[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-10503

(Filed Oct. 26, 2021)

MATTHEW SCHANTZ,

Plaintiff-Appellant,

versus

BENNY DELOACH,
former Sheriff of Appling County, Georgia,
in his individual capacity,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 2:17-cv-00157-LGW-BWC

Before JORDAN, BRASHER, and JULIE CARNES, Circuit Judges.

JULIE CARNES, Circuit Judge:

Plaintiff appeals the district court's order granting qualified immunity to Defendant on Plaintiff's § 1983 excessive force claim based on Defendant's use of deadly force during a high-speed chase that Plaintiff initiated when he ran from police on his motorcycle.

After granting summary judgment to Defendant on Plaintiff's § 1983 claim, the district court declined to exercise jurisdiction over Plaintiff's remaining state claims and dismissed those claims without prejudice. Plaintiff appeals both the qualified immunity ruling on his § 1983 claim and the dismissal of his state claims. Having carefully reviewed the record and the briefs, and after oral argument, we find no error and thus affirm the district court.

BACKGROUND

On the afternoon of June 17, 2016, Plaintiff Matthew Schantz was driving his motorcycle from Perry, Georgia to St. Simons Island, where he planned to meet his mother at the beach. Plaintiff smoked marijuana prior to leaving Perry that morning, and he had marijuana on his person as drove from Perry to St. Simons.

While traveling south on Highway 341 through Appling County on route to St. Simons, Plaintiff passed Appling County police officer Tim Sullivan, who was driving on the opposite side of the highway. Officer Sullivan made a U-turn and began following Plaintiff. After pacing Plaintiff for a mile or two, Sullivan pulled up behind Plaintiff and activated his blue lights. Plaintiff did not have a registration tag on his motorcycle, but he did not believe he had committed any other traffic violations. Nevertheless, Plaintiff decided to take off

instead of stopping, in part because he had marijuana on him at the time and he did not want to go to jail.[1]

When Plaintiff accelerated rather than stopping, Officer Sullivan pursued Plaintiff and a high-speed chase ensued. Several other Appling County officers eventually joined the chase as Plaintiff continued driving south down Highway 341, away from Sullivan. Appling County Sheriff's Deputy Robert Eunice became aware of the chase while he was monitoring radio traffic. Soon thereafter, Eunice joined the chase and became the lead pursuit vehicle.

Eunice recalled that the chase reached speeds well in excess of 100 miles per hour as Plaintiff drove away from the officers pursuing him through Appling County, and Plaintiff did not dispute that he drove at speeds of up to 130 miles per hour and that he ran a red light in downtown Baxley, Georgia while trying to evade the officers. Plaintiff testified that the officers tried to get him to stop by pulling in front of him on the highway, but that he managed to swerve around and accelerate away from them. The Appling County officers pursued Plaintiff down Highway 341 towards

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[1] This was not the first time Plaintiff had run from police trying to conduct a traffic or investigatory stop. Plaintiff was arrested after trying to outrun police on a different motorcycle in 2015. Then in April 2016, Plaintiff ran from the Cobb County police on foot to avoid being caught with marijuana. An eluding charge related to that incident was dropped, but Plaintiff served nearly a month in jail and was put on probation for possession of marijuana.

Wayne County until they lost sight of him, at which time they temporarily discontinued the chase.

At some point during the chase, Wayne County Sheriff's Captain Kenny Poppell, who was in an unmarked patrol car headed north on Highway 341 towards Odum, Georgia, heard a call over the radio about the chase in Appling County. A few minutes later, Poppell saw a single headlight from a motorcycle driving south on Highway 341 towards him, which he suspected was the motorcycle involved in the chase. Wanting to investigate, Poppell turned onto the southbound lane of the highway and began driving at about 90 miles per hour in the same direction the motorcycle was traveling. Plaintiff, who Poppell testified was laying across the fuel tank of the motorcycle in a "race mode" stance, caught up to and passed Poppell.

Poppell eventually lost sight of Plaintiff after he passed by on his motorcycle. Assuming Plaintiff had turned off Highway 341 onto a side road, Poppell decided to drive to Odum, to see if he could catch up with Plaintiff there. After he reached Odum, Poppell caught sight of Plaintiff again, and this time Poppell saw Plaintiff cross two large speed bumps at a high rate of speed and while driving only on the rear wheel of his motorcycle. Poppell testified that he then saw Plaintiff turn back onto the northbound lane of Highway 341. Poppell stated that after Plaintiff turned back north on Highway 341, he drove in the opposing lane of the highway to evade two patrol cars that were pursuing him, running the oncoming southbound traffic off the road. However, Plaintiff denied that he encountered

any traffic other than patrol cars at this point during the chase, and we again assume that is true for purposes of this appeal.

As Plaintiff's chase proceeded from Appling into Wayne County and back towards Appling County again, officers from both police departments shared details about the continuing chase over radio traffic. As noted, Wayne County Sheriff's Captain Poppell learned about the chase by listening to radio traffic coming in from Appling County. Likewise, Appling County officers and Defendant Benny DeLoach, the Sheriff of Appling County at the time[2], learned about Plaintiff's whereabouts and his activities after he left Appling County by listening to Wayne County radio traffic. Audio excerpts from Appling and Wayne County radio traffic during the relevant time period report Plaintiff engaging in a number of reckless activities during the chase, including: (1) traveling at a speed of 130 miles per hour, (2) "zipping around some big trucks," (3) "coming into heavy traffic" and weaving "in and out of traffic," (4) driving into "oncoming traffic," (5) doing a "wheelie," and (6) "not slowing up for anything."

Plaintiff acknowledges that the Appling and Wayne County radio traffic accurately describes some of his conduct during the chase. Again, Plaintiff did not dispute that he traveled at speeds in excess of 100 miles per hour and up to 130 miles per hour and that

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[2] DeLoach retired from his position as Sheriff on December 31, 2016.

he had to swerve around and perform other evasive maneuvers to avoid officers who were pursuing him during the chase. In addition, Plaintiff admitted that he "popped wheelies," drove into the opposing lane of the highway, and ran a red light in downtown Baxley, Georgia.

Plaintiff disputes certain facts reported in the radio traffic—for example, Plaintiff claims there was no traffic on the road during the chase, and he insists that his driving did not pose a danger to other motorists or pedestrians because he kept a "diligent lookout" throughout the chase. But regardless of how safely Plaintiff believes he was driving and whether Plaintiff in fact encountered other civilian motorists during the chase, it is undisputed that—in addition to traveling at an extremely high rate of speed, swerving around patrol cars, and running a red light in a downtown area, all of which Plaintiff admits to and was observed doing in Appling County—Defendant heard reports over radio traffic that Plaintiff was weaving in and out of traffic, heading into oncoming traffic, and driving on the wrong side of the road, all while still driving at speeds in excess of 100 miles per hour, as the chase continued through Wayne County.

After he turned north onto Highway 341 in Wayne County and drove back towards Appling County for some time, Plaintiff eventually reached the intersection of Highway 341 and Brentwood Road, near the border of Wayne and Appling Counties. Defendant and Eunice, who knew via Wayne County radio traffic that Plaintiff was headed back towards Appling County,

had taken up positions at the intersection. When Eunice noticed Plaintiff speeding up as he approached the intersection, he pulled his truck off the road and allowed Plaintiff to "zigzag around" him. Eunice then backed his truck up onto the highway and began chasing Plaintiff again. Shortly thereafter, Plaintiff's motorcycle slid to a stop. By the time Plaintiff stopped, he had engaged in what he acknowledged was a "long chase." Defense counsel estimated that the chase had lasted at least 30 miles based on the distance between Baxley to Odum. Plaintiff could not confirm the exact distance, but we take judicial notice of the fact that Baxley is approximately 22 miles from Odum, meaning that the chase had to have lasted for at least that distance.

Defendant was standing in front of his patrol car when Plaintiff's motorcycle came to a stop after zigzagging around Eunice. As the motorcycle slid to a stop, Defendant fired one shot from his shotgun, which was loaded with buckshot. Defendant testified that he fired this first shot into the air as a warning, but Plaintiff claims Defendant fired the shot directly towards him. According to Plaintiff, he saw Defendant point the shotgun at him and he subsequently heard the ping of a projectile strike against metal and the pavement below.

Whatever Defendant's intent, his first shot missed Plaintiff. Plaintiff momentarily stopped his motorcycle and put at least one of his hands up, but he quickly put both hands back on the throttle and restarted the motorcycle. Defendant testified that the motorcycle was

headed directly towards him when Plaintiff restarted it, but Plaintiff claims he was trying to flee the officers rather than drive toward them and that the motorcycle was pointed away from Defendant at the time. We assume the latter is true for purposes of this appeal. It is undisputed that when Plaintiff restarted his motorcycle, Defendant fired a second shot, this time directly at Plaintiff, causing buckshot to penetrate Plaintiff's helmet, face, and neck. Construing the facts in favor of Plaintiff, he then complied with Eunice's command to stop and surrender.[3]

Plaintiff subsequently filed this action against Defendant in his individual capacity, asserting a Fourth Amendment excessive force claim under § 1983 as well as various state claims. Following discovery, Defendant moved for summary judgment as to all of Plaintiff's claims. The district court held a hearing on the summary judgment motion and gave the parties an opportunity to supplement the record. Thereafter, the court granted summary judgment to Defendant as to Plaintiff's Fourth Amendment § 1983 claim on the ground of qualified immunity. The court then declined to exercise pendant jurisdiction over Plaintiff's remaining state claims, and it dismissed those claims without prejudice and without considering the merits. Plaintiff appealed the district court's summary judgment ruling

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[3] Defendant testified that Plaintiff laid his bike down and began running towards the woods after he was shot, but Plaintiff denies running. We assume Plaintiff's version of the facts is true for purposes of this appeal.

on his § 1983 claim, as well as the court's dismissal of his state claims.

DISCUSSION

I. Standard of Review

We review the district court's grant of summary judgment based on qualified immunity de novo, and we apply the same legal standards as the district court. *Khoury v. Miami-Dade Cty. Sch. Bd.*, 4 F.4th 1118, 1124 (11th Cir. 2021). In conducting our review, we resolve any factual disputes in favor of Plaintiff and then decide whether Defendant is entitled to qualified immunity under Plaintiff's version of the facts. *Id.* at 1124–25. *See also Tolan v. Cotton*, 572 U.S. 650, 656 (2014). We acknowledge that the "facts, as accepted at the summary judgment stage of the proceedings, may not be the actual facts of the case." *McCullough v. Antolini*, 559 F.3d 1201, 1202 (11th Cir. 2009) (quotation marks omitted). Nevertheless, we view the facts from Plaintiff's perspective because the determinative issue on appeal is "not which facts the parties might be able to prove" but whether "certain given facts" demonstrate a violation of clearly established law. *Crenshaw v. Lister*, 556 F.3d 1283, 1289 (11th Cir. 2009).

II. Plaintiff's Fourth Amendment Excessive Force Claim

A. Qualified Immunity

Qualified immunity "completely protects government officials performing discretionary functions from suit in their individual capacities unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." *Marbury v. Warden*, 936 F.3d 1227, 1232 (11th Cir. 2019) (quotation marks omitted). To be clearly established, the contours of a right must be "sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018) (quotation marks omitted). In other words, "existing precedent must have placed the statutory or constitutional question beyond debate" and given the official fair warning that his conduct violated the law. *Id.* at 1152 (quotation marks omitted). Fair warning is usually provided by "materially similar precedent from the Supreme Court, this Court, or the highest state court in which the case arose." *Gates v. Khokhar*, 884 F.3d 1290, 1296 (11th Cir. 2018). "Authoritative judicial decisions" may also "establish broad principles of law that are clearly applicable to the conduct at issue." *Id.* (quotation marks omitted). And very occasionally, "it may be obvious from explicit statutory or constitutional statements that conduct is unconstitutional." *Id.* at 1296–97 (quotation marks omitted).

A defendant who asserts qualified immunity has the initial burden of showing he was acting within the scope of his discretionary authority when he took the allegedly unconstitutional action. *See Patel v. Lanier Cty.*, 969 F.3d 1173, 1181 (11th Cir. 2020). Assuming the defendant makes the required showing, the burden shifts to the plaintiff to show that qualified immunity is not warranted by alleging (1) the violation of a constitutional right, (2) which right was clearly established at the time of the alleged misconduct. *See id.* Plaintiff does not dispute that Defendant was acting in his discretionary authority when Defendant used deadly force while trying to apprehend Plaintiff during the chase that occurred on June 17, 2016. The burden thus lies with Plaintiff to show that Defendant's use of deadly force under the circumstances violated a constitutional right and that the right was clearly established at the time of the incident. The district court bypassed the first prong of the analysis and granted summary judgment to Defendant based on the lack of clearly established law that would have put Defendant on notice that his conduct was unlawful.

As discussed below, we agree with the district court's decision to dispose of Plaintiff's § 1983 claim on the clearly established prong of the qualified immunity analysis. Assuming Plaintiff's motorcycle was not headed directly towards Defendant when Plaintiff was shot, reasonable minds could perhaps disagree as to whether his use of deadly force under the circumstances violated the Fourth Amendment. But Plaintiff does not cite, and we have not found, any clearly

established law that would have given Defendant fair warning that his use of deadly force to bring an end to Plaintiff's high-speed chase was excessive or otherwise unreasonable given the events that immediately preceded the shooting. Defendant is thus entitled to qualified immunity.

B. Excessive Force under the Fourth Amendment

Plaintiff's excessive force claim is analyzed under the objective reasonableness standard of the Fourth Amendment. *Plumhoff v. Rickard*, 572 U.S. 765, 774 (2014) (citing *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, 471 U.S. 1 (1985)). Reasonableness in this context depends on all the circumstances relevant to an officer's decision to use force and the amount of force used. *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010). We view those circumstances "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Plumhoff*, 572 U.S. at 775 (quotation marks omitted). And we consider the fact that officers often must "make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* (quotation marks omitted).

To determine whether an officer has used excessive force under the above standard, we weigh the level of force used against (1) the severity of the suspect's crime, (2) the immediacy of the threat posed by the

suspect to the safety of the officers or others, and (3) whether the suspect sought to evade or resist arrest. *See Kisela*, 138 S. Ct. at 1152. Applying those factors, this Court has held that an officer may constitutionally use deadly force when: (1) he "has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others" or that the suspect "has committed a crime involving the infliction or threatened infliction of serious physical harm," (2) he "reasonably believes that the use of deadly force [i]s necessary to prevent escape" and (3) he "has given some warning about the possible use of deadly force, if feasible." *McCullough*, 559 F.3d at 1206 (quotation marks omitted).

There is no question it would have been reasonable for Defendant to use deadly force to protect himself if Plaintiff had restarted his motorcycle and aimed it directly at Defendant, as Defendant claims. *See id.* at 1207–08 (describing several cases where this Court has authorized the use of deadly force against a suspect who was endangering an officer's life with his vehicle). But at this stage of the litigation, we must construe the testimony and the physical evidence in the light most favorable to Plaintiff. *See Tolan*, 572 U.S. at 657 (warning against importing "genuinely disputed factual propositions" into the analysis when deciding a motion for summary judgment on qualified immunity grounds). Plaintiff testified that he was trying to flee rather than drive towards the officers, and that his motorcycle was pointed away from Defendant when he was shot. Assuming Plaintiff's version of the facts is

true, it is a closer question whether Defendant's use of deadly force against Plaintiff violated the Fourth Amendment. As such, we proceed directly to the clearly established law prong of the analysis. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (concluding that courts have discretion to decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand").

C. Clearly Established Law

Even assuming a Fourth Amendment violation, Defendant is entitled to qualified immunity unless Plaintiff can point to some clearly established law that would have made it apparent to Defendant at the time of the shooting that his conduct was unconstitutional. As discussed, the "salient question" on this prong of the analysis is whether the preexisting law at the time of the shooting gave "fair warning" to Defendant that his use of deadly force was unconstitutional under the circumstances that confronted Defendant when he shot Plaintiff. *See Vaughan v. Cox*, 343 F.3d 1323, 1332 (11th Cir. 2003) (quotation marks omitted). Plaintiff does not cite, and we have not found, any such clearly established law.

To briefly recap the relevant undisputed facts, Plaintiff initiated the high-speed chase that culminated in his shooting when he ignored Appling County Officer Sullivan's clear mandate to stop after Sullivan pulled behind Plaintiff's motorcycle and activated his

blue lights. It is undisputed that Plaintiff subsequently led multiple officers on a lengthy chase through Appling and Wayne Counties, during which Plaintiff concedes he swerved and zigzagged around patrol cars, ran a red light in a downtown area, popped wheelies, and made U-turns on Highway 341—all while traveling at speeds in excess of 100 miles per hour and reaching up to 130 miles per hour. It is also undisputed that Defendant, when he encountered Plaintiff heading back towards Appling County at the intersection of Highway 341 and Brentwood Road, had heard reports over Wayne County radio traffic that Plaintiff had continued the chase through Wayne County, that he was still driving at speeds in excess of 100 miles per hour, that he was weaving in and out of traffic and heading into oncoming traffic while driving on the wrong side of the road, and that he was not stopping or slowing down "for anything."

Soon after Plaintiff encountered Defendant and Eunice where they had set up positions at the Brentwood Road intersection of Highway 341, Defendant fired one round from his shotgun that missed Plaintiff. Plaintiff's motorcycle slid to a stop and he momentarily put at least one hand up. But instead of keeping his hands up and stopping, Plaintiff quickly returned his hands to the throttle and restarted his motorcycle. When Plaintiff restarted his motorcycle, Defendant fired a second round from his shotgun, this time hitting Plaintiff. Plaintiff was injured when he was struck in the helmet, neck, and face by buckshot from the second shot that Defendant fired.

Again, we assume that Plaintiff was not driving his motorcycle towards Defendant when he was shot, which clearly would have authorized Defendant's use of deadly force to protect his own life. Nevertheless, a reasonable officer in Defendant's position could have concluded at the time of the shooting that Plaintiff intended to resume the chase he had initiated earlier. Indeed, Plaintiff admitted that he was trying to flee from the officers when he was shot. The determinative question on the clearly established law prong of the analysis is thus whether an officer in Defendant's position at the time of the shooting—with all the information Defendant possessed about Plaintiff's conduct during the chase up to that point and with the reasonable belief that Plaintiff intended to continue the chase if allowed to escape—would have known, based on preexisting law, that it violated the Fourth Amendment to use deadly force against Plaintiff to bring an end to the chase. We think not.

The most factually similar precedent from the Supreme Court is *Plumhoff v. Rickard*, 572 U.S. 765 (2014). In *Plumhoff*, an officer pulled over a car for a headlight violation and, noticing a large indentation in the windshield, asked the suspect driver if he had been drinking. *See id.* at 768–69. The suspect responded that he had not been drinking, but the officer asked him to step out of the car when he failed to produce his driver's license. *See id.* at 769. Rather than complying with the officer's request, the suspect sped away, initiating a high-speed chase down I-40 that ultimately was joined by five additional officers. *See id.* During the

chase, the suspect swerved through traffic at speeds that reached over 100 miles per hour. *See id.*

The officers pursuing the suspect in *Plumhoff* were unsuccessful in their attempt to stop the suspect's car with a "rolling roadblock" on I-40, but there was a brief pause in the chase when the suspect exited the interstate, spun out in a parking lot after his car made contact with one of the patrol cars that was pursuing him, and momentarily came to a stop after colliding with another patrol car. *See id.* The suspect quickly began attempting to escape by maneuvering and accelerating his car. *See id.* As the suspect's tires started spinning and his car began to rock back and forth, one of the officers fired three shots into the car. *See id.* at 770. The suspect then put his car in reverse and maneuvered onto another street, at which time the officers fired twelve shots into his car, causing him to lose control and crash into a building. *See id.*

The suspect in *Plumhoff* died[4] from a combination of gunshot wounds and the injuries he suffered in the crash that ended the chase. *See id.* His surviving daughter asserted a § 1983 claim against the individual officers involved in the chase, alleging that their use of deadly force against her father was excessive and violated the Fourth Amendment. *See id.* The officers moved for summary judgment based on qualified immunity, but the district court denied their motion and the Sixth Circuit affirmed. *See id.* The Supreme

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[4] The suspect's passenger also died of gunshot wounds and other injuries. *See Plumhoff*, 572 U.S. at 770.

Court granted certiorari and reversed, disagreeing with the lower courts as to both the question whether the suspect's Fourth Amendment rights had been violated as well as the question whether any such violation was clearly established at the time of the incident. *See id.* at 768, 771.

On the constitutional violation prong, the Court in *Plumhoff* cited *Scott v. Harris*, 550 U.S. 372 (2007) for the rule that an officer's "attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." *See Plumhoff*, 572 U.S. at 776 (quotation marks omitted). According to the Court, that rule—determinative in *Scott*—likewise governed *Plumhoff*, which involved a chase that "exceeded 100 miles per hour and lasted over five minutes" and during which the suspect's "reckless driving posed a grave public safety risk." *See id.* That was true even though the suspect's car "came temporarily to a near standstill" prior to the shooting because the suspect "resumed maneuvering his car" within seconds, attempting—and managing briefly—to escape. *See id.* Given those facts, the Court explained, "all that a reasonable police officer could have concluded" when the shots were fired was that the suspect "was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road." *See id.* at 777. Thus, the Court concluded, "it is beyond serious dispute that [the suspect's] flight posed a grave public safety risk" and

that "the police acted reasonably in using deadly force to end that risk." *Id.*

The Supreme Court in *Plumhoff* held further that, even if the suspect's Fourth Amendment rights had been violated, the officers who shot him would be entitled to qualified immunity. *See id.* at 778–81. Citing *Brosseau v. Haugen*, 543 U.S. 194 (2004), the Court noted that it had in 2004—the same year as the chase and shooting at issue in *Plumhoff* occurred—surveyed the existing precedent regarding the "reasonableness of lethal force as a response to vehicular flight" and concluded that:

> a police officer did not violate clearly established law when she fired at a fleeing vehicle to prevent possible harm to other officers on foot who she believed were in the immediate area, occupied vehicles in the driver's path, and any other citizens who might be in the area.

Id. at 779 (quotation marks omitted) (alterations adopted). The Court in *Brosseau* only considered cases that predated the shooting at issue in that case, which occurred in February 1999. *See id.* Still, *Brosseau* made it plain, the Court explained in *Plumhoff*, that it was not clearly established as of February 1999 that "it was unconstitutional to shoot a fleeing driver to protect those whom his flight might endanger." *See id.* Immunity was thus required for the officers in *Plumhoff* unless the plaintiff could distinguish *Brosseau* or cite some authority that had emerged between 1999 and 2004 showing that the suspect's shooting in 2004

clearly was unconstitutional. *See id.* at 780. The plaintiff in *Plumhoff*, the Court said, could do neither. *See id.*

A little over a year after *Plumhoff* was decided, and just seven months before Plaintiff's shooting in June 2016, the Supreme Court again granted summary judgment to an officer who was sued under § 1983 for shooting a suspect during a high-speed car chase. *See Mullenix v. Luna*, 577 U.S. 7, 19 (2015). The suspect in *Mullenix* initiated the chase when he fled in his car from an officer who was trying to serve a warrant for his arrest. *See id.* at 8. Other officers joined the chase, which continued for about 18 minutes down the interstate at speeds between 85 and 110 miles per hour. *See id.* Two times during the chase, the suspect called the police dispatcher claiming to have a gun and threatening to shoot the officers if they continued their pursuit. *See id.* The dispatcher relayed those threats to the officers involved in the chase and reported as well that the suspect might be intoxicated. *See id.* The officers planned to stop the suspect by setting tire spikes at various locations on the interstate, but as the suspect headed towards the location where spikes were being set by another officer, Officer Mullenix decided it would be better to shoot at the suspect's car to disable it. *See id.* at 9. Mullenix took up a shooting position on an overpass, and when he spotted the suspect's approaching car, he fired six shots at the car, killing the suspect. *See id.*

The suspect's estate sued Mullenix individually under § 1983, alleging that he had used excessive force

and violated the Fourth Amendment by shooting at the suspect's car. *See id.* at 10. Mullenix moved for summary judgment on the ground of qualified immunity, but the district court denied his motion and the Fifth Circuit affirmed, concluding that:

> Mullenix's actions were objectively unreasonable because several of the factors that had justified deadly force in previous cases were absent . . . : There were no innocent bystanders, [the suspect's] driving was relatively controlled, [Mullenix] had not first given the spike strips a chance to work, and [Mullenix's] decision was not a split-second judgment.

Id. at 11 (quotation marks omitted). The Fifth Circuit concluded further that Mullenix was not entitled to qualified immunity because "the law was clearly established such that a reasonable officer would have known that the use of deadly force, absent a sufficiently substantial and immediate threat, violated the Fourth Amendment." *See id.* (quotation marks omitted).

The Supreme Court again granted certiorari and again reversed, this time bypassing the question whether Mullenix had violated the Fourth Amendment and focusing solely on the clearly established law prong of the analysis. *See id.* Addressing the Fifth Circuit's rationale for denying qualified immunity, the Court in *Mullenix* restated its oft-repeated admonition that clearly established law should not be defined "at a high level of generality" for purposes of qualified immunity. *See id.* at 12 (quotation marks omitted).

The relevant inquiry, the Court explained, "must be undertaken in light of the specific context of the case, not as a broad general proposition." *See id.* (quotation marks omitted). The Fifth Circuit had thus erred, the Court concluded, by holding that Mullenix violated the "clearly established rule" that an officer "may not use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others." *See id.* (quotation marks omitted). The determinative question was, instead, whether it was clearly established that the Fourth Amendment prohibited Mullenix's conduct "in the situation he confronted"—that is, whether it should have been clear to Mullenix that it violated the Fourth Amendment for him to shoot "a reportedly intoxicated fugitive, set on avoiding capture through high-speed vehicular flight, who twice during his flight had threatened to shoot police officers, and who was moments away from encountering an officer" who was setting a tire spike on the interstate. *See id.* at 13.

After reframing the relevant question in this manner, the Court ultimately concluded that no existing precedent at the time of the incident established "beyond debate" that Mullenix acted unreasonably by shooting at a suspect's car where the suspect "had led police on a 25–mile chase at extremely high speeds, was reportedly intoxicated, had twice threatened to shoot officers, and was racing towards [another] officer's location" on the interstate. *See id.* at 14–15. Surveying the relevant case law, the Court noted that its own precedent involving Fourth Amendment excessive

force claims asserted in the context of high-speed car chases—at that point consisting solely of *Plumhoff*, *Scott*, and *Brosseau*—"reveal[ed] the hazy legal backdrop against which Mullenix acted." *See id.* at 14. In *Brosseau*, the Court noted, it had held that an officer did not violate clearly established law when she shot a suspect fleeing in his car out of fear that the suspect's flight endangered other officers and motorists in the area. *See id.* And in the two excessive force vehicular flight cases it had decided after *Brosseau*, the Court observed, it did not even find a Fourth Amendment violation where an officer used deadly force against a suspect during a high-speed car chase. *See id.* at 14–15 (citing *Scott v. Harris*, 550 U.S. 372, 384 (2007) and *Plumhoff*, 572 U.S. at 780). Indeed, the Court emphasized in *Mullenix*, it had "never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, let alone to be a basis for denying qualified immunity." *See id.* at 15.

Given the Supreme Court's decisions in *Plumhoff* and *Mullenix*, we likewise find no basis for denying qualified immunity to Defendant in this case. Again, in *Plumhoff*, issued just two years prior to Plaintiff's shooting, the Supreme Court held that an officer did not violate the Fourth Amendment by using deadly force to end the high-speed chase described in our discussion of that case above. There are a few differences between this case and *Plumhoff*: the suspect in *Plumhoff* was driving a car whereas Plaintiff was driving a motorcycle, the traffic in *Plumhoff* arguably was heavier, and the suspect in *Plumhoff* might have committed

more traffic violations during the chase than Plaintiff. But there are many more similarities: (1) in this case and in *Plumhoff*, the initial stop was for a relatively minor offense[5]—a missing tag here and an inoperable headlight in *Plumhoff*; (2) in both cases, the initial stop quickly developed into a protracted high-speed car chase; (3) like the suspect in *Plumhoff*, Plaintiff indisputably committed several traffic violations during the chase that Defendant reasonably could have perceived as posing a threat to other motorists, officers, and bystanders in the area, including running a red light in a downtown area, zigzagging and swerving around patrol cars, making U-turns and popping wheelies, and driving on the wrong side of the road; (4) it is undisputed that Defendant heard reports that Plaintiff was weaving through and heading into oncoming traffic, and thus endangering other motorists as the chase continued through Wayne County and thereby

[5] Plaintiff's argument that his shooting was unreasonable because he initially was signaled to stop for a minor tag violation is unpersuasive, given that the suspect in *Plumhoff* was signaled to stop for a minor headlight violation. We note further that by the time Plaintiff was shot, he had committed numerous violations beyond a missing tag—indeed, when Plaintiff was shot, he was a fleeing felon under Georgia law. *See* O.C.G.A. § 40-6-395(b)(5)(A)(i) (making it a felony to drive in excess of 20 miles an hour above the posted speed limit "while fleeing or attempting to elude a pursuing police vehicle or police officer"). Of course, Plaintiff's status as a fleeing felon does not necessarily justify the use of deadly force against him. *See Garner*, 471 U.S. at 11 ("The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape."). But Plaintiff's suggestion that Defendant shot him because of a minor tag violation is an extreme mischaracterization of the record.

presenting a threat similar to that posed by the driver in *Plumhoff*; and (5) finally, like the officer in *Plumhoff*, Defendant shot Plaintiff when he threatened to take off and resume the chase after momentarily stopping.

In short, the Supreme Court in *Plumhoff* was faced with a scenario that is factually similar to this case in many respects. And presented with that factual scenario, the Supreme Court concluded that an officer's use of deadly force to terminate a high-speed car chase did not violate the Fourth Amendment because "all that a reasonable police officer could have concluded was that [the suspect] was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road." *Plumhoff*, 572 U.S. at 777. The same could be said here. But at the very least, it would not be clear to an officer in Defendant's position, and aware of *Plumhoff*, that the use of deadly force against Plaintiff as he restarted his motorcycle and threatened to resume the lengthy and indisputably dangerous chase that preceded the shooting was unconstitutional.

As for *Mullenix*, it is more easily distinguished from this case than *Plumhoff*. Most notably, the suspect in *Mullenix* claimed to have a gun and threatened to shoot officers if they did not abandon their pursuit, and that threat was relayed to Officer Mullenix and presumably factored into his decision to disable the suspect's car by shooting at it. The suspect in *Mullenix* thus arguably presented a greater threat than Plaintiff to the officers involved in the chase, if not to other motorists and bystanders. On the other hand, the

officers in *Mullenix* had a less lethal option of stopping the suspect—namely, the tire spikes that were being set at the time of the shooting. There is no evidence suggesting that the officers in this case had any less lethal means of stopping Plaintiff available to them, arguably making Defendant's decision to shoot at Plaintiff when he threatened to resume the chase more reasonable than Officer Mullenix's.

Nevertheless, and regardless of the factual differences between the two cases, the Supreme Court made a few points in *Mullenix* that are highly relevant to the qualified immunity analysis in this case, and that weigh heavily in favor of granting immunity to Defendant. First, we cannot (as Plaintiff would have us do) decide whether qualified immunity applies in this case by applying the clearly established but general rule—set out in *Graham* and *Garner*—that an officer may not use deadly force against a fleeing felon "absent a sufficiently substantial and immediate threat." *See Mullenix*, 577 U.S. at 11. The Supreme Court recently reaffirmed this principal in *Rivas-Villegas v. Cortesluna*, 595 U.S. ___, 2021 WL 4822662, at *2 (U.S. Oct. 18, 2021) (quoting *Mullenix* and emphasizing that "[s]pecificity is especially important in the Fourth Amendment context, where it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts") and *City of Tahlequah, Oklahoma v. Bond*, 595 U.S. ___, 2021 WL 4822664, at *2 (U.S. Oct. 18, 2021) ("We have repeatedly told courts not to define clearly established law at too high a level

of generality."). Instead, we must determine whether any preexisting law would have put Defendant on notice that his conduct under the particular circumstances that confronted him during the chase involving Plaintiff made it clear—"beyond debate"—that it would be unreasonable for him to use deadly force when Plaintiff threatened to resume the chase.[6] *See Mullenix*, 577 U.S. at 12. Second, and as noted above, as of the date *Mullenix* was decided, the Supreme Court had "never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment." *See id.* at 15. The Supreme Court has not decided any excessive force cases involving a high-speed car chase since *Mullenix.* It is thus apparent, based on *Mullenix*, that no Supreme Court authority could have put Defendant on notice that his use of deadly force against Plaintiff under the circumstances of this case violated the Fourth Amendment.

Nor would any preexisting precedent from this Court have put Defendant on notice of the unlawfulness of his conduct, assuming it was unlawful. Most of the circuit precedent Plaintiff cites is so factually dissimilar from this case that it has no bearing on the qualified immunity analysis. *See Gilmere v. City of Atlanta*, 774 F.2d 1495, 1502 (11th Cir. 1985) (finding a

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[6] Much of Plaintiff's argument on appeal is based on the general fleeing felon rule of *Garner* and *Graham*. *Mullenix* makes it clear that the general rule of *Garner* and *Graham* does not apply in cases such as this one, where a suspect's vehicular flight reasonably—and objectively—could be perceived by an officer to pose a substantial risk to officers, other motorists, or pedestrians in the area.

Fourth Amendment violation where officers beat and shot a drunk suspect during a scuffle that ensued after the suspect resisted arrest and attempted to flee on foot); *Lundgren v. McDaniel*, 814 F.2d 600, 603 (11th Cir. 1987) ("[S]hooting a suspected felon who was apparently neither fleeing nor threatening the officers or others was . . . an unreasonable seizure and clearly violated fourth amendment law.") (footnote omitted); and *Salvato v. Miley*, 790 F.3d 1286, 1294 (11th Cir. 2015) (denying qualified immunity to an officer who shot a suspect without warning after the suspect struggled with the officer and then backed away from the officer on foot).[7] These cases, all of which involved a suspect fleeing or resisting arrest while on foot, would not have given Defendant any reason to believe that his use of deadly force against Plaintiff was

[7] Plaintiff also cites *Ayers v. Harrison*, 650 F. App'x 709 (11th Cir. 2016), *Gaillard v. Commins*, 562 F. App'x 870 (11th Cir. 2014), and *Baltimore v. City of Albany*, 183 F. App'x 891 (11th Cir. 2006). Neither *Ayers* nor *Baltimore* involved a high-speed chase, and the chase in *Gaillard* had already ended when the defendant officer accelerated his vehicle into a suspect who was by that time fleeing on foot, killing him. *See Gaillard*, 562 F. App'x at 875 ("Importantly, this is not a case where a high-speed car chase remained in progress. Instead, the suspect's vehicle spun off the road and came to a complete stop. An unarmed Gaillard then abandoned the vehicle and fled on foot."). But in any event, these unpublished cases do not constitute "clearly established" law for purposes of the qualified immunity analysis. *See JW, by and through Tammy Williams v. Birmingham Bd. of Ed.*, 904 F.3d 1248,1260 n.1 (11th Cir. 2018) ("Unpublished cases . . . do not serve as binding precedent . . . and cannot be relied upon to define clearly established law[.]").

unreasonable given the events that occurred during the high-speed chase that preceded the shooting.

Plaintiff also relies on *Vaughan v. Cox*, 343 F.3d 1323, 1330 (11th Cir. 2003), where this Court held it was unreasonable for an officer to shoot at a suspect who failed to pull his truck over when he was signaled by officers to stop, but who did not drive in a manner that posed a risk to the officers pursuing him or other motorists on the road. *See Vaughan*, 343 F.3d at 1330. *Vaughan* is easily distinguished from this case. All the suspect in *Vaughan* did before being shot was drive away from the police for a short distance down the interstate, traveling at approximately 80 to 85 miles per hour in a 70-mile per hour speed zone. *See id.* The suspect in *Vaughan* failed to stop when he was signaled by police to do so, but he made no evasive maneuvers besides accelerating and there was no evidence that he otherwise "had menaced or [was] likely to menace others" on the road "at the time of the shooting." *See id.* By contrast, it is undisputed that Plaintiff led numerous officers on a lengthy chase that reached speeds of 100 to 130 miles per hour, during which time Plaintiff swerved and zigzagged around patrol cars, ran a red light in a downtown area, and made U-turns and popped wheelies on Highway 341. Furthermore, it had been reported to Defendant that Plaintiff was driving on the wrong side of the road, weaving through traffic, and heading into oncoming traffic as he continued the chase in Wayne County.[8] Defendant would not have

[8] We are not persuaded by Plaintiff's attempt to bring this case within the reasoning of *Vaughan* by citing his own testimony

known, based on the very different facts in *Vaughan*, that his use of deadly force under the circumstances of this case clearly violated the Fourth Amendment.

In fact, this Court has "consistently upheld an officer's use of force and granted qualified immunity in cases where [a suspect] used or threatened to use his car as a weapon to endanger officers or civilians immediately preceding the officer's use of deadly force." *See McCullough*, 559 F.3d at 1206–1207 (collecting Eleventh Circuit excessive force cases involving vehicular flight). In *McCullough*, officers shot and killed a suspect who "late at night refused to pull over, engaged in a high-speed chase, and then, after pulling over, repeatedly refused to show his hands or respond to officers, revved his engine, and then drove his truck toward [an officer] standing nearby in a parking lot." *Id.* at 1208. Of course, we have assumed that Plaintiff did not drive his motorcycle directly toward Defendant, but Defendant might nevertheless have perceived Plaintiff

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that he drove safely and that there was no other traffic on the road during the chase. Plaintiff's subjective assessment that he drove safely—albeit at speeds in excess of over 100 miles per hour and up to 130 miles per hour while performing evasive maneuvers to avoid the patrol cars pursuing him and running a red light in a downtown area—does not raise an issue of fact as to the objective risk Plaintiff presented from Defendant's perspective. *See Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015) (emphasizing that the objective reasonableness determination must be made "from the perspective and with the knowledge of the defendant officer"). And again, it is undisputed that Defendant heard credible reports that Plaintiff was weaving through and heading into oncoming traffic and thus endangering other motorists on the road as he continued the chase through Wayne County.

to pose a serious threat to other motorists and bystanders if the chase continued, given the events that preceded the shooting. Several of our cases have held that it is reasonable for an officer to use deadly force to neutralize such a threat—even against a suspect who is not immediately threatening an officer by driving directly at the officer. *See Pace v. Capobianco*, 283 F.3d 1275, 1281–82 (11th Cir. 2002) (holding that the use of deadly force to terminate a high-speed chase was reasonable, even assuming the suspect did not try to run over or aim his car at the officers involved in the chase, due to the suspect's "aggressive use of his automobile during the chase"); *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007) (upholding an officer's use of deadly force against a mentally unstable suspect who stole a marked police car and was attempting to drive the car toward the road, stating: "the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect"). A reasonable officer in Defendant's position would not have known to a certainty, based on these cases, that his use of deadly force against Plaintiff violated the Fourth Amendment under the circumstances. *See Pace*, 283 F.3d at 1282 ("[P]re-existing law must give real notice of practical value to government officials, considering the specific circumstances confronting them, and not just talk of some generalized, abstract intellectual concept.").

Finally, while it is true that factually identical precedent is not always required to overcome qualified immunity, we only dispense with the requirement in

an excessive force case when an officer's conduct "lies so obviously at the very core of what the Fourth Amendment prohibits" that its unlawfulness was "readily apparent" under the circumstances. *Priester v. City of Riviera Beach*, 208 F.3d 919, 926 (11th Cir. 2000) (quotation marks omitted) (explaining that obvious clarity is a narrow exception to the rule requiring particularized case law, applicable where an officer's conduct extends "far beyond the hazy border between excessive and acceptable force"). *See also Helm v. Rainbow City*, 989 F.3d 1265, 1276 (11th Cir. 2021) (applying the obvious clarity rule where an officer "deployed his taser on a teenage girl three times as she lay immobilized on the floor with at least four to five adult men holding down her arms and legs while she suffered a medical emergency—a grand mal seizure"). The obvious clarity exception cannot apply here, given the Supreme Court's decision in *Plumhoff*, from which an officer in Defendant's position might reasonably have extrapolated that the use of deadly force to terminate a protracted high-speed chase, during which Plaintiff committed numerous traffic violations while driving at speeds of 100 to 130 miles per hour through two counties was a reasonable response to the threat presented by allowing Plaintiff to resume the chase. As such, and because Plaintiff fails to point to any other preexisting law that would have given Defendant fair warning of the unlawfulness of his conduct, we hold that Defendant is entitled to qualified immunity on Plaintiff's § 1983 Fourth Amendment claim.

III. State Claims

The district court did not rule on the merits of Plaintiff's state claims. Instead, the court declined pendent jurisdiction over the those claims and dismissed them without prejudice after granting summary judgment on the federal § 1983 claim. The district court was within its discretion to decline jurisdiction over Plaintiff's state claims, and there is no basis for disturbing that decision on appeal. *See Hardy v. Birmingham Bd. of Educ.*, 954 F.2d 1546, 1550 (11th Cir. 1992) ("[W]hen the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice.") (quotation marks omitted); *Ameritox, Ltd. v. Millennium Labs., Inc.*, 803 F.3d 518, 532 (11th Cir. 2015) (citing 28 U.S.C. § 1367(c) and noting the district court's authority to dismiss state claims once the court "has dismissed all claims over which it has original jurisdiction").

CONCLUSION

For the reasons stated above, we **AFFIRM** the district court's order granting summary judgment to Defendant on Plaintiff's § 1983 claim on the ground of qualified immunity and dismissing without prejudice Plaintiff's state claims.

JORDAN, Circuit Judge, Concurring:

Given the Supreme Court's recent qualified immunity decisions in *Rivas-Villegas v. Cortesluna*, 595 U.S. ___, 2021 WL 4822662 (U.S. Oct. 18, 2021), and *City of Tahlequah v. Bond*, 595 U.S. ___, 2021 WL 4822664 (U.S. Oct. 18, 2021), I reluctantly concur in the judgment. I say reluctantly because the Supreme Court's governing (and judicially-created) qualified immunity jurisprudence is far removed from the principles existing in the early 1870s, when Congress enacted 42 U.S.C. § 1983. *See*, *e.g.*, *Zigler v. Abbasi*, 137 S.Ct. 1843, 1870-72 (2017) (Thomas, J., concurring in part and concurring in the judgment); William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 55-61 (2018); Ilan Wurman, *Qualified Immunity and Statutory Interpretation*, 37 Seattle U. L. Rev. 939, 961-72 (2014). For a Court that consistently tells us that federal statutes are interpreted according to ordinary public meaning and understanding at the time of enactment, *see Wisconsin Central Ltd. v. United States*, 138 S.Ct. 2067, 2071 (2018), and that § 1983 preserved common-law immunities existing at the time of its enactment, *see Pierson v. Ray*, 386 U.S. 547, 554-55 (1967), that is a regrettable state of affairs.

Viewing the evidence in light most favorable to Mr. Schantz, Sheriff DeLoach used deadly force against him twice. Sheriff DeLoach first fired his shotgun at Mr. Schantz when he had stopped his motorcycle. When that first blast missed and Mr. Schantz understandably tried to drive away, Sheriff DeLoach fired at him again. This time the shot hit home, with the buckshot striking Mr. Schantz in the face and neck.

The notion that Sheriff DeLoach can escape liability for using deadly force under these circumstances—against an unarmed joyrider who was at rest on his motorcycle—stands § 1983 on its head, and will lessen incentives for police departments to craft better policies for the use of deadly force. "Regardless of the formal relationship between the constitutional and state law standards and the administrative standard, it is clear that the administrative standard remains heavily informed by both." Seth W. Stoughton, Jeffrey J. Noble, & Geoffrey P. Alpert, Evaluating Police Uses of Force 104 (2020). *See also* Franklin E. Zimring, When Police Kill 219 (2017) ("[T]he main arena for the radical changes necessary to save many hundreds of civilian lives in the United States each year is the local police department, not the federal courts or Congress, not state government, not local mayors or city councils, not even the hearts and minds of the police officers on the streets. All of these people and institutions can help by influencing local police to create less destructive rules of engagement.").

In the United States District Court
for the Southern District of Georgia
Brunswick Division

MATTHEW SCHANTZ, Plaintiff, v. BENNY DELOACH, former Sheriff of Appling County, Georgia, in his individual capacity, Defendant.	CV 2:17-157

ORDER

(Filed Feb. 4, 2020)

Plaintiff Matthew Schantz alleges that Defendant Benny DeLoach, the former Appling County Sheriff, used excessive force when DeLoach shot Shantz as Shantz was attempting to evade law enforcement on his motorcycle. He brings this action under 42 U.S.C. § 1983, as well as various state law claims, seeking payment for injuries he sustained during the incident. DeLoach has moved for summary judgment, alleging that the force he used was appropriate under the circumstances and, in the alternative, that he is entitled to qualified immunity. Ultimately, the question before this Court is not whether DeLoach chose the best course of action to end the chase but instead whether DeLoach's decision fell within the broad scope of behavior deemed acceptable under the Fourth Amendment. Because the Court answers this question in the

affirmative, it must grant DeLoach's Motion for Summary Judgment and dismiss Schantz's Complaint.

BACKGROUND

On June 17, 2016, Schantz was driving his new 2004 Suzuki GSX R750 motorcycle through Appling County on his way to the beach in coastal South Georgia. Dkt. No. 1 ¶¶ 9-10; Dkt. No. 27-8 at 1. As he drove, he passed Appling County Deputy Tim Sullivan, who noticed Schantz's motorcycle was missing a vehicle registration tag. See Dkt. No. 27-8 ¶ 3. Sullivan activated his police lights to signal Schantz to stop. Id. ¶ 3; Dkt. No. 27-2 at 101. Instead, Schantz "took off," initiating a high-speed chase with the Appling County Sheriff's Department on US Highway 341. See Dkt. No. 27-2 at 94-95, 109. Shantz admits that he had smoked marijuana before leaving his home in Perry and had marijuana and a pipe in his possession as he traveled. Id. at 10-12. As Shantz recalled, he decided he would rather get to the beach than go to jail. Id. at 107. As a result, he sped away. Shantz admits that his motorcycle reached speeds in excess of 100 miles per hour. Dkt. No. 27-8 ¶ 9. At some point, Appling County Lieutenant Robert Eunice joined the pursuit and eventually became the lead pursuit vehicle. Id. ¶¶ 7-8. He observed Shantz run a red light in downtown Baxley, Georgia and continue down U.S. Highway 341. See id. ¶ 7. Eunice ultimately lost sight of Schantz, and Appling County discontinued its chase. Id. ¶10.

Around this time, Captain Kenny Poppell of the Wayne County Sheriff's Office heard over the police radio that Schantz was leaving Appling County and entering Wayne County. Id. ¶¶ 11-12. After spotting Schantz's motorcycle heading Eastbound on U.S. Highway 341, Poppell sped up his vehicle to 90 miles per hour, but Shantz passed him traveling well in excess of that speed. Id. ¶¶ 12-14. In a deposition, Poppell testified that Shantz was weaving "in and out of traffic" in a "race mode stance" Dkt. No. 27-5 at 44, 46. Poppell continued to pursue Shantz for approximately thirty miles after which Shantz confronted another Wayne County officer at an intersection in Jesup, Georgia. Dkt. No. 27-8 ¶¶ 17, 17 n. 1. At that point, Shantz turned around and began traveling in the other direction while riding only on the back wheel of his motorcycle (a "wheelie"). Id. ¶ 18. Poppell testified that around this time he lost sight of Shantz, but he managed to spot him again in the town of Odom where Shantz was again traveling only on his back wheel. Dkt. No. 27-5 at 46-48; Dkt. No. 27-8 ¶ 19. Poppell also testified that as Shantz continued to flee, he came across two police units blocking the northbound lane of 341. See Dkt. No. 27-5 at 49. Poppell alleges that Shantz then swerved into oncoming traffic in the southbound lane, running other vehicles off the road. Id.

Eventually, Eunice and Defendant DeLoach learned through radio traffic that Shantz was returning to Appling County. Dkt. No. 27-8 ¶ 22. They set up positions on the highway just over the county line. Id.

¶ 23. DeLoach then got out of his car with a shotgun, hoping that this would encourage Shantz to stop. Dkt. No. 27-8 at 26. Just as Shantz crossed DeLoach's position, DeLoach fired a shot. Id. ¶ 27.[1] Thereafter, Shantz spun his bike around and came to a stop. See Dkt. No. 27-2 at 132-33. Shantz alleges that DeLoach was, at that time, pointing the gun toward him, and Shantz raised one hand, his right hand, off the motorcycle clutch. Id. at 136. DeLoach then racked the shotgun again, and Shantz returned his hand to the clutch and "took off." See id. at 136. The parties dispute heavily the direction that Shantz was traveling when he began to ride yet again. DeLoach contends that Shantz was accelerating toward him. Dkt. No. 27-8 ¶ 28. Shantz insists that he was headed back down the highway in the opposite direction that he had come. Dkt. No. 27-2 at 113. In either event, the parties agree that as Shantz's motorcycle began to move again, DeLoach again fired his weapon, this time striking Shantz. Dkt. No. 27-8 ¶ 30. Shantz's motorcycle continued forward briefly, but eventually he fell off his bike. Dkt. No. 27-2 at 138-39. Sometime thereafter EMS arrived at the scene, and Shantz was transferred to the hospital. Id. at 141, 152.

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[1] DeLoach contends that he fired a "warning shot" in the air. Dkt. No. 27-8 27. Schantz alleges that DeLoach was aiming at him because Shantz heard a "plink" that he believed was either the bullet hitting the asphalt or pieces of asphalt hitting his bike. See Dkt. No. 27-2 at 130. For purposes of summary judgment, Shantz's version is assumed to be true. Castleberry v. Camden Cty., No. CV 2:16-00128, 2018 WL 4702163, at *15, 2018 U.S. Dist. LEXIS 169414, at *51 (S.D. Ga. Sept. 30, 2018) (finding that the court must "draw all reasonable inferences" in favor of the non-moving party on summary judgment).

He was wounded but survived his injuries. Id. at 154, 164-66.

Shantz disputes some, but not all, of the testimony concerning his allegedly reckless driving during the chase. For purposes of this motion, it is important to identify the non-disputed testimony, for only such non-disputed testimony can serve as a basis for summary judgment. In an affidavit submitted in opposition to DeLoach's motion, Shantz states that while he "did ride [his] motorcycle at speeds in excess of 100 miles per hour . . . [he] did not drive recklessly, erratically, or in any way that would put other people at danger." Dkt. No. 41 ¶ 2. He characterized the chase as "a series of brief encounters where [he] tried to avoid contact with the police, which [he] accomplished in a safe manner when the opportunity presented itself by accelerating in short bursts to put them behind [him]." Id. ¶ 3. He conceded that he once drove through a red light but contends that he did so in a "safe manner" by ensuring "the road was clear before [he] went through the intersection." Id. ¶ 4. He stated that "[a]t no time did [he] run anyone off the road or otherwise threaten the safety of other motorists." Id. In short, Shantz admits evading police, driving more than 100 miles per hour, and running a red light, but he characterizes such behavior as "safe."

DeLoach submitted audio excerpts of police radio traffic from the day in question. These excerpts, taken from both Appling County and Wayne County radio, contain references to reckless activity that officers report witnessing during the chase. For example, on

Appling County radio, officers can be heard stating that Shantz was "zipping around some big trucks," dkt. no. 40, Ex. B., Track 7 at 0:09-0:12, and that his speed at one time was up to "one-thirty," dkt. no. 40, Ex. B., Track 12 at 0:08-0:09. On Wayne County radio, an officer reports that Shantz was "not slowing up for anything, in and out of traffic." Dkt. No. 40, Ex. C., 6-17-16 02.18.33PM Radio (SO) at 1:11-1:13. The same officer later noted that Shantz was "coming into some heavy traffic," id. at 1:46-1:48, and that he was "in the turn lane passing all [the] heavy traffic," id. at 2:22-2:25. A recording from a few minutes later refers to Shantz as "doing a wheelie," Dkt. No. 40, Ex. C., 6-17-16 02.21.22PM Radio (SO) at 0:13-0:15, and less than ten minutes after that an officer reported that Shantz "went into on-coming traffic around [him]," Dkt. No. 40, Ex. C., 6-17-16 02.31.26PM Radio (SO) at 1:32-1:34.

In an affidavit submitted in support of his motion, DeLoach states that he "heard of Mr. Schantz weaving in and out of traffic, running red lights, traveling on the wrong side of the road, and traveling in speeds of [sic] excess of 100 mph on the Wayne county radio traffic, which Appling County Sheriff's Department could access." Dkt. No. 39-2. He also stated that, while involved in the chase, he personally saw Shantz run the red light in Baxley. Id. ¶ 5. Shantz has not challenged the validity of any of the recordings.[2]

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[2] In his opposition brief to DeLoach's motion, Shantz disputed DeLoach's contention that DeLoach "knew from listening to radio traffic that [Shantz] had been driving recklessly, running red lights, [and] traveling on the wrong side of the road." See Dkt.

In December 2017, Shantz filed an action against DeLoach individually, asserting a claim under 42 U.S.C. § 1983 for violation of his Fourth Amendment rights, as well state law claims for negligence, battery, and violations of the Georgia Constitution. Dkt. No. 1. DeLoach moves for summary judgment on each of Shantz's claims.

LEGAL STANDARD

Summary judgment "shall" be granted if "the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is "genuine" where the evidence would allow "a reasonable jury to return a verdict for the nonmoving party." FindWhat Investor Group.com v. FindWhat.com, 658 F.3d 1282, 1307 (11th Cir. 2011) (quoting Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986)). A fact is "material" only if it "might affect the outcome of the suit under the governing law." Id. Factual disputes that are "irrelevant or unnecessary" are not sufficient to survive summary judgment. Anderson, 477 U.S. at 248.

No. 27-8 ¶ 25; Dkt. No. 33-1 ¶ 25. But the only evidence Shantz submitted to challenge DeLoach on this point was recordings from what appears to be Jesup Police Department radio traffic from the day of the incident. However, Shantz relies on an incomplete submission of the radio traffic heard by DeLoach. DeLoach submitted the excerpts of radio traffic from Appling and Wayne counties described above. See Dkt. No. 40. Shantz, as mentioned, has not challenged the validity of these recordings, nor has he introduced any evidence to refute DeLoach's contention that he had access to and heard these recordings during the incident.

The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. See Celotex Corp v. Catrett, 477 U.S. 317, 323 (1986). The movant must show the court that there is an absence of evidence to support the nonmoving party's case. See id. at 325. If the moving party discharges this burden, the burden shifts to the nonmovant to go beyond the pleadings and present affirmative evidence to show that a genuine issue of fact does exist. See Anderson, 477 U.S. at 257.

The nonmovant may satisfy this burden in one of two ways. First, the nonmovant "may show that the record in fact contains supporting evidence, sufficient to withstand a directed verdict motion, which was 'overlooked or ignored' by the moving party, who has thus failed to meet the initial burden of showing an absence of evidence." Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1116 (11th Cir. 1993) (quoting Celotex Corp., 477 U.S. at 332) (Brennan J. dissenting). Alternatively, the nonmovant "may come forward with additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency." Id. at 1117. Where the nonmovant attempts to carry this burden instead with nothing more "than a repetition of his conclusional allegations, summary judgment for the [movant is] not only proper but required." Morris v. Ross, 663 F.2d 1032, 1033-34 (11th Cir. 1981) (citing Fed. R. Civ. P. 56(e)).

DISCUSSION

I. Qualified Immunity

DeLoach contends that his use of force against Shantz was reasonable and necessary under the circumstances and therefore did not violate Shantz's rights under the Fourth Amendment. Alternatively, he argues that he is entitled to qualified immunity for his actions because there is no binding authority clearly establishing that the course of action he chose to end the chase was unlawful.

Qualified immunity grants "complete protection for government officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Vinyard v. Wilson, 311 F.3d 1340, 1346 (11th Cir. 2002). To establish a qualified immunity defense, the defendant must first show that the allegedly unconstitutional conduct occurred while he was acting within the scope of his discretionary authority. Estate of Cummings v. Davenport, 906 F.3d 934, 940 (11th Cir. 2018). The burden then shifts to the plaintiff, who must show 1) that the defendant's alleged actions violated a constitutional or statutory right and 2) that such a right was "clearly established." Bogle v. McClure, 332 F.3d 1347, 1355 (11th Cir. 2003). Here, the parties do not dispute that DeLoach was acting within his discretionary authority when he shot Shantz. Accordingly, we consider only whether Shantz has satisfied his burden to show that DeLoach was not entitled to qualified immunity.

As a threshold matter, it is critical to determine the nature of the right that DeLoach is alleged to have infringed. Generally, courts treat the use of force in vehicle chase cases as investigatory stops or arrests, which are most properly analyzed under the Fourth Amendment's protection against unreasonable seizures of the person. See Graham v. Connor, 490 U.S. 386, 394 (1989). The standard used by courts to determine whether the use of force was excessive is "objective reasonableness." Pace v. Capobianco, 283 F.3d 1275, 1281 (11th Cir. 2002). That is, courts ask "whether a reasonable officer would believe" that the level of force used to stop the suspect was "necessary in the situation at hand." Lee v. Ferraro, 284 F.3d 1188, 1197 (11th Cir. 2002) (quoting Willingham v. Loughnan, 261 F.3d 1178, 1186 (11th Cir. 2001)). Reasonableness is adjudged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id.

Assuming, without deciding, that DeLoach acted unreasonably by firing at Shantz as he tried to escape, the Court finds that Shantz has failed to establish the second prong of the qualified immunity analysis – that is, he has not shown that the unreasonableness of DeLoach's actions were "clearly established" at the time of the incident. A right is clearly established for purposes of the qualified immunity defense when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." Mullenix v. Luna, 136 S. Ct. 305, 308 (2015). "Unless a government agent's act is so obviously wrong, in light

of pre-existing law, that only a plainly incompetent officer or one who has knowingly violated the law would have done such a thing, the government actor has immunity from suit." Lassiter v. Alabama A & M Univ., Bd. Of Trustees, 28 F.3d 1146, 1149 (11th Cir. 1994).

Plaintiffs may use three methods to show that a right is "clearly established." First, they may bring forth a "materially similar case" decided prior to the officer's actions that gives notice to the officer that his actions were unlawful. Mercado v. City of Orlando, 407 F.3d 1152, 1159 (11th Cir. 2005). Second, they can "show that a broader, clearly established principle should control the novel facts in this situation." Id. (citing Hope v. Pelzer, 536 U.S. 730, 741 (2002)). Finally, they can show that the conduct is so obviously unconstitutional that no prior case law need be established. Id.

Here, Shantz seeks to show the existence of a clearly established right through one of the first two methods. First, he argues that DeLoach violated the "clearly established" principle that "where the suspect is not a fleeing felon and poses no immediate threat to the officer or others, the use of deadly force is a violation of the suspect's Fourth Amendment rights." Dkt. No. 33 (quoting Harrell v. Decatur County, 22 F. 3d 1570, 1573 (11th Cir. 1994)). There are two problems with this proposition. First, using only the conduct admitted by Shantz, he led officers on an extended chase down major roadways, ran a red light, did wheelies, and drove at least 100 miler per hour. Shantz was plainly a "fleeing felon" in that, at the time of the chase,

he was violating O.C.G.A. § 40-6-395, which expressly states that it is a felony to flee from police while driving "in excess of 20 miles an hour above the posted speed limit" – an act that Shantz expressly admits to having done. See Dkt. No. 27-2 at 107-110 (admitting to fleeing from police); see also Dkt. No. 33-1 ¶ 9 (admitting to reaching speeds "well in excess if 100 mph").[3] Second, the undisputed evidence that DeLoach witnessed or was made aware by police radio of the dangerous actions taken by Shantz cannot be countered merely by stating that driving 100 miles per hour and running red lights is "safe."

Moreover, the principle urged by Shantz is not the type of "clearly established" law necessary to put officers on notice that their actions were unlawful, see Mullenix, 136 S. Ct. at 308. Indeed, the Supreme Court has repeatedly instructed courts "not to define clearly established law at a high level of generality." Id. The inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." Id. The principle that an officer cannot use force without an "immediate threat" to officers or civilians is a

[3] The Court takes judicial notice that, per Shantz's admission, he was driving more than twenty miles per hour above the posted speed limit given that the maximum speed limit in the state of Georgia is seventy miles per hour. See O.C.G.A. § 40-6-181. It may be that the speed limits in towns such as Odum, Baxley, and Jesup are less than seventy miles per hour. However, giving Shantz the benefit of the doubt, the Court will assume for purposes of this motion that all sections of the roads involved permitted the maximum possible speed allowed in Georgia: seventy miles per hour.

generalized rule that calls for a subjective inquiry into the facts and circumstances of a given situation. Indeed, the Supreme Court has stated that in the context of excessive force claims based on vehicle chases, "the result depends very much on the facts of each case." Brosseau v. Haugen, 543 U.S. 194 (2004). Because "[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts," Mullenix, 136 S. Ct. at 308 (quoting Saucier v. Katz, 533 U.S. 194, 205 (2001)), the Court cannot find – absent a factually similar decision applying Shantz's proposed principle – that DeLoach was on notice that his acts were necessarily unlawful.

Alternatively, Shantz contends that specific case law constructively put DeLoach on notice that his actions violated the Constitution. However, the weight of factually similar authority tends to suggest that the opposite is true – that is, that DeLoach acted reasonably in firing at Shantz to end the chase. In Pace v. Capobianco, the Eleventh Circuit found that police did not use excessive force when they fired on a fleeing suspect who had been cornered and effectively trapped in a cul-de-sac. 283 F.3d at 1277-78, 1282. In that case, the plaintiff's decedent had led several police cars on a high-speed pursuit during which he had swerved his car in front of or toward police cars, driven through a residential front yard, and nearly hit a motorist while driving on the wrong side of the road. Id. at 1277. After an approximately fifteen-minute chase, the driver turned into the back of a cul-de-sac and stopped his car

with his engine running. Id. at 1277-78. Seconds later – at most – an officer fired shots through the windshield, at which time the vehicle again began moving forward. Id. at 1278. The court accepted as true testimony from a non-party witness that the driver was not aiming his vehicle at deputies during this time or otherwise trying to run them over. Id. at 1279. As the vehicle moved, officers fired several more shots until the car stopped in a residential backyard with the driver having died. Id. at 1278.

In reaching its conclusion that no constitutional violation occurred, the court relied heavily on the fact that the deceased had driven aggressively and "used [his] automobile in a manner to give reasonable policemen probable cause to believe that it had become a deadly weapon." Id. at 1281-82. The Court found that though the car was stopped when shots were fired, "no cooling time had passed" for the officers in pursuit, and, given the driver's reckless efforts to evade police, the officers simply could not be certain the chase was over. Id. at 1282. Accordingly, the court found that the Fourth Amendment had not "ruled out the use of deadly force." Id.

Several years later, the Supreme Court in Plumhoff v. Rickard found officers had not violated the Fourth Amendment by shooting a fleeing driver under a similar set of facts. 572 U.S. 765, 768 (2014). In that case, the plaintiff's decedent fled from several officers in a vehicle chase reaching speeds of over 100 miles per hour. Id. at 769. During the chase, the driver swerved through traffic and passed more than two

dozen vehicles. Id. Eventually, the driver's vehicle made contact with a police cruiser, causing the driver's car to spin out and collide with another cruiser. Id. The driver then put his car into reverse in an effort to escape. Id. As he did, two officers began pounding on the passenger side window. Id. at 769-70. The car then made contact with another cruiser, and the tires continued spinning as the driver kept his foot on the accelerator. Id. at 770. An officer then fired three shots into the car, which thereafter reversed and maneuvered into another street as an officer had to side-step the car to avoid being hit. Id. As the driver fled, two officers collectively fired twelve shots at the car, causing the driver to crash. Id. The driver and passenger were both killed. Id.

In finding that the officers' actions did not infringe on the driver's Fourth Amendment rights, the Court identified some of the reckless activity from the chase, such as the speed in excess of 100 miles per hour and the passing of many vehicles, some of which had to alter course. Id. at 776. The high Court thereafter concluded:

> Under the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that [the driver] was intent on resuming his flight and that, if he were allowed to do so, he would once again pose a deadly threat for others on the road.

Id. at 777. The Court found that the driver's flight "posed a grave public safety risk, and . . . the police

acted reasonably in using deadly force to end that risk." Id.

Likewise, in Small v. Glynn County, this Court looked at somewhat similar facts and concluded that officers were not liable in lethally shooting a driver attempting to flee. 77 F. Supp. 3d 1271, 1278, 1280 (S.D. Ga. 2014). There, the deceased driver fled from police after an officer approached her in a parking lot. Id. at 1276. Though the driver blew out a tire on a curb, she continued driving around the lot, slowly weaving between the lanes and narrowly missing civilian motorists. Id. Eventually, the driver entered the public roadway, once veering into oncoming traffic and also swerving off the road onto the adjacent grass on multiple occasions. Id. At one point after entering a neighborhood, she continuously weaved and often drove on the wrong side of the road for extended periods. Id. at 1277. She struck a mailbox, ran stop signs, and drove through a residential front yard. Id. She was alleged to have nearly made contact with officers on multiple occasions. Id.

Eventually, one of the officers executed a successful PIT (precision immobilization technique) maneuver, causing the driver's car to spin onto a lawn, with the rear bumper next to a utility pole. Id. An officer positioned his cruiser in front of her, effectively trapping her car between the cruiser and the pole. Id. After the officer exited his vehicle, the driver began maneuvering her vehicle between the police cruiser and the pole, in an attempt – at least in the officer's view – to free her vehicle. Id. at 1278. Other officers arrived on the

scene around this time and eventually perceived that the driver might be able to free her car from the trap and drive into them. Id. Ultimately, the car did inch forward, at which time officers fired, killing the driver. Id.

In finding that the officer's actions were lawful, this Court emphasized the reckless behavior exhibited by the driver during the chase, such as turning in front of oncoming cars and running off the road. Id. at 1280. This Court found that "[u]nder the circumstances, it was reasonable to perceive that [the driver] had used her car as a deadly weapon." Id. at 1281. It concluded that "[o]bjectively reasonable officers would conclude that she posed a threat to, at a minimum, the officers standing a few yards away." Id. at 1282. The decision was affirmed by the Eleventh Circuit. McGehee v. Glynn County, 598 Fed. App'x 752 (11th Cir. 2015).

Undoubtedly, the facts from these cases – and others like them – vary. However, the recurring theme in each of these cases is that a driver who uses his vehicle during a chase in such a way that significantly endangers others effectively converts his vehicle into a deadly weapon. Officers in those cases were justified in using deadly force because they reasonably believed that the fleeing suspect would, if allowed to continue, use that "deadly weapon" again in a way that could harm themselves or others. Pace, 283 F.3d at 1282 (finding that the driver "had used the automobile in a manner to give reasonable policeman probable cause to believe that it had become a deadly weapon with which [he] was armed"); Plumhoff, 572 U.S. at 777

(finding that if the driver were allowed to continue, "he would once again pose a deadly threat for others on the road"); Small, 77 F. Supp. at 1281 ("Under the circumstances, it was reasonable to perceive that [the driver] had used her car as a deadly weapon."). The facts of this case are not materially distinguishable. Like the drivers in Pace, Plumhoff, and Small, Shantz is alleged to have driven recklessly in such a way that endangered others around him. Indeed, DeLoach heard police on the official police radio report that Shantz drove in excess of 100 miles per hour, rode in a "race stance mode", ran a red light, rode only on his back wheel at least twice, and drove on the wrong side of the road on multiple occasions, sometimes driving other cars off the road. See Dkt. No. 27 ¶¶ 7, 9, 15-16, 18-20. DeLoach himself witnessed some of the reckless behavior.

Moreover, Shantz admits much of this conduct, including driving more than 100 miles per hour and running a red light in an attempt to evade police. No factual dispute is created by his subjective characterization of such conduct as driving in a "safe manner" and not "in any way that would put other people at danger." Dkt. No. 41 ¶¶ 2-4. Moreover, even if we assume that Shantz's subjective characterization of driving 100 miles per hour and running a red light is true, those facts do not necessarily inculpate DeLoach. To be sure, DeLoach, who is sued here in his individual capacity, states in his uncontested affidavit that he heard over police radio that Shantz was driving in a reckless manner. Radio recordings from that day refer to a range of dangerous activity, such as driving up to 130

miles per hour, dkt. no. 40, Ex. B., Track 12 at 0:08-0:09, riding "in and out of traffic," dkt. no. 40, Ex. C., 6-17-16 02.18.33PM Radio (SO) at 1:11-1:13, and "doing a wheelie," dkt. no. 40, Ex. C., 6-17-16 02.21.22PM Radio (SO) at 0:13-0:15. Thus, irrespective of whether Shantz considers himself such a special driver that he can do such things safely, DeLoach reasonably *perceived* Shantz to have driven in such a way that put others in danger at the time Shantz sought to flee from DeLoach's presence.[4] DeLoach had no way of knowing that Shantz was so special that he can "safely" drive at least 30 miles over the speed limit, run red lights, and flee from police through multiple counties. That is, an officer hearing of such behavior would have arguable probable cause to believe that deadly force was justified. Jones v. Cannon, 174 F.3d 1271, 1283 n.3 (11th Cir. 1999) ("Arguable probable cause, not the higher standard of actual probable cause, governs the qualified immunity inquiry."). It is DeLoach's perception, rather than Shantz's characterization, that ultimately governs whether DeLoach acted reasonably in choosing to fire his weapon. See Taffe v. Wengert, 775 Fed. App'x 459, 466 (11th Cir. 2019) ("Officers may use deadly force against individuals they *reasonably perceive* pose an imminent threat of serious physical harm to the officers or others") (emphasis added); Waterman v. Batton, 393 F.3d 471, 477 (4th Cir. 2005) ("[R]easonableness is determined based on the information

[4] This is particularly true where, as here, DeLoach witnessed some of Shantz's reckless behavior firsthand.

possessed by the officer at the moment that force is employed.").

Nor are the decisions above distinguishable because, as Shantz suggests, the drivers in those cases posed a more direct and immediate threat to officer safety. Albeit, the facts in Plumhoff and Small were such that officers perceived they were about to be run over at the time they fired their weapons. In contrast, Shantz alleges here that he was driving away from DeLoach at the time he was shot. But this distinction does not render DeLoach's actions in this case unreasonable. First, Plumhoff and Small did not rely solely on the immediate personal threat to the officers at the scene in determining that deadly force was reasonable. In both cases, the courts also considered the more generalized danger that the drivers' reckless acts had posed and would continue to pose if the chase continued. See Plumhoff, 572 U.S. at 777 ("Under the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that [the driver] was intent on resuming his flight and that, if he were allowed to do so, he would once again pose a deadly threat for others on the road."); see Small, 77 F. Supp. 3d 1271, 1281 (relying, in part, on the fact that the driver had driven recklessly and "used her car as a deadly weapon" in concluding that the police had acted reasonably by using deadly force).

Second, the Pace decision makes clear that the theoretical risk posed to future victims – rather than merely the pending risk to individuals at the immediate scene – can be sufficient to justify deadly force.

There, the first shots were fired when the vehicle was stopped and effectively blocked from entering back on the roadway. Pace, 283 F.3d at 1277-78. Moreover, while the car began to move again as the officers fired (possibly because the driver had already died and released his foot from the brake), the Court accepted as true that the driver was not aiming at officers or otherwise attempting to hit them with his car. Id. at 1278-79. The court found that the officers reasonably could have believed that the chase was not over, and that the driver had "used the automobile in a manner to give reasonable policemen probable cause to believe that it had become a deadly weapon with which Davis was armed." Id. at 1282. Plumhoff, Pace, and Small serve to support the constitutionality of DeLoach's conduct rather than put him on notice that his actions were clearly unconstitutional.

In an effort to point to case law putting DeLoach on notice that his actions were unreasonable, Shantz cites to Vaughan v. Cox. There, the Eleventh Circuit held that an officer violated the plaintiff passenger's Fourth Amendment rights when the officer inadvertently shot the plaintiff after firing at a moving vehicle in an effort to stop a chase. 343 F.3d 1323, 1329-30 (11th Cir. 2003). In that case, officers began pursuing a truck that matched the description of a vehicle that had just been stolen from a service station. Id. at 1325-26. The defendant officer positioned his cruiser in front of the truck and applied his brakes, at which point the truck collided into the back of the cruiser. Id. at 1326. Thereafter, another officer traveling in the rear

activated his lights, and the fleeing driver accelerated to eighty-five miles per hour in a seventy miles-per-hour zone. Id. at 1327. The defendant, now traveling in another lane beside the fleeing suspects, fired three shots into the truck, one of which hit the plaintiff. Id. The driver reacted by making a "desperate break for freedom," driving recklessly until he eventually lost control and collided into a median. Id.

Vaughan is distinguishable in that the court's conclusion with respect to the Fourth Amendment question rested heavily on the finding that there were "[g]enuine issues of material fact" as to whether the chase "presented an immediate threat of serious harm to [the officer] or others at the time [the officer] fired the shot that struck Vaughan." Id. at 1330. That was because under the plaintiff's version of the facts, there was no evidence "that the suspects had menaced or were likely to menace others on the highway at the time of the shooting." Id. Instead, the fleeing vehicle's lane "was clear of traffic and [the driver] made no aggressive moves to change lanes before [the officer] fired." Id. Moreover, the court noted that, according to the plaintiff, "the collision between the truck and [the officer's] cruiser was both accidental and insufficient to cause [the officer] to lose control." Id. In contrast, Shantz in this case does not dispute many of the facts that arguably justified DeLoach's use of force, such as his extraordinarily high rate of speed, his having run a red light, and his doing wheelies during the pursuit. While he does dispute certain facts about his reckless behavior, such as his having swerved into oncoming

traffic, he cannot dispute that the police radio described such behavior. Such reports reasonably led DeLoach to believe – and thereby created arguable probable cause to believe – that Shantz was placing others in immediate danger.

Furthermore, even to the extent that there are parallels between Shantz's chase and the Plaintiff's version of facts in Vaughan, the inquiry with respect to qualified immunity is whether precedent at the time of the incident "placed the statutory or constitutional question beyond debate". Mullenix, 136 S. Ct. at 308 (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011)). In Pace, Plumhoff, and Small, the facts more closely resemble the present case in that the suspects drove recklessly and placed others in significant danger before the shooting took place. Undoubtedly, Vaughan offers an example of a scenario where a court found the force used could be excessive. However, the reckless dangerous conduct was disputed in Vaughan. Under the Vaughan plaintiff's version of facts, the officers "simply faced two suspects who were evading arrest and who had accelerated to eighty to eighty-five miles per hour in a seventy-miles-per-hour zone in an attempt to avoid capture." Vaughan, 343 F.3d at 1330. As the Supreme Court has stated, "qualified immunity protects actions in the 'hazy border between excessive and acceptable force.'" Mullenix, 136 S. Ct. at 312 (quoting Brosseau v. Haugen, 543 U.S. 194, 201 (2004)).

This Court simply cannot find, in light of the universe of case law existing at the time of the incident, that DeLoach was on notice that it was unlawful to fire

at Shantz as he took up yet another effort to evade arrest. To the contrary, the authoritative cases that present facts most similar to the present case tend to suggest that DeLoach's actions were lawful.

II. State Law Claims

As a final matter, Shantz has also brought state claims for negligence, battery, and violations of the Georgia Constitution. Because this Court finds that Shantz's only claims that invoke federal jurisdiction should be dismissed, it declines to exercise pendent jurisdiction over the remaining state claims. See Hardy v. Birmingham Bd. of Educ., 954 F.2d 1546, 1550 (11th Cir. 1992) ("[I]f the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.") (emphasis omitted) (quoting United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)); see also Wilder v. Irvin, 423 F. Supp. 639, 643 (N.D. Ga. 1976) (finding pendent jurisdiction was not appropriate where there was not considerable overlap between the state and federal claims and where the state claim "would inject new issues and a large amount of facts unrelated to the other portion of the case involving the federal claim"). Accordingly, these claims will also be dismissed.

CONCLUSION

For these reasons, Defendant's Motion for Summary Judgment, dkt. no. 27, with respect to Plaintiff's § 1983 claim, Count I of the Complaint, is **GRANTED**.

Defendant's Motion with respect to Plaintiff's state law claims is **DENIED as moot**. Counts II and III of the Complaint are **DISMISSED without prejudice**. Defendant's motion to exclude testimony, dkt. no. 26, is **DENIED as moot**. The Clerk of Court is **DIRECTED** to **close this case**.

SO ORDERED, this 4th day of February, 2020.

/s/ Lisa Godbey Wood
HON. LISA GODBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10503-GG

MATTHEW SCHANTZ,

Plaintiff - Appellant,

versus

BENNY DELOACH,
former Sheriff of Appling County, Georgia,
in his individual capacity,

Defendant - Appellee.

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

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

(Filed Dec. 10, 2021)

BEFORE: JORDAN, BRASHER, and JULIE CARNES, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also

treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

MATTHEW SCHANTZ, Plaintiff, v. BENNY DELOACH, former Sheriff of Appling County, Georgia, in his individual capacity, Defendant.	*	CIVIL ACTION FILE NO. 2:17-cv-157

COMPLAINT FOR DAMAGES

(Filed Dec. 20, 2017)

COMES NOW Matthew Schantz, Plaintiff herein, and hereby files this Complaint against the above-named Defendant, showing the Court as follows:

INTRODUCTION

1.

This is a 42 U.S.C. § 1983 action brought under the Fourth Amendment to the United States Constitution arising from the Defendant's objectively unreasonable use of deadly force against Plaintiff, who was shot in the head with a shotgun by Defendant while attempting to flee a traffic stop on a motorcycle even though Plaintiff posed no lethal threat to Defendant or anyone else. Plaintiff has also asserted pendant state law

claims of battery, negligence, and violation of the Georgia Constitution.

JURISDICTION AND VENUE

2.

This action is brought pursuant to 42 U.S.C. §§1983 and 1988, and the Fourteenth Amendment of the United States Constitution. Jurisdiction is founded upon 28 U.S.C. § 1331, § 1343, and the aforementioned constitutional and statutory provisions. Plaintiff further invokes the pendant or supplemental jurisdiction of this Court to decide claims arising under state law pursuant to 28 U.S.C. §1367.

3.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the event giving rise to this claim occurred in Wayne County, Georgia, which is situated within the district and divisional boundaries of the Brunswick Division of the Southern District of Georgia, and because Defendant resides in Appling County within said district and division.

4.

All the parties herein are subject to the jurisdiction of this Court.

PARTIES

5.

Plaintiff Matthew Schantz is a citizen of the United States and the State of Georgia.

6.

Defendant Benny DeLoach was, at all times relevant herein, the duly elected sheriff of Appling County, Georgia who is subject to the jurisdiction of this Court and may be served with process by request for waiver of service by First Class Mail sent care of the Appling County Sheriff's Office, 560 Barnes Street, Suite B, Baxley, GA 31513.

7.

At all times relevant herein, Defendant acted under color of state law.

8.

Defendant is sued in his individual capacity.

FACTUAL ALLEGATIONS

9.

On the afternoon of June 17, 2016, Matthew Schantz and his mother were traveling in separate vehicles from their home in Perry, Georgia for vacation at St. Simon's Island. Matthew was riding the motorcycle

that he and his mother had just purchased for his upcoming 24th birthday, and his mother was going to drive her car and meet up with him that evening.

10.

As Matthew was driving his motorcycle through Appling County, police officers there observed that Matthew's bike did not have a license tag and attempted to get him to pull over. However, Matthew was afraid to stop because he did not yet have a tag or insurance on the motorcycle and he had been smoking marijuana.

11.

Matthew led the officers on a high-speed chase through Appling County but was eventually able to elude the officers, who lost sight of him and suspended the pursuit temporarily.

12.

The pursuing officers radioed ahead for assistance and sometime later, Matthew was spotted by officers in neighboring Wayne County, who attempted to stop him with a roadblock but were unsuccessful because Matthew turned around and headed back in the direction from which he had come.

13.

Meanwhile, Defendant and other Appling County officers proceeded to Wayne County where another roadblock was being set up on U.S. Highway 341 near the intersection of Shed Road.

14.

When Matthew arrived at that roadblock, Matthew attempted to turn around and drive away again, but Defendant fired a shotgun at him. The shot missed, but Matthew stopped and put up his hands.

15.

After Matthew stopped, Defendant racked the shotgun as if he were about to fire again, and Matthew accelerated the motorcycle and sped away to avoid being shot.

16.

As Matthew was trying to get away, Defendant fired a second shot, even though the motorcycle was not heading toward him or any other person.

17.

Buckshot from the second shot struck Matthew in the side of his head as he was moving away from Defendant and the other officers, penetrating his motorcycle helmet and causing the following injuries:

a) Ballistic wounds to bilateral nares, right cheek, and bleeding from bilateral nares;

b) Ballistic injuries to right cheek through the maxillary sinus;

c) Loss of three teeth;

d) Wound to soft palate;

e) Lacerations to right neck, including unremoved shrapnel;

f) Abrasions to bilateral humerus, forearms, and torso;

g) Comminuted open right mandible fracture;

h) Right-sided zygomatic fracture;

i) Right-sided orbital wall fracture;

j) Right-sided maxillary fracture;

k) Fluid in peritoneal cavity;

l) Oropharynx edema; and

m) Respiratory failure following trauma and surgery.

18.

At no time did Plaintiff ever assault or threaten Defendant or anyone else while trying to evade capture, and at no time relevant herein did he pose an imminent threat to human life so as to justify the use of deadly force against him.

THEORIES OF RECOVERY

COUNT I – FOURTH AMENDMENT CLAIM

19.

The aforementioned misconduct of Defendant in using deadly force against Plaintiff under circumstances where it was objectively unreasonable to do so was a violation of the Fourth Amendment of the United States Constitution.

20.

In June 2016, a reasonable police officer would have known that it was unconstitutional to use deadly force against an unarmed fleeing motorcyclist under circumstances where the subject posed no immediate threat to the life of the officer or any other person, and because those were the circumstances in this case, Defendant is not entitled to qualified immunity.

21.

The law being clearly established in June 2016 that Defendant's conduct was an objectively unreasonable use of deadly force in violation of the Fourth Amendment, Defendant is liable in his individual capacity under 42 U.S.C. § 1983 for all damages proximately caused by his violation of Matthew Schantz's Fourth Amendment rights.

COUNT II – VIOLATIONS OF GEORGIA CONSTITUTION

22.

By using excessive force against Plaintiff, Defendant not only violated the Fourth Amendment but also its equivalent provision under the Georgia Constitution, Art. 1, §1, ¶13.

23.

Defendant's use of excessive force against Plaintiff also amounted to abuse of a person being arrested in violation of the Georgia Constitution, Art. 1, § 1, ¶17.

24.

Because Defendant intentionally used deadly force when deadly force was unjustified, he was acting with specific intent to do wrong and to cause an injury – as opposed to acting in good faith in the defense of himself or others – for which Defendant is not entitled to official immunity under Georgia law.

25.

Defendant is liable to Plaintiff under Georgia law for all damages proximately caused by his unconstitutional misconduct.

COUNT III – STATE LAW TORT CLAIM

26.

By using more force than was reasonably necessary, Defendant committed a battery – as well as breach of a duty imposed by law and deviation from the standard of care as recognized by his own internal policies, both of which constitute negligence under Title 51 of the Official Code of Georgia Annotated.

27.

Because Defendant intentionally used deadly force when deadly force was unjustified, he was acting with specific intent to do wrong and to cause an injury – as opposed to acting in good faith in the defense of himself or others – for which Defendant is not entitled to official immunity under Georgia law.

28.

Defendant is liable to Plaintiffs under Georgia law for all damages proximately caused by his tortious misconduct.

DAMAGES

29.

As a direct and proximate result of the above described conduct of Defendant, Plaintiff was deprived of his constitutional right to be free from excessive force and Defendant is liable for all damages proximately

flowing from said deprivation of his rights, including but not limited to decedent's pain and suffering, his mental anguish and emotional distress, and medical expenses incurred as a direct consequence of the unconstitutional and tortious conduct of Defendant, including all such damages which are expected to continue into the future.

30.

Defendant is liable to Plaintiff for all of the foregoing injuries and damages in an amount to be proven at trial and determined by the enlightened conscience of fair and impartial jurors.

31.

The aforementioned conduct of Defendant amounted to such conscious indifference and reckless disregard for the consequences as to also authorize the imposition of punitive damages against Defendant.

32.

Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation pursuant to 42 U.S.C. §1988 and O.C.G.A. §13-6-11.

WHEREFORE, Plaintiff demands the following:

a) That this action be tried by a jury;

b) That judgment be entered in favor of Plaintiff and against Defendant in an amount to be

determined by the enlightened conscience of fair and impartial jurors;

c) That Plaintiff be awarded attorney's fees and reasonable expenses of litigation;

d) That all costs of this action be taxed against Defendant; and

e) That the Court award any additional or alternative relief as may be deemed appropriate under the circumstances.

A JURY TRIAL IS DEMANDED.

Respectfully submitted this 20th day of December, 2017.

/s/ Craig T. Jones

CRAIG T. JONES
Ga. Bar No. 399476
Attorney for Plaintiff

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FORCE ANALYSIS

Name of Victim: Matthew Schantz (23-year-old male)
Department involved: Appling Co. GA Sheriff's Dept.
Shooting location: Intersection of Georgia Highway 341 and Shed/Brentwood Road
Date of incident: June 17, 2016
Time of incident: Approximately 2:30 pm

Professor William Harmening
Washington University in St. Louis
August 1, 2018

STATEMENT OF QUALIFICATION

My qualifications for providing expert witness testimony in the area of police practices and use of force derive from two sources, one occupational, and the other academic. I have been a law enforcement officer for approximately 36 years, both in a patrol and investigative capacity. I am a graduate of the Illinois State Police Academy (1982), and since 2001 have served in the capacity of Chief Special Agent for the Illinois Securities Department. I am a former police academy instructor in Illinois, and was responsible for all behavioral science instruction to Illinois police cadets completing their initial basic training. This instruction included the psychology of force, especially deadly force. Additionally, I was a member of the Central Illinois Critical Debriefing Team, and became a member after my own officer-involved shooting.

Over the course of my law enforcement career I have attended many different types of training, including investigative methods and homicide investigation, crime scene analysis, and CIT instructor training. Additionally I have qualified annually with my duty weapon, and have periodically attended law updates on the use of force. I have also participated in many different types of police training as an instructor or co-instructor.

In terms of academic qualifications, I am currently the program coordinator of the Forensic Psychology certificate program at Washington University in St. Louis, one of the Nation's top research universities. In this capacity I also serve as lead instructor for the following courses:

- Introduction to Forensic Psychology
- Crisis Intervention
- Criminology
- Correctional Psychology
- Investigative Psychology

Two of these courses, Introduction to Forensic Psychology and Crisis Intervention, deal extensively with the subject of police use of force. Additionally I have authored four peer-reviewed textbooks, as follows:

1. Forensic Psychology (2015, Pearson Publishing). This widely used textbook includes an extensive treatment of the subject of force using the most current research.

2. Crisis Intervention: The Criminal Justice Response to Mayhem, Chaos, and Disorder (2014, Prentice Hall). Also includes an extensive treatment of the subject of force.
3. Serial Killers: The Psychosocial Development of Humanity's Worst Offenders (2014, Charles C. Thomas).
4. The Criminal Triad: Psychosocial Development of the Criminal Personality Type (2010, Charles C. Thomas).

I have testified in the following depositions:

- Deposition (04/17) – Estate of Dontre Hamilton v. City of Milwaukee, Federal District Court, Eastern Division of Wisconsin, 16-CV-507.
- Deposition (8/17) – Estate of Darren Billy Wilson v. Bartow County GA, Federal District Court, Northern District of Georgia, 4:17-CV-00018.
- Deposition (12/17) – Estate of Nicholas Dyksma v. Harris County GA, Federal District Court, Southern District of Georgia.
- Deposition (03/18) – Estate of Donte Johnson v. City of Dolton IL, Federal District Court, Northern District of Illinois, 17-CV-2888.
- Deposition (05/18) – Estate of Javier Gaona v. City of Santa Maria CA, Federal District Court, Central District of California, no. 217-CV-01983.

- Deposition (5/18) – Estate of Rafael Cruz v. City of Chicago IL, Circuit Court of Cook County, no. 16 L 00823.
- Deposition (7/18) – Estate of Nicholas Thomas v. City of Smyrna GA, Federal District Court, Northern District of GA, 1:17-CV-01036.
- Deposition (7/18) – Estate of Jason Fanning v. City of St. Joseph MO, Federal District Court, Western District of Missouri, 17-06073-CV-SJ-SWH
- Deposition (09/18) – Estate of Miguel Gonzales v. Bernalillo County NM, Federal District Court (scheduled).
- Deposition (09/18) – Gerald Cole v. City of Indianapolis, Federal District Court (scheduled).
- Deposition (10/18) – Estate of Aaron Siler v. City of Kenosha WI, Federal District Court (scheduled).

I have provided written expert opinions in approximately 50 use-of-force cases since 2015, and have provided sworn affidavits in seven of these cases. Affidavits were submitted in the following cases:

- Estate of Darren Billy Wilson v. Bartow County GA
- Estate of Cedrick Chatman v. City of Chicago IL
- Duka Grbavac v. Pinnelas County FL
- Estate of Jorge Ramirez v. City of Bakersfield CA

- Estate of Gerald Sakamoto v. County of Los Angeles CA
- Estate of James Hall v. City of Fontana CA, Superior Court of CA, CIVDS 1621023
- Thomas Raines v. Cook County IL, Cook Co. Merit Board, MB 1908
- Estate of Jason Fanning v. City of St. Joseph, MO

In addition to my work and testimony in the above cases, in my capacity as Chief Special Agent, I supervise a cadre of special agents in Springfield and Chicago IL, including supervision of all criminal, civil forfeiture, and administrative cases worked by the department.

The report that follows was completed using reports, incident scene charts, measurements, and photographs created by the Appling County Sheriff's Dept., Wayne County Sheriff's Dept., and the Georgia Bureau of Investigation (GBI). I have read the interviews of all witnesses, both summarized by the GBI and recorded, including those of Matthew Schantz, Sheriff Benny DeLoach, and Lt. Robert Eunice. I have reviewed all incident scene photographs, as well as hand-drawn diagrams provided by each witness. I have reviewed the medical records of Matthew Schantz, the summary report of the Wayne County Grand Jury, and correspondence to and from the Georgia Attorney General's Office. I have consulted scientific and technical information sources as cited in the report. Finally, I have read and considered the following depositions:

Sheriff Benny DeLoach
Lt. Robert Eunice
Captain Kenny Poppell
Chad Gray
John Carter
S.A. Lawrence Kelly
Chief Mark Melton
Randy Aspinwall

My fees for the services I provide are $150 an hour for all services but testimony, for which I charge $200 an hour.

INTRODUCTION

On June 17, 2016, at approximately 2:05 pm, Appling County Deputy Tim Sullivan observed a motorcycle being driven on the roadway without proper registration. Sullivan initiated a traffic stop, however the operator of the motorcycle, later identified as Matthew Schantz, sped away. Sullivan pursued Schantz at speeds exceeding 100 mph, with other deputies quickly joining in the pursuit. The deputies lost sight of Schantz as he entered Wayne County and the pursuit was terminated. Schantz was soon observed by officers and deputies in Wayne County, and they initiated a pursuit. The Wayne County officers advised Appling County deputies that Schantz was heading back toward Appling County on highway 341. Appling County Sheriff Benny DeLoach positioned his police vehicle in the median just north of the intersection of Highway 341 and Brentwood Road and exited with a shotgun. At the same time, ACSO Lt. Robert Eunice positioned his

unmarked truck approximately 200 yards south of the same intersection in the northbound lane. Eunice remained in his truck.

Within minutes, Schantz approached Eunice's position at a high rate of speed. Schantz swerved around Eunice and continued northbound toward Sheriff DeLoach. As he approached the intersection, the sheriff fired his shotgun. Schantz was not hit, and came to a stop in the area where Brentwood Road connects to Highway 341. Schantz momentarily put his hands in the air, and then again accelerated and attempted to cross the intersection and head back south on Highway 341. As he did, the sheriff again fired his shotgun, this time striking Schantz in the neck and face with multiple pellets. At the same time, Eunice maneuvered his truck to the inside of Schantz as Schantz attempted to turn onto southbound 341. Before completing the turn, Schantz crashed his motorcycle and was taken into custody. He was then airlifted to a nearby hospital.

The purpose of the analysis to follow is to review the available evidence and reach an informed conclusion regarding the appropriateness of the officers' actions, especially Sheriff DeLoach's use of deadly force against Schantz.

SCHANTZ INJURIES

Schantz was struck in the neck and face (right side) by four of the eight pellets. His reported injuries were as follows:

1. Right maxillary fracture
2. Right mandible fracture
3. Right orbital wall fracture
4. Right zygomatic fracture
5. Ballistic injuries to right cheek and both nostrils
6. Missing upper right tooth
7. Wound to soft palette
8. Superficial lacerations to right neck
9. Abrasions to legs, torso, and arms (from crash)

SHERIFF DELOACH'S STATEMENT

Sheriff DeLoach submitted to an interview on June 17, 2016, approximately three hours after the shooting incident. The interview was conducted by GBI Special Agent Lawrence Kelly at the Appling County Sheriff's Department in Baxley, Georgia. Regarding specifically his use of force, the Sheriff stated that he first fired a warning shot in the air as Schantz maneuvered around Eunice's position and approached the intersection of Highway 341 and Brentwood Road.[1] He stated that he did so because nothing else had worked to get Schantz stopped. DeLoach stated that Schantz stopped momentarily, raised his hands in the air, but then accelerated again directly at him. DeLoach then raised his shotgun and fired a second time, this one in Schantz's direction.

[1] In his later deposition, DeLoach admitted to firing the warning shot in Schantz's direction and over his head. See deposition of July 13, 2018, page 13 of transcript.

DeLoach stated that he did not aim at Schantz, but rather, pointed the shotgun in Schantz's general direction. He stated that he fired because Schantz was accelerating directly at him, and he did not want to get run over. He stated that Schantz then crossed the intersection, crashed his motorcycle, and attempted to get up and run before Lt. Eunice took him into custody. The Sheriff admitted that his intent with the second shot was to hit Schantz because he feared that he would be run over with Schantz accelerating directly toward him.

THE SHOTGUN BLAST

The characteristics of a shotgun blast can tell us much about the shot's *trajectory* and *distance.* Unlike a single bullet defect in a target, which provides limited information, a shotgun blast provides a pattern of multiple pellet defects that can be interpreted in a particular way. Because all of the pellets are fired at the same time and from the same shell, their trajectories will be generally the same. It is then a matter of triangulating from each defect back to a single point to determine the shooter's general location. In terms of distance, the manufacturers of shotgun ammunition provide test data about each of their product's *spread*, or the distance the pellets from a single shell will spread out from center at various points downrange. As a general rule, 12-gauge 00 buckshot, the type of load Sheriff DeLoach had loaded in his shotgun, will spread 1 inch for

each yard it travels downrange.[2] Referred to as the "40/40 rule," to put in the context of effective range, the pellets from a single shotgun shell will spread 40 inches apart at a distance of 40 yards. To get a distance then, we simply measure the amount of spread between the pellet defects furthest apart, and then compare that to the test data provided by the manufacturer of that particular ammunition.

Shot Trajectory

To determine the trajectory of Sheriff DeLoach's shot, we have two pieces of physical evidence available for analysis; the helmet Schantz was wearing when he was shot, and the motorcycle's right-side mirror, which was hit by multiple pellets. The only witness statement is from the Sheriff himself, as discussed above. Again, he stated to investigators that he fired in Schantz's direction as Schantz accelerated from a stopped position on Brentwood road and headed straight for him. If this were true, then the trajectories of the pellets should be straight on into Schantz and the motorcycle with very little side-to-side deviation.

In looking first at the helmet (see exhibit no. 1), we see that it was hit by three of the shell's eight pellets.[3] Two of the pellets have corresponding exit holes, which

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[2] Houck, M. ed. (2013). Range. *Firearm and toolmark examination and identification*, pages 31-33. Elsevier LTD.

[3] While most 12 ga. 00 buckshot has nine pellets, the type carried by the Sheriff—Hornady "Superformance"—has only eight.

show right-to-left and forward trajectories. This suggests that Sheriff DeLoach fired from behind Schantz and after Schantz had already passed him by. This is further confirmed by the individual entry holes, which clearly show angled shots moving in a forward direction (see exhibit no. 2). Exhibit no. 3 then provides a depiction of the trajectories as they entered and passed through the helmet.

The argument can be made that Schantz could have had his head turned in any particular direction when the pellets struck his helmet, however, as previously stated, the trajectories determined from defects in the helmet must still be reconciled with those in the motorcycle's right-hand mirror, since all 8 pellets were fired at the same time and from the same shell. Also, if Sheriff DeLoach make a straight on shot as Schantz was accelerating toward him, it seems quite impossible that there would be no damage to the front of the motorcycle's fairing, especially the windscreen, if the Sheriff's aim was low enough to hit the mirror. Also, given the trajectories to the helmet shown in exhibit no. 3, for such a trajectory to have been made while Schantz was moving directly at the Sheriff would have required that Schantz have his head turned to the left and approximately three-quarters of the way back to the rear, a difficult task indeed, especially while wearing a helmet.

Exhibit no. 4 shows the three pellet shots to the mirror. All three are clearly angle shots from the side. In fact, the two most rearward shots are actually glancing shots. The pellets did not penetrate the mirror housing.

A close-up of one of the pellet deflects shows a slightly elongated indentation that is pointing in the direction the pellet is moving. This could not have happened with a straight on shot. The third pellet hit on the outer seal ring and passed through. This pellet hit neither Schantz nor the motorcycle's fairing, confirming that it was moving sideways and passed in front of the windscreen after passing through the mirror's outer edge. Also, exhibit no. 5 shows the factory configuration of the 2004 Suzuki GSXR 750. You can see that even with the motorcycle breaking the perpendicular plane of the shooter's line of sight, the back of the mirror is still visible. To the extent that the mirrors have been adjusted even further inward, then the back becomes even more visible.

With regard to the trajectory of the shot then, the defects in both the helmet and the mirror are consistent and support the conclusion that Schantz was passing by the Sheriff when he fired at him, as depicted in exhibit no. 6, which shows the movement of both Schantz and Lt. Eunice.[4] And as further proof, exhibit no. 7 shows a debris field in the area depicted in exhibit no. 6. There is no debris in the area closer to Brentwood Road where DeLoach indicated Schantz would have been when he fired. It does not appear that any investigator took the simple step of finding the pieces of the

[4] In fact, Schantz attempted to tell S.A. Kelly (GBI) during his interview of July 12, 2016, that he was passing DeLoach when he fired, but Kelly abruptly informed him that the mirror was shot from the front. This was not the case, and Kelly had not properly analyzed the pellet defects in the mirror.

mirror in the roadway, which would have confirmed with certainty the location where Schantz and his motorcycle were struck by the pellets. A closer look at this debris field shows what appear to be pieces of the shattered mirror, as well as pieces of the seal ring that was shattered by the one pellet that did not glance off the mirror body. This debris is mixed in with what appear to be pieces of a tire, likely from a semi that previously blew a tire in that same location. It is important to note that this debris field is consistent with the motorcycle's location as depicted in exhibit no. 6. It does not appear that any of this evidence was collected by investigators.

Distance

Determining the distance of a shotgun blast is relatively uncomplicated. We simply measure the amount of pellet spread, and then compare that to any available spread data for the specific type of ammunition, which in this case is Hornady 00 Buckshot. The spread in this case extends from the mirror to the most rearward defect in the helmet. It is simply not possible to get an exact measurement, but assuming Schantz was sitting in a normal riding position (facing forward with both hands on the grips), we can use a conservative estimate of 18 inches. The 40/40 rule would give us a distance from muzzle to target of 54 feet. This is consistent with the measurement obtained on Google Earth (57.5 ft.) by placing the Sheriff in the general location where he stated he was standing, and Schantz in the general location of the debris field.

On the manufacturer's website, no test data could be located for the specific type of ammunition the Sheriff was using (Hornady "Superformance" 2 ¾ 70mm 00 Buckshot). Various independent tests were found online, and while all achieved different results, when the test involved the specific ammunition used by the Sheriff, the results were generally consistent. One test for example, found a 10" spread at 60 feet.[5] While this would indicate that the Sheriff was even further away from Schantz when he fired, given the location of the debris field, it is likely that the Sheriff was further back toward his vehicle than what is depicted in exhibit no. 6. Using the most conservative estimate of distance then, we can say with some degree of certainty that the Sheriff fired from a distance of at least 54 feet.

Conclusion

Given the trajectory and distance information above, it is reasonable to conclude the following regarding the shotgun blast:

1. The Sheriff did not shoot straight-on at Schantz as Schantz accelerated directly at him from Brentwood Road. There are no pellet strikes to the motorcycle's fairing or windscreen, and there is no debris anywhere in the roadway between the Sheriff's general location and where Schantz would have been had he been accelerating toward him.

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[5] https://www.youtube.com/watch?v=kfl1iCzcnvY

2. Had Schantz been accelerating toward the Sheriff when he was hit by the shotgun blast, the trajectories through the helmet would have required that Schantz have his head turned to the left and three-quarters of the way to the rear at the time, a feat that would have been difficult, if not impossible, while wearing a helmet.

3. Two of the three pellets that hit the mirror actually glanced off due to the angle at which the shot was taken, which was from the side and slightly behind the motorcycle.

4. The debris field in the center of the intersection (see exhibit no. 7), which is consistent with the Sheriff having fired from the side as the motorcycle passed him by, includes pieces of broken glass and what appear to be pieces from the mirror's seal ring. Both were missing from the motorcycle when it came to rest.

5. Using an approximate and conservative measure of the pellets' spread, the Sheriff fired at a distance of over 50 feet from the motorcycle as it passed him by

6. At no time was the Sheriff ever in the motorcycle's path.

LT. EUNICE'S MANEUVER

Exhibit no. 6 depicts the movement of Lt. Eunice while in the immediate area of the shooting. This depiction is based on Eunice's interview of July 17, 2017 with GBI Special Agent Will Ivey, as well as the hand drawn

diagram he provided during that interview. When it came to describing how the front end of his truck ended up atop the motorcycle on the shoulder of southbound 341 however, Eunice had very little specific to say, and S.A. Ivey made no effort to pursue that line of questioning. No other witnesses, including the Sheriff, recalled anything specific about Eunice's movements, and no witness was questioned to any significant degree by the GBI investigators on that issue.

It is not disputed that Schantz crashed his motorcycle in the southbound lane of 341. The gouge marks in the pavement show that at the time he crashed, he was moving straight toward the outside shoulder of the road. Both Eunice and the Sheriff stated that after he crashed, Schantz stood and ran toward the trees south of the highway, and that only when Eunice yelled at him did he turn around and come back to Eunice's truck to surrender himself. These circumstances, along with the fact that Eunice's truck ended up on top of the motorcycle, lead to a number of questions:

1. If Schantz intended to flee south back toward Jessup on 341, why was headed straight toward the outside shoulder of the road when he crashed? (see exhibit no. 6)

2. If Schantz lost control of the motorcycle because he was so badly injured by the shotgun blast, then how was it that he was able to get back up and start running toward the trees?

3. If he was able to maintain control of the motorcycle in spite of his injuries, then why did he not simply stop the motorcycle and get off

> to surrender himself rather than lay it down on the pavement and cause himself further injury?

No one, including Eunice, has really explained how his truck ended up on top of the motorcycle. During Eunice's interview, it was Special Agent Ivy, and not Eunice, who suggested that Eunice must have slid in the sand and gravel as he approached the downed motorcycle, and was unable to stop in time. But we can see in exhibit no. 8, there was neither sand nor gravel on the road in that area. Furthermore, there are no visible brake or skid marks behind the truck indicating a sudden stop. So the question is, what exactly happened that led to the contact.

It is reasonable to conclude, as depicted in exhibit no. 6, that as Schantz accelerated across 341 toward the southbound lane, taking the shotgun blast as he passed by the Sheriff, Eunice attempted to turn the corner on the inside of Schantz and prevent him from heading back south by forcing him to the shoulder. This is an ill-advised and dangerous maneuver, but not uncommon in law enforcement, especially during a high speed chase. It is also reasonable to conclude that upon seeing Eunice's truck, Schantz accelerated to pass Eunice on the outside and either crashed by accelerating too quickly and spinning out, or by being bumped by Eunice as he pulled back to his left in front of Eunice's truck to accelerate forward in the southbound lane.

In his own interview, Schantz stated only that he laid the motorcycle down after being shot. Given that he was badly injured by then, and the fact that Eunice would have made contact with Schantz's rear tire with his front push bar, it is possible that Schantz may not have known or remembered that Eunice made contact. This would account for the chaotic way the two vehicles came to a stop, one on top of the other. And while Eunice offered very little about how this happened, Chief Deputy Mark Melton provided a more detailed account in his interview with GBI Special Agent Kelly on June 17, 2016. Kelly summarized Melton's statement as follows:

> "*Investigator Eunice briefed Chief Deputy Melton about what had happened. Investigator Eunice reported that he and Sheriff DeLoach stopped in the median of United States Highway 341 and waited for Schantz. Schantz sped past Investigator Eunice and turned to cross the highway to head for Jessup, Georgia, and Investigator Eunice gave chase. Investigator Eunice was behind Schantz when Schantz crashed his motorcycle, which slid to the shoulder of the road. Investigator Eunice's truck skidded to a stop atop Schantz's motorcycle. Schantz got up and ran toward the wood line, but he stopped when Investigator Eunice called to him.*"

Eunice admits to being behind the motorcycle when it crashed. He would only have been behind the motorcycle after beginning his turn left toward the southbound lane, which means they had to be very close when

Schantz crashed because he did so almost immediately after attempting to turn south. In the audio recording of the interview, Eunice makes it clear that his intentions were to prevent Schantz from heading back south on 341. He also states that he heard the gunshot just as he was turning, which is consistent with the shooting location depicted in exhibit no. 6.

The issue with Eunice's truck is that at the very least it was reckless to attempt to force Schantz off the road. At the other end of the spectrum, if in fact Eunice did purposely make contact with Schantz in an effort to terminate the pursuit, then that would rise to the level of force, and given the potential for death or serious injury to the person on the motorcycle, it must be considered deadly force. In this case, there was no justification whatsoever to make contact with the motorcycle, if in fact Eunice did. It is not merely a hypothetical in this case. After all, Eunice's truck did end up on top of the motorcycle, so to understand the total picture in terms of the amount and type of force used against Schantz, it is important to take into consideration what we know about Eunice's actions.

VIDEO ANALYSIS

Only one dash cam captured part of the incident. Wyatt's dash cam brings the incident scene into view as he turns his vehicle around approximately half a second after DeLoach fired the second shot. The video and accompanying audio provide the following timeline:

00:54 Eunice broadcasts "He's right by the sheriff . . . right by the sheriff!"

01:00 Eunice's truck comes into view turning the corner and appearing to strike Schantz.

01:03 Eunice yells "10-50" (accident).

01:14 Eunice (unintelligible)

01:15 Eunice himself comes into view outside his truck standing over Schantz who is now on the ground by Eunice's door (see exhibit no. 9). At this same time Eunice broadcasts "10-10" (suspect fighting).

We know from Eunice's original statement to the GBI investigator that he was "a couple hundred yards" south of the intersection when Schantz passed him by heading north in the direction of Sheriff Deloach's location. We also know that as Eunice turned around in his truck, Schantz was coming to a stop on Brentwood Road. It is reasonable to conclude that this is when Eunice broadcast "He's right by the sheriff . . . right by the sheriff." He said nothing about the Sheriff shooting, nor did he say anything about Schantz taking off again. His truck would come into view 6 seconds later rounding the corner and appearing to strike Schantz. For them to be that close to each other, working backwards in time, the timeline supports that Eunice made his first broadcast (as shown above) when Schantz was stopped on Brentwood Road.

It is standard procedure in policing that when a person being chased crashes, "10-50" is immediately broadcast. Most importantly, it signals the other officers to slow down or discontinue their involvement in tightening the dragnet, and thus it is a safety issue. Eunice Broadcasts "10-50" in almost the exact spot shown in exhibit no. 6 where the two vehicles converge. He would not have watched Schantz crash and then wait for a period of time to make the broadcast. It would have been immediate. It supports the idea that Eunice did in fact bump Schantz with his truck, causing him to immediately lose control of the motorcycle. The contact would have been to Schantz's rear tire with Eunice's front push bar, a maneuver that leaves no contact evidence.

The video evidence also refutes the idea that Schantz jumped up and ran 20 feet toward the trees. Aside from the fact that it would have been difficult with serious head wounds, the video shows that only 12 seconds after Eunice broadcast "10-50," he (Eunice) is on top of Schantz struggling with him by the door of his truck. The fact that they were struggling is supported by two things. First, at the same time Eunice comes into view on top of Schantz—Schantz is on the ground attempting to get up it appears—Eunice broadcasts "10-10," which is the code for a physical altercation. Secondly, Deputy Cody Leggett, in his statement to GBI investigators,[6] stated that when he drove up it appeared that Schantz and Eunice were struggling. Leggett pulled up

[6] See Leggett interview of June 17, 2016 with GBI Special Agent Kelly.

at the very same time as Wyatt—his vehicle can be seen on Wyatt's dash cam—so we know it took only approximately 15 seconds to reach that location. It seems unlikely, if not impossible for Schantz to have jumped up from the ground with serious head wounds, take off running toward the trees for a distance of at least 20 feet, stop and turnaround, and then return to Eunice's truck door presumably compliant, yet somehow end up on the ground with Eunice on top of him; and all this in just 10-15 seconds. So the narrative of Schantz running toward the trees seems to be less than accurate. Even Leggett stated that he saw Schantz run for the trees before he saw Eunice struggling with him. This would have been impossible. Aside from the timeline problem, Leggett had the same view as Wyatt (as seen on the dash cam), and is seen arriving at the same time. Their view of Schantz and Eunice was blocked by the truck until they actually passed it by slightly when they pulled up next to it.

SUMMARY & CONCLUSIONS

The shooting of Matthew Schantz by Sheriff DeLoach represents yet another case where the excitement of a police pursuit blinded the officers involved—particularly Sheriff DeLoach and Lt. Eunice—to their better judgment. Given the physical evidence that has been reviewed and analyzed, we can say with a reasonable amount of certainty that DeLoach fired upon Schantz after Schantz had already passed him by, and from a distance of over 50 feet. He thus chose to use deadly force at a time when he was in no reasonable

apprehension of being struck by the motorcycle. Even firing a warning shot, which by his own admission was fired over Schantz's head at a 45-degree angle to the ground, and at a time when Schantz was sliding to a stop on Brentwood Road, demonstrated a reckless disregard for Schantz's safety.

It is thus the conclusion of this expert that the use of deadly force by Sheriff DeLoach was inappropriate and excessive in the context of accepted police training and standards of practice related to the issue of force.

/s/ William M. Harmening
William M. Harmening
08/01/2018

EXHIBITS

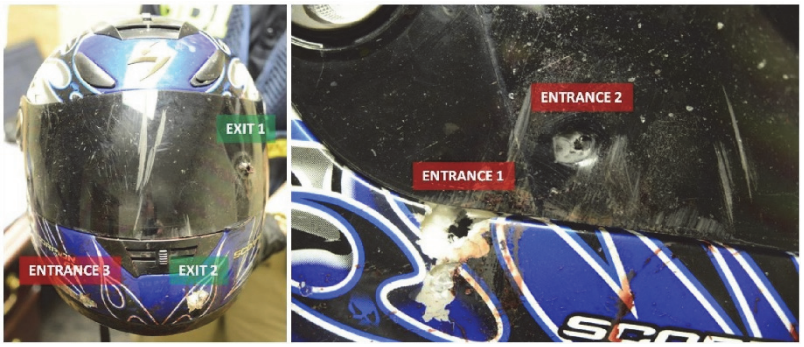

EXHIBIT NO. 1: The three pellet shots that struck Schantz's helmet (red), with corresponding exit defects for two of them (green).

EXHIBIT NO. 2: Elongated pellet defects confirm angled shot.

EXHIBIT NO. 3: Approximate trajectories of the three pellets that struck the helmet based on corresponding exit defects.

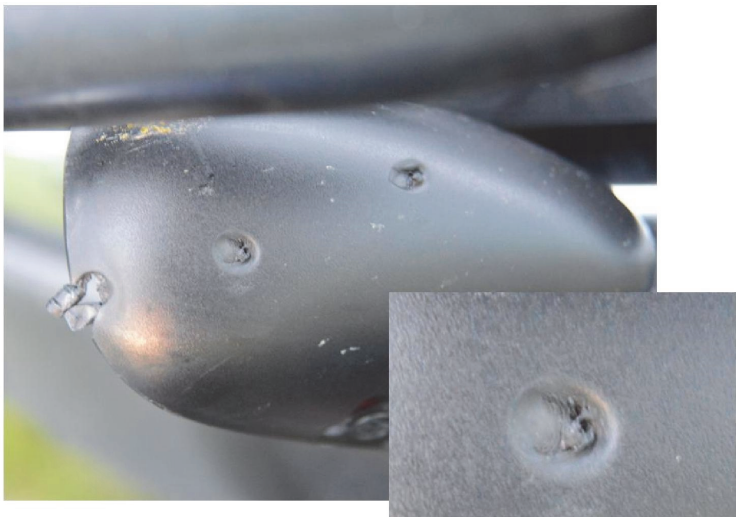

EXHIBIT NO. 4: The three pellet strikes to the right mirror. A close-up of the middle defect clearly shows an angled glancing strike with no penetration.

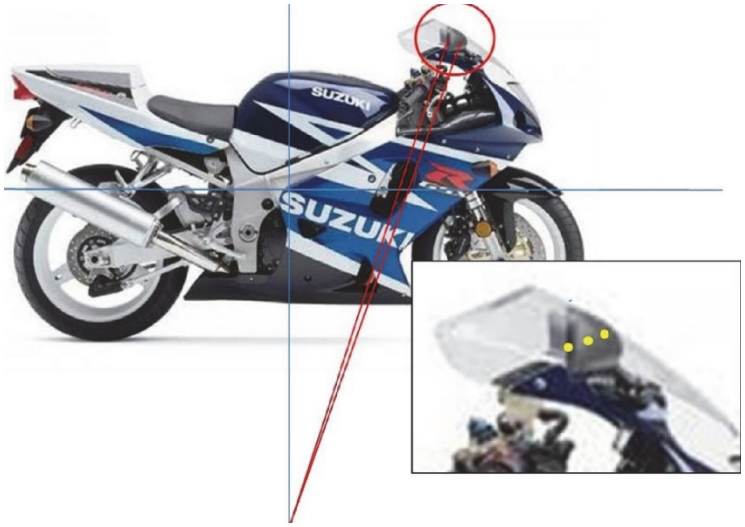

EXHIBIT NO. 5: Factory configuration of the 2004 Suzuki GSX R750. Shows that the back side of the mirror is still visible even when the front of the motorcycle is past the center point. Close-up shows the locations of the three pellet strikes.

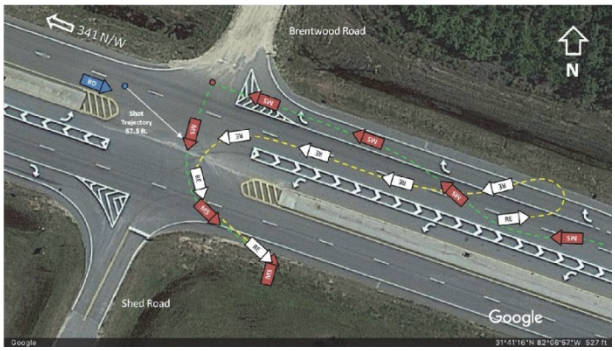

EXHIBIT NO. 6: The incident scene at the intersection of highway 341 and Shed/Brentwood Road. The diagram shows the approximate location of Sheriff DeLoach (BD), and the movement of both Lt. Eunice (RE) and Schantz (MS). The diagram also shows the approximately trajectory of the second shotgun blast, and Schantz's location when he was struck by the pellets from the blast.

EXHIBIT NO. 7: The debris field in the middle of the intersection where Schantz was struck by the pellets. Some of the debris appears to be from a previous tire failure on a semi, however, the close-up shows what are suspected to be pieces of the mirror glass, as well as part of the mirror's seal ring that was hit by a pellet and shot out of the mirror housing.

EXHIBIT NO. 8: Eunice's unmarked truck where it came to rest on top of the motorcycle. You can clearly see from the gouge marks that confirm Schantz's direction of travel was toward the shoulder of the road. Also, the road in that area is clear of any sand or gravel that would have caused Eunice to slide when he braked. Furthermore, there are no brake or skid marks showing a sudden stop.

EXHIBIT NO. 9: Frame capture from Wyatt's dash cam shows Eunice struggling with Schantz. At this same time Eunice broadcasts "10-10" (suspect fighting).

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

MATTHEW SCHANTZ, Plaintiff, v. BENNY DELOACH, former Sheriff of Appling County, Georgia, in his individual capacity, Defendant.	*	CIVIL ACTION FILE NO. 2:17-cv-157

SWORN DECLARATION OF MATTHEW SCHANTZ

(Filed Mar. 1, 2019)

COMES NOW Matthew Schantz, being duly sworn and legally competent to testify, and hereby deposes and states as follows:

1. I, Matthew Schantz, am the Plaintiff in the above styled action. Last week I attended oral argument of Defendant's summary judgment motion, and since the Court granted both sides an additional ten days to supplement the record, I am submitting this affidavit to respond to certain comments made during oral argument.

2. While I did ride my motorcycle at speeds in excess of 100 miles per hour on the open four-lane road to put distance between myself and the police, I did not drive recklessly, erratically, or in any

way that would put other people at danger. I was an experienced motorcycle racer with over fifteen years of track and highway experience, and at no point was I not in control of the bike nor was I ever outside my comfort zone as a rider.

3. This was not a high-speed chase where the police were led on a long distance pursuit. Instead, I would characterize it as a series of brief encounters where I tried to avoid contact with the police, which I accomplished in a safe manner when the opportunity presented itself by accelerating in short bursts to put them behind me. I was so far ahead of them that they never came close to catching me, and I was maintaining a diligent lookout at all times. The police were only in my sight for the first few minutes when they tried to pull me over, and once I left Baxley and was alone on the open road, I never saw any police again until I got to the first roadblock. When I saw that roadblock ahead, I turned around, then turned off on a side road and doubled back on a parallel road. That lead me back to 341, where I headed back towards Perry. I did not see them again until I came to the second roadblock, where I was shot by Defendant when I was driving away from him as described in my deposition.

4. The one time that I went through a red light was done in a safe manner. I slowed down and made sure the road was clear before I went through the intersection. At no time did I run anyone off the road or otherwise threaten the safety of other motorists.

5. At the time I was shot, nobody was in my path or otherwise at imminent risk of harm. I was not a lethal threat to anyone at the time and place I was shot. To the contrary, I was clearly trying to avoid the police, not threaten them, and it should have been obvious that I was just trying to get away without anyone getting hurt, myself included.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate.

So sworn this 28th day of February, 2019.

/s/ Matthew Schantz
MATTHEW SCHANTZ

[Certificate Of Service Omitted]