United States Court of Appeals for the Fifth Circuit

No. 23-50623
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 25, 2024
Lyle W. Cayce
Clerk

TYRONE STAFFORD,

Plaintiff—Appellant,

versus

ARNOLD S. ZWICKE, *Executive Sheriff, Guadalupe County Sheriff's Office*; MAGISTRATE JUDGES, *Guadalupe County*; COUNTY/DISTRICT ATTORNEY, *Guadalupe County*; DISTRICT COURT OF TEXAS JUDGES 274TH, *25th, 2nd 25th, Guadalupe County*; GUADALUPE COUNTY COMMISSIONERS; GREG ABBOTT; KEN PAXTON; DAVE WILBORN, *Guadalupe County Attorney*; ARLENE GAY; TILLIE LUKE; GUADALUPE COUNTY COURT AT LAW #1; GUADALUPE COUNTY COURT AT LAW #2; SUPREME COURT OF TEXAS; CORPORAL F/N/U DOSS, *Guadalupe County Sheriff's Office*; G. I. CASTILLO, *Guadalupe County Sheriff's Office*; DEPUTY F/N/U/ GIPSON, *Guadalupe County Sheriff's Office*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:22-CV-314

Before SMITH, SOUTHWICK, and WILSON, *Circuit Judges*.

PER CURIAM:*

Tyrone Stafford filed a 42 U.S.C. § 1983 complaint alleging that deputies of the Guadalupe County Sheriff's Office used excessive force during a traffic stop in January 2022. The district court granted summary judgment in favor of the defendants, concluding that Stafford failed to demonstrate a constitutional violation. Stafford moves to proceed *in forma pauperis* ("IFP") on appeal, which constitutes a challenge to the district court's certification that any appeal would not be taken in good faith because Stafford will not present a nonfrivolous appellate issue. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Stafford's motion to supplement his reply brief is GRANTED.

Stafford devotes a majority of his initial brief to challenging the legality of his arrest. He does not meaningfully question the district court's reasons for finding that the deputies did not use excessive force and therefore were entitled to qualified immunity. Thus, Stafford abandons the primary issue on appeal. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Furthermore, Stafford abandons his § 1983 claims against the remaining defendants by not raising them on appeal. *See Yohey v. Collins*, 985 F.2d 222, 224–25 (5th Cir. 1993). Accordingly, Stafford fails to raise a nonfrivolous issue with respect to the summary judgment. *See Baugh*, 117 F.3d at 202 n.24; FED. R. CIV. P. 56(a).

The appeal is without arguable merit and is thus frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, the motion to proceed IFP on appeal is DENIED, and the appeal is DISMISSED. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

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* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
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NEW ORLEANS, LA 70130

March 25, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 23-50623 Stafford v. Zwicke
USDC No. 5:22-CV-314

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

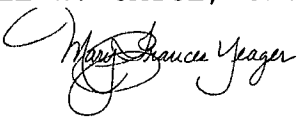
Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By:_____
Mary Frances Yeager, Deputy Clerk

Enclosure(s)

Mr. Jason Eric Magee
Mr. Tyrone Stafford

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TYRONE STAFFORD,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
ARNOLD S. ZWICKE, Executive Sheriff, Guadalupe County Sheriff's Office; DEPUTY BETHANY GIPSON, Guadalupe County Sheriff's Office; CORPORAL F/N/U DOSS, Guadalupe County Sheriff's Office; G.I. CASTILLO, Guadalupe County Sheriff's Office; DAVID WILBORN, Guadalupe County Attorney; and GUADALUPE COUNTY COMMISSIONERS,[1]	§	**SA-22-CV-00314-OLG**
	§	
Defendants.	§	

ORDER

Before the Court are *pro se* Plaintiff Tyrone Stafford's ("Stafford") 42 U.S.C. § 1983 Amended Civil Rights Complaint, the Amended Motion for Summary Judgment filed by Defendants Guadalupe County Sheriff Arnold S. Zwicke, Guadalupe County Deputy Bethany Gipson, Guadalupe County Corporal F/N/U Doss, Guadalupe County Deputy G.I. Castillo, Guadalupe County Attorney David Wilborn, and the Guadalupe County Commissioners (collectively "Defendants"), Stafford's responses in opposition to the amended motion for

[1] In their Amended Motion for Summary Judgment, Defendants fully identify the Defendant named by Plaintiff Tyrone Stafford as "Deputy F/N/U Gipson, Guadalupe County Sheriff's Office" as Deputy Bethany Gipson. (Dkt. No. 27). Additionally, pleadings filed by the parties identify the Defendant originally identified as "Dave Wilborn, Guadalupe County Attorney" as "David Wilborn, Guadalupe County Attorney. (Dkt. Nos. 14, 27). Accordingly, the Clerk of Court is directed to change the style of the case to reflect these Defendants' full and proper names as set out in the style of this Order. Finally, the Court notes that although Plaintiff Tyrone Stafford refers to the law enforcement Defendants as employees of the Guadalupe County Sheriff's "Department," that entity's proper name is the Guadalupe County Sheriff's "Office." *See* Guadalupe County TX Sheriff's Office (guadalupecountysherifftx.org) (last visited Aug. 21, 2023). The Court will refer to the entity by its proper name, and the Clerk of Court is directed to change the style of the case to reflect this.

summary judgment, and Stafford's Motion for Judgement as a Matter of Law. (Dkt. Nos. 14, 27, 28, 29, 34, 41, 45). Upon review, the Court orders Defendants' Amended Motion for Summary Judgment **GRANTED**. (Dkt. No. 27). The Court further orders Defendants' Motion to Dismiss and Stafford's Motion for Judgment as a Matter of Law **DISMISSED WITHOUT PREJUDICE AS MOOT**. (Dkt. No. 19, 45).

BACKGROUND

In January 2022, Stafford was arrested in Guadalupe County and charged with: (1) possession of a controlled substance in Penalty Group 1; (2) resisting arrest, search, or transport; and (3) possession of marijuana in an amount less than two ounces. *See* https://portal-txguadalupe.tylertech.cloud/PublicAccess/JailingDetail.aspx?JailingID=181146 (last visited Aug. 21, 2023). The charges were subsequently dismissed, and Stafford was released from custody May 7, 2022. (*Id.*); *see* (Dkt. No. 10). While still confined in the Guadalupe County Jail, Stafford filed a civil rights action against numerous individuals and entities from Guadalupe County. (Dkt. No. 1). Upon review, the Court determined the Complaint was deficient and ordered Stafford to file an amended complaint. (Dkt. No. 5). Ultimately, Stafford filed an Amended Complaint in which he named the following Defendants: (1) Arnold S. Zwicke, Executive Sheriff, Guadalupe County Sheriff's Office ("the Sheriff"); (2) Guadalupe County Commissioners; (3) David Wilborn, Guadalupe County Attorney ("the County Attorney"); (4) Corporal F/N/U Doss, Guadalupe County Sheriff's Office ("Deputy Doss"); (5) G.I. Castillo, Guadalupe County Sheriff's Office ("Deputy Castillo"); and (6) Deputy Bethany Gipson, Guadalupe County Sheriff's Office ("Deputy Gipson"). (Dkt. No. 14). Stafford appears to take issue with events related to his January 29, 2022 arrest.

Stafford contends that on January 29, 2022, Deputy Gipson initiated a traffic stop during which she determined Stafford had an outstanding warrant. (*Id.*). According to Stafford, Deputy Gipson called for back up and when Deputies Doss and Castillo arrived, they used excessive force during his arrest—including improper neck restraint. (*Id.*). Stafford alleges the excessive force occurred while the deputies were removing him from his vehicle and placing him in a patrol vehicle. (*Id.*). Stafford claims Deputy Gipson "failed to intervene," suggesting a claim for bystander liability based on her alleged failure to prevent the actions by Deputies Doss and Castillo. (*Id.*).

As to the remaining Defendants, Stafford claims the Sheriff failed to train his deputies regarding the use of excessive force, specifically referencing article 2.33 of the Texas Code of Criminal Procedure, which precludes a peace officer's use of choke holds or similar neck restraints during searches or arrests unless necessary to prevent serious bodily injury to or the death of the officer or another person. (*Id.*); *see* TEX. CODE CRIM. PROC. ANN. art. 2.33.[2] He claims the Guadalupe County Commissioners and the County attorney failed to supervise or implement policies with regard to this same use of excessive force. (*Id.*).

After the Court secured service on Defendants, they filed a joint motion to dismiss, which the Court ordered converted to a motion for summary judgment. (Dkt. Nos. 19, 26). In the conversion Order, the Court ordered Defendants to file, if they desired, an amended motion for summary judgment or additional summary judgment evidence. (Dkt. No. 26). In response, Defendants filed their amended motion for summary judgment. (Dkt. No. 27). Thereafter, Stafford filed various single–page responses to Defendants' amended motion for summary

[2] Although the text will not change, effective September 1, 2023, article 2.33 will be renumbered and appear in the Texas Code of Criminal Procedure as article 2.34. *See* Acts 2023, 88th Leg., H.B. 4595, § 24.001(6) (eff. Sept. 1, 2023).

judgment, the majority of which are unresponsive to the summary judgment grounds set forth by Defendants or his stated § 1983 claims. (Dkt. Nos. 28, 2, 34, 41).

ANALYSIS

Standard of Review

A district court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *see Funches v. Progressive Tractor & Implement Co., L.L.C.*, 905 F.3d 846, 849 (5th Cir. 2018). Where the nonmovant bears the burden of proof at trial, the summary judgment movant must offer evidence that undermines the nonmovant's claim or point out the absence of evidence supporting essential elements of the nonmovant's claim; the movant may, but need not, negate the elements of the nonmovant's case to prevail on summary judgment. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 885 (1990). A complete failure of proof on an essential element of the nonmovant's case renders all other facts immaterial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Once the movant shows entitlement to judgment as a matter of law, the nonmovant must bring forward *evidence* to create a genuine issue of material fact. *Giles v. Gen. Elec. Co.*, 245 F.3d 474, 493 (5th Cir. 2001). "The *evidence* of the non–movant is to be believed, and all *justifiable* inferences are to be drawn in his favor." *Darden v. City of Fort Worth*, 880 F.3d 722, 727 (5th Cir.), *cert. denied*, 139 S.Ct. 69 (2018) (emphasis added) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). Mere allegations in the nonmovant's complaint are not evidence. *Wallace v. Tex. Tech Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996). However, verified allegations in an inmate–plaintiff's complaint are deemed competent summary judgment

evidence. *See Al–Raid v. Ingle*, 69 F.3d 28, 32 (5th Cir. 1995). Nevertheless, even verified allegations cannot defeat summary judgment if they are simply "conclusory allegations," "unsubstantiated assertions," or constitute "only a scintilla of evidence." *Little v. Liquid Air. Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994); *see Hunt v. Pierson*, 730 F. App'x 210, 212 (5th Cir. 2018) (quoting *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007)).

However, the usual summary–judgment burden of proof does not apply when a defendant moves for dismissal based on qualified immunity. *See Tucker v. City of Shreveport*, 998 F.3d 165, 173 (5th Cir. 2021); *Escobar v. Montee*, 895 F.3d 387, 393 (5th Cir. 2018). Although nominally an affirmative defense, when a defendant properly pleads qualified immunity, the burden shifts to the plaintiff to negate the defense by demonstrating the defendant is not entitled to immunity. *Tucker*, 998 F.3d at 173; *Escobar*, 895 F.3d at 393. To negate the defense, a plaintiff show a violation of an actual constitutional right that was clearly established at the time of the alleged violation. *Tucker*, 998 F.3d at 173; *see Ashcroft v. al–Kidd*, 563 U.S. 731, 735 (2011). Despite this shifting burden, a court must still "view the facts in the light most favorable to the nonmovant." *Darden*, 880 F.3d at 727.

Whether qualified immunity is at issue or not, the Fifth Circuit requires a nonmovant to submit "significant probative evidence" from which the jury could reasonably find for the nonmovant. *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 118 (5th Cir. 1990). The non–movant's evidence must raise more than some "metaphysical doubt as to the material facts." *Funches*, 905 F.3d at 849. A genuine issue of fact does not exist "if the record taken as a whole could not lead a rational trier of fact to find for the non–moving party." *Hunt*, 730 F. App'x at 212 (quoting *City of Alexandria v. Brown*, 740 F.3d 339, 350 (5th Cir. 2014)).

Analysis

In their motion for summary judgment, Defendants contend they are entitled to qualified immunity. (Dkt. No. 27). Defendants contend Stafford has failed to establish a constitutional violation as to any of his § 1983 claims. (*Id.*). *See Tucker*, 998 F.3d at 173; *see also al–Kidd*, 563 U.S. at 735.

Qualified immunity has been described as "'an entitlement not to stand trial or face the other burdens of litigation.'" *Staten v. Adams*, 939 F. Supp. 2d 715, 723 (S.D. Tex. 2013) (quoting *Saucier v. Katz*, 533 U.S. 194, 199–200 (2001)), *aff'd*, 615 F. App'x 223 (5th Cir. 2015). Qualified immunity "provides ample protections to all but the plainly incompetent or those who knowingly violate the law." *Id.* (quoting *Malley v. Briggs*, 475 U.S. 511, 526 (1986)). It is a shield from "'undue interference'" with a government official's duties and "'potentially disabling threats of liability.'" *Collie v. Barron*, 747 F. App'x 950, 952 (5th Cir. 2019) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982)).

Once a defendant pleads qualified immunity, the Court must undertake a two–pronged inquiry. *Tolan v. Cotton*, 572 U.S. 650, 655 (2014) (per curiam). Under the first prong, the Court must determine whether the facts alleged by the plaintiff establish or "make out a violation of a constitutional right." *Darden*, 880 F.3d at 727 (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)); *Bush v. Strain*, 513 F.3d 492, 500 (5th Cir. 2008). The second prong requires the Court to determine whether the defendant's actions were objectively reasonable in light of the law that was "clearly established" at the time of the alleged constitutional violation. *Darden*, 880 F.3d at 727; *Haverda v. Hays Cnty.*, 723 F.3d 586, 598 (5th Cir. 2013).

A. Excessive Force—Deputies Doss and Castillo

Stafford asserts excessive force claims against Deputies Doss and Castillo. (Dkt. No. 14). He contends the Deputies used excessive force, stating *in toto*: "Doss grabbed my neck without a word, [Doss] and Castillo pulled me out [of] the car and on the way back to the [patrol vehicle] Doss tried to slam me into the [patrol vehicle], [and] we fell. Doss put me in another neck restraint and pulled out his pepper spray. Castillo was on my right leg and shoulder." (Dkt. No. 14). In one of his summary judgment responses, Stafford states he was "choked twice." (Dkt. No. 29). Stafford makes no statement as to any injury he might have suffered during the described event other than when, in the same summary judgment response, he states he "sustained injuries during arrest and [is] still injured." (*Id.*).

When, as here, a plaintiff alleges law enforcement officials used excessive force while making an arrest, the federal right at issue is the Fourth Amendment right against unreasonable seizures. *Tolan*, 572 U.S. at 656. Thus, in this case, prong one of the qualified immunity inquiry asks whether Stafford established Deputies Doss and Castillo violated his Fourth Amendment rights when they took the actions described in the preceding paragraph. *See, supra*; *see also Darden*, 880 F.3d at 727.

A Fourth Amendment violation occurs when an arrestee "suffers an injury that results directly and only from [the officer's] clearly excessive and objectively unreasonable use of force." *Betts v. Brennan*, 22 F.4th 577, 582 (5th Cir. 2022) (quoting *Joseph ex rel. Estate of Joseph v. Bartlett*, 981 F.3d 219, 332 (5th Cir. 2020)). The officer's actions are viewed from "the perspective of a reasonable officer on the scene, rather than … the 20/20 vision of hindsight." *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Several factors guide this Court's

analysis, including: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the officers' safety or the safety of others; (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and (4) the relationship between the need for force and the amount of force used. *Id.* When officers encounter an uncooperative arrestee, they are entitled to use "measured and ascending actions that correspond to [the arrestee's] escalating verbal and physical resistance." *Id.* "[T]he right to make an arrest ... necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham*, 490 U.S. at 396.

As summary judgment evidence, Defendants presented two probable cause affidavits executed by Deputy Gipson and a sworn statement from Stafford's passenger. (Dkt. No. 27, Exh. 1). In her affidavits, Deputy Gipson states she initiated a traffic stop based on an obstructed license plate and made contact with Stafford, who was driving the vehicle. (*Id.*). While talking to Stafford, Deputy Gipson states she "detected the odor of fresh [m]arijuana emitting from inside the vehicle." (*Id.*). Stafford's marijuana use was substantiated by his passenger who swore that as the two were driving, Stafford "lit up a blunt with weed."[3] (*Id.*). Moreover, according to Deputy Gipson, Stafford admitted to possessing the drug. (*Id.*).

At some point, Deputy Gipson called for assistance; Deputies Doss and Castillo arrived. (Dkt. No. 14). Deputy Gipson attempted to detain Stafford, instructing him "multiple times to place his hands behind his back." (Dkt. No. 27, Exh. 1). Stafford refused to comply. (*Id.*). Deputies Doss and Castillo intervened to secure Stafford, but he "pulled away from deputies trying to effect a lawful search and arrest." (*Id.*). Stafford continued his refusal to obey

[3] The passenger identified Stafford as his niece's husband and stated the two men were driving to a boxing match. (Dkt. No. 27, Exh. 1).

commands from law enforcement, pulling his hands under his chest—apparently he was on the ground as he describes in his Amended Complaint. (Dkt. Nos. 14; 27, Exh. 1). Ultimately, the deputies subdued Stafford, which allowed Deputy Gipson to search his vehicle. (Dkt. No. 27, Exh. 1). During the search, she found two plastic bag containing marijuana and an orange pill bottle, which did not belong to Stafford, containing Oxycodone. (*Id.*).

Considering the *Graham* factors, as discussed in *Betts*, and the elements necessary to establish excessive force, the Court finds the summary judgment evidence establishes an absence of excessive force by Deputies Doss and Castillo. *See Betts*, 22 F.4th at 582. Although the initial stop was based on a traffic offense, Deputy Gipson detected the odor of marijuana, Stafford admitted to possessing the narcotic, and his passenger admitted Stafford was using marijuana while driving. Driving under the influence of a narcotic is a serious offense that endangers the driver, his passengers, and the public at large. Stafford's refusal to obey commands and active resistance to attempts to arrest him posed an immediate threat to the Deputies and to the public, particularly given these events were taking place on the side of a public road. (Dkt. No. 27, Exh. 1).

Stafford claims he was grabbed by the neck, some sort of neck restraint was used, he and Doss fell when Doss "tried" to slam him into the patrol vehicle, pepper spray was exhibited but apparently never used, and Castillo "was on my right leg and shoulder." (Dkt. No. 14). The summary judgment evidence and Stafford's claims regarding the events suggest a struggle based on Stafford's resistance, not an unnecessary or unreasonable use of force. Stafford does not deny Deputy Gipson's verified statement that he refused multiple orders to place his hands behind his back and resisted Deputies' efforts to secure him when he refused, pulling away and hiding his

hands beneath his body. As to any injury, other than Stafford's conclusory statement that he "sustained injuries during arrest and [is] still injured[,]" there is no evidence he suffered any injury as a result of the Deputies' efforts to restrain and arrest him. (Dkt. No. 29). Additionally, Stafford does not describe the injury he contends he suffered as a result of the alleged excessive force, making it impossible for the Court to determine whether the injury was sufficient to establish a Fourth Amendment violation. (Dkt. Nos. 14, 29). His self–reported, undefined injury is entitled to little if any weight in the Court's review.

Based on the evidence, the Court finds Defendants have established an absence of excessive force and as to qualified immunity, Stafford has failed to carry his burden to show a Fourth Amendment violation. *See Tucker*, 998 F.3d at 173; *see also al–Kidd*, 563 U.S. at 735. Although there was a physical encounter between Stafford and the Deputies, the Fourth Amendment gives law enforcement officials "'fair leeway for enforcing the law in the community's protection[,]'" *Heien v. North Carolina*, 574 U.S. 54, 60–61 (2014) (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)), and "'[n]ot every push or show, even if it may later seem unnecessary in the peace of a judge's chambers' violates the Fourth Amendment." *Graham*, 490 U.S. at 396–Here, the summary judgment evidence shows Stafford refused multiple orders to place his hands behind his back and physically resisted efforts to arrest him. (Dkt. No. 27, Exh. 1). The "evidence" presented by Stafford to support his claim of excessive force consists of nothing more than the conclusory and unsubstantiated allegations in his Amended Complaint and one summary judgment response. (Dkt. Nos. 14, 29). These types of allegations, though verified, constitute but a scintilla of evidence and are insufficient to defeat summary judgment. *See Little*, 37 F.3d at 1075; *Hunt*, 730 F. App'x at 212. In sum, given the

evidence, a rational factfinder would not find for Stafford on his claim of excessive force, thereby entitling Deputies Doss and Castillo to summary judgment. *See Hunt*, 730 F. App'x at 212.

B. Bystander Liability—Deputy Gipson

Stafford alleges "failure to intervene," by Deputy Gipson, which the Court interprets as a claim of bystander liability for failing to intervene when the other Deputies allegedly used excessive force. (Dkt. No. 14). A law enforcement officer may be liable under § 1983 under a theory of bystander liability where the officer (1) knows another officer is violating an individual's constitutional rights, (2) has a reasonable opportunity to prevent the harm, and (3) chooses not to act. *Whitley v. Hanna*, 726 F.3d 631, 646 (5th Cir. 2013) (referencing *Hale v. Townley*, 45 F.3d 914, 919 (5th Cir. 1995)). Inherent in a bystander claim is the necessity for a constitutional violation to which the officer must respond. *See id.* Here, however, the Court has found Defendants established as a matter of law the force used by Deputies Doss and Castillo against Stafford was not excessive. *See, supra.* Accordingly, there was no need for Deputy Gipson to intervene as there was no constitutional violation to prevent, negating any claim of bystander liability and entitling Deputy Gipson to summary judgment as to Stafford's § 1983 bystander claim.

C. Failure to Train or Supervise—the Sheriff, the County Attorney, Commissioners

Stafford contends the Sheriff, the County Attorney, and the Guadalupe County Commissioners violated his civil rights based on their alleged failures to train, supervise, or implement policies relating to law enforcement officers' use of excessive force, specifically the mandate of article 2.33 of the Texas Code of Criminal Procedure, which sets out when an officer

may use neck restraints in effecting a search or arrest. (Dkt. No. 14); *see* TEX. CODE CRIM. PROC. ANN. art. 2.33. However, the Fifth Circuit has held that claims such as these fail in the absence of an underlying constitutional violation. *See Davis v. Richardson*, No. 22-30298, 2022 WL 16837060, at *2 (5th Cir. 2022); *Whitley*, 726 F.3d at 648–49 (citing *Bustos v. Martini Club Inc.*, 599 F.3d 458, 467 (5th Cir. 2010). The Court finds *Davis* instructive.

In *Davis*, the plaintiff brought § 1983 claims against two deputies alleging, among other things, excessive force under the Fourth Amendment. 2022 WL 16837060, at *2. She also brought § 1983 claims against the sheriff's department and the sheriff claiming they allowed the deputies to violate her constitutional rights based on the policies they maintained. *Id.* The Fifth Circuit first held the district court properly found the deputies' actions in the case were neither excessive nor objectively unreasonable, thereby entitling the deputies to qualified immunity—and summary judgment based thereon—as to the plaintiff's excessive force claims. *Id.* Based on this holding, the Fifth Circuit concluded that because the plaintiff failed to establish a Fourth Amendment violation, her claims against the sheriff's department and the sheriff likewise failed because supervising authorities cannot be liable "if a person suffered no constitutional injury at the hands of the individual police officer." *Id.* (quoting *Bustos*, 599 F.3d at 467).

The holding in *Davis* and its predecessors is applicable here. Stafford's failure to train, failure to supervise, and policy claims necessarily fail without an underlying constitutional violation. *See Davis*, 2022 WL 16837060, at *2; *Bustos*, 599 F.3d at 467; *Whitley*, 726 F.3d at 648–49. This Court has determined that as a matter of law the deputies' actions in the case were

neither excessive nor objectively unreasonable, entitling them to qualified immunity—and summary judgment based thereon—as to Stafford's excessive force claims. *See, supra.* Accordingly, because there is no underlying constitutional violation, Stafford's claims relating to training, supervision, and policy fail, entitling the Sheriff, the County Attorney, and the Guadalupe County Commissioners to summary judgment. *See Davis*, 2022 WL 16837060, at *2; *Bustos*, 599 F.3d at 467; *Whitley*, 726 F.3d at 648–49.

CONCLUSION

Based on the foregoing, the Court finds Defendants are entitled to summary judgment. Defendants established as a matter of law the force used by Deputies Doss and Castillo in effecting Stafford's arrest was neither excessive nor objectively unreasonable and therefore, Stafford failed to meet his burden to establish a constitutional violation for purposes of the qualified immunity inquiry. Because Stafford failed to establish an underlying constitutional violation, his remaining claims—bystander liability, failure to train, failure to supervise, and policy implementation—likewise fail.

IT THEREFORE ORDERED that Defendants' Amended Motion for Summary Judgment (Dkt. No. 27) is **GRANTED** and Stafford's claims against them are **DISMISSED**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (Dkt. No. 19) and Stafford's Motion for Judgment as a Matter of Law (Dkt. No. 45) are **DISMISSED WITHOUT PREJUDICE AS MOOT**.

IT IS FURTHER ORDERED that Stafford shall take nothing in this cause against Defendants.

It is **SO ORDERED**.

SIGNED this 28 day of August, 2023.

ORLANDO L. GARCIA
United States District Judge