks omitted) (quoting *United States v. Mendenhall*, 446 U.S. 544, 553-554 (1980)). Crucially, the test is disjunctive: the seizure can be effected "by means of [*either*] physical force *or* show of authority." *Brendlin v. California*, 551 U.S. 249, 254 (2007) (emphasis added) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991)).

"[A] government officer effects a seizure by means of a show of authority where 'the officer's words and actions would have conveyed . . . to a reasonable person' that 'he was being ordered to restrict his movement,' and those words and actions actually 'produce his stop.'" *House*, 684 F.3d at 1199 (quoting *California v. Hodari D.*, 499 U.S. 621, 628-629 (1991)). "Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicat-

ing that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. at 554. Also relevant is "whether a citizen's path is blocked or impeded." *United States v. De La Rosa*, 922 F.2d 675, 678 (11th Cir. 1991).

Considered within this framework, there can be no dispute that the detentions of Anderson, Durant, and Trammon commenced *before* they were physically restrained, from the moment the raid began. The evidence establishes that at least eight officers "rush[ed] in[to]" the barbershop all at once, in a threatening manner, hollering orders at the shop's occupants. Doc. 98-2, at 5-7; Doc. 93-3, at 48, 65; Doc. 93-4, at 56-60; Doc. 93-5, at 61-64. Half of the officers were dressed in SWAT-style gear, and half were in uniform. Doc. 93-3, at 49-52; Doc. 93-4, at 56. Some had their weapons drawn. Doc. 93-4, at 64. Officers were guarding the front entrance to the barbershop, and there were numerous police vehicles parked at both the front and rear entrances of the shop. Doc. 93-4, at 60, 71, 74; Doc. 93-2, at 63. *See also generally Berry*, 767 F.3d at 1149 (describing the facts and circumstances of the "sting operation" raid).

There is no way to understand this set of facts except as a "willful restriction on [Anderson's, Durant's, or Trammon's] freedom of movement" from the very outset. *Brendlin*, 551 U.S. at 261. In the face of a threatening police presence and loud police commands, any reasonable person in

the plaintiffs' shoes "would have perceived that the show of authority was at least partly directed at him, and that he was thus not free to ignore the police presence and go about his business." *Id*. Thus Anderson, Durant, and Trammon were each unlawfully seized before, and independent of, any physical restraint or handcuffing that followed. *Cf*. *Berry*, 767 F.3d at 1155 (holding that the raid "was unconstitutional from the moment that OCSO burst into Strictly Skillz in raid mode").[2]

That is enough to answer the questions presented here. All that is required to hold Leslie personally liable for the unlawful seizure of all three men is evidence that he "was personally involved in the acts that resulted in the constitutional deprivation." *Zatler v. Wainwright*, 802 F.2d 397, 401 (11th Cir. 1986) (per curiam). And that is just what the record here shows: Leslie was among the eight or ten officers who stormed through the front door of the barbershop. Doc. 93-2, at 69-72; Doc. 93-4, at 60; Doc. 93-5, at 61; Doc. 94-3, ¶ 4, 6; Doc. 98-3, ¶ 3(f). And he was wearing his official deputy's uniform and a sidearm. Doc. 94-3, ¶¶ 5, 11; Doc. 98-3,

[2] It is no response to say that Anderson and Trammon were each handcuffed so quickly after the raid began that the restraint by show of force was too brief to violate their rights. "The restraint on one's freedom of movement does not have to endure for any minimum time period before it becomes a seizure for Fourth Amendment purposes." *West v. Davis*, 767 F.3d 1063, 1069 (11th Cir. 2014). In any event, the restriction of the plaintiffs' freedom by show of force simply marked the beginning of a singular detention that endured throughout the entire encounter. As for Durant, he was never cuffed and was detained only by show of force.

¶¶ 18-19. Thus, Leslie was "personally involved" (*Zatler*, 802 F.2d at 401) in the police conduct that "conveyed" (*House*, 684 F.3d at 1199) to Anderson, Durant, and Trammon that they were not free to disregard the police presence and go about their business. No more is required to hold Leslie individually liable to Anderson, Durant, and Trammon, regardless of whether he or anyone else later touched their persons or property.

Leslie thus misses the point when he insists that he cannot be held "individually liable for the actions of the other deputies on scene." En Banc Br. 22. Anderson, Durant, and Trammon are not asking to hold Leslie to account "for other officers' alleged improper [conduct]," in which Leslie was not "personally involved." *Id.* Rather Anderson, Durant, and Trammon seek to hold Leslie responsible for his own, personal involvement in the show of force that unlawfully detained them from the outset of the raid. That is just what *Zatler* permits.

B. Leslie is not entitled to qualified immunity for the unlawful detention of Anderson, Durant, and Trammon

The order granting en banc rehearing also asks whether Leslie is entitled to qualified immunity. He is not.

The qualified immunity inquiry "asks whether the right [that was violated] was 'clearly established' at the time of the violation." *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014) (per curiam) (quoting *Hope v. Pelzer*,

536 U.S. 730, 739 (2002)). According to this doctrine, officials "are shielded from liability for civil damages" only insofar as "their actions did not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* (quoting same) (quotation marks and alteration marks omitted). Thus, "the salient question is whether the state of the law at the time of an incident provided 'fair warning' to the defendants that their alleged conduct was unconstitutional." *Id.* (quoting *Hope*, 536 U.S. at 741) (quotation marks and alteration marks omitted).

Here, clearly established law gave Leslie more than "fair warning" that his involvement in the detention of Anderson, Durant, and Trammon by show of force was unconstitutional. To begin with, the illegality of the raid itself was clearly established on the day that it took place. *Swint* and *Bruce* had made it crystal clear long before August 21, 2010 that warrantless administrative searches executed as SWAT-style raids involving a "massive show of force and excessive intrusion" are unconstitutional. *Swint*, 51 F.3d at 999. Indeed, this Court thought the "constitutional impropriety" of such raids so evident that it held *in 1995*, in *Swint*, that the relevant law was clearly established at least as early as 1979. *Id.* at 996 (citing *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)). *See also Bruce*, 498 F.3d at 1244 ("'No reasonable officer in the defendants' position could have

believed that these were lawful, warrantless administrative searches.'") (quoting *Swint*, 51 F.3d at 999). No less can be said here.

Likewise, it was no mystery on August 21, 2010 that citizens could be detained by show of force, without physical touching; *Mendenhall* had established that rule 30 years earlier. Likewise, there was no reason for Leslie to doubt that his "personal involvement" in the show of force would subject him to liability for it; *Zatler* made that clear nearly as long ago.

Accordingly, there is no basis for granting Leslie qualified immunity for his involvement in detaining Anderson, Durant, and Trammon: Any competent officer in Leslie's shoes would have understood that he or she was violating the Fourth Amendment by participating in the show of force that detained those individuals during the August 21, 2010 raid on Strictly Skillz Barbershop and Salon.

II. LESLIE'S ACTIVE PARTICIPATION IN THE RAID MAKES HIM PERSONALLY LIABLE FOR ALL FORESEEABLE CONSTITUTIONAL VIOLATIONS COMMITTED DURING THE RAID

Because Leslie was personally involved in the detention of Anderson, Durant, and Trammon from the outset of the raid, the en banc Court need not address the separate question of whether an officer can be held personally liable if he or she actively participates in a course of group conduct that foreseeably results in a constitutional violation that is physically committed by another officer. But even if that were not so—even if the

detentions of Anderson, Durant, and Trammon had not commenced until they were physically restrained by handcuffs and police cruisers—Leslie still could be held personally liable in this case. That is because the settled (indeed, clearly established) rule is that, when police officers work together as a unit, all officers who actively participates in a team effort that foreseeably results in a constitutional violation are individually liable for the violation, regardless what specific roles they play.

A. Any government official who actively participates in group conduct that foreseeably results in a constitutional violation is individually liable for the violation

1. It is no accident that the raid of Strictly Skillz was undertaken by ten officers rather than just one. Police officers frequently work together in teams because safely accomplishing their objectives often requires the dominating and coercive force of a large police presence. In that way, the personal conduct of *each* officer who actively participated in the Strictly Skillz raid contributed to the accomplishment of the raid's objectives, including the unconstitutional searches and seizures at issue.

Accordingly—and as the panel majority explained—Leslie's "active and full participa[tion] in the unconstitutional intrusion" is all that is necessary to hold him personally liable for the violations of Anderson's, Durant's, and Trammon's constitutional rights committed during the raid. *Berry*, 767 F.3d at 1155. That conclusion follows necessarily from *Swint*.

Just like Leslie in this case, Officer Gregory Dendinger argued in *Swint* that he could not be held individually liable because he did not "h[o]ld a gun on anyone" during the raid, and because it was not he, but "other law enforcement persons [who] restricted plaintiffs [sic] freedom of movement." Opening Br. 22, *Swint v. City of Wadley*, 1992 WL 12149259 (Oct. 19, 1992). This Court rejected that contention, concluding that it was enough to hold Dendinger individually liable that he was a "willing[]" "participant[]" in the raids. *Swint*, 51 F.3d at 999-1000.

In Leslie's view, *Swint* does not control this case because it "is silent regarding facts establishing the officer's role in each Appellee's injury and whether an officer is liable for violations of clearly established rights that he did not personally commit." En Banc Br. 25. That is a strange assertion. The *Swint* Court stated in plain terms that "Officer Dendinger personally participated in both raids." 51 F.3d at 994. Because active participation in the raids was, according to the Court, sufficient to hold Dendinger individually liable, no further details concerning his conduct were necessary.

2. The First, Second, Fifth, Ninth, and District of Columbia Circuits agree that active participation in a course of conduct that violates rights is sufficient to impose individual liability. The seminal case is *Melear v. Spears*, 862 F.2d 1177 (5th Cir. 1989). There, a team of three police officers

kicked in the doors of and searched five apartments, looking for a suspect whom they believed to be in the building. *Id.* at 1180-1181. The occupants of the apartments later sued, and a jury found the officers liable for violating the Fourth Amendment. *Id.* at 1178. On appeal, one of the officers (Ron Avirett) argued that he could not be held individually liable to one of the plaintiffs (Willie Stewart) because Avirett did not *personally* "kick[] in the door, enter[] Stewart's apartment or search[] the room." *Id.* at 1186 (quotation marks and alteration marks omitted). Rather, he stood guard outside the entrance of the apartment while his partner did those things. The Fifth Circuit rejected that argument without hesitation:

> Avirett's attempt to evade liability for the Stewart search fails to recognize the nature and scope of a Fourth Amendment violation. He was a full, active participant in the search, not a mere bystander. Avirett proceeded to Stewart's door . . . and stood at the door armed with his gun while [another officer] went into the apartment. Both men thus performed police functions that were integral to the search. . . . [The jury was therefore] justified in finding both officers liable for their integral participation in the violation.

Id. Thus, *Melear* stands for the proposition that if an officer is an "active participant" in a course of unconstitutional conduct—that is, if the officer is not a "mere bystander" but performs "police functions that [are] integral to the" violation—he may be held individually liable for damages, regardless of the particular role he plays. *Id.*

The Fifth Circuit has since applied the *Melear* rule in a case nearly identical to this one. In *James v. Sadler*, 909 F.2d 834 (5th Cir. 1990), police suspected that the owner of a salon was involved in "drug trafficking" and "conducted a raid on the salon, arresting [the proprietor] and searching the premises." *Id.* at 835. During the course of the raid, one of the patrons, Carrie James, "was subjected to a pat-down search" by a state narcotics agent "and instructed to remain outside while the search of the salon proceeded." *Id.* About 40 minutes later, the police instructed James to leave the premises without allowing her to complete her hair treatment; she later suffered personal injuries when a solution that remained in her hair burned her scalp and caused her hair to fall out. *Id.*

James brought suit, alleging, among other things, that all of the officers present at the raid had violated her Fourth and Fourteenth Amendment rights to be free from unreasonable searches and seizures. *James*, 909 F.2d at 835-836. The district court granted summary judgment to the municipal police officers on the pat-down-search claim because they "were merely back-up officers who did not participate in the search or detention" performed by the state narcotics agents. *Id.* at 836.

The Fifth Circuit again did not hesitate to reverse: "The record reveals that although the Yazoo City officers did not physically perform the pat-down search of James, they remained armed on the premises

throughout the entire search," "guard[ing]" the individuals present "while the search and arrest proceeded inside." *James,* 909 F.2d at 837. "[T]hese activities were 'integral to the search' and rendered [the defendants] participants rather than bystanders," subject to personal liability. *Id.*

The Ninth Circuit has adopted *Melear*'s "integral participation" rule. According to that court, "Section 1983 liability extends to those who perform functions 'integral' to an unlawful search, even if their individual actions do not themselves rise to the level of a constitutional violation." *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1089-1090 (9th Cir. 2011) (citing *Boyd v. Benton Cnty.*, 374 F.3d 773, 780 (9th Cir. 2004); *Chuman v. Wright*, 76 F.3d 292, 294 (9th Cir. 1996) (in turn citing *Melear*)). Although "the 'integral participant' doctrine does not implicate government agents who are 'mere bystanders' to an unconstitutional search" (*id.* at 1090), that court has held that "officers who provide[] armed backup during an unconstitutional search [are] 'integral' to that search, and [are] therefore participants rather than mere bystanders" (*Boyd*, 374 F.3d at 780).

Thus, in *Boyd*—an excessive force case—the Ninth Circuit held that each individual officer who participated in the raid there could be held personally liable for the use of a flash-bang grenade: "as in *James* and *Melear*, the officers in this case stood armed behind Ellison while he reached into the doorway and deployed the flash-bang." 374 F.3d at 780.

Because "the use of the flash-bang was part of the search operation in which every officer participated in some meaningful way," and because "every officer was aware of the decision to use the flash-bang, did not object to it, and participated in the search operation knowing the flash-bang was to be deployed," "the integral participation analysis" permitted "each defendant [to] be held liable for the Fourth Amendment violation outlined above." *Id.*

The First Circuit also adopted the *Melear* rule in *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553 (1st Cir. 1989). There, four officers were involved in the unconstitutional shooting of a suspect. *Id.* at 557. A jury later found all four officers individually liable for damages. *Id.* at 558. On appeal, one of the officers argued that he could not be held liable because he was not a supervisor, and the bullet that caused the plaintiff's injuries had been fired by another officer. *Id.* at 560-561. The First Circuit had "no difficulty" rejecting that argument because there was evidence that the officer "was a participant in th[e] acts" that led to the shooting: He "exited the car with his gun drawn and moved toward the [victim's] vehicle along with the other officers" before the shooting. *Id.* "Under such a factual scenario," the First Circuit concluded, "the actions of all four of the officers who participated in the intervention could be deemed to be proximate causes of plaintiff's injuries." *Id.* (citing *Melear*, 862 F.2d at 1186).

The D.C. Circuit took the same approach in *Wesby v. District of Columbia*, 765 F.3d 13 (D.C. Cir. 2014). In that case, five officers appeared on the scene of a bachelor party held in an apartment. *Id.* at 17-18. They conducted a brief investigation on the scene and, despite a lack of probable cause, arrested everyone present for unlawful entry. *Id.* at 25. In a subsequent lawsuit against all five officers, the D.C. Circuit rejected an argument that two of the officers could "not be held liable because they did not personally arrest each of the Plaintiffs." *Id.* at 29. That argument, according to the court, "misapprehends the applicable legal standard for causation in the Section 1983 context." *Id.* Both officers "actively participated" in the course of conduct that led to the illegal arrests, including by "gather[ing] evidence" and "questioning . . . key witnesses." *Id.* "In this context," the D.C. Circuit concluded, "that is sufficient to establish causation" for the illegal arrests. *Id.* at 29-30 (citing *James*, 909 F.2d at 837).

Finally, the Second Circuit also has acknowledged that individual liability may be imposed on "a person who, with knowledge of the illegality, participates in bringing about a violation of [a] victim's rights but does so in a manner that might be said to be 'indirect'—such as ordering or helping others to do the unlawful acts, rather than doing them him- or herself." *Provost v. City of Newburgh*, 262 F.3d 146, 155 (2d Cir. 2001). The court there ruled in favor of the defendant, however, "[b]ecause the

evidence fail[ed] to show that [the defendant] was aware of the facts that made the arrest unconstitutional." *Id*. at 156.

3. Leslie does not deny that, if the *Melear* rule is correct, he is liable. Nor could he—he concedes that he participated in the raid (Doc. 94-3, ¶ 4; Doc. 98-3, ¶ 3(f)), that he was wearing his official uniform and was carrying a sidearm (Doc. 94-3, ¶¶ 5, 11; Doc. 98-3, ¶¶ 18-19), and that he personally handcuffed and searched the barbershop's owner, Brian Berry (Doc. 94-3, ¶ 6; Doc. 98-3, ¶¶ 6-9, 17). There is no dispute that he was an active and integral participant in the raid, and thus no dispute that the First, Second, Fifth, Ninth, and D.C. Circuits would hold him liable.

Instead, Leslie argues (or at least implies) that the *Melear* rule is wrong. Without citing any authority, he asserts that, to establish a "causal connection between personal actions of Deputy Leslie and [the] search or seizure of each Appellee," the plaintiffs here were required to offer "evidence that [Leslie] touched Appellees Durant, Trammon, or Anderson or their property." Opening Br. 19; *see also Berry*, 767 F.3d at 1163 (Pryor, J., concurring in part and dissenting in part) (similar). To conclude otherwise, he asserts, would be to hold Leslie "individually liable for the actions of the *other* officers, based on his presence alone." Opening Br. 14 (emphasis added); *see also Berry*, 767 F.3d at 1162-1163 (Pryor, J., concurring in part and dissenting in part) (similar).

That unsupported contention fundamentally misunderstands the *Melear* rule.[3] It is, of course, true that "'the inquiry into causation must be a directed one, focusing on the duties and responsibilities of each of the individual defendants whose acts or omissions are alleged to have resulted in a constitutional deprivation.'" *Swint*, 51 F.3d at 999 (quoting *Williams v. Bennett*, 689 F.2d 1370, 1381 (11th Cir. 1982)). But none of that is inconsistent with the First, Second, Fifth, Ninth, and D.C. Circuits' approach to cases like this one—those courts simply recognize that the conduct that "results" in a particular constitutional violation can, and often does, include conduct by officials *other* than those who physically touch the individual whose rights are violated.

In this case, for example, the cuffing of Anderson's hands was the "result" not just of the one, particular officer's physical contact with Anderson, but of each officer's active participation in the *entire raid*, taken as a whole, without which the handcuffing never would have happened.

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[3] Leslie cites a series of district court cases throughout his brief. *See, e.g.*, En Banc Br. 19, 22. But none of these cases sets binding precedent, and each involves distinguishable facts. *See Foster v. Raspberry*, 652 F. Supp. 2d 1342, 1348 (M.D. Ga. 2009) (officials were not present for strip search of female suspect); *Nicholson v. Moates*, 159 F. Supp. 2d 1336, 1356 (M.D. Ala. 2001) (no constitutional violation); *Bradley v. Reese*, 2010 WL 4639258, at *8 (M.D. Ga. Nov. 8, 2010) (no indication that university administrators had any connection to alleged seizure by security personnel); *Williams v. Goldsmith*, 4 F. Supp. 2d 1112, 1125-1126 (M.D. Ala. 1998) (sheriff was not present for and did not otherwise participate in the seizure).

While only one officer physically grabbed Anderson's wrists and put him in handcuffs, it would blink reality to say that the handcuffing "resulted" *only* from that particular officer's conduct, and that his actions were not facilitated by the independent conduct of his colleagues on the scene. Thus, holding Leslie individually liable for the detentions and searches of Anderson, Durant, and Trammon is not to hold him liable for the conduct of other offices; it is to hold him liable for his *own* conduct, which assisted the commission of each violation.[4]

4. That is not to say, as the dissent worries, that "*every* officer at the scene of an invalid search [will be] liable for *every* violation of *every* plaintiff's rights." *Berry*, 767 F.3d at 1162-1163. Quite the contrary, the *Melear* rule incorporates two limiting principles that accommodate precisely that concern.

First, it is settled that mere "bystanders" cannot be held liable under circumstances like those present here. *Boyd*, 374 F.3d at 780; *James*, 909 F.2d at 837. If a passing government official had appeared on the scene of

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[4] Leslie asserts that this case "is similar to *Rizzo* [*v. Goode*, 423 U.S. 362 (1976)]" because "there were multiple original defendant deputies originally sued for their personal participation in the alleged constitutional violations, but these original defendant deputies are no longer named as parties" here. En Banc Br. 23. That is beside the point, however, because Leslie does not argue that any of the dismissed defendants is an indispensable party under Civil Rule 19(a)(1). And *Rizzo*—an Article III standing case involving municipal policies and a request for injunctive relief—has no direct relevance here.

the Strictly Skillz raid and merely observed the officers' conduct without actively participating in the raid himself, he could not be held liable. Only officials who were present and performed police functions that were integral to the violation can be held personally to account. It was on that basis that this Court affirmed the grant of qualified immunity in *Brown v. City of Huntsville*, 608 F.3d 724 (11th Cir. 2010). In that case, "[t]here was no active personal participation by [the defendant officers] in [the plaintiff]'s arrest, much less an opportunity to intervene in [the] arrest at the scene." *Id*. at 737. Because the defendant officers in that case were merely present for the arrest, and did not perform any police functions in support of it, they could not be held individually liable.

Second, the facts making the conduct unconstitutional must be known or foreseeable. That was the basis for the Second Circuit's decision in *Provost*—the court held in favor of the defendant "[b]ecause the evidence fail[ed] to show that [the defendant] was aware of the facts that made the arrest unconstitutional." 262 F.3d at 156. In *Boyd*, by contrast, the Ninth Circuit held that each officer participating in the raid had personally violated the Fourth Amendment because "every officer was aware of the decision to use the flash-bang, did not object to it, and participated in the search operation knowing the flash-bang was to be deployed." 374 F.3d at 780. Matters would have been different in that case if a single

member of the raid had unforeseeably thrown a flash-bang grenade, without the prior knowledge and implicit assent of his colleagues. *See also Gutierrez-Rodriguez*, 882 F.2d at 561 (holding participating officers liable because "[i]t was eminently foreseeable that an encounter with a civilian by four policemen with weapons drawn and ready to fire might result in a discharge of the firearms and an injury to the civilian").

But neither of these limitations on the *Melear* rule is applicable here: Leslie was not a mere bystander, and the searches and seizures at issue were plainly foreseeable to any reasonable officer participating in the raid—indeed, their accomplishment was the very object of the raid. Thus, while these limitations should allay the dissent's concern that "*every* officer at the scene of an invalid search [will be] liable for *every* violation of *every* plaintiff's rights" (*Berry*, 767 F.3d at 1162-1163), neither offers Leslie any shelter from individual liability in this case.

B. Leslie is not entitled to qualified immunity for the physical restraint of Anderson, Durant, or Trammon or the searches of their property

Nor is Leslie sheltered from individual liability by qualified immunity. Once again, there is no doubt that the unconstitutionality of the raid was clearly established before August 21, 2010. *See supra*, pp. 18-19. The illegality of Leslie's personal conduct, in particular, was also clearly established at the relevant time. As we have explained, the *Swint* Court consi-

dered and rejected an argument indistinguishable from Leslie's. And this Court thought the grounds for liability clearly established at the time of the raid in *Swint* itself. Thus, "*Swint* put . . . Leslie on notice that engaging in the type of warrantless search conducted in *Swint* clearly violates the Fourth Amendment." *Berry*, 767 F.3d at 1159. Despite the clarity of the law on that point, Leslie actively participated in just such a search; he accordingly is not immune from the resulting liability.

Leslie disagrees. Pointing to the Supreme Court's recent decision in *Carroll v. Carman*, 135 S. Ct. 348 (2014) (per curiam), Leslie claims that "*Swint* did not address the issues raised by Deputy Leslie in this appeal." En Banc Br. 26-27. But that is simply wrong. As we have explained, the defendant in *Swint*—Officer Dendinger—raised the exact same argument that Leslie raises here. He asserted that neither he nor his supervisor on the scene "held a gun on anyone" or "jabbed [anyone] in the back with a weapon," as other officers were alleged to have done in that case. Opening Br. 21-22, *Swint v. City of Wadley*, 1992 WL 12149259 (Oct. 19, 1992). Dendinger argued that it was "other law enforcement persons [who] restricted plaintiffs [sic] freedom of movement," and he could not be held individually liable merely because he "participated in the raids." *Id.* at 22.

This Court rejected that argument. It (1) found that "Dendinger personally participated in both raids," (2) noted that, according to *Zatler*,

"[p]ersonal participation is . . . one of several ways to establish the requisite causal connection," and (3) held that "the alleged conduct that law enforcement officials, *including the individual defendants*, engaged in" violated the plaintiffs' "clearly established" constitutional rights. *Swint*, 51 F.3d at 994, 999-1000 (Court's ellipses omitted; emphasis added). True enough, the *Swint* Court did not expressly set out Dendinger's argument before rejecting it, but, logically, it could not have held him individually liable on any other basis. *Swint* thus controls this case.

The Supreme Court's reversal in *Carroll* does not suggest otherwise. There, the Third Circuit had concluded that a prior circuit decision *permitting* certain conduct had clearly established that the permitted conduct was *required*—a "conclusion that d[id] not follow." 135 S. Ct. at 351. And it did so in respect to a case that involved "wholly different" facts. *Id*. Here, the opposite is true: *Swint* answered the precise question that Leslie poses in this case, and it did so on indistinguishable facts.

Even if there were room for doubt concerning the clarity with which *Swint* established the relevant law, it would be cleared up by the "robust 'consensus of cases of persuasive authority'" (*Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2084 (2011)) from the First, Second, Fifth, and Ninth Circuits. The decisions from those other courts were on the books before the Strictly Skillz raid took place, and they unambiguously confirmed the basis for the

outcome in *Swint*—that all government officials who actively participate in a joint police effort that foreseeably results in a constitutional violation are individually liable for the violation, regardless of the particular roles that they play.

III. ALTERNATIVELY, LESLIE MAY BE HELD LIABLE FOR CIVIL CONSPIRACY TO VIOLATE ANDERSON'S, DURANT'S, AND TRAMMON'S FOURTH AMENDMENT RIGHTS

Even if this Court concludes that Leslie was not a part of the show of force that detained Anderson, Durant, and Tramon from the outset of the raid; and even if it disagrees that the foreseeable constitutional violations committed in the course of the raid are, at least in part, the result of Leslie's own, active participation in the raid, there is yet another basis for finding Leslie individually liable to Anderson, Durant, and Trammon: The complaint alleges that the deputies and state inspectors engaged in a civil conspiracy to violate each plaintiff's Fourth Amendment rights. Doc. 87, ¶¶ 39-42. There is evidence here to support that allegation.

"A plaintiff may state a § 1983 claim for conspiracy to violate constitutional rights by showing a conspiracy existed that resulted in the actual denial of some underlying constitutional right." *Grider v. City of Auburn*, 618 F.3d 1240, 1260 (11th Cir. 2010). Thus, "'[t]o sustain a conspiracy action under § 1983 a plaintiff must show an underlying actual denial of his constitutional rights'" and "that the defendants reached an under-

standing to deny the plaintiff's rights." *Hadley v. Gutierrez*, 526 F.3d 1324, 1332 (11th Cir. 2008) (alteration marks omitted) (quoting *GJR Invs., Inc. v. County of Escambia*, 132 F.3d 1359, 1370 (11th Cir. 1998)).

The conspiratorial agreement need not be express and "may be inferred 'from the relationship of the parties, their overt acts and concert of action, and the totality of their conduct.'" *Myers v. Bowman*, 713 F.3d 1319, 1332 (11th Cir. 2013) (quoting *Am. Fed. of Labor v. City of Miami*, 637 F.3d 1178, 1192 (11th Cir. 2011) (in turn, quoting *United States v. Schwartz*, 541 F.3d 1331, 1361 (11th Cir. 2008) (in turn, citing *United States v. Guerra*, 293 F.3d 1279, 1285 (11th Cir. 2002)))).

"Conspiracy is not itself a constitutional tort under § 1983" and cannot "enlarge the nature of the claims asserted by the plaintiff." *Lacey v. Maricopa County*, 693 F.3d 896, 935 (9th Cir. 2012) (en banc) (Bybee, J.). "Conspiracy may, however, enlarge the pool of responsible defendants by demonstrating their causal connections to the violation." *Id.* Put another way, "the fact of the conspiracy may make a party liable for the unconstitutional actions of the party with whom he has conspired." *Id.* That is because, when a "'[c]onspiracy to violate a citizen's rights under the Fourth Amendment'" leads to an actual violation, the conspiracy is "'as much a violation of an established constitutional right as the underlying constitutional violation itself.'" *Cameron v. Craig*, 713 F.3d 1012, 1023 (9th Cir.

2013) (brackets omitted) (quoting *Baldwin v. Placer County*, 418 F.3d 966, 971 (9th Cir. 2005)). Proving a Section 1983 conspiracy thus "aid[s] in proving claims against otherwise tenuously connected parties in a complex case." *Lacey*, 693 F.3d at 935.

That was this Court's conclusion in *Dykes v. Hosemann*, 743 F.2d 1488 (1984), *vacated on rehearing* 776 F.2d 942, *reinstated in relevant part* 783 F.2d 1000 (11th Cir. 1986). There, one of the defendants argued that whatever constitutional violation had been committed, it had been committed by others, and "*he* did not deprive the appellants of any constitutional rights." 743 F.2d at 1498. This Court rejected that argument, explaining that it did "not adequately address the appellants' contention that [the defendant had] acted as part of a conspiracy to deprive the appellants of their constitutional rights." *Id*. The Court ultimately reversed the grant of summary judgment as to that defendant because "he could be held liable on a conspiracy theory if he reached an understanding with the other appellees to violate [the plaintiff]'s constitutional rights." *Id*. *Cf*. *Woodard v. Town of Oakman*, 885 F. Supp. 2d 1216, 1235-1237 (N.D. Ala. 2012) (denying dismissal of Section 1983 civil conspiracy to violate the Fourth Amendment).

A jury could make the same finding here. Again, there is no dispute that the plaintiffs' clearly established constitutional rights were violated

in this case. Thus, the only question is whether Leslie and his colleagues "reached an understanding to deny the plaintiff's rights." *Hadley*, 526 F.3d at 1332. Viewing the totality of the officers' actions in light most favorable to the plaintiffs, a rational jury could conclude that they did reach such an understanding—that Leslie and his fellow officers tacitly agreed to work together to execute the unlawful raid. Because Leslie was "integrally involved" in the raid from the outset (*Berry*, 767 F.3d at 1154), a rational jury could infer that he, in particular, shared in that "understanding to deny the plaintiff's rights" (*Hadley*, 526 F.3d at 1332). That is all that is necessary to hold Leslie individually liable for every constitutional violation foreseeably committed during the course of the raid. *Lacey*, 693 F.3d at 935.[5]

Needless to say, the black-letter doctrine of civil conspiracy was clearly established at the time of the Strictly Skillz raid. *E.g.*, *Hadley*, 526 F.3d at 1332; *GJR Invs.*, 132 F.3d at 1370. And it is no defense to assert

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[5] To be sure, this Court has recognized that "[t]he intracorporate conspiracy doctrine bars conspiracy claims against corporate or government actors accused of conspiring together within an organization." *Rehberg v. Paulk*, 611 F.3d 828, 854 (11th Cir. 2010), *aff'd,* 131 S. Ct. 1678 (2012). *Cf. Bowie v. Maddox*, 642 F.3d 1122, 1130-1131 (D.C. Cir. 2011) ("At least seven circuits have held the intracorporate conspiracy doctrine applies to civil rights conspiracies."). But because this case involves a conspiracy among officials from both the county sheriff's office and the state Department of Business and Professional Regulation (*see* Doc. 98-7 (repeated reference to "joint operation")), that doctrine has no application here.

that the conspiracy at issue was hatched by Leslie's supervisors, and that Leslie was merely following orders. Leslie's conduct indicates that he willingly joined the conspiracy to execute "an excessive and intrusive administrative search" (*Bruce*, 498 F.3d at 1250), which any competent officer should have known would violate the Fourth Amendment.

Every government official bears an individual obligation to "exercis[e] reasonable professional judgment." *Malley v. Briggs*, 475 U.S. 335, 346 (1986). Thus an officer "cannot excuse his own default by pointing to the greater incompetence" of another official. *Id.* at 346 n.9. A contrary conclusion would mean "'that obedience to higher authority should excuse disobedience to law, no matter how central the law is to the preservation of citizens' rights.'" *Wesby*, 765 F.3d at 29 (quoting *Hobson v. Wilson*, 737 F.2d 1, 67 (D.C. Cir. 1984)). That is not the rule.

* * *

In sum, there are three analytically distinct grounds for holding Leslie individually liable to Anderson, Durant, and Trammon.

First, Leslie was an active participant in the show of force that detained the occupants of the barbershop from the outset of the raid. His conduct on that score directly effected an illegal seizure of Anderson, Durant, and Trammon and accordingly makes him individually liable wholly apart from the subsequent handcuffings and searches.

Second, Leslie's active participation in the raid assisted the handcuffings, pat-down searches, and property searches that took place at the hands of other officers; his conduct as a "back up" officer therefore was an element of the police action that "resulted in" those constitutional violations, and again makes him individually liable.

Finally, the evidence is clear that Leslie and his fellow participants in the raid had an understanding to work together to execute the raid. A jury could infer from Leslie's conduct that he was a member of the conspiracy, making him liable for the constitutional violations committed in the course of its execution.

CONCLUSION

The district court's interlocutory order denying qualified immunity should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned counsel for plaintiffs-appellees certifies that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 9,366 words, including footnotes and excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2007 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

/s/ *Michael B. Kimberly*

CERTIFICATE OF SERVICE

I certify that that on February 2, 2015, this en banc answering brief was served electronically via the Court's CM/ECF system, and in hardcopy by courier, upon all counsel of record.

/s/ *Michael B. Kimberly*