viewed in light of the entire record, suffice for us to determine that its conclusion was not clearly erroneous. In this case, assuming only the four undisputed participants, the involved non-participants include the car dealership employee and the fence. Huynh does not dispute that he engaged both with the specific intent of furthering the aims of the conspiracy. And contrary to his suggestion, the record contains ample evidence that their services were necessary to the scheme's success. Without the stolen identification and credit information the car dealership employee supplied to Huynh, the scheme could not have created the fake identities necessary to complete its fraudulent credit applications and purchases. And by purchasing the stolen watches from Huynh, the fence supplied the cash necessary to cover the scheme's expenses and compensate its members. Huynh makes no attempt to show why these two individuals should not be counted as functional equivalents of participants, and we perceive no clear error in doing so. Because the sum of the scheme's participants and countable non-participants exceeds five, we conclude that the District Court did not clearly err in finding that the scheme was otherwise extensive within the meaning of § 3B1.1(a). Accordingly, the Court did not clearly err in finding that Huynh was "an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." USSG § 3B1.1(a).

IV

Because the Government did not breach its plea agreement with Huynh and the District Court did not clearly err when it applied the relocation and organizer or leader enhancements, we will affirm the District Court's judgment of sentence.

which to evaluate the Court's finding for clear error.

E.W., a minor, BY AND THROUGH her next friend and mother, T.W., Plaintiff–Appellant,

v.

Rosemary DOLGOS, School Resource Officer, in her individual capacity, Defendant–Appellee,

and

Wicomico County Sheriff's Department, Defendant.

No. 16-1608

United States Court of Appeals, Fourth Circuit.

Argued: May 10, 2017

Decided: February 12, 2018

Background: Parents of an elementary school student brought § 1983 action against school resource officer, claiming officer's decision to handcuff a calm, compliant elementary school student for fighting with another student three days prior violated student's Fourth Amendment rights and Maryland law. The United States District Court for the District of Maryland, no. 1:15-cv-03982-JFM, J. Frederick Motz, Senior District Judge, 2016 WL 1752750, granted summary judgment to officer [redacted] Parents appealed.

Holdings: The Court of Appeals, Gregory, Chief Judge, held that:

(1) officer's decision to handcuff student was objectively unreasonable;

(2) student's right to be free from being handcuffed was not clearly established at the time of student's seizure; and

(3) officer did not act maliciously or with gross negligence when she handcuffed student.

Affirmed.

Shedd, Senior Circuit Judge, filed an opinion concurring in the judgment only.

1. Federal Courts ⚷3604(4)

The Court of Appeals reviews de novo a district court's order granting summary judgment.

2. Federal Civil Procedure ⚷2470, 2470.4

Summary judgment is appropriate only if taking the evidence and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party, no material facts are disputed and the moving party is entitled to judgment as a matter of law.

3. Federal Courts ⚷3604(4)

The Court of Appeals generally reviews a district court's conversion of a motion to dismiss to a summary judgment motion for abuse of discretion.

6. Arrest ⚷68.1(4)

The Fourth Amendment prohibition on unreasonable seizures bars police officers from using excessive force to seize a free citizen. U.S. Const. Amend. 4.

7. Arrest ⚷60.2(14)

Determining the reasonableness of an officer's actions in conducting a seizure requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. U.S. Const. Amend. 4.

8. Arrest ⚷60.2(10)

In assessing the reasonableness of a seizure, a court examines the officer's actions in light of the facts and circumstances confronting her, without regard to her underlying intent or motivation. U.S. Const. Amend. 4.

9. Arrest ⚷68.1(4)

In assessing the reasonableness of a seizure, a court assesses the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. U.S. Const. Amend. 4.

10. Arrest ⚷68.1(4)

The ultimate question in assessing the reasonableness of a seizure is whether the totality of the circumstances justified a particular sort of seizure. U.S. Const. Amend. 4.

11. Education ⚷807

Under the totality of the circumstances, school resource officer's decision to handcuff a calm, compliant elementary school student for fighting with another

student three days prior was objectively unreasonable, even though officer knew that student had committed misdemeanor assault and student suffered only de minimis injuries; student, who stood 4'4" and weighed about 95 pounds, did not pose an immediate threat to the safety of the officer or others, significant time had passed student's assault, student remained seated and was submissive during officer's conversation with student, and all of the events occurred at school. U.S. Const. Amend. 4.

12. Arrest ⟹68.1(4)
Municipal Corporations ⟹747(3)
Public Employment ⟹916

Police officers will not be absolved of liability merely because their conduct, however unreasonable, results in only de minimis injury.

15. Civil Rights ⟹1376(2)

A right may be clearly established if a general constitutional rule already identified in the decisional law applies with obvious clarity to the specific conduct in question; as such, an officer can be on notice that their conduct violates established law even in novel factual circumstances, but the officer must in fact have notice.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Senior District Judge. (1:15–cv–03982–JFM)

ARGUED: Robin Ringgold Cockey, COCKEY, BRENNAN & MALONEY, PC, Salisbury, Maryland, for Appellant. John Francis Breads, Jr., Hanover, Maryland, for Appellee. ON BRIEF: Laura E. Hay, COCKEY, BRENNAN & MALONEY, PC, Salisbury, Maryland, for Appellant.

Before GREGORY, Chief Judge, WYNN, Circuit Judge, and SHEDD, Senior Circuit Judge.

Affirmed by published opinion. Chief Judge Gregory wrote the opinion, in which Judge Wynn joined. Senior Judge Shedd wrote a separate opinion concurring in the judgment.

GREGORY, Chief Judge:

This matter involves a school resource officer's decision to handcuff a calm, compliant elementary school student for fighting with another student three days prior. The child brought a claim under 42 U.S.C. § 1983 for excessive use of force in violation of the Fourth Amendment and several state law claims. On a motion for summary judgment, the district court concluded that the officer's conduct did not amount to a constitutional violation and that [redacted] For the reasons that follow, we affirm the district court's judgment.

I.

Because this case arises from a grant of summary judgment, we set forth the material facts in the light most favorable to Appellant E.W., the non-movant. *Henry v. Purnell*, 652 F.3d 524, 527 (4th Cir. 2011) (en banc).

On Tuesday, January 6, 2015, ten-year-old E.W. rode a school bus to East Salisbury Elementary School in Salisbury, Maryland. E.W. sat in an aisle seat on one side of the bus while another student, A.W., sat diagonally across from her in an aisle seat one row behind E.W. on the opposite side of the bus. The two schoolgirls both had their feet in the aisle: E.W. was facing sideways with her feet in the aisle, and A.W. was facing forward with her left leg in the aisle, extended in the direction of E.W.

Video footage from the school bus's surveillance camera shows A.W. swaying her left knee from side to side in the aisle. ECF No. 18 (DVD filed with Joint Appendix, hereinafter "Video"), at 0:10. Several seconds later A.W. raised her left leg in the air and made a sudden, stomping motion in the direction of E.W.'s leg. Video 0:24. E.W. later reported that A.W. had stomped on her shoe. In response to the stomp, E.W. immediately stood up and faced A.W., who was slouched in her seat. Video 0:26. The bus driver then asked E.W. what she was doing. E.W. sat down, took off her backpack, and removed what appeared to be two lanyards from around her neck. Video 0:26–38. A few seconds later, E.W. stood up again and raised her leg towards A.W. Video 0:40. As E.W. raised her leg, A.W., still sitting, also raised hers. Video 0:40. Because A.W. was slouched in her seat, she was able to extend her leg further than she would have sitting fully upright. The two girls appear to trade kicks before E.W. put her leg down and A.W. slid lower into her seat. Video 0:41.

E.W. then stood over A.W. and began hitting her, swinging her arms downward because of their height difference. Video 0:41–45. Although the seat in front of A.W. obscured the camera's view of the scuffle, the way A.W. was sitting suggests that E.W.'s swings likely landed on A.W.'s left arm, shoulder, and possibly her head. Video 0:46–48. After four seconds, E.W. returned to her seat. Video 0:46–48. Shortly thereafter, E.W. looked at A.W., stood up, and again moved in A.W.'s direction. Video 0:54–55. A.W. raised her leg in the air, and E.W. kicked at A.W.'s shoe several times while A.W. kicked back. Video 0:56–59. During the exchange of kicks, A.W. ap-

peared to laugh and say something to E.W. Video 0:56–59.

This exchange drew the attention of the bus driver, who called both E.W. and A.W. to the front of the bus and eventually suspended both girls from the bus for three days. Video 1:00–2:15; J.A. 22–23.

On Friday, January 9, 2015, the school contacted Appellee Rosemary Dolgos, a deputy sheriff and school resource officer ("SRO") in Wicomico County, about the scuffle. When she arrived at the school, Dolgos watched the surveillance video described above. Dolgos spoke to A.W. first, asking her if she was injured. A.W. pulled up her left pant leg, and Dolgos observed "two small, bluish bruise[s]" above the left knee and one on the side of A.W.'s leg. J.A. 23. Notably, no other injuries, including upper body injuries, were reported.

E.W. was then removed from class and placed in a closed office with Dolgos and two school administrators. Dolgos told E.W. that she was there to discuss what took place on the bus. But, in Dolgos's estimation, "E.W. [did not] seem to care." J.A. 23. E.W. explained, "A.W. stepped on my shoe so I kicked her and started to hit her." J.A. 23. Dolgos attempted to emphasize to E.W. the seriousness of the situation and the possible repercussions, telling her that adults could be jailed for such behavior. Still, in Dolgos's opinion, "E.W. continued to act as if the situation simply was not a 'big deal.' " J.A. 23. Dolgos then decided to take E.W. into custody.

Dolgos placed E.W. in handcuffs from behind and reseated her. Dolgos inserted two fingers between the handcuffs and E.W.'s wrists to ensure that they were not too tight. In her affidavit, Dolgos stated that she was concerned about the physical safety of herself and the school administrators because of both the incident she observed in the surveillance video and E.W.'s apathy. Dolgos expressed concern in the affidavit that E.W. might act violently against her or someone else if she attempted to walk E.W. from the school to her patrol car. Dolgos also admitted, however, that she had no idea whether E.W. had "any past or current behavioral issues or past involvements with law enforcement." J.A. 24. According to Dolgos, E.W. stood 4'4" and weighed about 95 pounds, while Dolgos stands 5'4" and weighs 155 pounds.

Immediately after being handcuffed, E.W. began to cry. She explained that she did not want to go to jail and that she would not hit A.W. again. Dolgos kept her handcuffed for about two minutes as she cried and apologized. Dolgos averred that E.W. never complained that the handcuffs were too tight or displayed bruises to her. Rather, "[i]n response" to E.W.'s show of remorse, Dolgos decided not to arrest E.W. and removed the handcuffs. J.A. 24–25. "Based on [E.W.'s] remorse," Dolgos further decided to release E.W. to her parents. J.A. 25. The school contacted E.W.'s mother, T.W., and Dolgos informed T.W. that she would refer the matter to the Wicomico County Department of Juvenile Services. T.W. responded by asking, "[f]or a kid fight?" and "[s]o you're going to put my 10 year old daughter in the system when she's 10?" J.A. 25. Frustrated and upset by the treatment of her daughter, T.W. retrieved E.W. from the school.

On December 29, 2015, E.W., by and through T.W., filed this suit against Dolgos,[1] alleging (1) a violation of the Fourth Amendment under 42 U.S.C. § 1983 for unreasonable seizure and excessive force; (2) a violation of Article 26 of the Mary-

1. E.W. also sued the Wicomico County Sheriff's Department but voluntarily dismissed those claims.

land Declaration of Rights; (3) battery; and (4) assault. Dolgos filed a motion to dismiss or, in the alternative, for summary judgment, which the district court construed as one for summary judgment and then granted. In a short paragraph, without citing any case law, the district court concluded that Dolgos's actions did not amount to excessive force because E.W. was handcuffed for only two minutes and then released to her mother. E.W. timely appealed.

II.

[1–3] E.W. first maintains that the district court erred by granting summary judgment to Dolgos for her § 1983 claim. We review de novo a district court's order granting summary judgment.[2] *See Smith v. Ray*, 781 F.3d 95, 100 (4th Cir. 2015). "Summary judgment is appropriate only if taking the evidence and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party, 'no material facts are disputed and the moving party is entitled to judgment as a matter of law.' " *Purnell*, 652 F.3d at 531 (quoting *Ausherman v. Bank of Am. Corp.*, 352 F.3d 896, 899 (4th Cir. 2003)).

[4, 5] E.W. argues that the district court erred by concluding that Dolgos did not use excessive force

2. We note that E.W. contests the district court's use of the summary judgment standard, but does not appear to challenge the court's conversion of the motion to dismiss to one for summary judgment.

We generally review a district court's conversion of a motion to dismiss to a summary judgment motion for abuse of discretion. *See Laughlin v. Metro. Wash. Airports Auth.*, 149 F.3d 253, 261 (4th Cir. 1998). E.W. has not shown any abuse of discretion. E.W. was on notice that the motion could be converted to one for summary judgment because Dolgos styled it in the alternative, and E.W. similarly submitted an opposition brief in the alternative. *See id.* (holding that a district court did not abuse its discretion by converting motion with alternative caption because parties were on notice that it could be disposed of as motion for summary judgment). We therefore apply the same standard used by the district court. *See Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 419–20 (4th Cir. 2014) (reviewing district court's grant of summary judgment under same legal standard as district court).

To "provide guidance to those charged with the difficult task" of protecting students "within the confines of the Fourth Amendment," we exercise our discretion to first decide whether a constitutional violation occurred. *Id.* (internal quotation marks omitted); *see Armstrong*, 810 F.3d at 899 (exercising discretion to address excessive force issue

A.

[6–8] We begin by considering whether Dolgos used excessive force in violation of the Fourth Amendment when she handcuffed E.W. "The Fourth Amendment prohibition on unreasonable seizures bars police officers from using excessive force to seize a free citizen." *Jones v. Buchanan*, 325 F.3d 520, 527 (4th Cir. 2003) (citing *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)). We analyze whether an officer has used excessive force under an objective reasonableness standard. *Purnell*, 652 F.3d at 531. Determining the reasonableness of an officer's actions "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Ray*, 781 F.3d at 101 (quoting *Graham*, 490 U.S. at 396, 109 S.Ct. 1865). We examine the officer's actions "in light of the facts and circumstances confronting [her], without regard to [her] underlying intent or motivation." *Graham*, 490 U.S. at 397, 109 S.Ct. 1865; *accord Pegg v. Herrnberger*, 845 F.3d 112, 120 (4th Cir. 2017) ("Subjective factors involving the officer's motives, intent, or propensities are not relevant." (quoting *Rowland v. Perry*, 41 F.3d 167, 173 (4th Cir. 1994))).

[9, 10] For this inquiry, *Graham* encourages us to evaluate three factors: "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." 490 U.S. at 396, 109 S.Ct. 1865. But these factors are not "exclusive," and we may identify other "objective circumstances potentially relevant to a determination of excessive force." *Kingsley v. Hendrickson*, — U.S. ——, 135 S.Ct. 2466, 2473, 192 L.Ed.2d 416 (2015). Here, we believe it prudent to consider also the suspect's age and the school context. The ultimate "question [is] whether the totality of the circumstances justified a particular sort of . . . seizure." *Jones*, 325 F.3d at 527–28 (alternation in original) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8–9, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985)); *see Ray*, 781 F.3d at 101 ("To properly consider the reasonableness of the force employed we must 'view it in full context, with an eye toward the proportionality of the force in light of all the circumstances.'" (quoting *Waterman v. Batton*, 393 F.3d 471, 481 (4th Cir. 2005))).

[11] Here, the parties dispute whether handcuffing E.W. was justified under the circumstances. E.W. asserts that such physical restraint was unnecessary because Dolgos did not have a reasonable safety concern. Dolgos argues in response

that because she had probable cause to arrest E.W. for assaulting A.W., as seen on video and as E.W. concedes, *see* Md. Code Ann, Crim. Law § 3–203(a) (West 2015) (defining second-degree assault), she was justified in using handcuffs to effectuate the arrest.

In *Brown v. Gilmore*, we stated that "a standard procedure such as handcuffing would rarely constitute excessive force where the officers were justified ... in effecting the underlying arrest." 278 F.3d 362, 369 (4th Cir. 2002). There, the plaintiff brought an excessive force claim based on allegations that a police officer had handcuffed her, causing her wrists to swell, dragged her to the police cruiser, and then pulled her into the vehicle. *Id.* at 365–66, 369. We found that the circumstances justified the "minimal level of force applied" because, as the officer approached a crowded scene on the street, he attempted to arrest the plaintiff for failure to follow another officer's orders to move her car. *Id.* at 369. We stated that it was not "unreasonable for the officers to believe that a suspect who had already disobeyed one direct order would balk at being arrested. Handcuffing [the plaintiff] and escorting her to a police vehicle was thus reasonable under the circumstances." *Id.*

But this Court has never held that using handcuffs is *per se* reasonable. Rather, the Fourth Amendment requires us to assess the reasonableness of using handcuffs based on the circumstances. *See United States v. Drayton*, 536 U.S. 194, 201, 122 S.Ct. 2105, 153 L.Ed.2d 242 (2002) ("[F]or the most part *per se* rules are inappropriate in the Fourth Amendment context."); *Garner*, 471 U.S. at 7–8, 105 S.Ct. 1694 (holding that probable cause to arrest does not automatically justify manner in which search or seizure is conducted). A lawful arrest does not categorically legitimize binding a person's wrists in chains. *See Soares v. State of Conn.*, 8 F.3d 917, 921 (2d Cir. 1993) ("[W]e reject defendants' invitation to adopt a *per se* rule that the use of handcuffs in effecting an arrest is always reasonable."). And the troubling facts of the present case highlight why such a *per se* rule would be ill-advised.

The circumstances in this case are markedly different from those in *Brown.* We are not considering the typical arrest of an adult (or even a teenager) or the arrest of an uncooperative person engaged in or believed to be engaged in criminal activity. Rather, we have a calm, compliant ten-year-old being handcuffed on school grounds because she hit another student during a fight several days prior. These considerations, evaluated under the *Graham* framework, demonstrate that Dolgos's decision to handcuff E.W. was unreasonable.

The first factor considers the severity of the underlying offense. *Graham*, 490 U.S. at 396, 109 S.Ct. 1865. At the time Dolgos handcuffed E.W., Dolgos knew that E.W. had at most committed misdemeanor assault in the second degree by hitting another little girl for stepping on her foot. *See* Md. Code Ann. Crim. Law § 3–203(a). But because assault is an offense that can be considered violent if committed by any person, even a child, we find that this factor weighs against E.W. This finding is tempered, though, by the fact that the offense is a misdemeanor.[3]

The second factor identified in *Graham*, whether the suspect poses an immediate threat to the safety of the officer or others, weighs strongly in E.W.'s favor. *See* 490 U.S. at 396, 109 S.Ct. 1865. In assessing the threat an individual poses, it is often useful to consider the suspect's conduct at

3. Even the concurrence characterizes this offense as "relatively minor." *Post* at 197.

the time of the arrest and "the size and stature of the parties involved." *See Solomon v. Auburn Hills Police Dep't*, 389 F.3d 167, 174 (6th Cir. 2004); *see also C.B. v. City of Sonora*, 769 F.3d 1005, 1030 (9th Cir. 2014) (en banc). In *Solomon*, the Sixth Circuit concluded that a suspect did not pose a safety threat because she had no weapons, she made no threats, and she was several inches shorter and weighed one hundred pounds less than the arresting officers. 389 F.3d at 174. Similarly, in *Sonora*, the Ninth Circuit held that "a calm, compliant, but nonresponsive 11-year-old child," who weighed about eighty pounds and stood around 4'8" tall, did not pose a safety threat, particularly given the child was "surrounded by four or five adults at all times." 769 F.3d at 1030.

Here, Dolgos could not have reasonably believed that E.W. presented any immediate risk of harm to anyone. Like the adult suspect in *Solomon*, E.W. had no weapons and made no threats, *see* 389 F.3d at 174, and like the eleven-year-old in *Sonora*, she was calm and compliant as Dolgos spoke to her, *see* 769 F.3d at 1030. In fact, Dolgos recognized that E.W. appeared calm. *See* J.A. 23–24. Also similar to the suspects in *Solomon* and *Sonora*, E.W., at 4'4" and ninety-five pounds, was quite small relative to Dolgos, the arresting officer, who was a foot taller and sixty pounds heavier. *See Sonora*, 769 F.3d at 1030; *Solomon*, 389 F.3d at 174. Not to mention, E.W. was in a closed office and surrounded by two school administrators and a deputy sheriff. Given these facts, E.W. posed little threat even if she were to become aggressive.

The significant time that had elapsed—without incident—since the fight on the bus further negates any notion that E.W. posed an immediate threat. While the scuffle took place on Tuesday, January 6, East Salisbury Elementary School waited three days to even contact Dolgos. In the interim, E.W. was allowed to and did in fact attend school without incident, indicating that she did not pose a risk to the children around her, much less to the adults. *See Williams v. Nice*, 58 F.Supp.3d 833, 838 (N.D. Ohio 2014) (finding reduced need to use force because student was no longer disruptive when officer arrived). When Dolgos interacted with E.W. on Friday, January 9, E.W. was not hostile or even disobedient. Rather, E.W. remained seated and submissive during the entire interview, even as Dolgos placed the handcuffs on her.

Moreover, Dolgos had no reason to think that the scuffle between E.W. and A.W. was anything but an isolated incident. E.W. had no prior behavioral issues or involvement with law enforcement, nor did Dolgos have any indication that she did. The use of force is an intrusion on Fourth Amendment rights, and an officer must have a reason for using or escalating force. *See Graham*, 490 U.S. at 396, 109 S.Ct. 1865 (intrusions on Fourth Amendment rights must be reasonably necessary given countervailing governmental interests). Even as to the altercation on the school bus, E.W., while unjustified in retaliating, did not become violent without physical provocation by A.W. Indeed, even a child with a history of attacking school officials should not be handcuffed if, at the time of handcuffing, she did not present a danger. *See S.R. v. Kenton Cty. Sheriff's Office*, No. 15-143, 2017 WL 4545231, at *5–6, *9 (E.D. Ky. Oct. 11, 2017) (hereinafter "*Kenton II*"). All of these circumstances, taken together, show that E.W. posed no immediate threat to the safety of the officer or others to justify the use of handcuffs.

The third factor discussed in *Graham*, whether the suspect is actively resisting arrest or attempting to evade arrest by flight, also strongly favors E.W. *See* 490 U.S. at 396, 109 S.Ct. 1865. Dolgos does

not even suggest that E.W. attempted to resist or flee from the office at any point. *See, e.g.*, *Sonora*, 769 F.3d at 1030 (handcuffing student was unreasonable in part because no evidence suggested that nonresponsive eleven-year-old was likely to run away); *Solomon*, 389 F.3d at 173–74 (unreasonable use of force in part because arrestee did not attempt to flee or otherwise resist arrest). *Cf. Brown*, 278 F.3d at 369–70 (finding that officer was justified in handcuffing plaintiff who was actively and violently resisting arrest).

The suspect's age again favors E.W. Circuit and district courts around the country have recognized that youth is an important consideration when deciding to use handcuffs during an arrest.[4] The Ninth Circuit, applying the *Graham* factors, held that officers who handcuffed an eleven-year-old child used excessive force. *Tekle v. United States*, 511 F.3d 839, 846 (9th Cir. 2007) ("He was cooperative and unarmed and, most importantly, he was eleven years old."); *see also Ikerd v. Blair*, 101 F.3d 430, 435 (5th Cir. 1996) (holding that officer used excessive force against ten-year-old girl under *Graham* analysis). In addition, the Eleventh Circuit has held that "handcuffing was excessively intrusive given [the arrestee's] young age." *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1300–01, 1306 (11th Cir. 2006) (RO who handcuffed nine-year-old student for five minutes). Several district courts have similarly held that young age is a "uniquely" or "highly relevant" consideration under *Graham*. *See Kenton II*, 2017 WL 4545231, at *9 (holding that handcuffing eight-year-old child violated constitution); *Hoskins v. Cumberland Cty. Bd. of Educ.*, No. 13-15, 2014 WL 7238621, at *7, 11 (M.D. Tenn. Dec. 17, 2014) (noting that eight-year-old student "was a startlingly young child to be handcuffed"); *see also James v. Frederick Cty. Pub. Sch.*, 441 F.Supp.2d 755, 757, 759 (D. Md. 2006) (concluding that handcuffing eight-year-old child suggested excessive force). Here, E.W. was only ten years old at the time of the arrest. She therefore falls squarely within the tender age range for which the use of handcuffs is excessive absent exceptional circumstances.

The concurrence seems to suggest that elementary school children like E.W. are so inherently unpredictable and uncontrollable that officers would be reasonable in restraining them for our collective safety. Unsurprisingly, the concurrence's authorities do not actually support that position or apply to this case. The concurrence cites to *Knox Cty. Educ. Ass'n v. Knox Cty. Bd. of Educ.*, 158 F.3d 361 (6th Cir. 1998), for the proposition that young children are "unpredictable, in need of constant attention and supervision," such that "[e]ven momentary inattention or delay in dealing with a potentially dangerous or emergency situation could have grievous consequences." *Post* at 195 (quoting *Knox*, 158 F.3d at 378). What the concurrence leaves out is that *Knox* was discussing whether teachers may be required to undergo drug-testing in order to *protect* young children, who "could cause harm to themselves or others while playing at recess, eating lunch in the cafeteria (if for example, they began choking), or simply horsing around with each other." *See* 158 F.3d at 378–79. Unless the concurrence suggests that we handcuff children as a reasonable method

4. This consideration makes particular sense given the risk of lasting trauma among children exposed to the criminal justice system at young age. *E.g.*, *Sonora*, 769 F.3d at 1012 ("Following [handcuffing] incident, C.B. experienced a host of psychological and emotional problems, including difficulty sleeping, low self-esteem, anger, irritability, and depression.").

of "supervision" to prevent choking and horseplay, *Knox* has little relevance to the case at hand. If anything, *Knox* suggests that adults may have to take on otherwise unreasonable burdens under the Fourth Amendment to accommodate children's unique needs. Similarly, the concurrence cites to *United States v. Gwinn*, 219 F.3d 326 (4th Cir. 2000), but it addresses an officer's interest in protecting an arrestee by requiring him to wear a shirt and shoes outside. *See id.* at 333; *Post* at 195. Needless to say, handcuffs are different from shoes, and there is no indication in this case that there was any danger *to* E.W. that justified her wearing handcuffs. The concurrence also cites to *Hedgepeth ex rel. Hedgepeth v. W.M.A.T.A.*, 386 F.3d 1148 (D.C. Cir. 2004), but that case expressly noted that the plaintiff did not bring a traditional Fourth Amendment claim, and the court did not even consider an excessive force argument. *See id.* at 1159; *Post* at 195–96. Finally, *J.H. ex rel. J.P. v. Bernalillo County*, 806 F.3d 1255 (10th Cir. 2015), another case the concurrence cites, is not contrary to our holding, as it merely held that age does not categorically remove all safety concerns. *See id.* at 1259 ("[A]n arrestee's age does not necessarily undermine an officer's concern for safety and need to control the situation." (citation and alternations omitted)); *Post* at 195. We agree and therefore do not establish a *per se* rule in this case.[5] Contrary to the concurrence's suggestion, we are in good company in concluding that age is a relevant consideration in an excessive force analysis.

The location of the arrest also weighs in E.W.'s favor because all relevant activity took place in the school context.[6] Courts have found that officers should exercise more restraint when dealing with student misbehavior in the school context. *See Hoskins*, 2014 WL 7238621, at *7 (holding that school setting, along with suspect's young age, is "uniquely relevant" consideration under *Graham* analysis); *see, e.g.*, *Sonora*, 769 F.3d at 1030 (noting significance of school setting); *Kenton I*, at *4–5 (same). Society expects that children will make mistakes in school—and, yes, even occasionally fight. That teachers handle student misbehavior and unruliness "on a routine basis without the use of any force" suggests that force is generally unnecessary in the school context.[7] *See Nice*, 58 F.Supp.3d at 838. Furthermore, as with age, the school context presents unique considerations not present when officers patrol the streets. The use of handcuffs, for instance, may undermine students' perception of the school and their willingness to attend, thereby disrupting their education far beyond the time they actually

5. To the extent that *Bernalillo* held that the use of handcuffs was reasonable on an eleven-year-old student, it is distinguishable because the officer there witnessed the student attack a teacher, an act considerably more serious than E.W.'s conduct in this case, and unlike this case, no time had elapsed between the student's offense and the arrest. *See* 806 F.3d at 1257. *Bernalillo* is also of limited utility because it does not conduct a *Graham* analysis and is against the weight of extra-circuit authority already discussed above. *See id.* at 1257–59.

6. *See* Statement of Interest of the United States at 20–22, *Kenton I*, 2015 WL 9462973, (No. 15-143) (Department of Justice urging courts to consider school context in evaluating need for handcuff-use).

7. Research shows that "the presence of an SRO at a school significantly increased the rate of arrests" for minor misbehavior that previously would have been handled through in-school disciplinary measures. Elizabeth A. Shaver & Janet R. Decker, *Handcuffing a Third Grader? Interactions Between School Resource Officers and Students with Disabilities*, 2017 Utah L. Rev. 229, 247 (2017).

spend in handcuffs.[8] And being handcuffed is often a source of stigma, which can lead to alienation and further disrupt long-term outcomes.[9] In other words, the use of handcuffs and force is not reasonably expected in the school context because it is counterproductive to the mission of schools and school personnel. For these reasons, the school setting—especially an elementary school—weighs against the reasonableness of using handcuffs.

Viewing the facts in the light most favorable to E.W., the totality of the circumstances weighs against Dolgos and demonstrates that her actions were not " 'objectively reasonable' in light of the facts and circumstances confronting" her. *Graham*, 490 U.S. at 397, 109 S.Ct. 1865. Our reasonableness analysis incorporates "the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* But the circumstances here were by no means tense, uncertain, or rapidly evolving such that Dolgos was required to make any split-second decisions. Dolgos observed a ten-year-old girl sit calmly and compliantly in a closed office surrounded by three adults and answer questions about an incident with another little girl that had occurred several days prior. Although Dolgos stated she "believed there was a possibility that [E.W.] could physically act out against me or anyone else nearby as we left the school to go to my patrol car," J.A. 24, and although E.W. argues that Dolgos handcuffed her at the outset merely because E.W. "didn't seem to care" about the incident with A.W., J.A. 23, Dolgos's subjective motives are not relevant to our reasonableness inquiry. We consider neither whether Dolgos had a subjective safety concern nor whether she intended to teach E.W. to appreciate the consequences of her actions.[10] Rather, we consider whether a reasonable officer would have determined that E.W. should be handcuffed as a means of effectuating her arrest.

The district court considered only the amount of time E.W. was handcuffed and that she was released to her mother, but we are required to assess the *totality* of the circumstances presented to properly assess Dolgos's conduct. *Jones*, 325 F.3d at 527–28 (citing *Garner*, 471 U.S. at 8–9, 105 S.Ct. 1694). A reasonable officer, in addition to discerning E.W.'s small stature and calm and compliant disposition, would know that the bus driver who observed the incident between E.W. and A.W. found them mutually culpable, as he suspended both girls from the bus for three days. Further, the officer would know that E.W. attended school and sat in class among

8. *See, e.g.*, Lanette Suarez, *Restraints, Seclusion, and the Disabled Student: The Blurred Lines Between Safety and Physical Punishment*, 71 U. Miami L. Rev. 859, 878 (2017) ("Restraints and seclusion, when used as a form of physical punishment, erodes students' confidence in their teachers and their schools."); *see also* Udi Ofer, *Criminalizing the Classroom: The Rise of Aggressive Policing and Zero Tolerance Discipline in New York City Public Schools*, 56 N.Y.L. Sch. L. Rev. 1373, 1401 (2012) ("[Z]ero tolerance policies create an unwelcoming school environment for all students, leading to feelings of detachment from school and a greater willingness to leave the school environment.").

9. Ofer, *supra* note 8 (noting that such effects fall disproportionately on students of color and students with disabilities).

10. Contrary to the concurrence's conclusion, we are not allowed to consider that Dolgos handcuffed E.W. for safety reasons related to the transport. *Post* at 190–91; *see Pegg*, 845 F.3d at 120 ("Subjective factors involving the officer's motives, intent, or propensities are not relevant.").

other children without incident from Tuesday, January 6, 2015 to Friday, January 9, 2015. No reasonable officer confronted with this information would have determined that handcuffing E.W. for any amount of time was justified under the circumstances. As such, we find that Dolgos acted unreasonably.

[12] Dolgos argues that any alleged injury E.W. suffered as a result of the handcuffs was *de minimis*. Even so, the severity of the physical injury resulting from the force used is but one "consideration in determining whether force was excessive." *See Jones*, 325 F.3d at 530. Police officers will not be absolved of liability merely because their conduct, however unreasonable, results in only *de minimis* injury. *See Tennessee*, 471 U.S. at 8–9, 105 S.Ct. 1694 (explaining that the relevant inquiry examines "the nature and quality" of the seizure and "whether the totality of the circumstances justified a particular sort of ... seizure"). That the handcuffs did not cause E.W. more pain does not diminish the disproportionality of Dolgos's actions in light of the circumstances.

Dolgos took a situation where there was no need for any physical force and used unreasonable force disproportionate to the circumstances presented. We therefore find that Dolgos's actions amount to excessive force. As such, E.W. has demonstrated a violation of her constitutional rights under the Fourth Amendment.

B.

[13–15] Because we conclude that Dolgos's conduct was unreasonable and violated E.W.'s Fourth Amendment rights, we must next examine whether Dolgos violated a clearly established right. A right is "clearly established" if "the contours of the right [are] sufficiently clear that a reasonable officer would understand that what he is doing violates that right." *Hill v. Crum*, 727 F.3d 312, 321 (4th Cir. 2013) (quoting *Wilson v. Layne*, 526 U.S. 603, 615, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999)). It is not required, however, that a court previously found the specific conduct at issue to have violated an individual's rights. *See Pritchett v. Alford*, 973 F.2d 307, 314 (4th Cir. 1992). The unlawfulness of the officer's conduct need only be "manifestly apparent from broader applications of the constitutional premise in question." *Owens ex rel. Owens v. Lott*, 372 F.3d 267, 279 (4th Cir. 2004). Put differently, a right may be clearly established if "a general constitutional rule already identified in the decisional law applies with obvious clarity to the specific conduct in question." *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 543 (4th Cir. 2017) (alterations omitted) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002)). As such, an officer can be "on notice that their conduct violates established law even in novel factual circumstances." *Armstrong*, 810 F.3d at 907 (quoting *Hope*, 536 U.S. at 741, 122 S.Ct. 2508). But, to be held liable, the officer must in fact have notice.

[16–18] Even though general statements of law may provide notice, *see Hope*, 536 U.S. at 741, 122 S.Ct. 2508 (quoting *United States v. Lanier*, 520 U.S. 259, 271, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997)), courts must not "define clearly established law at a high level of generality," *Mullenix v. Luna*, ––– U.S. ––––, 136 S.Ct. 305, 308, 193 L.Ed.2d 255 (2015) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011)). Rather, we must examine "whether the violative nature of *particular* conduct is clearly established." *Id.* (quoting *al-Kidd*, 563 U.S. at 742, 131 S.Ct. 2074). This examination is "undertaken in light of the specific context of the case, not as a broad general proposition." *Id.* (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S.Ct. 596, 160

L.Ed.2d 583 (2004)). The Fourth Amendment context requires a high level of specificity because "it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Id.* (alteration omitted) (quoting *Saucier v. Katz*, 533 U.S. 194, 205, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)).

[19] At the time Dolgos seized E.W., the law was clear that, as a general matter, an officer must carefully measure the force used to respond to the particulars of a case, including the wrongdoing at issue, the safety threat posed by the suspect, and any attempt to evade arrest or flee. *See Graham*, 490 U.S. at 396, 109 S.Ct. 1865; *Ray*, 781 F.3d at 101. But the Supreme Court has emphasized that *Graham* is "cast at a high level of generality," *Plumhoff v. Rickard*, ––– U.S. ––––, 134 S.Ct. 2012, 2023, 188 L.Ed.2d 1056 (2014) (quoting *Brosseau*, 543 U.S. at 199, 125 S.Ct. 596), and does not by itself "create clearly established law outside 'an obvious case,' " *White v. Pauly*, ––– U.S. ––––, 137 S.Ct. 548, 552, 196 L.Ed.2d 463 (2017) (quoting *Brosseau*, 543 U.S. at 199, 125 S.Ct. 596). Here, Dolgos handcuffed a calm, compliant ten-year-old who was surrounded by multiple adults in a closed room for hitting another child three days earlier. While E.W.'s right not to be unreasonably handcuffed is clearly implicated by "more general applications of the core constitutional principle invoked," *Owens*, 372 F.3d at 279 (quoting *Amaechi v. West*, 237 F.3d 356, 362–63 (4th Cir. 2001)), namely, the right to be free from the use of excessive and unreasonable police force, we cannot say that her seizure amounts to an "obvious case" such that *Graham* put Dolgos on sufficient notice that her conduct was unlawful.

This case is unlike *Turmon v. Jordan*, in which we concluded under *Graham* that it was obvious the officer "could not point his gun at an individual's face," pull the individual out of his hotel room, and "handcuff him when there was no reasonable suspicion that any crime had been committed, no indication that the individual posed a threat to the officer, and no indication that the individual was attempting to resist or evade detention." 405 F.3d 202, 208 (4th Cir. 2005). There, the officer's conduct was an obvious violation of the Fourth Amendment because the plaintiff was compliant and non-threatening, and there was no evidence that the plaintiff was or had been engaged in any criminal activity. *See id. Cf. Kane v. Hargis*, 987 F.2d 1005, 1008 (4th Cir. 1993) (per curiam) (applying *Graham* to conclude that "[i]t would have been 'apparent' to a reasonable officer in [defendant's] position that, after he had pinned to the ground a woman half his size and the woman did not pose a threat to him, it was unreasonable to push her face into the pavement with such force that her teeth cracked," even though she was resisting arrest).

Conversely, it was not obvious that Dolgos could not handcuff E.W. here. Although precedent supports the conclusion that Dolgos acted unreasonably and violated E.W.'s Fourth Amendment rights, it did not put Dolgos on sufficient notice that her conduct was unlawful. Indeed, this Court previously stated that the use of handcuffs would "rarely" be considered excessive force when the officer has probable cause for the underlying arrest. *See Brown*, 278 F.3d at 369. And the parties do not point us to any controlling authority sufficiently similar to the situation Dolgos confronted. In fact, E.W. chiefly relies on *Graham* to define the clearly established law. Without more, we cannot conclude that it would have necessarily been clear to a reasonable officer that handcuffing E.W. would give rise to a Fourth Amendment

violation.

Accordingly, we conclude that E.W.'s right not to be handcuffed under the circumstances of this case was not clearly established at the time of her seizure.

III.

IV.

"School-based policing is the fastest growing area of law enforcement." [11] While the officers' presence surely keeps the nation's children safe, officers should not handcuff young students who may have committed minor offenses but do not pose an immediate threat to safety and will not evade arrest. Unnecessarily handcuffing and criminally punishing young schoolchildren is undoubtedly humiliating, scarring, and emotionally damaging. We must be mindful of the long-lasting impact such actions have on these children and their ability to flourish and lead prosperous lives—an impact that should be a matter of grave concern for us all.

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

II

III