CASE NO.
In the Supreme Court of the United States

Juan Perez and Maria Posada,
Petitioners,
vs.
The City of Sweetwater,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I) Whether the Petitioner's Seventh Amendment rights were violated when the trial court weighed evidence and drew inferences against Petitioner in setting aside a verdict in his favor in contravention of this Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000).

II) Whether a municipality known to have a "culture of corruption" and for having "engaged in a protracted pattern of racketeering activity," including "multiple acts of theft, fraud, burglary, torture and other violent crimes against civilians," can be held liable under 42 U.S.C. §1983 for injuries resulting from the *conscience shocking* use of force by a police officer the municipality failed to train on the proper use of force?

III) Whether the Single Occurrence Rule originating from *City of Canton v. Harris,* 489 U.S. 378, 109 S. Ct. 1197 (1989) is a viable theory for holding a municipality liable in finding sufficient evidence of a custom of tacitly condoning police officers' unjustified use of deadly force to establish municipal liability under 42 U.S.C. §1983.

PARTIES TO THE PROCEEDING

Petitioner, Juan Perez and Maria Posada, are the Plaintiffs in the original action and Appellants before the Eleventh Circuit Court of Appeals. The Respondent is the City of Sweetwater, a municipality in the state of Florida. Respondent Sweetwater was a Defendant in the district court proceedings and the Appellee before the Eleventh Circuit Court of Appeals. The Petitioners sued three officers in their official capacities in the original complaint who either settled or were dismissed. These defendants are not parties to the trial proceedings which form the basis of this appeal and have no interest in the outcome of this petition.

RELATED PROCEEDINGS

16-24267 Juan Perez and Maria Posada v. City of Sweetwater, Rafael Duarte, Richard Brioso, and Armando Gonzalez
District Court for the Southern District of Florida

17-13430 Juan Perez and Maria Posada v. Richard Brioso and Armando Gonzalez
Eleventh Circuit Court of Appeals
Dismissed by the Court April 26, 2018

17-15551 Juan Perez v. City of Sweetwater
Eleventh Circuit Court of Appeals
Voluntarily Dismissed January 24, 2018

18-10498 Juan Perez and Maria Posada v. City of Sweetwater

Eleventh Circuit Court of Appeals
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The district court's unpublished order granting the respondent's motion for judgment as a matter of law is reproduced in Appendix B. The Eleventh Circuit's opinion, affirming the district court's final judgment in respondents' favor, is reproduced in Appendix A. The Eleventh Circuit's denial of Petitioner's Motion for Rehearing is reproduced in Appendix C.

STATEMENT OF JURISDICTION

Petitioners seek review of the opinion of the Eleventh Circuit Court of Appeals and its judgment on May 3, 2019 and its denial of Petitioners Motion for Rehearing and/or *en banc* review on July 12, 2019. The Eleventh Circuit had jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, § *1:*

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

> process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

United States Constitution, Amendment VII

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE AND FACTS

On January 2, 2012, while on his way to work, Juan Perez was seriously injured as a result of the City of Sweetwater police officers' unwarranted stop, shooting, and vehicular chase of a traffic offender. After its initial filing in state court, this case was removed to the United States District Court pursuant to 28 U.S.C. § 1441. One claim for a violation of 42 U.S.C. §1983 was tried before a jury who unanimously found the City of Sweetwater liable to Petitioner. Subsequently, the District Court entered an order granting the Respondent, City of Sweetwater's, motion for judgment as a matter of law under Fed. Rule Civ. P. 50 (b), thereby voiding the jury's verdict. (Appendix B). The Eleventh Circuit Court of Appeals affirmed the District Court. (Appendix A).

The case arises from the traffic stop of a black Mercedes-Benz driven by Felipe Torrealba, a young man of Hispanic descent, by off-duty Sweetwater Police Officer Richard Brioso outside of his geographical jurisdiction. Shortly after the stop was initiated, Sweetwater Police Officers Domingo Benito, Rafael Duarte and Armando Gonzalez arrived on the scene to "investigate." Torrealba and the vehicle's passenger, Dondrey St. Phar a young, black Haitian male, were asked to exit the car and questioned regarding their ability to drive a "$100,000 car." The officers thoroughly searched the vehicle and Torrealba for weapons and found none. After nearly twenty minutes of this extra-jurisdictional investigation and aggressive behavior towards Torrealba, Torrealba panicked and

attempted to flee. Upon Torrealba running back into his vehicle, Armando Gonzalez, a part-time officer on the force for about one week, drew his weapon and began firing at him. Brioso also discharged his firearm towards Torrealba and the fleeing vehicle. Gonzalez claims Torrealba brandished a firearm. Torrealba and his passenger, St. Phar, assert they never had a firearm on that date. No firearm was ever found. Brioso and Gonzalez fired at Torrealba's vehicle as he was driving away on Eighth Street, a heavily trafficked thoroughfare. They discharged a total of 24 bullets into the roadway while Officer Benito simultaneously engaged in a chase of Torrealba on Eighth Street where other cars were also driving.

Torrealba was struck in the ear by one of the bullets and, as a result, he crashed into Juan Perez's pickup truck permanently injuring him. Predictably, the gunfire also wounded another driver unrelated to the stop, Hermodio Coca, who was two blocks away driving to work himself.

Armando Gonzalez, the rookie officer first to discharge his firearm had been a part time police officer with the city of Sweetwater for roughly a week when this incident occurred. He was driving a Sweetwater police cruiser on his own. Gonzalez was never give a copy of the standard operating procedures nor were the City's policies ever reviewed with him. Brioso and Gonzalez failed to follow Sweetwater guidelines regarding the proper use of force and violated their written policy regarding shooting at moving vehicles. Neither shooting officer followed the policy requiring them to make a verbal and then written report documenting the

circumstances of the shooting. Gonzalez claimed to be unaware of such policy and insisted at trial he should not be required to do that. The City of Sweetwater never required the officers to comply with any of these policies.

In addition to the City's failure to train Armando Gonzalez, the department was otherwise chaotic at the time. Evidence was presented regarding a "culture of corruption" throughout the City of Sweetwater police department, in which members of the department "while operating under color of law, engaged in a protracted pattern of racketeering activity that included, but is not limited to, multiple acts of theft, fraud, burglary, torture and other violent crimes against civilians." Two specific incidents were presented where Sweetwater officers used excessive force against citizens who were being investigated for minimal crimes.

Further evidence was presented regarding the lack of any order in the department during the relevant period. There was no system of recordkeeping at all and the detectives were essentially "running amuck." It was established that officers were unrestricted when it came to making stops outside their jurisdiction. The officers were often illegally towing cars without authority to do so often targeting unsophisticated individuals who had committed petty offenses. The police department itself was chaotic and police lacked supervision. The police chief and the higher ups in the police department were aware of the unlawful actions of their officers.

Despite a jury's findings that the injuries sustained by Juan Perez were a result of the City of

Sweetwater's custom or policy approving of the conscious shocking use of deadly force and that the City of Sweetwater exhibited deliberate indifference to a known need for additional training and/or supervision, the District Court and Appellate Court held that the evidence presented was insufficient to support their verdict. The District Court and Appellate Court further disregarded factual findings by the jury that the officers were not in danger when the decision to use deadly force was made and reversed the verdict based on their own interpretation of the facts.

A clear answer is necessary to determine uniform parameters for municipal liability. Further, this Court should exercise its unique ability to correct appellate tribunals when they substitute their own judgments for those of the jurors to the detriment of our constitutional system.

REASONS FOR GRANTING CERTIORARI

1. It is necessary to resolve the conflict regarding the application of the Single Occurrence Rule and whether the inadequate training of a single officer on the proper use of deadly force subjects a municipality to liability when that officer uses deadly force on a fleeing traffic offender.

This case provides the Court with an opportunity to resolve the conflict between the circuits about the "single occurrence" rule of *City of Canton v. Harris,* 489 U.S. 378, 109 S. Ct. 1197 (1989). The narrow interpretation of the "single-incident" rule applied by the Eleventh Circuit in this case permits municipalities to send armed, untrained officers into the street and remain free from liability for the actions of that officer.

In a footnote in *Canton,* this court established that there were certain situations where the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the city can be liable for injuries sustained as a result of the city's failure to train without a prior pattern of unconstitutional behavior. *Id.* at 390-91. This court used the specific example found here regarding failure to train officers on the use of force and firearms when arresting fleeing felons. However, since *Canton* was decided, this court has never fleshed out that avenue of liability.

In *Connick v. Thompson*, this Court reiterated the single incident liability established by *Canton* and again theorized that the hypothetical decision by

a municipality not to train the officers about constitutional limits on the use of deadly force could reflect the city's deliberate indifference to the "highly predictable consequence" of violations of constitutional rights. 563 U.S. 51, 64-65, 131 S.Ct. 1350, 179 L.Ed.2d 417 (2011). *Connick* involved a municipality's failure to train its prosecutors on Brady evidence. This court found that the need to train highly educated prosecutors on their obligations was not so obvious that the district attorney could be said to have been "deliberately indifferent" to need for such training, and his office was not liable under § 1983 when a defendant was wrongfully convicted as a result. *Id.* at 65-66.

Following this logic, the Fifth Circuit in *Brown v. Bryan County, OK*, held that "under certain circumstances § 1983 liability can attach for a single decision not to train an individual officer even where there has been no pattern of previous constitutional violations." 219 F.3d 450, 459 (5th Cir. 2000). The same facts giving rise to the Fifth Circuits decision were heard by this court. *Board of County Com'rs of Bryan County, Okl. v. Brown*, 117 S.Ct. 1382, 520 U.S. 397 (1997). In rendering its opinion that the County could not be liable for a single hiring decision, this court left open the possibility that the decision not to train an officer on the proper use of deadly force could constitute deliberate indifference sufficient to support municipal liability. *Id.* at 1385. On remand, the court of appeals upheld the verdict on the single decision not to train the officer. This court denied certiorari on that case and has yet to clarify whether a municipality's failure to train a single officer

subjects them to liability. *Board of County Com'rs of Bryan County v. Brown*, 121 S.Ct. 1734, 532 U.S. 1007 (2001).

The Fifth Circuit's decision was grounded, not on whether the county had a policy of failing to train all its deputies, but rather on the failure to provide training and supervision to the reserve deputy in particular. This is precisely the argument made by Petitioner and rejected by the Eleventh Circuit. A resolution regarding the proper interpretation of *Canton* will make clear the parameters of liability with regards to training every armed officer employed by a municipality and resolve the clear conflict between circuits. A final determination will affect the safety and liberty of all the citizens of the United States.

2. This Court must set forth tangible guidelines for establishing a custom or policy sufficient to create municipality liability under 42 U. S. C. § 1983 to ensure consistent results.

In *Monell v. New York City Department of Social Services*, this Court held that a municipality can be held liable for violations of 42 U.S.C. § 1983 if the civil rights violation resulted from a "policy or custom" of the government. 436 U.S. 658, 98 S.Ct. 2018 (1978). This "policy or custom" requirement was intended to prevent the imposition of municipal liability under circumstances where no wrong could be ascribed to municipal decisionmakers. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 821, 105 S.Ct. 2427 (1985).

This Court, however, has not defined what level of proof is necessary to establish an unofficial custom "so persistent and widespread as to practically have the force of law." *Connick* at 131. The Petitioner's theory is that the municipality sanctioned the unconstitutional conduct of their officers by failing to correct unconstitutional behavior. In this case, the city of Sweetwater failed to correct a widespread belief that civil rights violations will be tolerated, and in keeping with the custom, the officers were violating civil rights and causing injuries to citizens. The municipality's inaction can be said then to cause the injury.

The evidence in this case showed that there was general disorder and a culture of corruption in the city's police department as a result of the enforcement of a questionable towing ordinance that resulted in millions of dollars a year to the city. The

officers were encouraged to do whatever possible in order to effectuate the towing of vehicles within the city and there was evidence that city of Sweetwater officers were violating citizens' rights as a result. The evidence supported the theory that the initial stop and investigation of Torrealba was motivated by the officer's desire to tow his valuable vehicle. The jury found that evidence of the officer's conduct on the date in question plus the evidence of the city's failure to correct previous unconstitutional behavior established a custom attributable to the city.

Although the Eleventh Circuit has held that the continued failure of the city to prevent known constitutional violations by its police force is precisely the type of informal policy or custom that is actionable under section 1983, they failed to rule consistent with their holding in *Depew v. City of St. Marys,* 787 F.2d 1496, 1499 (11th Cir.1986). In the case at bar, the appellate court found that the previous incidents that showed the police force violating citizen's constitutional rights and using extreme force against them were not sufficiently similar to the circumstances surrounding the use of unnecessary force in this case to establish a pattern. The appellate court held that the Petitioner had not presented "evidence of prior similar incidents involving police officers confronted with a suspect they believed was armed, who disregarded their orders, pointed a gun at an officer, and fled at high speed." (Appendix B).

The problem with this statement is two-fold. First, the court's characterization of the evidence disregarded contradictory evidence that there was never a threat to the police and a jury's finding that

Torrealba did not pose a threat of physical harm to the police. Second, applying this framework, it is extremely unlikely that victims of police violence in the Eleventh Circuit can ever succeed on civil rights claims against a municipality unless they find a series of previous incidents with the exact same fact pattern, a feat nearly impossible to attain.

Other circuits recognize the difficulty in proving a custom and permit the factfinder to infer municipal custom in excessive force cases without proof of numerous prior incidents virtually identical in nature. They use something resembling a totality-of-the-circumstances test, incorporating direct testimony and circumstantial evidence bearing on the frequency, duration, and seriousness of the unconstitutional conduct. *See, e.g., Newton v. City of New York,* 79 F.3d 140, 153 (2d Cir. 2015) (numerous deficiencies of evidence management system justified claim based on custom of inadequate recordkeeping); *Sorlucco v. New York City Police Dept.,* 971 F.2d 864, 872 (2d Cir. 1992) (small but unanimous statistical sample, combined with plaintiff's and expert's testimony, supported inference of general discriminatory practice);

This theory of liability is supported by the First Circuit's holding in *Bordanaro v. McLeon,* 871 F.2d 1151 (1st Cir. 1989). In *Bordonaro*, the court upheld a verdict of municipal liability on a showing that the police chief's constructive knowledge of the unconstitutional arrest practices of its officers. *Id.* at 1157. The court found that the jury could conclude that there was "supervisory encouragement, condonation and even acquiescence" in the unconstitutional practice. *Id.* In reaching its

conclusion, the First Circuit used an interrelation of testimony about prior instances, egregiousness of conduct, and deficiencies of personnel policies sufficient to show custom and causation. *Id.* at 1156, 1159-62.

In *Larez v. City of Los Angeles,* the Ninth Circuit's found that the police department perpetuated "a departmental policy or custom of resorting to the use of excessive force." 946 F.2d 630 (9th Cir. 1991). That court found evidence of a custom of excessive force when the police department failed to acknowledge a complaint, discipline officers or take any remedial measures in response to complaints. *Id.* at 636, 647.

Similarly, the Seventh Circuit in *Woodward v. Correctional Medical Services of Illinois,* 368 F.3d 917 (7th Cir. 2004), affirmed the jury's § 1983 verdict against Correctional Medical Services ["CMS"], a private contractor being treated as a municipality, for its staff's violations of written policies and procedures such that CMS "tolerated if not encouraged the custom or practice that encompassed deliberate indifference to the substantial danger posed" to suicidal inmates. 368 F.3d 920. Deliberate indifference was demonstrated by CMS's condoning of its employees actions, not its own written policies. *Id.* The Eleventh Circuit, however, disregards such evidence, as it did here. As a result, municipalities in other circuits may be held accountable when they turn a blind eye to police misconduct, while those in the Eleventh are virtually immunized from federal civil rights liability in the same circumstances.

The Fifth Circuit in *Grandstaff v. City of Borger, Tex.,* held that a victim of excessive force

should not be required in every case to establish the recurrence of the same type of injury. 767 F.2d 161 (5th Cir. 1985). That court found that where police officers know at the time they act that their use of deadly force in conscious disregard of the rights and safety of innocent third parties will meet with the approval of city policymakers, the affirmative link/moving force requirement is satisfied. *Id.* at 170.

This court's failure to articulate identifiable standards for custom cases has led to inconsistent evidentiary standards and outcomes. The type, quantity, and specificity of the evidence required to show custom and causation vary significantly within and between circuits. Some courts permit an inference of unconstitutional custom to be drawn from the allegedly tortious incident itself. Others do not. The courts are inconsistent in what constitutes a prior similar instance in order to satisfy the requirement that the municipality be on notice of such conduct. Inconsistency breeds an appearance of unfairness. The Eleventh Circuit's approach creates a virtually unattainable evidentiary standard that must be met to create municipal liability and has narrowed the custom and policy requirement of *Monell*. The national importance of having the Supreme Court decide the questions involved is to ensure that governmental entities are uniformly held accountable for the actions, inactions and decisions of their policymakers that lead to injuries or death of citizens.

3. This Court must provide guidance to the lower courts regarding the limits of their Constitutional power when reviewing jury verdicts.

A jury's role as a fact finder is constitutionally mandated. *United States Constitution, Amendment* VII. Deference to the factual finding of a jury is a bedrock of our judicial system. The Reexamination Clause is an express limitation on the nature of appellate review and, as such, is the only provision in the Constitution that directly limits the power of appellate courts. Only this Court is in a position to review whether the Reexamination Clause has been violated. This Court has historically been protective of the role of the jury and expressed its willingness to exercise its power of review in any case where it appears that the litigants have been improperly deprived of their right to a jury determination. *Rogers v. Mo. Pacific R.R. Co.,* 352 U.S. 500, 509, 77 S.Ct. 443, 1 L.Ed.2d 493 (1957). In this case, the district court and subsequently the appellate panel assumed the role of a second jury, making credibility determinations and rejecting reasonable inferences that had been drawn by the jury. Given the lower court's encroachment on the jury's role, it is appropriate and necessary for this Court to step in and correct this deprivation of the Petitioners' rights.

When a court is asked to review a verdict, they are not free to reweigh evidence and set aside a verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable. In this

case, alternative theories were presented at trial which enabled the jury to find that the force used by the officers was either pursuant to a custom of the city of Sweetwater or deliberate indifference to a known need for more training and/or supervision. The jury found the city liable under both theories based on the evidence presented and detailed interrogatories. The district court reversed the jury's decision and the Eleventh Circuit inexplicably affirmed this decision. Since there was evidence in the record to support the verdict under the traditional tests for sufficiency applied in this Court, the panel's decision is erroneous and it should be reversed.

In *Reeves v. Sanderson Plumbing Prods., Inc.,* this Court addressed the role of the district court in ruling on a judgment notwithstanding the verdict. 530 U.S. 133, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). This court unanimously reiterated the standard that the appellate courts must follow to ensure they are not reexamining the finding of the jury and held that the lower court must draw all reasonable inferences in favor of nonmoving party, and it may not make credibility determinations or weigh the evidence. *Id.* at 150.

The jury in this case found a custom attributable to the city as a result of its tow ordinance and its enforcement. They further believed that the motivation for the original stop was the tow ordinance based on the evidence presented. The district court and the appellate court held that there was no evidence that the towing ordinance played any role in the stop and investigation of Felipe Torrealba and, therefore, found there was no

causal link between the custom of the city presented and the injury. (BC). This statement required the lower courts to weigh the evidence before them and reach a conclusion, a job reserved only for the jury.

Furthermore, the district court and appellate court both held that the officer would have been justified in using deadly force upon "an armed suspect …who pointed a gun at an officer." (Appendix B). This statement is the basis for the lower courts' reversal and is evidence that was contradicted and clearly disregarded by the jurors. To reach this conclusion, the district court and then the appellate panel made the credibility determination to believe Armando Gonzalez, the first shooting officer's, version of the incident, a version that was heard and rejected by the jury. The jury's finding that the traffic offender did not pose an immediate threat of physical harm to the city's officers was a fact that was the basis for liability. Using the jury's reasonable logic, an unarmed traffic offender who posed no harm to officers was shot at 24 times in an attempt to flee the traffic stop. The actions of the officers were directly related to the city's failure to train the shooting officer on even its most basic policies.

This case is an opportunity for this court to determine whether the lower courts should be corrected for disregarding this court's clear precedent. The lower courts' misapplication of the standard of review dictated by Rule 50 and *Reeves*, and granting a judgment as a matter of law is improper, where, as in this case, the court impermissibly substitutes its judgment concerning the evidence for that of the jury. *Id.* at 152. This

Court should grant certiorari here to ensure that lower courts do not substitute their own judgment for those of jurors and deprive litigants of their constitutional rights. Absent regular scrutiny by this Court, the constitutional right to a jury trial is a fallacy. The petition for certiorari should therefore be granted to curb the abuse of power by appellate courts.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10498

D.C. Docket No. 1:16-cv-24267-CMA

JUAN L. PEREZ,
MARIA A. POSADA,
Plaintiffs-Appellants,

versus

CITY OF SWEETWATER,
RAFAEL DUARTE, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(May 3, 2019)
Before WILLIAM PRYOR and NEWSOM, Circuit Judges, and ROSENTHAL,*
Chief District Judge.

PER CURIAM:

Careful district judges anxious to protect the trial record and avoid retrial maysubmit cases to the jury, even when the judge doubts that the evidence

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*Honorable Lee H. Rosenthal, Chief United States District Judge for the Southern Districtof Texas, sitting by designation.

is sufficient to support the liability finding and damages the plaintiff seeks. If the jury returns a defense verdict, the judge usually needs only to enter judgment. But when, as here, the jury finds liability and imposes a large damages award, the district judge must decide whether to displace the verdict by granting judgment as a matter of law. The district judge took that step here, and the plaintiff appealed, requiring us to decide if the jury had any reasonable basis to return the verdict it did. We agree with the district court that this record did not present sufficient evidence to support the verdict, and we affirm.

I. Background

A jury found that the City of Sweetwater, Florida was liable under 42 U.S.C. § 1983 for injuries that Juan L. Perez suffered when a car fleeing police pursuit hit Perez's vehicle at a high speed. The jury awarded Perez $1,000,000 in compensatory damages. After trial, the City renewed its motion for judgment as a matter of law, which the district court granted, finding that no reasonable jury could have found the City liable under § 1983 based on the trial evidence. Perez appeals the district court's decision during trial to exclude certain evidence and its decision after trial to grant judgment for the City as a matter of law.

Early the morning of January 2, 2012, Juan Perez left his home in Miami, Florida to drive to work. As he was driving east on 8th Street, he noticed four police cars stopped behind "one dark car." Officer Richard Brioso, a City police officer, had stopped the "dark car," a Mercedes Benz, for reckless

driving. Officer Brioso testified at trial that the Mercedes had been traveling at a high speed and appeared to be racing another car. At trial, the driver testified that he was not racing another car, but he did not recall how fast he was driving. The passenger had been asleep and could not dispute Officer Brioso's testimony.

Three nearby City police officers—Officers Rafael Duarte, Armando Gonzalez, and Domingo Benito—responded to Officer Brioso's dispatch report of the stop. The Mercedes driver, Felipe A. Torrealba, gave the officers a Texas identification card, telling them that he did not have a Florida driver's license. The officers did a routine run of Torrealba's name through identification databases and found a Florida driver's license with a picture matching Torrealba's appearance. The picture showed a large tattoo on Torrealba's neck. When the officers asked Torrealba about his tattoo, Torrealba ran toward the Mercedes's driver-side door. The police officers ordered him to stop, but he kept going. The officers gave chase. Officer Duarte was closest to Torrealba, but Torrealba got to the Mercedes first. The officers testified at trial that at that point, they saw Torrealba reach into his waistband, pull out a handgun, and aim it at Officer Duarte. Officer Duarte yelled "Oh, shit[,] gun," and leaned "back towards the driver['s] rear door" for cover, holding onto the "middle pillar of the vehicle." The Mercedes started moving, dragging Officer Duarte. Officers Gonzalez and Brioso fired 23 rounds at Torrealba,
but he raced away. Officer Benito testified that he got into his patrol car to give chase but "had no chance" because the Mercedes was already "two

blocks ahead." At trial, Torrealba testified that he did not have a gun on that day, disputing the officers' testimony.

Perez was still driving on 8th Street. He looked into his rearview mirror and saw "light coming like a lightning." He could do nothing more than "say, [s]orry, Maria," before the Mercedes hit his truck at high speed. Perez recalled nothing after seeing the light and feeling the impact. He regained consciousness upside down in his crumpled truck, smelling leaking gasoline. The Fire Rescue Squad had to free him from the truck. Perez was hospitalized for 14 days.

Officer Benito was the first to arrive at the collision scene. He saw the truck but did not check on the occupants, because his "main concern was [that Torrealba was] armed with a handgun and" on the loose. The Mercedes had crashed into a palm tree "30, 40 yards away" from Perez's truck. A bystander told Officer Benito that a man had jumped out of the Mercedes and into a nearby canal. Officer Benito radioed dispatch to set up a perimeter blockade in the area.

The City police officers did not find Torrealba on January 2, 2012, and they did not find a firearm or evidence that Torrealba had fired a gun from the Mercedes, the canal, or the crash area. Torrealba was finally arrested in February 2013. Torrealba pleaded guilty to resisting arrest with violence and to resisting arrest without violence for his actions on January 2, 2012. He received a three-year sentence.

Perez and his wife, Maria A. Posada,[1] sued the City and Officers Duarte, Brioso, and Gonzalez in

[1] Perez and Posada are referred to collectively as Perez.

state court, asserting claims under 42 U.S.C. § 1983 and for negligence. Perez alleged that his injuries were caused by the officers' unconstitutional use of deadly force. He alleged that the City's custom relating to conducting vehicle stops to enforce a towing ordinance to obtain money or property for the City, and the City's custom relating to, and training in, using deadly force and engaging in high-speed chases, violated his Fourteenth Amendment substantive due-process rights. The City and the officers removed. The district court dismissed the claims against Officer Duarte, with prejudice, and denied Officers Brioso's and Gonzalez's motions for summary judgment. Officers Brioso and Gonzalez filed an interlocutory appeal, and Perez's claims against them were not tried with his claims against the City.

Perez voluntarily dismissed his negligence claim against the City during trial. The City moved for judgment as a matter of law on the § 1983 claims after Perez rested his case-in-chief, and renewed the motion at the close of the evidence. Perez asserted two bases for liability against the City: (1) that the City had an unconstitutional policy or custom relating to the police use of deadly force or conducting high-speed pursuits, causing a violation of Perez's Fourteenth Amendment due-process rights; and (2) that the City was deliberately indifferent to the need for different or more officer training or supervision as to deadly force or high-speed pursuits. The district court instructed the jury on the elements under each theory. The jury found that the City was deliberately indifferent to an unconstitutional policy or custom as to using deadly force, but not as to conducting

high-speed pursuits, and was deliberately indifferent to the need for officer training on both using deadly force and conducting high-speed pursuits. The jury awarded Perez $1,000,000 in compensatory damages, and the court entered final judgment in that amount. The City filed a timely renewed motion for judgment as a matter of law. *See* FED. R. CIV. P. 50(b). The court granted the City's motion, finding that the evidence did not allow a reasonable jury to conclude that the City had a policy or custom of "conscience-shocking use of lethal force" or that the officers' training was deficient as to lethal force or the conducting of high-speed pursuits following traffic stops. The district court vacated the final judgment based on the verdict and entered final judgment for the City.

In this appeal, Perez challenges the district court's decision to exclude from the trial evidence parts of affidavits submitted in 2017 by two Miami-Dade detectives to get arrest warrants against two former City police officers for misconduct they allegedly committed on duty. Perez also challenges the district court's decision to grant judgment as a matter of law, contending that there was enough trial evidence for a reasonable jury to find that the City police department had a custom of using unlawful means to enforce a towing ordinance, in order to collect the fines and personal property from the vehicles, and that this custom was the moving force behind the constitutional violation and Perez's injuries. Perez also argues that there was enough evidence for a reasonable jury to find that the City was deliberately indifferent to the need for different or additional officer training on using deadly force and engaging in high-speed vehicle pursuits.

Although Perez's innocent-bystander status evokes sympathy, the evidence simply does not support the jury's verdict.

II. The Standards of Review

A. Evidentiary Rulings

"The evidentiary rulings of the district court are reviewed for a clear abuse of discretion." *Aycock v. R.J. Reynolds Tobacco Co.*, 769 F.3d 1063, 1068 (11th Cir. 2014). "[T]he deference that is the hallmark of abuse-of-discretion review requires that we not reverse an evidentiary ruling of a district court unless the ruling is manifestly erroneous." *United States v. Barton*, 909 F.3d 1323, 1330 (11th Cir. 2018) (quoting *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004)). "A district court abuses its discretion 'if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous.'" *Aycock*, 769 F.3d at 1068 (quoting *Brown v. Ala. Dep't of Transp.*, 597 F.3d 1160, 1173 (11th Cir. 2010)).

B. Judgment as a Matter of Law

When "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue," the court may either "resolve the issue against the party" or "grant a motion for judgment as a matter of law against the party on a claim or defense that,

under the controlling law, can be maintained or defeated only with a favorable finding on that issue." FED. R. CIV. P. 50(a)(1). "Judgment as a matter of law for a defendant is appropriate[] 'when there is insufficient evidence to prove an element of the claim, which means that no jury reasonably could have reached a verdict for the plaintiff on that claim.'" *Cadle v. GEICO Gen. Ins. Co.*, 838 F.3d 1113, 1121 (11th Cir. 2016) (quoting *Collado v. United Parcel Serv., Co.*, 419 F.3d 1143, 1149 (11th Cir. 2005)). A district court may grant judgment as a matter of law only "where reasonable jurors could not arrive at a contrary verdict." *Munoz v. Oceanside Resorts, Inc.*, 223 F.3d 1340, 1344–45 (11th Cir. 2000) (alteration and quotation omitted). "In considering a Rule 50(b) motion after the jury verdict, 'only
the sufficiency of the evidence matters. The jury's findings are irrelevant.'" *Cadle*, 838 F.3d at 1121 (quoting *Connelly v. Metro Atlanta Rapid Transit Auth.*, 764 F.3d 1358, 1363 (11th Cir. 2014)).

An appellate court reviews a "district court's ruling on a motion for judgment as a matter of law *de novo*, considering the evidence and the reasonable inferences drawn from it in the light most favorable to the nonmoving party." *Eghnayem v. Bos. Sci. Corp.*, 873 F.3d 1304, 1313 (11th Cir. 2017).

III. Discussion

"As a general rule, to prevail on a claim of a substantive due-process violation, a plaintiff must prove that a defendant's conduct 'shocks the conscience.'" *Nix v. Franklin Cty. Sch. Dist.*, 311 F.3d 1373, 1375 (11th Cir. 2002) (quoting *Cty. Of*

Sacramento v. Lewis, 523 U.S. 833, 846–47 (1998)). "[O]nly a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." *Lewis*, 523 U.S. at 836. An official's "actions 'intended to injure in some way unjustifiable by any government interest' are those 'most likely to rise to the conscience-shocking level.'" *Nix*, 311 F.3d at 1376 (quoting *Lewis*, 523 U.S. at 849); *see also Fennell v. Gilstrap*, 559 F.3d 1212, 1217 (11th Cir. 2009); *Cockrell v. Sparks*, 510 F.3d 1307, 1311 (11th Cir. 2007).

"[T]he bar to establish municipal liability is very high." *Simmons v. Bradshaw*, 879 F.3d 1157, 1169 (11th Cir. 2018). "Plaintiffs who seek to impose liability on local governments under § 1983 must prove that 'action pursuant to official municipal policy' caused their injury." *Connick v. Thompson*, 563 U.S. 51, 60–61 (2011) (quoting *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)); *see Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 404 (1997); *City of Canton v. Harris*, 489 U.S. 378, 385–86 (1989). The plaintiff must "demonstrate that, through its *deliberate* conduct, the municipality was the 'moving force' behind the injury alleged." *Bryan Cty.*, 520 U.S. at 404 (emphasis in original). "Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law." *Connick*, 563 U.S. at 61. A custom requires the plaintiff to identify evidence showing "[a] pattern of similar constitutional violations." *Craig v. Floyd*

Cty., 643 F.3d 1306, 1310 (11th Cir. 2011) (quoting *Connick*, 563 U.S. at 62).

A municipality's "culpability for a deprivation of rights is at its most tenuous
where a claim turns on a failure to train." *Connick*, 563 U.S. at 61. A municipality's
"failure to train its employees in a relevant respect must amount to 'deliberate indifference to the rights of persons with whom the untrained employees come into contact.'" *Id.* (alteration omitted) (quoting *Canton*, 489 U.S. at 388). "[W]hen city policymakers are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights, the city may be deemed deliberately indifferent if the policymakers choose to retain that program." *Id.* "A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." *Id.* at 62 (quoting *Bryan Cty.*, 520 U.S. at 409).

Because this appeal focuses on the sufficiency of the evidence, we first consider whether the district court abused its discretion in excluding certain trial evidence. Finding no error, we then analyze whether the admitted evidence was enough for a reasonable jury to find that the City had an unconstitutional custom relating to using deadly force or engaging in high-speed vehicle pursuits, or was deliberately indifferent to the need for more or different training on using deadly force and engaging in high-speed vehicle pursuits. Again, we find no error.

A. The Evidentiary Ruling

Perez sought to admit arrest-warrant affidavits executed by two Miami-Dade detectives in 2017 to obtain warrants against two former City police officers for misconduct allegedly committed while on duty in 2012. The affidavits detailed eight incidents in which the former officers allegedly unlawfully entered houses, took property, towed vehicles, beat and tasered suspects while interrogating them, and at least once waterboarded a suspect. None of the eight incidents involved officers using deadly force or conducting high-speed vehicle chases. One incident occurred in September 2010, before the chase and crash here, but the other seven were after, occurring between May and September 2012.

The district court excluded the affidavit sections discussing the post-event incidents, but admitted the introductory paragraphs and the description of the September 2010 incident. Perez argues that the district court erred in excluding the affidavit sections on the post-event incidents, because they would have "proven several other instances of the same administrator turning a blind eye and actually encouraging constitutional violations." Appellant's Reply Br. at 20 (emphasis omitted).

"Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action." *Aycock*, 769 F.3d at 1068 (citing FED. R.EVID. 401). "Even if the evidence is relevant, the court may exclude it if its probative value is substantially outweighed by a danger of 'unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly

presenting cumulative evidence.'" *Id.* (quoting FED. R. EVID. 403).

The events described in the excluded sections of the affidavits are evidence of factual situations that have no similarity to this case. *See Mercado v. City of Orlando*, 407 F.3d 1152, 1162 (11th Cir. 2005). The events described in the excluded sections did not involve deadly force or high-speed vehicle pursuits. The only similarities between the excluded incidents and the events here are that vehicles were involved in both and some of the excluded incidents involved traffic stops. Because the excluded sections of the affidavits discussed events that were so dissimilar, they were of little to no relevance, and whatever relevance was present was clearly outweighed by the risks of unfairly prejudicing the City and confusing the jury. The district court was well within its discretion in excluding this evidence.

B. The City's Custom

Perez had to prove by a preponderance of the evidence that the City "had a custom or policy that constituted deliberate indifference" to his Fourteenth Amendment right to be free from the arbitrary, conscience-shocking use of deadly force. *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004). Meeting this burden required evidence of a "pattern of similar constitutional violations" supporting a reasonable inference that the City had "such a longstanding and widespread practice [relating to conscience-shocking deadly force] that it is deemed authorized by the policymaking official because they must have known about it but failed to stop it."

Craig, 643 F.3d at 1310 (alteration and quotation omitted).

There is no evidence of a written policy encouraging or authorizing police officers to use conscience-shocking deadly force, and Perez presented no evidence of similar prior incidents. He cites a prior high-speed pursuit by Officer Benito, but this incident fails the similarity test; the pursuit there was authorized, caused no injuries, and resulted in robbery suspects' immediate arrest.

Perez's theory of liability was instead that a "culture of corruption" existed in the City's police department around the enforcement of a towing ordinance and alleged wrongdoing by officers in the City police department's General Investigation Unit. The first problem is that there is no evidence that the stop, shooting, or chase here had anything to do with police intending to seize Torrealba's vehicle and have it towed. The second problem is that the prior incidents Perez cites have nothing to do with what the evidence here showed were the circumstances surrounding the stop, the use of force, and the pursuit.

Perez contends that the trial evidence supported a reasonable inference that "the decision makers in the City had notice that their officers were using unnecessary force and unlawful means to make use of the towing ordinance for the benefit of the City and City officials." Appellant's Amended Br. at 26–30. Perez argues that "[i]t is entirely reasonable for the jurors to conclude that if the City would tolerate illegal stops and investigations, unnecessary force against citizens[,] and unlawful taking of their property[,] that the City would

tolerate the level of force in this case." Appellant's Reply Br. at 13.

Perez's arguments fail. He does not identify trial evidence of prior similar incidents involving police officers confronted with a suspect they believed was armed, who disregarded their orders, pointed a gun at an officer, and fled at high speed. The district court correctly found that the evidence was not sufficient to allow a reasonable jury to conclude that the City had a "longstanding and widespread practice" of encouraging the conscience-shocking use of deadly force in similar circumstances. *Craig*, 643 F.3d at 1310 (quoting *Brown v. City of Fort Lauderdale*, 923 F.2d 1474, 1481 (11th Cir. 1991)).

Nor does the evidence support "a direct causal link" between the alleged custom of overly aggressive enforcement of the City towing ordinance and the crash that caused Perez's injuries. *Cuesta v. Bd. of Miami-Dade Cty.*, 285 F.3d 962, 967 (11th Cir. 2002) (quotation omitted); *see Bryan Cty.*, 520 U.S. at 410 ("[A] court must carefully test the link between the policymaker's inadequate decision and the particular injury alleged."). No evidence showed that the prospect of a towing fee played any role in Officer Brioso stopping the Mercedes when he saw it speeding through the public streets in the predawn hours after New Year's Day.[2]No evidence showed that the towing ordinance played any role in the questioning of Torrealba that followed and led to the discovery that he had provided a false Texas

[2] While Torrealba denied racing another car, neither he nor his passenger could recall whether they were speeding.

identification and lied about not having a Florida license. No evidence showed that towing had anything to do with the subsequent use of deadly force in response to Torrealba's undisputed disregard for police orders and the evidence that he drew a handgun, pointed it at a police officer, and drove away at high speed. No evidence showed that the "known or obvious consequences" of enforcing the towing ordinance or chasing a fleeing suspect, especially one believed to be armed, would be a conscience-shocking use of deadly force. *Am. Fed. of Labor & Cong. of Indus. Orgs. v. City of Miami*, 637 F.3d 1178, 1187 (11th Cir. 2011) (quotation omitted).

Perez asserts that the City ratified the officers' allegedly unconstitutional behavior by having "a 'chaotic' department"; "failing to conduct any internal investigation after the incident"; failing to require Officers Gonzalez and Brioso to make a written report after they fired their weapons at Torrealba; and sending "their own crime scene units to sanitiz[e] the crime scene." Appellant's Amended Br. At 31, 34. But Perez identifies no evidence that the City's policymakers reviewed the officers' actions "before they became final" or approved their "decision and the basis for it." *Salvato v. Miley*, 790 F.3d 1286, 1296 (11th Cir. 2015) (alteration and quotation omitted). A reasonable jury could not have found that the City ratified the officers' actions.

Having submitted the case to the jury despite the scant evidence, the district court did what no trial judge relishes doing—granting judgment notwithstanding the verdict because the evidence was insufficient to make it reasonable, as a matter of

law. The district court did not err in entering judgment as a matter of law for the City as to Perez's claim that the City had an unconstitutional custom that was the moving force behind the constitutional violations and his injuries.

C. The City's Failure to Train

Perez's failure-to-train theory fares no better. Perez had to prove by a preponderance of the evidence that the City was deliberately indifferent to the need for different or more officer training or supervision on using deadly force or engaging in high-speed pursuits. The trial evidence made it unreasonable for the jury to find "[a] pattern of similar constitutional violations by untrained employees," as needed to demonstrate deliberate indifference to the risk of constitutional violations that was a moving force behind Perez's injuries. *Connick*, 563 U.S. at 62; *Mercado*, 407 F.3d at 1162.

Perez pieced together arguments connected only by the fact that they generally involved police encounters with vehicles. He argued, for example, that "during the relevant time, [the] officers were unrestricted when it came to making stops outside their jurisdiction"; the "officers were often illegally towing cars without authority";
the officers involved in this case did not receive, and were not required to know, the
City's Standard Operating Procedures; and "the shooting officers were not properly trained on the City's policy against shooting into moving vehicles." Appellant's Amended Br. at 37–38, 40–42. He generally argued that the City was "deficient in its

hiring practices" and that the officers here were "inexperienced and untrained." *Id.* at 41–42.

But the arguments and evidence Perez presented were not of circumstances "substantially similar" to the constitutional violation that Perez has asserted: a conscience-shocking use of force and the high-speed pursuit of a fleeing suspect who had lied in answering the officers' questions and disregarded direct orders, particularly given the testimony that the officers believed him to be armed. *Mercado*, 407 F.3d at 1162. Perez's evidence could not have put the City on actual or constructive notice that its police officers required additional training or supervision in the "particular area[s]" of deadly force or high-speed pursuits to avoid the constitutional violations he alleged. *Gold v. City of Miami*, 151 F.3d 1346, 1351–52 (11th Cir. 1998); *see, e.g.*, *Connick*, 563 U.S. at 63 ("Because those incidents are not similar to the violation at issue here, they could not have put Connick on notice that specific training was necessary to avoid this constitutional violation.").

Perez argues that the officers' "need for more or different training [was] so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the [C]ity can reasonably be said to have been deliberately indifferent to the need." Appellant's Amended Br. at 45. Perez points out that Officer Gonzalez, a new officer who was "never handed a copy of the City's standard operating procedures," was unsure whether "the standard operating procedures were reviewed with him." *Id.* at 46–47. Officer Gonzalez was at some point "suspended or reprimanded for falsifying a police report or at the very least not following police procedures." *Id.* None

of this shows that if Officer Gonzalez had had more experience or had read the procedures, that would have made any difference at all, given the evidence as to what happened at the scene leading up to the pursuit and crash. Perez's allegations about Officer Gonzalez's training are insufficient for a reasonable jury to find the City liable for failure to train or supervise. *See Canton*, 489 U.S. at 390–91 ("That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city . . . Neither will it suffice to prove that an injury or accident could have been avoided if an officer had had better or more training.").

Evidence on the City's training program came from Officer Brioso's testimony that all City police officers had to take "training classes" on deadly force "either once a year or every six months" to "stay certified" with the FloridaDepartment of Law Enforcement. This testimony does not support finding that the City's training regimen as to deadly force or high-speed pursuits was "so obvious[ly]" inadequate and "so likely to result in the violation of constitutional rights" that the City could "reasonably be said to have been deliberately indifferent." *Canton*, 489 U.S. at 390.

The district court did not err in finding that no reasonable jury could conclude that the City was deliberately indifferent to a need for training or supervision as to deadly force or high-speed pursuits. The district court did not err in granting judgment as a matter of law on the failure to train claim.

IV. Conclusion

The district court's judgment for the City as a matter of law is **AFFIRMED**.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-24267-CIV-ALTONAGA/Goodman

JUAN L. PEREZ and MARIA A. POSADA,
Plaintiffs,
vs.
CITY OF SWEETWATER, *et al.*,
Defendants.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant, the City of Sweetwater's Amended Renewed Motion for Judgment as a Matter of Law . . . and Alternative Motion for New Trial [ECF No. 182], filed November 20, 2017. On December 1, 2017, Plaintiff, Juan Perez, filed a Response [ECF No. 194]; to which the City filed a Reply [ECF No. 195] on December 8, 2017. The Court has carefully considered the parties' submissions, the record, and applicable law.

I. BACKGROUND

This case concerns actions taken by the City's police officers during a traffic stop of an individual who in turn went on to crash into Perez's vehicle at high speed, causing Perez head injuries. (*See generally* Amended Complaint [ECF No. 33]). The Court assumes the reader's knowledge of the

intricate facts as discussed in prior orders (*see* December 22, 2016 Order [ECF No. 30]; July 6, 2017 Order [ECF No. 99]), but provides a brief background for the purpose of this Order.

On the morning of January 2, 2012, during his commute to work, Sweetwater Police Officer Richard Brioso stopped Felipe Torrealba, who was driving a black Mercedes-Benz sedan, for driving erratically. (*See* Am. Compl. ¶¶ 25–26). The stop was initiated outside the City's geographical jurisdiction. (*See* Trial Day 3 Transcript [ECF No. 187] 191:4–121[3]). Sweetwater Police Officers Domingo Benito, Rafael Duarte and Armando Gonzalez arrived on the scene as backup. (*See* Am. Compl. ¶ 27; Trial Day 2 Transcript [ECF No. 186] 95:14–20).

Torrealba and the vehicle's passenger, Dondrey St. Phar, were asked to exit the car. (*See* Am. Compl. ¶ 28; Trial Day 1 Transcript [ECF No. 185] 143:15–44:13). The traffic stop then escalated into a physical confrontation with Torrealba, during which Brioso and Gonzalez drew their weapons and attempted to shoot Torrealba. (*See* Am. Compl. ¶ 29). Torrealba ran back to his car and fled, while Brioso and Gonzalez fired at Torrealba's vehicle. (*See id.* ¶ 32; Trial Day 1 Tr. 146:18–25). Benito put his car in drive and pursued Torrealba. (*See* Trial Day 3 Tr. 72:4–8; Trial Day 4 Transcript [ECF No. 188] 122:6–24:13).

Per Torrealba's account, a bullet struck him in the ear; as a result, he crashed into Perez's pickup

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[3] The Court uses the pagination generated by the Case Management/Electronic Case Files system, which appears as a header on all court filings.

truck. (*See* Trial Day 1 Tr. 146:20–25, 148:20–25). Perez's truck rolled multiple times off the road and struck a palm tree. (*See* Am. Compl. ¶ 37). Torrealba fled on foot, jumped in a canal, and escaped. (*See* City of Sweetwater's Statement of Undisputed Material Facts [ECF No. 70] ¶ 20; Plaintiffs' Response to Defendant City of Sweetwater's Statement of Material Facts [ECF No. 81] ¶ 20 (undisputed)). Perez was rescued from the crushed truck by Miami-Dade Fire Rescue and taken to the hospital, where he was diagnosed with a closed head injury and subdural hematoma. (*See* Am. Compl. ¶ 38).

On December 22, 2015, Perez and his wife, Maria Posada, brought suit against the City, Duarte, Brioso, and Gonzalez in state court to recover for Perez's injuries and Posada's loss of consortium. (*See* Complaint for Damages [ECF No. 1-2] 5–19). Defendants removed the case on October 7, 2016 (*see* Notice of Removal [ECF No. 1]), and Plaintiffs filed their Amended Complaint on January 5, 2017 (*see* Am. Compl.). Plaintiffs brought the following claims against Defendants: (1) negligence against the City ("Count 1"); (2) negligence against Duarte, Brioso and Gonzalez ("Count 2"); (3) a claim against Brioso, Duarte, and Gonzalez for violations of 42 U.S.C. section 1983 ("Count 3"); and (4) a claim against the City for violation of 42 U.S.C. section 1983 ("Count 4"). (*See generally* Am. Compl.). On July 18, 2017, the Court dismissed the claims against Duarte, but denied Brioso and Gonzalez's request for summary judgment for procedural reasons. (*See* July 18, 2017 Order [ECF No. 105] 2). After Brioso and Gonzalez appealed the July 18 Order, the Court stayed the case as to Brioso and Gonzalez and bifurcated the

proceeding, allowing the claims against the City to go forward. (*See* July 28, 2017 Order [ECF No. 110]; *see also* August 23, 2017 Order [ECF No. 121]). On the first day of trial, Plaintiffs voluntarily dismissed the negligence claim against the City. (*See* Notice of Filing Transcript of Trial – Day 1, Ex. 1 [ECF No. 176-1] 7:8–23).

The six-day jury trial between Plaintiffs and the City began September 6, 2017 and concluded September 25, 2017.[4] (*See* Trial Transcripts [ECF Nos. 184–90]). At the close of Plaintiffs' case-in-chief, the City moved pursuant to Federal Rule of Civil Procedure 50(a) for judgment as a matter of law. (*See* Trial Tr. Day 4 97:23–103:11). The Court denied the motion. (*See id.* 108:4). At the close of all of the evidence, the City renewed its Rule 50(a) motion (*see id.* 162:3–25), and the Court deferred ruling on the motion pending the jury's determination (*see id.* 168:24–69:1).

On September 25, 2017, the jury returned a verdict with the following findings: (1) Torrealba did not pose an immediate threat of serious physical harm to the Sweetwater police officers during the traffic stop; (2) the use of deadly force against Torrealba shocked the conscience; (3) the use of deadly force against Torrealba was pursuant to an official policy or custom of the City approving conscience-shocking use of force; (4) the use of deadly force against Torrealba resulted from the City's deliberate indifference to a known need for additional supervision or training of its officers in the use of deadly force; (5) the City's official policy or

[4] The trial was interrupted by court closures in preparation for, and in the aftermath of, Hurricane Irma.

custom approving of conscience-shocking use of deadly force caused Perez's injuries; (6) the City's deliberate indifference to a known need for additional supervision or training in the use of deadly force caused Perez's injuries; (7) Sweetwater police officers engaged in a high-speed chase of Torrealba; (8) the high-speed chase shocked the conscience; (9) the high speed chase was not pursuant to an official policy or custom of the City which approved of conscience-shocking high speed chases; (10) the high-speed chase resulted from the City's deliberate indifference to a known need for additional supervision or training in the conduct of high-speed chases; and (11) the City's deliberate indifference to a known need for additional supervision or training in the conduct of high-speed chases caused Perez's injuries. (*See generally* Verdict [ECF No. 160]). The jury awarded Perez $1,000,000.00 in compensatory damages and decided Posada should not be granted damages for loss of consortium. (*See id.* ¶¶ 13–14).

On September 26, 2017, the Court entered a Final Judgment [ECF No. 164] in favor of Perez and against the City for $1,000,000.00 in compensatory damages. (*See* Final Judgment ¶ 1). On October 23, 2017, the City timely filed its Renewed Motion for Judgment as a Matter of Law [ECF No. 173], without citations to the trial transcript. On November 8, 2017, the Court denied the Renewed Motion without prejudice and directed the City to file an amended motion containing citations to the trial transcript once the transcript became available. (*See* November 8 Order [ECF No. 175] 2).

On November 20, 2017, the City filed the present Amended Renewed Motion pursuant to

Federal Rules of Civil Procedure 50(b) and 59, requesting judgment in its favor as a matter of law vacating the Final Judgment in favor of Perez. (*See generally* Mot.). In the alternative, the City requests a new trial on liability. (*See id.* 13–15). For the reasons discussed below, the Court finds the City is entitled to judgment as a matter of law.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 50(b) governs renewed motions for judgment as a matter of law. Under this standard, a "district court should grant judgment as a matter of law when the plaintiff presents no legally sufficient evidentiary basis for a reasonable jury to find for him on a material element of his cause of action." *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1278 (11th Cir. 2005) (citation omitted). Conversely, the court should deny the motion "if the plaintiff presents enough evidence to create a substantial conflict in the evidence on an essential element of the plaintiff's case." *Id.* (citations omitted). "Although [the court] look[s] at the evidence in the light most favorable to the non-moving party, the non-movant must put forth more than a mere scintilla of evidence suggesting that reasonable minds could reach differing verdicts." *Campbell v. Rainbow City*, 434 F.3d 1306, 1312 (11th Cir. 2006) (alterations added; internal quotation marks omitted) (quoting *Abel v. Dubberly*, 210 F.3d 1334, 1337 (11th Cir. 2000)).

III. ANALYSIS

The City argues judgment as a matter of law is warranted because: (1) there is no legal basis to recognize a violation of Perez's substantive due process rights for shots fired by Sweetwater officers at Torrealba (*see* Mot. 6–7); (2) the jury had no basis to find a high-speed chase occurred (*see id.* 7–9); (3) there was no evidentiary basis to find the officers' use of deadly force on Torrealba was pursuant to a City official policy approving of conscience-shocking use of deadly force (*see id.* 9–10); (4) there was no basis for the jury to find the officers' shooting of Torrealba resulted from the City's deliberate indifference to a known need for additional training of its officers in the use of deadly force (*see id.* 10–12); (5) the jury correctly found the officers' high speed chase was not pursuant to any official City policy or custom (*see id.* 12); and (6) there was no legally sufficient basis for the jury to find the officers' conscience-shocking high-speed chase resulted from the City's deliberate indifference to a known need for additional training of its officers in high-speed chases (*see id.* 12–13). As the Court finds the jury had no reasonable basis to impute liability to the City for the officers' conscience-shocking behavior, it declines to examine whether Perez suffered a legally cognizable substantive due process violation or whether there was sufficient evidence to conclude a high-speed chase occurred.

A. Municipal Liability, Generally

Under section 1983, a municipality cannot be held liable on a theory of *respondeat superior*; it may only be held liable for its own, independent violations of federal law. *See Monell v. Dep't of Soc.*

Servs., 436 U.S. 658, 691 (1978). "Local governing bodies, therefore, can be sued directly under [section] 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers."*Id.* at 690 (alterations added; footnote call number omitted). A municipality may also be sued for violations of federal rights "visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.* at 690–91. Such a custom must be "so persistent and widespread as to practically have the force of law." *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (citations omitted). To prevail under this theory of municipal liability, a plaintiff must show: (1) the violation of a federal right occurred; (2) the existence of a municipal policy or custom; and (3) a causal connection between the violation and the municipal policy or custom. *See City of Canton v. Harris*, 489 U.S. 378, 385 (1989).

In lieu of showing a policy or custom, a plaintiff may invoke the narrower "failure to train" theory of liability, although the circumstances giving rise to such a liability are quite limited: a plaintiff must prove "deliberate indifference to the rights of persons with whom the [municipal employees] come into contact." *Id.* at 388 (alteration added; footnote call number omitted). To show "deliberate indifference," a plaintiff must present evidence "the municipality knew of a need to train and/or supervise in a particular area and the municipality made a deliberate choice not to take any action."

Gold v. City of Miami, 151 F.3d 1346, 1350 (11th Cir. 1998) (citations omitted). The Eleventh Circuit "repeatedly has held that without notice of a need to train or supervise in a particular area, a municipality is not liable as a matter of law for any failure to train and supervise." *Id.* at 1351 (footnote call number omitted). Indeed, "[w]ithout notice that a course of training is deficient *in a particular respect*, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights." *Connick*, 563 U.S. at 62 (emphasis and alteration added). Additionally, the deficient training of one officer is not sufficient to meet this standard; rather the deficiency must be widespread and closely related to the plaintiff's injury. *See Canton*, 489 U.S. at 390–91.

"A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." *Connick*, 563 U.S. at 62 (quoting *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 409 (1997)). Nevertheless, "the Supreme Court has 'hypothesized' that 'in a narrow range of circumstances,' a municipality may be liable under [s]ection 1983 when a single incident is the 'obvious' consequence of a failure to provide specific training." *Whitaker v. Miami-Dade Cty.*, 126 F. Supp. 3d 1313, 1324 (S.D. Fla. 2015) (alteration added) (quoting *Connick*, 563 U.S. at 62).

B. Policy or Custom

The jury found the City had a policy or custom approving of the "conscience-shocking" use of deadly

force, which caused Perez's injuries. (Verdict ¶ 5 (internal quotation marks omitted)).[5] But at trial, Plaintiffs presented no evidence of an official City policy encouraging or condoning shooting in a conscience-shocking manner. To the contrary, Plaintiffs' expert on police policies and procedure, Roy Taylor, testified the City's policies on use of force were consistent with the policies of the International Association of Chiefs of Police (*see* Trial Day 3 Tr. 69:1–8); the City's written police procedures prohibited the discharge of a firearm to arrest or stop a person who has committed a misdemeanor (*see id.* 55:14–56:5); the City had a policy against shooting moving vehicles (*see id.* 44:11–12); and Gonzalez and Brioso's use of their firearms violated the City's written procedures (*see id.* 56:6–11). Plaintiffs' claim under the custom or policy theory of municipal liability, therefore, rests on the existence of a "widespread practice" of conscience-shocking use of deadly force "that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law." *Brown v. City of Ft. Lauderdale*, 923 F.2d 1474, 1481 (11th Cir. 1991) (internal quotation marks omitted) (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)).

"[A] longstanding and widespread practice is deemed authorized by the policymaking officials because they must have known about it but failed to

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[5] This finding is limited to a policy or custom of shooting, as the jury did not find the high-speed chase was pursuant to any City policy or custom. (*See* Verdict ¶ 9).

stop it." *Id.* (alteration added). "The deprivations that constitute widespread abuse sufficient to notify the supervising official must be obvious, flagrant, rampant and of continued duration, rather than isolated occurrences." *Brown v. Crawford*, 906 F.2d 667, 671 (11th Cir. 1990) (citations omitted). "This threshold identification of a custom or policy ensures that a municipality is held liable only for those deprivations resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality" and "prevents the imposition of liability based upon an isolated incident." *McDowell v. Brown*, 392 F.3d 1283, 1290 (11th Cir. 2004) (internal quotation marks and citations omitted).

In support of their attempt to show a municipal custom, Plaintiffs introduced testimony from Special Agent William Victor Saladrigas and Detective David Colon, who described their investigation of the City's police department for conduct from 2010 onward. (*See* Trial Day 1 Tr. 106:11–42:16). Saladrigas informed the jury of a 2010 incident during which City officers forcibly entered a suspect's house while he was in their custody; removed cash and valuables from the house; towed the suspect's car; and reportedly hit the suspect, leaving abrasions or reddish coloring on his face. (*See id.* 108:13–12:15). No weapons were discharged during that incident. (*See id.* 131:1–7). Saladrigas also testified the City towed a comparatively high number of cars compared to other police departments of its size in 2011 (*see id.* 115:2–12); conducted "a lot of enforcement activity" outside its jurisdiction (*id.* 117:3–15); routinely targeted for investigation immigrants who were "not

proficient in the English language" and "not skilled" (*id.* 123:14–25); City officers had been "using excessive force" against suspects before 2012 (*id.* 117:20–23), and officers had been suspended for this conduct (*see id.* 120:5–15). Saladrigas concluded, based on his investigation, City officers "engaged in a custom of using police action to unlawfully tow vehicles" (*id.* 130:3–4), without legal authority (*see id.* 130:6–7).

Colon described the City of Sweetwater culture as "one to be of officers not following policies, policies that were not clear, and a cultural corruption, basically, within the Sweetwater Police Department." (*Id.* 137:7–10). Colon found in 2011 leading up to 2012, the City had a "culture or a custom of doing investigations or stops outside of their jurisdiction without authority." (*Id.* 142:10–11). Plaintiffs also introduced a partially redacted Affidavit in Support of Arrest Warrant (*see* [ECF No. 168-1] 25–82) from 2017, drafted by Saladrigas and Colon. The un-redacted portion of the Affidavit describes a "culture of corruption" throughout the City of Sweetwater police department, in which members of the department "while operating under color of law, engaged in a protracted pattern of racketeering activity that included, but is not limited to, multiple acts of theft, fraud, burglary, torture and other violent crimes against civilians." (*Id.* 33). The Affidavit also includes a recount of the 2010 incident about which Saladrigas testified (*see id.* 33–35), and a description of an unlawful car towing scheme conducted by the City (*see id.* 31–33).

In addition to the Affidavit and the testimony by Saladrigas and Colon, Perez asserts the jury's finding that the conscience-shocking use of deadly

force was pursuant to a City custom is supported by the testimony of City records custodian Mercedes Roques. (*See* Resp. 6–7; *see also* Trial Day 3 Tr. 117:18–19). Roques testified $1 million in towing fees went missing in the City's police department around 2011 and there were recordkeeping issues surrounding those towing fees. (*See* Trial Day 3 Tr. 128:11–32:25). Roques described 2011 as "a bit chaotic" with regard to recordkeeping and supervision within the department (*id.* 133:18), and testified the recordkeeping procedures were poorly managed and the detective bureau was "basically running amuck" (*id.* 134:16). Roques testified unlike many other police departments, the City's did not have a records department from 2010 through 2012. (*See id.* 137:8–21).

Plaintiffs fall well short of showing a rampant and widespread practice of conscience-shocking use of lethal force by City police officers sufficient for a reasonable jury to believe such force was employed pursuant to a City custom. While testimony and evidence put forth by Plaintiffs describe a culture of corruption and a scheme involving car towing, the testimony of Saladrigas, Colon, and Roques, as well as the numerous exhibits admitted, all lack any indication of even one prior incident involving the conscience-shocking use of a firearm or other lethal force. Accordingly, the jury's finding that the City had a "custom" which "approved of the 'conscience shocking' use of deadly force" that caused Perez's injuries (Verdict ¶¶ 3, 5) was not reasonable. *See, e.g.*, *Depew v. City of St. Marys*, 787 F.2d 1496, 1499 (11th Cir. 1986) ("[R]andom acts or isolated incidents are insufficient to establish a custom or policy." (alteration added; citation omitted)); *Denham v.*

Corizon Health, Inc., 675 F. App'x 935, 944 (11th Cir. 2017) (proof of "a single incident of unconstitutional activity" held insufficient to show a municipal custom (internal quotation marks omitted) (quoting *Craig v. Floyd Cty.*, 643 F.3d 1306, 1312 (11th Cir. 2011))); *Asia v. City of Miami Gardens*, No. 14-20117-CIV, 2016 WL 739656, at *8 (S.D. Fla. Feb. 25, 2016) ("Plaintiff has failed to present any evidence of prior incidents of constitutional injuries similar to his, . . . and his own experience with the City's police officers is insufficient to establish a custom or practice." (alteration added; citations omitted)); *Adams v. Custer*, No. 14-80403-CIV, 2016 WL 155081, at *19 (S.D. Fla. Jan. 12, 2016) (four isolated shootings held not enough to "establish[] a pattern that is so 'obvious, flagrant, rampant and of continued duration' and that would establish a 'causal connection' between actions of the Sheriff and the alleged constitutional deprivations" (alteration added) (quoting *Hartley v. Parnell*, 193 F.3d 1263, 1269 (11th Cir. 1999); other citations omitted)), *aff'd sub nom. Adams v. Sheriff of Palm Beach Cty.*, 658 F. App'x 557 (11th Cir. 2016).

C. Deliberate Indifference

The jury found Perez's injuries were also caused by the City's deliberate indifference to a known need for additional supervision or training in the use of deadly force and in the conduct of high-speed chases. (*See* Verdict ¶¶ 4, 6, 10, 12). This finding, too, was not reasonable.

1. Pattern of Similar Prior Incidents

As noted, a claim of deliberate indifference premised on failure to train or supervise usually requires a showing of "a widespread pattern of similar constitutional violations by untrained employees." *Mingo v. City of Mobile*, 592 F. App'x 793, 799 (11th Cir. 2014); *see also Connick*, 563 U.S. at 62 ("A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." (citation omitted)). "Prior incidents . . . must involve facts substantially similar to those at hand in order to be relevant to a deliberate-indifference claim." *Shehada v. Tavss*, 965 F. Supp. 2d 1358, 1374 (S.D. Fla. 2013) (alteration added) (citing *Mercado v. City of Orlando*, 407 F.3d 1152, 1162 (11th Cir. 2005), and *Gold*, 151 F.3d at 1351).
As the Court concluded in Section III.B, *supra*, Plaintiffs failed to show a single prior incident of conscience-shocking deadly force employed by City officers. With regard to the vehicular pursuit, the record contains evidence of only one other high-speed chase by a City of Sweetwater officer. On cross-examination, Benito testified he had previously engaged in a high-speed pursuit of a vehicle that had refused to stop for his colleague, Officer Abreu, and which he had been told by dispatch had just been involved in a home invasion and possibly a homicide. (*See* Trial Day 4 Tr. 152:7–23). Benito admitted Abreu "knew what [Benito] knew" at the time of the chase (*id.* 155:6–7), and Abreu initiated the chase before dispatch announced the vehicle had been involved in a violent felony (*see id.* 152:24–53:21 & 154:20–55:7). Benito testified a lieutenant had ordered Abreu to cancel the chase until dispatch communicated the vehicle had been involved in a

home invasion and possible homicide, at which point Benito was authorized to pursue the suspect and the chase resumed. (*See id.* 154:24–55:1 & 159:22–60:10). The chase resulted in an accident in which no one was hurt. (*See id.* 155:19–23). Benito successfully apprehended the suspects in the vehicle and received commendation for doing so. (*See id.* 160:13–17).

Even viewing this evidence in the light most favorable to Perez, the Court fails to see how a reasonable jury could conclude the City was on notice of a "*pattern* of *similar* constitutional violations" to the conscience-shocking chase that resulted in Perez's injuries, *Connick*, 563 U.S. at 62 (emphases added; citation omitted), where the one prior chase discussed by Benito was authorized due to the vehicle's suspected involvement in violent felonies and resulted in the successful apprehension of the vehicle's occupants without any injuries. Based on Benito's unrebutted testimony, the prior chase was not in any way conscience-shocking. While Perez argues Abreu's chase was initiated for an improper reason — failure to comply with a traffic stop — Benito testified the chase was quickly authorized over dispatch due to the vehicle's occupants' suspected participation in a home invasion, and Benito even received commendation for his conduct during the incident. (*See* Trial Day 4 Tr. 160:8–17). Plaintiffs therefore failed to make a reasonable showing the prior chase was "substantially similar" to the officers' chase of Torrealba. *Shehada*, 965 F. Supp. 2d at 1374.

Even assuming it did constitute a similar constitutional violation, the Eleventh Circuit has declined to a hold a supervisor liable for failure to

train where the plaintiff provided only one preceding similar incident, as "one prior incident did not provide the requisite notice . . . that the training provided . . . was constitutionally deficient." *Denham*, 675 F. App'x at 942 (alterations added; internal quotation marks omitted) (quoting *Keith v. DeKalb Cty.*, 749 F.3d 1034, 1053 (11th Cir. 2014)); *cf. Brooks v. Scheib*, 813 F.2d 1191, 1193 (11th Cir. 1987) (evidence of ten citizen complaints about a police officer was insufficient to put the city on notice of past police misconduct because the plaintiff "never demonstrated that past complaints of police misconduct had any merit"). Benito's testimony regarding the prior chase, by itself, does not show the City should have been on notice of a failure to train or supervise its officers in the conduct of high-speed pursuits.[6]

2. Single-Incident Liability

Perez argues "[i]n any event, in a case such as this, evidence of prior incidents is not required to establish a city policy." (Resp. 11 (alteration added)). He contends the officers' conscience-shocking actions of shooting at Torrealba and engaging in a high-speed pursuit are among the "narrow range of circumstances" hypothesized by the Supreme Court under which "a single incident is the obvious consequence of a failure to provide specific training." *Whitaker*, 126 F. Supp. 3d at 1324 (internal

[6] The Court further notes Plaintiffs did not even offer evidence of the previous chase during their case-in-chief, at the conclusion of which the City first moved for judgment as a matter of law. Instead, the evidence was presented during Plaintiffs' cross-examination of Benito during the City's case

quotation marks omitted) (quoting *Connick*, 563 U.S. at 62); (*see also* Resp. 11). The single-incident theory of liability for failure to train was first theorized in *City of Canton*, where the Supreme Court hypothesized even without a pattern of previous similar incidents giving a municipality notice of a failure to train its employees in a certain course of conduct, it may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. 489 U.S. at 390 (footnote call number omitted). As an "example," the Court noted:

[C]ity policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the use of deadly force . . . can be said to be "so obvious," that the failure to do so could properly be characterized as "deliberate indifference" to constitutional rights. *Id.* at 390 n.10 (alterations added; internal citation omitted).

The Supreme Court in *Board of County Commissioners v. Brown* later clarified:

In leaving open in *Canton* the possibility that a plaintiff might succeed in carrying a failure-to-train claim without showing a pattern of constitutional violations, we simply hypothesized that, in a narrow range of circumstances, a violation of federal rights may be a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations. The likelihood that the situation will recur and the predictability that

an officer lacking specific tools to handle that situation will violate citizens' rights could justify a finding that policymakers' decision not to train the officer reflected "deliberate indifference" to the obvious consequence of the policymakers' choice — namely a violation of a specific constitutional or statutory right. 520 U.S. at 409–10. In *Connick*, the Supreme Court explained it intended in *Canton* "not to foreclose the possibility, however rare, that the unconstitutional consequences of failing to train could be so patently obvious that a city could be liable under [section] 1983 without proof of a pre-existing pattern of violations." 563 U.S. at 64 (alteration added).

Neither the Supreme Court nor the Eleventh Circuit has ever applied the single-incident liability exception. The Fifth Circuit has upheld a jury verdict based on this theory of liability. *See Brown v. Bryan Cty.*, 219 F.3d 450, 465 (5th Cir. 2000). In *Bryan County*, a municipality was sued for actions of a reserve deputy, who "without the benefit of training or supervision, participated in a car chase and an arrest involving the use of force," resulting in the plaintiff suffering severe knee injuries. *Id.* at 452. At the time of the incident, the deputy was "only twenty-one years old," "inexperienced," had only been on the force "for a matter of weeks," and had no prior experience as a law enforcement officer. *Id.* at 454. The deputy had previously "been arrested for assault and battery, resisting arrest, public drunkenness, driving while intoxicated, possession of false identification, driving with a suspended license, and nine moving traffic violations." *Id.* (footnote call number omitted). At the time he was hired, the

deputy had an outstanding warrant for his own arrest for violating probation. *See id.* at 454–55.

At trial, "the evidence . . . showed the County to have a policy of providing *no* training itself for its regular officers and reserve deputies." *Id.* at 455 (alteration and emphasis added). For full-time positions, the County's practice was to hire individuals who had already received training from Oklahoma's Commission on Law Enforcement Education and Training ("CLEET") program, but the record was unclear as to whether CLEET training was required for reserve deputies, and the court found the jury could have reasonably believed the deputy had not attended CLEET training. *See id.* 455–56. While there was evidence the deputy received some "*ad hoc*" training from his grandfather, who was a special deputy in the department, the record suggested "this training was minimal at best and included no training on arrest situations." *Id.* at 456 (footnote call number omitted). "[T]he evidence reasonably supported a conclusion that the County also failed to provide formal, and very little effective, supervision for its reserve deputies who were 'on the street'" and the officer accompanying the deputy testified he received none. *Id.* (alteration added). "[T]he jury reasonably could have found that [the deputy] remained, essentially, unsupervised." *Id.* at 463 (alterations added).

The Fifth Circuit held the jury could have reasonably concluded it was obvious to the county's policymaker that the decision not to train the deputy would result in a constitutional deprivation. *See id.* at 463. The court further held "the policy of not supervising inexperienced officers" could have reasonably led the jury to conclude "the failure to

train made the County even more culpable for the constitutional injuries that followed," *id.*, and the policy of not providing proper supervision "contributed to the causal force behind the constitutional deprivation," *id.* at 465. Even without a pattern of prior similar incidents, the *Bryan County* court found:

> [G]iven the evidence that provided notice to [the county decisionmaker] of the highly predictable consequences of not training [the deputy] — *i.e.*, his youth, his personal record of recklessness and questionable judgment, his inexperience, and his exuberance as a reserve deputy in the short time he had been on the force, and knowledge that forcible arrests were inevitable for a law enforcement officer — [the] policy decision not to require training for [the deputy] can be said to constitute "deliberate indifference" to the Fourth Amendment rights of citizens [the deputy] would encounter.

Id. at 463 (alterations added).

In later cases, the Fifth Circuit has limited *Bryan County* to its unique facts. *See Whitaker*, 126 F. Supp. 3d at 1326 (citing cases). For instance, in *Davis ex rel. McCully v. City of North Richland Hills*, the court found the single-incident exception did not apply and distinguished *Bryan County*, noting in *Bryan County*, the court "found liability . . . for a single incident when the county 'failed to provide *any* training or supervision for a young, inexperienced officer with a record of recklessness,' while also noting that 'there is a difference between a *complete failure to train*, . . . and a failure to train in one limited area.'" 406 F.3d 375, 386 (5th Cir. 2005) (alterations added; emphases in original; footnote call number omitted) (quoting *Cozzo v.*

Tangipahoa Par. Council-President Gov't, 279 F.3d 273, 288 (5th Cir. 2002)). In *Davis*, the court found "[i]n contrast, here, there *was* training and Plaintiffs have not shown that those training sessions were so deficient as to constitute deliberate indifference." *Id.* at 386 (alteration added; emphasis in original).

This case, too, is distinguishable from *Bryan County*. Plaintiffs did not offer evidence the City of Sweetwater officers received *no* training or were "essentially[] unsupervised." *Bryan Cty.*, 219 F.3d at 463 (alteration added). Quite the opposite.

Brioso testified City officers were required to attend training classes "once a year or every six months" on the use of deadly force (Trial Day 3 Tr. 221:7), and they received supervision in the use of deadly force to the degree required by the Florida Department of Law Enforcement (*see id.* 221:14–18). Brioso also testified he read Sweetwater's Standard Operating Procedures and spoke to his field training officer about it during training, although he did not keep a copy of it with him in the field. (*See id.* 219:4–20:13). The evidence of deficient training included: (1) Gonzalez's testimony on cross-examination he was never given his own copy of the Standard Operating Procedures and appeared unfamiliar with the details of the City policy requiring verbal notification of a supervisor and a prompt written report to the chief of police in the event an officer discharged a weapon (*see* Trial Day 4 Tr. 108:15–13:19)[7]; and (2) Roques's testimony the City lacked a

[7] The Court notes this evidence was not offered during Plaintiffs' case-in-chief. Instead, it was elicited on cross-examination of one of the City's witnesses while the City was putting on its case and Plaintiffs had already rested.

records department (*see* Trial Day 3 Tr. 137:8–21) and its detective bureau was "basically running amuck" (*id.* 134:14–16). Even with this showing, no reasonable jury could conclude from this evidence the officers received zero training or supervision regarding the use of force, as was the case in *Bryan County*. Moreover, the trial record is entirely bereft of any reference to the training and supervision, or lack thereof, of officers regarding the conduct of high-speed chases.

The Court agrees with Perez the use of deadly force and high-speed chases constitute conduct where the need for training can be said to be "so obvious" that failure to train in these areas could properly be characterized as deliberate indifference (Resp. 9 (citing *City of Canton*, 489 U.S. at 390 n.10)). Even so, Plaintiffs did not present evidence at trial sufficient for a reasonable jury to conclude the training and supervision of the City's officers in that conduct was, in fact, deficient. Accordingly, the City cannot be liable under a theory of failure to train or supervise. *Cf. Whitaker*, 126 F. Supp. 3d at 1327–28 (complaint failed to state a claim for single-incident liability where the plaintiff failed to plead facts showing a complete absence of training, as was found in *Bryan County*, concluding "the facts alleged simply do not plausibly give rise to the inference that a final decisionmaker for the County made a decision not to train the officer" (internal quotation marks and citation omitted)); *Chappell v. City of Clanton*, No. 2:17-CV-370, 2017 WL 4079721, at *7 (M.D. Ala. Sept. 14, 2017) (dismissing claim for municipal liability premised on failure to train where the plaintiff pled only the "legal conclusion[]"the county "did not adequately train its

police officers to employ safe, reasonable and necessary techniques," alleged "no actual facts suggesting that there was an obvious but unmet need for training," and did "little, if anything, to tie the constitutional deprivation alleged . . . to a specific lack of training" (alterations added; footnote call number, internal quotation marks, and citation omitted)).

As Plaintiffs failed to make a reasonable showing at trial the City was liable for Perez's injuries via a custom or policy or failure to train theory, the Court cannot impute liability onto the City for its officers' actions. The City is therefore entitled to judgment as a matter of law.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that the Motion **[ECF No. 182]** is **GRANTED**. The Final Judgment **[ECF No. 164]** entered on September 26, 2017 is **SET ASIDE**. Final judgment as a matter of law is entered in favor of Defendant, the City of Sweetwater. The City is not liable to Plaintiffs, Juan Perez and Maria Posada, for any damages.

DONE AND ORDERED in Miami, Florida, this 8th day of January, 2018.

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CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 18-10498

JUAN L. PEREZ,
MARIA A. POSADA,
Plaintiffs-Appellants,

versus

CITY OF SWEETWATER,
RAFAEL DUARTE, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

On Petition(s) for Rehearing and Petition(s) for Rehearing en Banc

Before: WILLIAM PRYOR and NEWSOM, Circuit Judges, and ROSENTHAL* Chief District Judge.

PER CURIAM:
The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having

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* Honorable Lee H. Rosenthal, Chief United States District Judge for the Southern Districtof Texas, sitting by designation.

requested that the Court be polled, the Petition for Rehearing En Banc (Rule 35, Federal Rules of Appellate Procedure) DENIED.

UNITED STATES CIRCUIT JUDGE

Filed: July 12, 2019