**ANNOTATIONS AND COMMENTS**

1. **Elements of Unlawful Arrest Claim**

A warrantless arrest without probable cause violates the Constitution and provides a basis for a § 1983 claim. *Kingsland v. City of Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004). However, the existence of probable cause at the time of arrest constitutes an absolute bar to a § 1983 action for unlawful arrest. *Id*. “Probable cause to arrest exists when an arrest is objectively reasonable based on the totality of the circumstances.” *Id*. (citing *Rankin v. Evans,* 133 F.3d 1425, 1435 (11th Cir. 1998)). “This standard is met when the facts and circumstances within the officer’s knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.” *Id*. (internal quotations omitted).

1. **Elements of Unlawful Search Claim**

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” In regard to unreasonable searches, the Fourth Amendment protects certain areas over which individuals manifest “a subjective expectation of privacy” and where “society is willing to recognize that expectation as reasonable.” *Kyllo v. United States*, 533 U.S. 27, 27-28 (2001). The home is one such area where it is readily accepted that an expectation of privacy exists. *Id*. at 34; *see also Kentucky v. King*, 563 U.S. 452, 474 (2011). Accordingly, the United States Supreme Court has held that “searches and seizures inside a home without a warrant are presumptively unreasonable.”  *King*, 563 U.S. at 459 (citation omitted). However, there are two principal exceptions to the search warrant requirement which are detailed in this instruction—searches conducted by consent or under exigent circumstances. *See Katz v. United States*, 389 U.S. 347, 357 (1967).

“The Fourth Amendment recognizes a valid warrantless entry and search of premises when police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, authority over the area in common with a co-occupant who later objects to the use of evidence so obtained.” *Georgia v. Randolph*, 547 U.S. 103, 106 (2006). Additionally, a “well-recognized exception applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.” *King*, 563 U.S. at 460 (internal quotations omitted). The Supreme Court has identified several exigencies that may justify a warrantless search of a home. This instruction includes a description of the “emergency aid” exception, under which “officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *See Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). Other recognized exigent circumstances include where officers are “in hot pursuit of a fleeing suspect,” *King*, 563 at 460 (citing *United States v. Santana*, 427 U.S. 38, 42-43 (1976)), and where there is a need to “prevent the imminent destruction of evidence.” *Id*.

Additional exceptions not detailed in this instruction include the plain view exception, *see Kyllo*, 533 U.S. 27, 38-40, and the exception for search incident to a lawful arrest. *See Maryland v. Buie*, 494 U.S. 325, 334 (2009). This instruction may be altered if an exception other than consent or an exigent circumstance is at issue in a particular case.

1. **Elements of Unlawful Terry Stop Claim**

“[L]aw enforcement officers may seize a suspect for a brief, investigatory *Terry* stop where (1) the officers have a reasonable suspicion that the suspect was involved in, or is about to be involved in, criminal activity, and (2) the stop ‘[is] reasonably related in scope to the circumstances which justified the interference in the first place.’” *United States v. Jordan*, 635 F.3d 1181, 1186 (11th Cir. 2011) (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20, 30 (1968)). Determining the unreasonableness of a seizure within the meaning of the Fourth Amendment requires balancing “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. When the nature and extent of the detention are minimally intrusive of the individual’s Fourth Amendment interests, the opposing law enforcement interests can support a seizure based on less than probable cause.” *Courson v. McMillian*, 939 F.2d 1479, 1490 (11th Cir. 1991) (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)). The reasonableness of an investigatory stop is examined under the totality of the circumstances. *United States v. Lewis*, 674 F.3d 1298, 1303 (11th Cir. 2012) (citing *Samson v. California*, 547 U.S. 843, 848 (2006); *Jordan*, 635 F.3d at 1186).

“A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.” *Courson*, 939 F.2d at 1490 (quoting *Adams v. Williams*, 407 U.S. 143, 145-46 (1972)). “While ‘reasonable’ suspicion is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). Alternatively stated, “[r]easonable suspicion need not involve the observation of illegal conduct, but does require ‘more than just a hunch.’” *Lewis*, 674 F.3d at 1303 (citation omitted). “The detaining officer ‘must have a particularized and objective basis for suspecting the person of criminal activity.’”  *United States v. Cruz*, 909 F.2d 422, 424 (11th Cir. 1989) (quoting *United States v. Aldridge*, 719 F.2d 368, 371 (11th Cir. 1983)).

Even if an officer has reasonable suspicion to make a valid *Terry* stop, the encounter may mature into a detention that amounts to an arrest for which probable cause is required. *United States v. Acosta*, 363 F.3d 1141, 1145-46 (11th Cir. 2004). The Eleventh Circuit has set forth four non-exclusive factors which may be considered in “drawing the line between a *Terry* stop and an arrest in an individual case.” *Id.* at 1146. These factors include: “the law enforcement purposes served by the detention, the diligence with which the police pursue the investigation, the scope and intrusiveness of the detention, and the duration of the detention.” *Id.* (citation omitted).

**IV. Causation**

“A § 1983 claim requires proof of an affirmative causal connection between the defendant’s acts or omissions and the alleged constitutional deprivation.” *Troupe v. Sarasota Cnty., Fla.*, 419 F.3d 1160, 1165 (11th Cir. 2005) (citing *Zatler v. Wainwright*, 802 F.2d 397, 401 (11th Cir. 1986)). The requisite causation includes proof of legal and proximate causation. *Jackson v. Sauls*, 206 F.3d 1156, 1168 n.16 (11th Cir. 2000). Thus, “a plaintiff must show that, except for that constitutional tort, such injuries and damages would not have occurred and further that such injuries and damages were the reasonably foreseeable consequences of the tortious acts or omissions in issue.” *Id*. at 1168. The model instruction makes clear that the plaintiff must prove both legal and proximate causation in accordance with Eleventh Circuit case law.

**V. Damages**

For the damages instruction, see Pattern Instruction 5.13