

APPENDIX

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[ENTERED: February 6, 2018]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1923

WILLIE MCCALL, Administrator for the Estate of
Sandy Jamel McCall,

Plaintiff - Appellant,

v.

SAMUEL MORANT, individually and in his official
capacity as a law enforcement officer with the Hoke
County Sheriff's Department; SHERIFF HUBERT
PETERKIN, individually and in his official capacity
as the Sheriff of Hoke County,

Defendants – Appellees,

and

HOKE COUNTY,

Defendant.

Appeal from the United States District Court for the
Middle District of North Carolina, at Greensboro.
Catherine C. Eagles, District Judge. (1:16-cv-00141-
CCE-JLW)

Submitted: January 31, 2018

Decided: February 6, 2018

Before DUNCAN, AGEE, and THACKER, Circuit
Judges.

Affirmed by unpublished per curiam opinion.

James H. Locus, Jr., Allen W. Rogers, LOCUS &
ASSOCIATES, Fayetteville, North Carolina, for
Appellant. Bradley O. Wood, WOMBLE BOND
DICKINSON (US) LLP, Winston-Salem, North
Carolina, Norwood P. Blanchard, III, CROSSLEY
MCINTOSH COLLIER HANLEY & EDES, P.L.L.C.,
Wilmington, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Willie McCall, administrator for the estate of
Sandy Jamel McCall, appeals the district court's
order granting Defendants' motions for summary
judgment and Defendants' motion to strike
Plaintiff's expert affidavit. We affirm.

We first address the district court's granting
of Defendants' motion to strike Plaintiff's expert
affidavit. We review a district court's ruling on the
admissibility of expert witness testimony for abuse
of discretion. *See Bresler v. Wilmington Tr. Co.*, 855
F.3d 178, 189 (4th Cir. 2017). In this case, the
expert's affidavit was not disclosed to Defendants

until it was filed in opposition to summary judgment—well after the expert disclosure deadline and the close of discovery. *See* Fed. R. Civ. P. 26(a)(2)(B). The affidavit contained opinions that were not included in the timely-disclosed expert report, including analysis of the officers’ deposition testimony. Accordingly, we find no abuse of discretion in the district court’s order to strike the affidavit.

We turn next to the district court’s granting of Defendants’ motions for summary judgment. We review an order granting summary judgment *de novo*, “drawing reasonable inferences in the light most favorable to the non-moving party.” *Butler v. Drive Auto. Indus. of Am., Inc.*, 793 F.3d 404, 407 (4th Cir. 2015) (internal quotation marks omitted). “Summary judgment is proper ‘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.’” *Id.* at 408 (quoting Fed. R. Civ. P. 56(a)). The relevant inquiry is whether the evidence “presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *McAirlaids, Inc. v. Kimberly-Clark Corp.*, 756 F.3d 307, 310 (4th Cir. 2014) (internal quotation marks omitted). Applying these principles to the record before us, we discern no reversible error in the district court’s conclusion that, in light of the essentially undisputed facts, the officer’s actions were reasonable and constitutional. *See McCall v. Morant*, No. 1:16-cv-00141-CCE-JLW (M.D.N.C. July 12, 2017). In view of that conclusion, summary judgment was also proper as to each of the Plaintiff’s additional claims.

Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

[ENTERED: February 6, 2018]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1923
(1:16-cv-00141-CCE-JLW)

WILLIE MCCALL,
Administrator for the Estate of Sandy Jamel McCall

Plaintiff - Appellant

v.

SAMUEL MORANT, individually and in his official
capacity as a law enforcement officer with the Hoke
County Sheriff's Department; SHERIFF HUBERT
PETERKIN, individually and in his official capacity
as the Sheriff of Hoke County

Defendants - Appellees

and

HOKE COUNTY

Defendant

J U D G M E N T

In accordance with the decision of this court,
the judgment of the district court is affirmed.

6a

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

[ENTERED: JULY 12, 2017]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA

WILLIE McCALL, as Administrator	)
for the Estate of SANDY JAMEL	)
McCALL,	)
	)
Plaintiff,	)
	)
v.	)1:16-CV-141
	)
HOKE COUNTY; SAMUEL	)
MORANT, individually and in his	)
official capacity as a law enforcement	)
officer with the HOKE COUNTY	)
SHERIFF'S DEPARTMENT;	)
SHERIFF HUBERT PETERKIN,	)
individually and in his official	)
capacity as the SHERIFF OF HOKE	)
COUNTY,	)
	)
Defendants.	)

ORDER

On May 31, 2014, a Hoke County deputy shot Sandy McCall during a roadside encounter. The administrator of Mr. McCall's estate contends that the Hoke County Sheriff and his deputies violated Mr. McCall's Fourth Amendment rights, both in the seizure of his person before the shooting and in the use of force in the shooting itself. The evidence, viewed in the light most favorable to the estate, establishes that the seizure was lawful and

the force used was reasonable. The Court will grant summary judgment for all defendants on all counts.

FACTS

At about 1:00 a.m. on May 31, 2014, Sergeant Samuel Morant of the Hoke County Sheriff's Department was in his patrol car in the area of Scurlock School Road in Raeford, North Carolina. Doc. 29-6 at ¶ 3. While on his way to a noise complaint from a nearby address, Sergeant Morant saw a man, who he later identified as Sandy McCall, walking down the middle of Scurlock School Road in the opposite direction. *Id.* at ¶ 4. Sergeant Morant advised over the radio that he was investigating a suspicious person and gave his location. Doc. 29-8 at 54:2-:7. Sergeant Morant passed Mr. McCall, turned around, turned on his lights, parked near Mr. McCall, and approached him on foot. Doc. 29-6 at ¶ 5. Sergeant Morant was in uniform. Doc. 29-8 at 66:7-:8.

At this point, Sergeant Morant recognized Mr. McCall from at least two earlier arrests, although he did not remember Mr. McCall's name. Doc. 29-6 at ¶ 5. Sergeant Morant decided to stop and question Mr. McCall because there were a number of recent break-ins in the area and because Mr. McCall was walking in the middle of the road in violation of North Carolina law. *Id.* at ¶¶ 6-7.

Sergeant Morant approached Mr. McCall, identified himself, and asked Mr. McCall who he was and what he was doing in the area. *Id.* at ¶ 8. Mr. McCall said something like, "Why are you harassing me?" and did not identify himself. *See id.*; Doc. 29-8 at 63:3-:13. Mr. McCall acted agitated

and appeared to be impaired. Doc. 29-6 at ¶ 8. Sergeant Morant said he just needed to see identification and that once he verified that information, Mr. McCall could be on his way. *Id.* Mr. McCall stated that he did not have his identification and refused to give his name or date of birth. *Id.* at ¶ 9. Sergeant Morant then told Mr. McCall that he was going to detain him until he could figure out who he was, and he told Mr. McCall to put his hands on a wooden fence on the side of the road. *Id.* at ¶¶ 9-10. Mr. McCall initially complied, and Sergeant Morant put a handcuff on one of Mr. McCall's wrists. *Id.* at ¶ 10.

Mr. McCall then began pulling and turning his body away from Sergeant Morant. *Id.* at ¶ 11. Around this time, two other officers with the Hoke County Sheriff's Department arrived in another patrol car: Deputy Lourdes Arbos and Corporal Jessica Tyner.¹ *See id.* at ¶ 11; Doc. 29-5 at ¶¶ 8-9; Doc. 29-8 at 65:3-:12. Deputy Arbos and Corporal Tyner parked their car and approached. Doc. 29-5 at ¶ 9. Corporal Tyner recognized Mr. McCall and called out to him by name. Doc. 29-5 at ¶¶ 10-11; Doc. 29-6 at ¶ 11. The three officers tried to handcuff Mr. McCall's other wrist, while Mr. McCall continued to resist by yelling, pushing away, and "beg[inning] to swing his arm . . . with the loose handcuff attached to his wrist." Doc. 29-5 at ¶¶ 9-11; *see* Doc. 29-1 at ¶ 9; Doc. 29-6 at ¶ 11. The three officers eventually forced Mr. McCall to the ground, where they tried to restrain him and handcuff his other wrist. Doc. 29-5 at ¶ 11; Doc. 29-

¹ Ms. Tyner's name at the time was Jessica Stanek. *See* Doc. 29-5 at ¶ 1.

1 at ¶ 8. Mr. McCall got up and continued to resist and to swing the loose handcuff at the officers. Doc. 29-5 at ¶ 11. During this time, Sergeant Morant and Corporal Tyner repeatedly told Mr. McCall to stop resisting and to stop fighting. Doc. 29-5 at ¶ 11; Doc. 29-6 at ¶ 14.

After the tussling continued for several minutes, Sergeant Morant drew his Taser and warned Mr. McCall to stop resisting or else he would use his Taser to subdue him. Doc. 29-6 at ¶ 14. Mr. McCall did not stop, and Sergeant Morant used his Taser on Mr. McCall in “prong mode,” Doc. 29-5 at ¶ 12, which shoots wire prongs through the air towards the target. Doc. 29-9 at 46:9-:14. Mr. McCall fell to the ground, but quickly stood back up and began pulling out the prongs. Doc. 29-5 at ¶ 12. Corporal Tyner then drew her Taser and told Mr. McCall to stop resisting; again, Mr. McCall did not stop. *Id.* at ¶ 13. Corporal Tyner then fired her Taser in “prong mode,” which appeared to have no effect on Mr. McCall. *Id.*; Doc. 29-6 at ¶ 14. Sergeant Morant also attempted to use his Taser in “dry stun” mode, which involves touching the target with the Taser, but Mr. McCall grabbed the Taser and Sergeant Morant’s hand, causing it to shock Sergeant Morant. Doc. 29-8 at 75:2-76:2.

Throughout this period, Mr. McCall was resisting and swinging around his arm with the loose handcuff. *See* Doc. 29-5 at ¶ 12. At times, Mr. McCall would feign compliance for a moment, then resume resisting. Doc. 29-6 at ¶¶ 15, 17.

After the ineffective attempts to tase or subdue Mr. McCall, both Corporal Tyner and Sergeant Morant drew their handguns and told Mr.

McCall to stop. Doc. 29-5 at ¶ 13. Mr. McCall walked across the road, away from the officers, who followed him. *Id.* Mr. McCall said that he was waiting for a family member and pointed down the road, but the three officers did not see anyone nearby. *See id.* at ¶ 14; Doc. 29-6 at ¶ 16. Soon after this comment, Mr. McCall lunged at Sergeant Morant and reached for his handgun; Sergeant Morant pushed Mr. McCall away, took a step back, and told Mr. McCall to stop. Doc. 29-5 at ¶ 14; Doc. 29-6 at ¶ 16. Mr. McCall lunged at Sergeant Morant again, and Sergeant Morant fired a single shot, which hit Mr. McCall. Doc. 29-5 at ¶ 14; Doc. 29-6 at ¶ 16; Doc. 29-1 at ¶ 11; Doc. 29-10 at 35:24-38:14; Doc. 29-9 at 53:22-54:9.²

² The plaintiff contends in his brief that Sergeant Morant “grabbed McCall by his shoulder or arm, pulled him near Morant’s body and then discharged one round directly into the abdomen of McCall,” Doc. 41 at 5, but the cited evidence does not state that Sergeant Morant pulled Mr. McCall towards him before firing. Doc. 29-9 at 53:22-54:9. The plaintiff also contends that Mr. McCall was “on his knees” at some point before he was shot, Doc. 41 at 13, and that Morant had earlier “punched McCall in the stomach,” Doc. 41 at 4, but these contentions are unsupported by the evidence the plaintiff cited. *See* Doc. 29-10 at 32:1-37:8. Statements in a brief are not evidence. *Cochran v. Volvo Grp. N. Am., LLC*, 931 F. Supp. 2d 725, 730 (M.D.N.C. 2013); *see also INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984) (declining to consider “[c]ounsel’s unsupported assertions in respondent’s brief” as evidence); *Kulhawik v. Holder*, 571 F.3d 296, 298 (2d Cir. 2009) (“An attorney’s unsworn statements in a brief are not evidence.”) (per curiam); *Martin v. Cavalier Hotel Corp.*, 48 F.3d 1343, 1358 (4th Cir. 1995) (holding jury was properly instructed that counsel’s statements are not evidence). These assertions in the plaintiff’s brief do not create a dispute of material fact. *See Behrens v. Pelletier*, 516 U.S. 299, 309 (1996) (when considering qualified immunity on summary

Mr. McCall continued to struggle and swing at the officers. Doc. 29-5 at ¶¶ 16-17. The officers called for medical assistance, and they pinned Mr. McCall to the ground with help from other officers who arrived soon afterwards. *Id.*; Doc. 29-6 at ¶ 18. EMTs arrived four or five minutes later, by which time Mr. McCall had stopped moving. Doc. 29-10 at 42:23-43:12. The EMTs pronounced Mr. McCall dead soon after they arrived. *Id.* at 43:13-17. The medical examiner found that the gunshot wound to Mr. McCall's groin was the cause of death. Doc. 29-7 at 14.

At no point in the encounter did Sergeant Morant believe that Mr. McCall possessed a weapon. *See* Doc. 29-8 at 80:24-82:6. Nor did Mr. McCall have a known history of possessing weapons. *See* Doc. 29-9 at 52:25-53:3.

Willie McCall, Sandy McCall's father, is the administrator of the estate of Sandy McCall. Doc. 4 at ¶¶ 9-10. The estate sued Hoke County Sheriff Hubert Peterkin, in his official and individual capacities, and Sergeant Samuel Morant, in his individual and official capacities. *Id.* at ¶¶ 11, 22-23.³ The defendants move for summary judgment, contending that Sergeant Morant's actions were reasonable and asserting governmental immunity, qualified immunity, and public officer's immunity. Docs. 29, 31.

judgment, "the plaintiff can no longer rest on the pleadings, and the court looks to the evidence before it (in the light most favorable to the plaintiff)" (citation omitted)).

³ The plaintiff also brought claims against Hoke County, which the parties later stipulated to dismiss. Doc. 4 at ¶ 16; Doc. 17.

DISCUSSION

I. § 1983 claims against Sergeant Morant in his individual capacity

The plaintiff's federal claims against Sergeant Morant are based on two alleged constitutional violations: the initial seizure of Mr. McCall by Sergeant Morant, and the shooting of Mr. McCall by Sergeant Morant. *See* Doc. 4 ¶¶ 32, 42-43.⁴

A. Seizure

There is no doubt that Sergeant Morant could lawfully approach Mr. McCall and talk to him. Such interactions are not seizures and are not prohibited by the Fourth Amendment, as the plaintiff concedes. Doc. 41 at 10 (noting that “Morant, even without a basis for detaining McCall, was allowed to question him”). The parties also agree that in the absence of a reasonable suspicion that criminal activity was afoot or of probable cause, Mr. McCall was free to walk away. *See United States v. Sokolow*, 490 U.S. 1, 7 (1989) (discussing the reasonable suspicion standard); *Pegg v. Herrnberger*, 845 F.3d 112, 118 (4th Cir. 2017).

Under North Carolina law, it is unlawful for a pedestrian to walk along a roadway except on the

⁴ The complaint mentions the use of the Tasers and the use of non-deadly physical force during the initial attempts to detain Mr. McCall, Doc. 4 at ¶¶ 34, 37, but the plaintiff did not defend those assertions of excessive force in its opposition brief to the motions for summary judgment. *See* Doc. 41 at 6-18.

extreme left side, facing oncoming traffic. *See* N.C. Gen. Stat. § 20-174(d). A violation of § 20-174(d) appears to be an infraction. *See* N.C. Gen. Stat. § 20-176(a) (stating that violations of Part 11 of Article Three of Chapter 20 are infractions unless stated otherwise). An officer who has probable cause to believe a person has committed an infraction “may detain the person for a reasonable period” to issue a citation. N.C. Gen. Stat. § 15A-1113(b).

Mr. McCall was walking down the middle of the road when Sergeant Morant saw him. Doc. 29-6 at ¶ 4. Sergeant Morant’s initial stop and detention of Mr. McCall was therefore lawful because he had probable cause to believe that Mr. McCall had violated N.C. Gen. Stat. § 20-174(d) in his presence. At a minimum, he was justified in investigating why Mr. McCall was walking down the middle of the road at 1:00 a.m. and in determining his identity so he could decide whether to issue a citation for the infraction.⁵

⁵ The defendants contend that a violation of § 20-174(d) is enough to provide probable cause to arrest. Doc. 29 at 8. The Court is not at all sure that is correct. *See* N.C. Gen. Stat. § 14-3.1(a) (“An infraction is a noncriminal violation of law not punishable by imprisonment.”); *Glenn-Robinson v. Acker*, 140 N.C. App. 606, 615-16, 538 S.E.2d 601, 609-10 (2000) (collecting authorities and holding that officers are not empowered to arrest for infractions). However, the Court need not resolve that issue. While the exact constitutional parameters of a detention for an infraction are not completely clear and while neither party’s briefing explores the question, the Fourth contending suspected of an infraction. *See Pierce v. Multnomah Cty.*, 76 F.3d 1032, 1040-41 (9th Cir. 1996) (acknowledging that a limited detention for a non-criminal infraction was constitutional).

Mr. McCall said he did not have identification and refused to provide his date of birth. Doc. 29-6 at ¶ 9. Sergeant Morant then ordered Mr. Morant to place his hands on the fence and began to handcuff him. *Id.* at ¶¶ 9-10. At that point, Sergeant Morant had probable cause to believe that Mr. McCall had committed a misdemeanor by resisting, delaying, or obstructing the duties of a law enforcement officer by refusing to answer questions needed to issue a citation. *See State v. Friend*, 237 N.C. App. 490, 493-94, 768 S.E.2d 146, 148-49 (2014) (holding that the failure to identify oneself so an officer could issue a seatbelt citation during a lawful stop can constitute obstruction within the meaning of N.C. Gen. Stat. § 14-223); *see also* Doc. 29-6 at ¶ 12. This conduct created probable cause to justify arresting Mr. McCall. *See Pegg*, 845 F.3d at 118 (holding that when an officer has probable cause to believe an individual has committed even a very minor criminal offense in his presence, he may lawfully arrest the offender).

The plaintiff does not discuss the North Carolina statute requiring pedestrians to walk on the left side of the road, nor does he contend that Mr. McCall complied with this statute or that it did not create probable cause to detain Mr. McCall. *See* Doc. 41 at 8-10. He does not address the argument that, by refusing to provide his identification, Sergeant Morant had probable cause to arrest Mr. McCall for obstructing an officer. Rather, the plaintiff addresses only whether the time of night and the recent crimes in the neighborhood raised a reasonable suspicion of criminal activity. *See id.* at 8 (that this was the “sole basis” for reasonable

suspicion). His conclusory and unsupported assertion that Sergeant Morant lacked reasonable suspicion does not entitle him to a trial.⁶

The plaintiff also contends that Mr. McCall was not required to answer any questions and was free to go about his business, citing *Illinois v. Wardlow*, 528 U.S. 119 (2000). Doc. 41 at 10. *Wardlow* states that people approached by police have that right only where the officer has no reasonable suspicion or probable cause. See 528 U.S. at 125. Here, Sergeant Morant had probable cause to believe Mr. McCall had committed an infraction and, a few moments later, a misdemeanor.

The plaintiff has not shown a violation of any constitutional right related to Mr. McCall's seizure by Sergeant Morant.⁷ To the extent his claims are

⁶ Even when a litigant is pro se, which is not the case here, it is not the role or responsibility of the Court to undertake the legal research needed to support a perfunctory argument. See *Gordon v. Leeke*, 574 F.2d 1147, 1152 (4th Cir. 1978) (recognizing that the district court is not expected to assume the role of advocate for a pro se litigant); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) (stating that the principle requiring liberal interpretation of pro se complaints “does not require . . . courts to conjure up questions never squarely presented to them”). The Court has no duty to create arguments on behalf of the plaintiff to rebut the defendants' position.

⁷ The defendants further contend that the seizure was lawful because Mr. McCall was on probation and was required to submit to warrantless searches, Doc. 29 at 4 n.2; see Doc. 29-11, and that Sergeant Morant is entitled to qualified immunity. Doc. 31 at 11-12. The Court need not address these arguments.

based on an unlawful seizure, they will be dismissed.

B. Use of force

To determine whether an officer used excessive force, courts “examine officers’ actions ‘in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.’” *Pegg*, 845 F.3d at 120 (citing *Graham v. Connor*, 490 U.S. 386, 397 (1989)). A court should consider “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* (quoting *Graham*, 490 U.S. at 396). “Whether an officer has used excessive force is analyzed under a standard of objective reasonableness.” *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011) (en banc).

A court must examine whether the use of force was reasonable based “on the circumstances at the moment force was used,” not the timeline of events up to that point. *Elliott v. Leavitt*, 99 F.3d 640, 642 (4th Cir. 1996). A plaintiff “cannot establish a Fourth Amendment violation based merely on bad tactics that result in a deadly confrontation that could have been avoided.” *City & Cty. of S.F. v. Sheehan*, 135 S. Ct. 1765, 1777 (2015) (quotation omitted).

Deadly force may be employed “where the officer has probable cause to believe that a suspect poses a threat of serious physical harm, either to the officer or to others.” *Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013). The Fourth Circuit

has held that deadly force is not excessive when an officer reasonably believes a suspect is reaching for a gun. *Anderson v. Russell*, 247 F.3d 125, 130-31 (4th Cir. 2001) (affirming entry of judgment as a matter of law and finding that use of deadly force was not excessive where officer shot at a person who “was reaching toward what [the officer] believed to be a gun” in the person’s waistband); see also *Elliott*, 99 F.3d at 644 (“No citizen can fairly expect to draw a gun on police without risking tragic consequences.”).⁸

Here, at the moment Sergeant Morant used deadly force, Mr. McCall was lunging, for the second time, at Sergeant Morant’s drawn handgun. Doc. 29-5 at ¶ 14. Mr. McCall was on his feet and was only three or four feet away, which was close enough to touch Sergeant Morant when he lunged. Doc. 29-10 at 37:3-:5; Doc. 29-9 at 53:23-54:9. Had Mr. McCall been successful in his efforts to take the gun, he would have posed an immediate, serious threat to Sergeant Morant and the other officers. Even a failed attempt to take the gun, or an attempt to push the gun away, could have caused the gun to fire and hit one of the officers. Mr. McCall had been fighting and wrestling with the three officers for several minutes and was actively resisting arrest. Doc. 29-6 at ¶ 14. He had thwarted the officers’ efforts to handcuff him, pin him to the ground, immobilize him with a Taser, or otherwise

⁸ Courts have also found that officers are entitled to qualified immunity when they use deadly force against a person who they reasonably believe was reaching towards or holding a weapon. *Slattery v. Rizzo*, 939 F.2d 213, 215-17 (4th Cir. 1991). Since the Court finds that the force was reasonable, it need not address qualified immunity.

control him. Doc. 29-5 at ¶¶ 11-13, 15; Doc. 29-6 at ¶¶ 13-15. While the underlying reason for the seizure—essentially a minor traffic infraction—was not serious, the risk of serious physical harm to the officers was substantial.

The use of force here is comparable to *Anderson* and *Elliott*, where courts held that it was not excessive to use deadly force against a person whom an officer reasonably believed was reaching for a gun. *Anderson*, 247 F.3d at 130-31; *Elliott*, 99 F.3d at 643-44. Although the gun here was in Sergeant Morant's hands, and not yet in Mr. McCall's possession, the risk of harm and danger is the same.⁹

The plaintiff contends that the use of force was objectively unreasonable under the *Graham* factors. Doc. 41 at 12-14. The plaintiff cites no cases that appear similar to the facts here. Instead, plaintiff cites several cases finding excessive force and denying qualified immunity where an officer used force on a person who was already secured, whether by handcuffs, being pinned to the ground, or other physical means. *Id.* at 15.

⁹ The plaintiff also contends that the officers acted outside of policy by drawing their weapons on Mr. McCall, who was unarmed and who at times appeared to walk away from the officers. Doc. 41 at 17-18. However, the plaintiff makes no argument that drawing a firearm itself is an excessive use of force. Under the excessive force framework, the appropriateness of an officer's decision to draw a gun on an unarmed person is irrelevant to whether use of deadly force a few moments later was appropriate. *See Elliott*, 99 F.3d at 643-44; *City & Cty. of S.F.*, 135 S. Ct. at 1777.

In *Jones v. Buchanan*, 325 F.3d 520, 532 (4th Cir. 2003), the plaintiff was unarmed and handcuffed in a secured room in the sheriff's headquarters when officers used force. In *Valladares v. Cordero*, 552 F.3d 384, 390 (4th Cir. 2009), the officer allegedly "picked [the plaintiff] up off the ground, had [him] under full control, stood him on his feet, and slammed [the plaintiff's] head into a car twice." The plaintiff was fifteen years old and approximately half the officer's weight. *Id.* at 387. In *Bailey v. Kennedy*, 349 F.3d 731, 744-45 (4th Cir. 2003), "the use of force continued even after [the plaintiff] was secured with flex-cuffs around both his hands and his feet, and lying face down on the floor, alone in a room of his parents' house." In *Kane v. Hargis*, 987 F.2d 1005, 1006-08 (4th Cir. 1993) (per curiam), the plaintiff alleged that an officer twice her weight pinned her to the ground and "repeatedly push[ed] [her] face into the pavement, cracking three of her teeth." In *Mayard v. Hopwood*, 105 F.3d 1226, 1227-28 (8th Cir. 1997), the officer punched and slapped a plaintiff who was in handcuffs and leg restraints in the backseat of a patrol car. These cases are readily distinguishable because Mr. McCall was not handcuffed, was not restrained by any officer, and was on his feet at the time that Sergeant Morant shot him. Plaintiff also contends that Sergeant Morant "could have considered other less than lethal means to subdue McCall." Doc. 41 at 13. This may be true; however, it is not the test for excessive force. See *Cooper*, 735 F.3d at 158-59 (quotation omitted) ("[P]olice officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving," and courts must "avoid judging

the officer's conduct with the 20/20 vision of hindsight.")

The force used by Sergeant Morant was not constitutionally excessive and did not violate Mr. McCall's constitutional rights. To the extent the claims are based on excessive force, they will be dismissed.

II. *Monell* claim

"In the absence of any underlying use of excessive force . . . , liability cannot be placed on either the non-shooting officers, a supervisor, or a City" for excessive force, inadequate training, or supervisory liability. *Hinkle v. City of Clarksburg*, 81 F.3d 416, 420-21 (4th Cir. 1996). Because the detention of Mr. McCall was lawful and the force used by Sergeant Morant was not excessive, the Court will dismiss the § 1983 claim against Sheriff Peterkin. Doc. 4 at ¶¶ 92-99.

III. State law claims

When an arrest is supported by probable cause and an officer's use of force is reasonable, all related North Carolina tort claims based on those actions must also fail. *Bell v. Dawson*, 144 F. Supp. 2d 454, 464 (W.D.N.C. 2001) (Horn, M.J., order) (collecting cases); see *Sigman v. Town of Chapel Hill*, 161 F.3d 782, 788-89 (4th Cir. 1998) (holding that where an officer's actions were reasonable, they cannot be negligent or wrongful under state law). That is the case here. Therefore, the Court will dismiss the plaintiff's state law claims against all defendants.

IV. Motion to Strike

The defendants move to strike a late-filed “amended” affidavit and report from an expert witness proffered by the plaintiff. Doc. 44. The motion will be granted, as a litigant is not allowed to submit expert opinions in opposition to summary judgment which the litigant has not previously disclosed. *See* Fed. R. Civ. P. 26(a)(2)(A), (B)(i) (requiring disclosure of expert witness identities and reports, including “ a complete statement of all opinions the witness will express and the basis and reasons for them”). The plaintiff has not shown that the failure was substantially justified or harmless. Fed. R. Civ. P. 37(c)(1). Moreover, the new opinions are largely inadmissible.

It is **ORDERED** that:

1. The motion for summary judgment of the defendant Samuel Morant in his official capacity and Hubert Peterkin, in both his official and individual capacities, Doc. 28, is **GRANTED**.
2. The motion for summary judgment of the defendant Samuel Morant, in his individual capacity, Doc. 30, is **GRANTED**.
3. The motion to strike, Doc. 44, is **GRANTED**.

A judgment will be entered as time permits.

This the 12th day of July, 2017.

/s/
UNITED STATES DISTRICT JUDGE

[ENTERED: JULY 12, 2017]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA

WILLIE McCALL, as Administrator	)	
for the Estate of SANDY JAMEL	)	
McCALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:16-CV-141
	)	
HOKE COUNTY; SAMUEL	)	
MORANT, individually and in his	)	
official capacity as a law enforcement	)	
officer with the HOKE COUNTY	)	
SHERIFF'S DEPARTMENT;	)	
SHERIFF HUBERT PETERKIN,	)	
individually and in his official	)	
capacity as the SHERIFF OF HOKE	)	
COUNTY,	)	
	)	
Defendants.	)	

JUDGMENT

For the reasons set forth in the Order filed contemporaneously with this Judgment,

It is hereby **ORDERED AND ADJUDGED** that the motion for summary judgment of the defendant Samuel Morant in his official capacity and Hubert Peterkin, in both his official and individual capacities, Doc. 28, is **GRANTED**, the motion for

summary judgment of the defendant Samuel Morant in his individual capacity, Doc. 30, is **GRANTED** and this case is **DISMISSED** with prejudice.

This the 12th day of July, 2017

/s/
UNITED STATES DISTRICT JUDGE

[SWORN: May 10, 2017]

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH
CAROLINA CIVIL ACTION NO.: 1:16-CV-00141**

**Willie McCall, Administrator
for the Estate of Sandy
Jamel McCall**

Plaintiff,

v.

**Hoke County, Samuel Morant,
individually and in his official
capacity as a law enforcement
officer with the Hoke County
Sheriff's Department; Sheriff
Hubert Peterkin, individually
and in his official capacity
as the Sheriff of Hoke County**

Defendants.

**AFFIDAVIT
OF WILLIE
MCCALL**

I, Willie McCall, under oath, deposes as follows:

1. I am over eighteen (18) year of age, suffer from no known disability and have personal knowledge of the facts set forth herein. All of the statements in this Affidavit are correct.
2. That I am a citizen and resident of Hoke County, North Carolina.

3. Sandy Jamel McCall, the deceased in this lawsuit, was my only living son.
4. My son, whom I called "Sandy," and I had a close and personal relationship.
5. He often confided in me about issue and thoughts regarding his life ambitions.
6. I am personally aware of Sandy's daily disposition regarding his personality and his reputation in the community. Sandy has always been a quiet person, yet he was very bright.
7. Although Sandy has been incarcerated for drug use on many occasions, he was not a violent person.
7. He did not have a temper or angry disposition while under stress and always appeared positive, yet quiet.
8. What impressed me was his efforts to go back to the community and apologize to people he had disappointed in the community and asked for their forgiveness.
9. I was not present on May 31, 2014 when Deputy Samuel Morant shot and killed Sandy. Therefore, I have no firsthand Information to offer as to what transpired the morning that Sandy was killed.
10. However, the claims by Deputy Morant and the other deputies that Sandy either attacked Deputy Morant and/or

attempted to grab his weapon is totally inconsistent with the demeanor and personality of Sandy.

11. Even under heavy stress, Sandy would never have been violent nor would he have attempted to disarm a law enforcement officer.
12. I am extremely familiar with the tactics that Sandy has employed over the years when confronted with law enforcement.
13. My knowledge and experience with Sandy's primary mode of dealings with law Enforcement for the past decade attempting to arrest him has been that he has away evaded arrested without attempting to harm anyone.
14. His reputation and past history in the local community that I have been aware of was to be evasive but not in a manner that would not threaten the safety of any law enforcement officer.
15. I have even been aware of times that he has even hidden from law enforcement for a few days and then turned himself in.
16. But I have never known him to attack a law enforcement officer or tried to disarm a law enforcement officer during an arrest.

17. Sandy was not eligible to drive because of his drug dependency. Therefore he did not have a driver's license.
18. These deputies had arrested Sandy on previous occasions so they knew that he did not carry ID on his person.
19. On the previous occasions that these deputies arrested Sandy in the past, I am personally aware that Sandy did not have any ID.
20. On the morning of May 31, 2014, it made no sense to me that these deputies made these repeated demands of Sandy for him to produce an ID on that occasion, particularly since I am certain for sure that Deputy Tyner already knew him and would have known Sandy did not carry his ID.
21. Sandy had only recently moved from this area in 2013. There have been a few occasions when I have walked with Sandy down Scurlock School Road and we have walked in the middle of the road because of our joint fears and concerns about snakes and other unknown dangers that lurked on the side ditches of that road.
22. With no sidewalks on this road, walking near the center of Scurlock School Road gives us a better chance to avoid small dangerous animals on late evening or early morning walks.

29a

23. Sandy has several close family members that lives within two miles of this area.

I declare under penalty of perjury that the foregoing is true and correct.

This the 10th day of May, 2017.

/s/ Willie McCall
Willie McCall

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

Sworn to and subscribed before me this day by Willie McCall, either being personally known to me or proven by satisfactory evidence, said evidence being personal identification. WITNESS my hand and official stamp or seal.

Sworn to and subscribed before me this 10th day of May 2017.

My Commission Expires 04-14-2020

/s/
Notary Public

(OFFICIAL SEAL)

[TAKEN: February 1, 2017]

NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
COUNTY OF HOKE SUPERIOR COURT DIVISION

_____	)	
	)	
WILLIE MCCALL, Administrator for	)	
The Estate of Sandy Jamel McCall,	)	
	)	
Plaintiff,	)	
	)	
	)	File No.
Vs.	)	16 CVS
	)	
HOKE COUNTY, SAMUEL MORANT,	)	000024
Individually and in His Official	)	
Capacity as a Law Enforcement Officer	)	
With the Hoke County Sheriff's	)	
Department; Sheriff Hubert Peterkin,	)	
Individually and in His Official	)	
Capacity as the Sheriff of Hoke County,	)	
	)	
	)	
Defendants.	)	
	)	
_____	)	

Deposition of:

Deputy Lourdes Arbos

* * * *

SCHEDULED TO BE TAKEN ON:

31a

February 1, 2017

Beginning at 12:45 p.m.

* * * * *

TAKEN AT:

The Roger's Law Firm

111 Person Street

Fayetteville, North Carolina 28301

* * *

of you also go down?

A. No, I mean, like he -- he went down and then he stood right back up. There wasn't enough time for me to go toward him.

Q. Then what happened?

A. He was -- when he got up, he jumped up and he started moving across the street, across the road, and he kept saying something about his cousin, and he would point down, you know, down wherever he was facing, he would point. I knew there was nobody out there because I saw when I pulled up. There was nobody out there. It was dark. He walked across the street. Tyner knew his name, so she was calling him, but nothing. He was -- like that wasn't his name. He just kept walking like it's nothing. He had no -- he didn't recognize his name or something.

Q. The name she was calling him, was it Sandy or McCall or?

A. Sandy.

Q. Sandy?

A. Yes.

Q. All right. So he walked across the street pointing, saying something about his cousin?

A. Yes.

Q. Officer Tyner was calling his name Sandy?

A. Um-hum.

Q. But he was not responding to his name?

A. Yes.

Q. All right. Did the three of you then follow him across the street?

A. We -- yes. We were like simultaneously walking with him as he was walking across the road. I think Morant got to that side first, and then he turned around -- Sandy turned around and he pointed, you know, he pointed again and talked about his cousin and we continued to tell him to stop resisting. I told him, "Hey man, just chill, just chill, stop," but like he -- like he wasn't there. He wasn't hearing anything, and Sergeant Morant was on one

side of him and Deputy Tyner was on the other side, and I was a bit skewed off to the right. No -- Tyner was behind me, and she moved this way. She was on my --

Q. Now, "this way," the court reporter can't --

A. I'm sorry. She was on my right when we first went across the street and then she moved slowly, she was still behind me, but she was more toward my left at that point, so she would have been facing Sandy McCall and then Sergeant Morant would have been behind McCall.

Q. Then what did you observe?

A. Well, at some point with us trying to tell him to stop, he turned around. He seemed like aggressive toward Sergeant Morant like -- he was ignoring me completely, but he seemed to turn and kind of run toward Morant, and whenever he would lunge, he would lunge toward Morant. So at that point he turned around and was looking at Sergeant Morant, and he pointed like that (indicating) from the way we just came and said something about his cousin.

Q. Okay. For the record you held your right hand up above your shoulders with your index finger pointed up; is that correct?

A. Yes. I thought that he was trying to distract us. The whole time he did that, that's what I was thinking. Because like I told you before, there

was no one around. And so when he did that, then he went forward with his left hand, tried to grab Sergeant Morant's gun because they had drawn their weapons when we crossed the street, but they had them at a low ready. They weren't pointing at him yet. But then he went for Sergeant Morant's gun, so I remember -- I believe it was Sergeant Morant he said, "Whoa," and he went back. He went back.

Q. Then what happened?

A. And then he went for the gun again.

Q. Sergeant Morant went for the gun?

A. No, Sandy McCall went for Sergeant Morant's gun with his left-hand again.

Q. At that point how far away from Sandy McCall was Sergeant Morant?

A. I would say three to four feet.

Q. Okay. Then what happened?

A. The second time he went for the gun, Sergeant Morant shot his gun.

Q. Did Sergeant Morant have the gun in his left-hand or his right-hand?

A. I believe it was both.

Q. He had the gun in both hands?

A. Yeah.

Q. And at that point it was pointed at Sandy McCall?

A. Yeah, when he shot him, yeah.

Q. For what period of time had the gun been pointed at Sandy McCall?

A. It wasn't very long. I can't tell you the exact time because --

Q. Three or four seconds?

A. It seemed like forever. That whole incident seemed like it was never ending. I can't tell you the time, but it wasn't very long at all.

Q. There was a time that Sandy McCall -- you described going for Sergeant Morant's gun when the gun was not pointed at him, and Sergeant Morant said "Whoa," and then pointed the gun at him; is that correct?

A. No. He had his gun at a low ready, and at that point Sandy McCall pointed, talked about his cousin, I think he was trying to distract us so he could grab the gun, and he went for the -- he lunged forward with his left hand and grabbed -- tried to grab Sergeant Morant's gun. At that point Sergeant Morant stepped back, said "Whoa," still had it at a low ready, but it had came up when he had to go back, it had came up. And then Sandy McCall he went forward again and tried to grab his gun with

the left hand again. At that point Sergeant Morant shot him.

Q. Okay. I guess I'm -- at what point in this process was the gun pointed at Sandy McCall?

A. It was at a low ready. He didn't point it until --

Q. He did not point it until right before he -- did he not point it until he shot it?

A. After he went for the gun.

Q. Well, I understand that. But he pointed it and shot it in one motion?

A. No. No.

Q. All right. This is what I was trying to --
for

* * *

[TAKEN: January 31, 2017]

NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
COUNTY OF HOKE SUPERIOR COURT DIVISION

_____	)	
	)	
WILLIE MCCALL, Administrator for	)	
The Estate of Sandy Jamel McCall,	)	
	)	
Plaintiff,	)	
	)	
	)	File No.
Vs.	)	16 CVS
	)	
HOKE COUNTY, SAMUEL MORANT,	)	000024
Individually and in His Official	)	
Capacity as a Law Enforcement Officer	)	
With the Hoke County Sheriff's	)	
Department; Sheriff Hubert Peterkin,	)	
Individually and in His Official	)	
Capacity as the Sheriff of Hoke County,	)	
	)	
	)	
Defendants.	)	
	)	
_____	)	

Deposition of:

Officer Jessica Tyner

* * * *

SCHEDULED TO BE TAKEN ON:

38a

January 31, 2017

Beginning at 7:15 p.m.

* * * * *

TAKEN AT:

Raeford Police Department

Raeford, North Carolina

* * *

Do you recall anything at this point that Sergeant Morant said, other than asking him his name?

A. No.

Q. Do you recall anything that Mr. McCall said specifically?

A. He said he was walking down the road.

Q. What is the next thing that occurred?

A. Morant was still trying to gather information from him to do a field interview which is an FI card, and when Mr. McCall wouldn't give him his information on it, he kept moving around, so Morant detained him take sure that, he didn't have, you know, anything on him.

Q. By detaining him, describe specifically what Sergeant Morant did.

A. As soon as he grabbed a hold of his arm to put on a handcuff, Sandy McCall started actively resisting.

Q. So Sergeant Morant grabbed Mr. McCall's arm; is that correct?

A. His wrist, because you have to hold his wrist to handcuff him.

Q. Right wrist, left wrist?

A. Don't know.

Q. So he grabbed one wrist, grabbed it with his left or right hand, do you know?

A. Hun-uh.

* * *

Q. He was getting up. He had been seated and he was in the process of getting up?

A. Correct.

Q. Well, was he -- had he gotten up completely when you tased him, or was he on his knee, or do you recall?

A. I don't recall.

Q. But he was in the process of getting up and you tased him?

A. Uh-huh.

Q. After you tased him, did he go back on his butt?

A. No, he got up.

Q. Stood up?

A. Uh-huh.

Q. After he stood up, what happened?

A. He started walking across the street.

Q. Did he say anything?

A. I don't remember.

Q. As he started walking across the street, how far aware from you was he?

A. If I am right here on the side of the road and he is walking on the road, he is only a few feet from me.

Q. How far -- was he the same distance from Sergeant Morant?

A. I would imagine.

Q. And same distance from --

A. Arbos was backed up a little bit because she didn't really know what to do.

Q. As he is walking away, what did you do?

A. I dropped my taser. I pulled out my firearm, and I had been asking him --I knew Mr. McCall, so I kept asking him, you know, please just listen to us, help us out. Stop doing this. And he wouldn't acknowledge anything that I was saying.

Q. He continued to walk away?

A. Yes.

Q. And what did Sergeant Morant do as he continued to walk away?

A. Tried to give him verbal commands by telling him to stop, stop walking away, you know, come back here, and he wasn't listening.

Q. He continued to walk away?

A. Yes.

Q. Then what did you do?

A. We were able to stop him right there in front of the house. There's like a dirt road and a house on the other side, on the left-hand side of the road. So the fence is on the right. The house is on the left. We were able to stop him and, you know, Morant was like, look, man, I am just trying to find out what your name is and what you're doing. He said, this a high crime area, so I am just trying to figure out what is going on. And Mr. McCall said, you know, I am just waiting on my cousin.

Q. At this point he had walked away and crossed the road?

A. Right.

Q. And he said he was looking for his cousin?

A. He was waiting on his cousin.

Q. Waiting on his cousin?

A. Uh-huh

Q. You said you knew Sandy McCall?

A. Uh-huh.

Q. You knew his name?

A. Uh-huh.

Q. Do you know whether Sergeant Morant knew his name?

A. I don't know if Sergeant Morant knew his name or not, but I know that we had been on a couple of calls with him, so I don't know if he just didn't recognize him that night or --

Q. But you did know his name?

A. Yeah, I knew him.

* * *

* * *

During the previous dealing with Mr. McCall had you observed Mr. McCall having any kind of firearm or other dangerous weapons?

A. No. He didn't have any weapons on him.

Q. How far was Sergeant Morant from Sandy McCall at this time?

A. We were all in a very close proximity of each other. I can't give you an estimate of how close we were, but we were very close, all four to each other.

Q. Sandy McCall had walked away from the two of you; is that correct --

A. Uh-huh.

Q. -- after he stood up?

A. Yeah.

Q. And the two of you had walked toward him?

A. Yes, well there was three of us.

Q. There were three of you, and all of you had walked toward him?

A. Yeah.

Q. At that point did Sergeant Morant discharge his firearm?

A. No.

Q. What did he do?

A. He pushed him back and said, hey, man, don't ever do that again. And you know, at that time Mr. McCall still had his handcuff -- Morant's handcuff still on his hand. So he was still talking about his cousin, man, I am waiting on my ride. And he -- Mr. McCall tried to grab a hold of Sergeant Morant's gun again. And at that time, Sergeant Morant grabbed a hold of him and fired a shot at him.

Q. When you say, "grabbed a hold of him," grabbed what part of his body?

A. I don't know if it was an arm, his shoulder, I don't know what arm it was.

Q. The first time Sandy McCall started talking about his cousin that you recall after he had been tased and he started walking away?

A. Yeah.

Q. During that time he was continuously talking about his cousin?

A. Yeah, talking about his cousin the whole time.

Q. That he was walking away?

A. The whole -- from the time that he got up and walked over, man, I am just waiting on my ride. I am waiting on my cousin. That's all he kept talking about was his cousin and a ride.

Q. This was after he had been tased?

A. Yeah.

Q. Tased by both Sergeant Morant and by you?

* * *

A. Un-hum.

Q. That was the first time he was talking about his cousin?

A. Yeah.

* * *

Q. And the three of you also walk across the street to where he was? Is that correct?

A. Correct, but he wasn't walking. He was more of a fast pace trying to get away from us.

Q. He went across the street?

A. Correct.

Q. And during this time he was talking about his cousin?

A. Un-huh.

Q. And the three of you went across the street where he was?

A. Correct.

Q. And stood close to him?

A. Correct

* * *

[TAKEN: December 30, 2016]

NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
COUNTY OF HOKE SUPERIOR COURT DIVISION

_____	)	
	)	
WILLIE MCCALL, Administrator for	)	
The Estate of Sandy Jamel McCall,	)	
	)	
Plaintiff,	)	
	)	
	)	File No.
Vs.	)	16 CVS
	)	
HOKE COUNTY, SAMUEL MORANT,	)	000024
Individually and in His Official	)	
Capacity as a Law Enforcement Officer	)	
With the Hoke County Sheriff's	)	
Department; Sheriff Hubert Peterkin,	)	
Individually and in His Official	)	
Capacity as the Sheriff of Hoke County,	)	
	)	
	)	
Defendants.	)	
	)	
_____	)	

Deposition of:

Samuel Morant

* * * *

Scheduled to be held on:

47a

December 30, 2016

* * * * *

Taken at:

THE ROGERS LAW FIRM

111 Person Street

Fayetteville, NC 28301

* * *

A. Yes.

Q. When you first observed the individual specifically, what did you do?

A. When I spotted him walking in the middle of the road, I passed by him so I could turn around. While I was doing that, I notified dispatch that I had a suspicious individual and I gave them my location.

Q. How far did you drive past the individual before you turned around?

A. About 50 or 60 feet.

Q. Then you made a U-turn on the road?

A. Yes, sir.

Q. And you drove back to where the individual was?

A. Yes, sir.

Q. Then what did you do?

A. I made contact with the individual.

Q. Specifically, how did you make contact with him?

A. I identified myself.

Q. At the time that you identified yourself, were you inside of your patrol car or had you parked your patrol car and gotten out of your patrol car?

A. Patrol car is parked, I was on foot.

* * *

Q. What did he say?

A. He asked me what I was stopping him for?

Q. Now, when he asked you that, did he turn around and face you or did he continue to walk away from you?

A. When I made contact with him, I was facing the front of him. When I engaged him, I moved around, I was facing in front of him.

Q. So before you said anything to him, you walked past him, turned around and faced him; is that correct?

A. I identified myself, and as I was talking to him, I was moving to the front of him.

Q. So you identified yourself. And when you completed the – your identification of yourself, but before you said the next thing that you said, you had passed him and turned and was facing him; is that correct?

A. Yes, sir.

Q. Then, without being repetitive, what specifically did you say?

A. I told him that we have had several incidents happen in this area and if he had my information, what was going on. I wasn't giving him a hard time.

Q. How far is he from you?

A. Anywhere between, I guess, six or seven feet.

Q. Then what did he say or do?

A. He asked me why was I stopping him.

Q. What did you say in response to that question?

A. "I am not here to harass you. Right now I have got to investigate what's going on in this area."

Q. Did he say anything in response to that question?

A. Yes, he did.

Q. What did he say?

A. "Why are you harassing me? And do you know who my cousin is?"

Q. Then what did you say?

A. I told him I'm not giving him a hard time. All I needed for him to do was let me see his ID, identify who he was, he could go about his way.

Q. Now, during this conversation, was he still walking or had he stopped walking?

A. He had stopped.

Q. So this conversation was taking place with approximately six to eight feet directly in front of him with both of you stopped?

A. Yes, sir.

Q. What did he say in response to that statement?

A. He told me that, "You know the sheriff is my cousin. Why are you F-ing with me?"

Q. Then what did you say?

A. I told him it is simple, all he has to identify who he was. And there was a reason for that.

Q. Then what did he say?

A. I didn't say there was a reason for that, all I said was, "All I need for you to do is identify himself." But there is a reason for that.

Q. All right. Well, what you said was, "All you have to do is identify yourself"; is that correct?

A. Yes, sir.

Q. And then what did he say?

A. He didn't have an ID on him.

Q. That's what he said?

A. That's what he said.

Q. Then what did you say?

A. "If you don't have your ID on you that's -- that's required by law, so tell me what your name and date of birth is."

Q. Then what did he say?

A. "I'm not telling you anything."

Q. Now, during all of this conversation both of you were still standing, you facing him, him stationary approximately six to eight feet from you?

A. Yes, sir.

Q. Then after he made that statement, what is the next thing that you said or did?

A. Right after he made that statement, I that if he didn't identify himself I was going to detain him.

Q. Then what did he say or do?

A. He told me that he wasn't telling me shit at that time Corporal Stanek and Deputy Arbos came in behind me, and Corporal Stanek called in to dispatch to let them know that they was at my location.

Q. Now, do you know when those two officers arrived relative to the conversation that has been going on?

A. They arrived about five to six minutes after I had made contact with him.

Q. When were you first -- you first aware of their arrival?

A. I heard a car coming up, like I could see the headlights from the back, and I heard them come on the radio that somebody was there.

Q. Do you know whether -- were they both in the same car?

A. Yes, sir.

* * *

To refresh my recollection, you what was the statement that you made after the individual said that he wasn't going to do shit, or whatever he said? The last thing that he said and then you indicated that you responded to that?

A. I told him that if he didn't identify himself I was going to have to detain him.

Q. All right. Then what did he say or do?

A. He said he wasn't going to do anything. He wasn't going to give me identification.

Q. Then what did you say or do?

A. Once Corporal Stanek and Deputy Arbos parked their patrol vehicle and started to approach me, I ordered him to face a wooden fence, put his hands on the fence so I could handcuff him.

Q. How far was the wooden fence from where you standing?

A. Since we were still in the road, it was about close to ten feet away. Off the road -- off of the roadway itself, probably about seven to eight feet, but away from us was about ten feet.

Q. Then what did he say or do?

A. He walked up to the fence and he put his hands on the fence. I ordered him to put his hands behind his back.

Q. Then what did he say or do?

A. He put his hands behind his back.

* * *

Q. Then what happened?

A. He started pointing in the direction a street saying that "There's somebody over there. There's my cousin. "And I already figured out when he was trying to distract us because we kept telling him to get down to the ground. And he went down, got on his knees, but then he would jump right up and lunged towards me. So I stepped back and Corporal Stanek was telling him the same thing, and he kept pointing in the other direction saying that, "You see, that's my uncle. "That's my uncle over there."

We were telling him, "Get on the ground. Get on the Ground now." So he did this three times where he would act like he was going to go down to his knees, and as soon as we started getting closer towards him to restrain him he would jump back up and lunge at us. After the third time he lunged at me, he came towards me and my gun was out and he lunged at me, and that's when I fired.

Q. How far was -- was the individual from you when you fired?

A. Three feet. Two to three feet.

Q. Now, at this time he did not have a firearm in his possession, you were aware of that; is that

* * *

Q. But you were not aware of the existence of any firearm or other type of weapon, knife, any type of dangerous weapon?

A. I don't know if he was armed or not, sir.

Q. You were not affirmatively aware of any type of dangerous weapon?

A. I did not feel or see anything during the struggle.

* * *

Q. Was there anything behind you?

A. There was a house behind me.

Q. How far was the house behind you?

A. About 20 feet.

Q. When you discharged your firearm, where on the individual's person did it strike?

A. It struck him center mass. And I was aiming in a downward an angle, so somewhere along that stomach area.

Q. Then what happened?

A. When he got struck he went down to the ground on his knees. But he didn't act like he was hurt, so I ordered him to get on the ground again. And I moved to grab him, and when I moved up to grab him he jumped up and immediately tried to go for my gun with both of his hands. When he did that, I punched him—I did a palm strike with my left hand to push him back and holstered my weapon.

Q. But you didn't discharge your weapon again?

A. I couldn't because I would have risked hitting Corporal Stanek.

Q. You didn't discharge your weapon again?

A. No, sir.

Q. Then what occurred?

A. After that — after I holstered my weapon, I grabbed him, took him to the ground, Corporal Stanek got on top of him and Deputy Arbos got on top of him as well.

* * *

[REVISED: September 24, 2015]

Hoke County Sheriff's Office
429 East Central Ave.
Raeford, NC 28376

Policy #: **02-06**

Policy Title: **Use of Force**

Date: October 10, 2006

Revised: June 18, 2008; September 24,
2015

Reference: CALEA 1.3.1; 1.3.2; 1.3.3; 1.3.4;
1.3.5; 1.3.6a-d; 1.3.7; 1.3.8; 1.3.11;
13:13

GENERAL PURPOSE: To establish and explain the law with regard to the use of force by Sheriff's Deputies

POLICY: Sheriff's Office employees will use only the amount of force reasonably necessary to accomplish lawful objectives. This Office will not tolerate excessive force used by a Deputy on any citizen. The explanation of the limitations of the law upon use of force by Sheriff's Deputies will provide them with the necessary knowledge so they may perform their duties confidently and wisely, without subjecting themselves to criminal or civil liability. In no way is this policy intended to limit the Deputy's ability to use force, when and if the proper circumstances exist. The Deputy is expected to retain the right to

defend himself or others with as much force as is necessary to effect such defense. **(CALEA 1.3.1)**

SPECIFIC PROCEDURES:

I. Definitions:

- A. Imminent: Impending or on the point of happening.
- B. Reasonable Belief: The facts or circumstances the Deputy knows, or should know, are such as to cause an ordinary and prudent Deputy to act or think in a similar way under similar circumstances.
- C. Deadly Physical Force: Any force that is likely to cause death or life threatening bodily injury.
- D. Serious Injury: Any injury requiring significant medical intervention to diagnose or treat.

II. Use of Force Justification

- A. According to North Carolina General Statutes 15A-401, Use of Force in Arrest:
 - 1. A Deputy is justified in using force upon another person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized, or

2. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.
- B. A Deputy is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this subsection only when it is, or appears to be, reasonably necessary thereby:
1. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force, or
 2. To effect an arrest or to prevent the escape from custody of a person who he/she reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious injury to others unless apprehended without delay. **(CALEA 1.3.2)**
- C. Nothing in this subsection constitutes justification for willful, malicious or criminally negligent conduct by a person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

III. Force Options:

- A. Determining the appropriate amount of force to use when confronting a resistive subject can be problematic for the Deputy. While it is certainly advantageous for a Deputy to resolve a confrontation with verbal direction, it is at the point where words no longer serve to de-escalate a confrontation that force must be used. Simply stated, officers do not have to exhaust other lower levels of force options before moving to another, so long as it is justified.
- B. The amount of force an officer employs in effecting control or defending himself/herself is generally guided by surrounding circumstances, including, but not limited to, the following:
 - (1) Subject behavior - physical and verbal actions, signs of impairment
 - (2) Totality of the circumstances - known factors
 - (3) Environmental conditions - lighting, location, weather, terrain
 - (4) Reaction time/distance from subject - effective response
 - (5) Multiple subjects/officers
 - (6) Size and gender of the officer and subject

- (7) Skill level of officer - physical ability/condition, training level
- (8) Apparent skill level of suspect - physical appearance, demonstrated ability
- (9) Age of subject/officer
- (10) Injury or exhaustion - physical impairment of officer
- (11) Weapon availability - officer's issued weapons, weapons in the immediate area
- (12) Availability of alternative actions - disengagement, use of multiple officers
- (13) Previous knowledge of the subject

IV. Lethal or Deadly Force.

- A. Lethal or Deadly Force includes, but is not limited to, the use of a firearm or striking a subject with an impact weapon on areas such as the head, neck, clavicle, groin, or multiple strikes to organ areas.
- B. Warning shots shall not be fired under any circumstances as they are considered use of deadly force. **(CALEA 1.3.3)**
- C. A Deputy may draw his weapon when he has reasonable grounds to suspect that the use of deadly force may be necessary. The Deputy need not be under immediate attack, but need

only be reasonably apprehensive that a deadly force situation could occur. This policy is intended to allow the Deputy to have his weapon ready in such circumstances as answering a silent alarm, or confronting a subject when there are reasonable grounds to believe he may be armed, or who may otherwise cause the Deputy to reasonably fear for his life.

- D. Discharging a firearm at a moving vehicle involves a possible risk of death or serious injury to innocent persons. The safety of innocent people is jeopardized when a suspect is disabled and loses control of his or her vehicle. There may be a risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, with the actions of the suspect creating the threat.

Due to the risks and considering that firearms are not generally effective in bringing a moving vehicle to a rapid halt, Deputies shall not fire at a moving vehicle unless the Deputy reasonably believes:

1. The use or imminent use of deadly force other than the vehicle is being used against the Deputy or another person; or
2. There exists an imminent danger of death or serious bodily injury to the Deputy or another person by an on-coming vehicle and no other means are available at that

time to avoid or eliminate the danger because the vehicle is driving directly toward the Deputy or third person and there is no avenue of escape.

A Deputy should not intentionally position himself or herself into the path of an oncoming vehicle. Whenever possible, Deputies should take reasonable steps to get out of harm's way if a vehicle is moving toward them.

E. Any Deputy who is responsible for the death or serious injury of any person shall immediately determine the physical condition of any injured person and render first aid when appropriate. He shall also: (1) notify the Telecommunicator of the incident, location, age and nature of injury of the person, (2) request any necessary medical-aid, request the presence of the on-duty supervisor, (3) remain at the scene (unless injured) until the arrival of the supervisor and, (4) protect his weapon for examination. **(CALEA 1.3.5)**

a The supervisor shall receive from the involved Deputy his weapon used in the incident and provide for the issuance of another weapon through the Chief Deputy, without delay, except in cases wherein the Deputy is suspected of criminal behavior, or in matters wherein it would be in the Deputy's best interest not to do so.

b. The supervisor shall (1) conduct an initial investigation, (2) render command assistance

to the assigned Deputy, and (3) without delay; notify the Sheriff, or his designees

- F. In the event of the death or serious injury of a person as a result of a Deputy's actions the SBI, requested by the Sheriff; his designee, or District Attorney, will conduct a thorough investigation. A detailed report will be submitted to the Sheriff, or his designee, the District Attorney, and the County Attorney.
- G. Internal Affairs will conduct a parallel investigation to determine whether the incident was within the guidelines set forth in the office rules, regulations, and general orders. Internal Affairs will submit a detailed report of the findings to the Sheriff, or his designee. The total investigation will be reviewed by the Legal Advisor, District Attorney, and Sheriff, or his designee. The State Bureau of Investigation, or a similar agency, in cases of alleged civil liberty violations, will be allowed access to reports concerning the specific investigation.
- H. In all cases wherein any person has been seriously injured or killed by the use of deadly force by a Deputy, the involved Deputy will be required to undergo an examination by a licensed psychologist or psychiatrist chosen by the Office and any other course of treatment recommended. In addition, any Deputy seriously injured, as a result of a deadly force encounter shall also be required to undergo the same aforementioned examination. Should

a physical evaluation be necessary, the Deputy shall be examined by a physician chosen by the Sheriff's Office and said examination shall be at the expense of the Sheriff's Office.

- I. The Sheriff's Office shall also make available to the Deputy and his family a licensed psychologist to provide the Deputy and/or his family with a source of professional consultation to aid them in dealing with the potential moral and ethical after-effects of a deadly force incident.
- J. Any employee involved in incidents resulting in death or serious injury shall be placed on administrative leave pending completion of the investigation. This leave shall be without loss of pay or benefits, pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the employee has acted improperly. While on administrative leave, the employee shall remain available at all times should he be needed for official interviews and statements regarding the deadly force incident and shall be subject to recall to duty at any time. **(CALEA 1.3.8)**
- K. Upon returning to duty, the employee may be assigned to administrative duty for a period of time, as deemed appropriate by the Sheriff or his designee.

V. Rendering Aid After Use of Force: **(CALEA 1.3.5)**

- A. All Sworn Personnel will render the appropriate medical aid or ensure that it is initiated after the use of lethal and less than lethal weapons. The aid shall include, but is not limited to:
 - 1. Allowing the suspect to apply water when OC Spray is used and monitoring their progress of recovery
 - 2. CPR when the need arises
 - 3. Requesting EMS personnel for on-scene medical treatment
 - 4. Transporting the suspect to the appropriate medical facility for professional medical treatment
 - 5. Following the deployment of the taser, probes will be removed per policy **02-04 Use of Taser.**

VI. Reporting Use of Force: **(CALEA 1.3.7)**

- A. In any situation in which a Deputy is required to use force against another person, or when a person is injured in any manner, he shall:
 - 1. Complete an Incident/Investigation report as soon as possible
 - 2. Complete a Use of Force Report

3. Forward forms to immediate supervisor for review and appropriate action
 4. The supervisor will forward forms up the chain of command to the Chief Deputy for review and appropriate action
 5. The reports and statements shall be completed no later than the end of tour of duty during which force was used.
- B. The following are examples of situations where the completion of forms is required:
1. A Deputy exercising law enforcement authority used force which causes any apparent physical injury or death **(CALEA 1.3.6b)**
 2. A Deputy exercising law enforcement authority uses an object, including Taser, Expandable Baton, flashlight, hand, fist, or foot to strike a blow, hold or take down a subject. **(CALEA 1.3.6c)**
 3. A Deputy exercising law enforcement authority uses force which in any way causes a subject to suffer a blow to the head, or head injury, or uses any degree of force as defined by this policy. **(CALEA 1.3.6d)**
 4. A Deputy points a gun at any person or discharges a weapon in the line of duty. **(CALEA 1.3.6a)**

5. A Deputy exercising law enforcement authority uses any action involving joint manipulation for purposes of restraint.
 6. Any use of less than lethal weapon; Taser or OC Spray (Activated/Fired).
- C. When a subject in custody is accidentally injured or claims to have been injured, Deputies shall complete an Incident report. The Incident report is to be completed as soon as possible and forwarded to the immediate supervisor
- D. The Chief Deputy will conduct an annual Use of Force analysis of those reports required by this policy. A review of these reports may reveal patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications. **(CALEA 1.3.13)**

VII. Shots to Destroy Animals

- A. It shall be the policy of this Office to contact Animal Control, State Wildlife Commission, N.C. Department of Transportation or appropriate agency if at all possible when dealing with an incident involving an animal
- B. The killing of an animal is justified only:
 1. For self-defense.
 2. To prevent substantial harm to the Deputy or another.

3. When the animal is so badly injured that it requires relief from further suffering and all attempts to contact Animal Control or State Wildlife Commission have been exhausted. Final authority will rest with the shift supervisor.
 4. If conditions allow, the Deputy will make use of their issued shotgun or rifle to dispatch an animal.
- C. Sworn personnel will not take possession of a game animal that has been dispatched, destroyed or killed.

VIII. Training

Deputies must attend biennial training and demonstrate sufficient proficiency in less lethal uses of force to induce Handcuffing, Empty hands control techniques, Impact Weapons and use of O.C. Pepper Spray. If a deputy fails to achieve and demonstrate proficiency, the deputy must attend remedial training, and subsequently show proficiency before returning to duty. Biennial training shall be implemented beginning calendar year 2012.
(CALEA 1.3.11)

NOTE: *This policy is for internal use only, and does not enlarge a Deputy's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims.*

70a

Violations of this directive, if proven, can only form the basis of a complaint by this agency, and then only in a non-judicial administrative setting.

BY THE ORDER OF

**HUBERT A. PETERKIN
SHERIFF**

[DATED: June 30, 2014]

Office of the Sheriff

Hoke County Sheriff's Office and
Emergency Management

HUBERT A. PETERKIN, *SHERIFF*

Hoke County, North Carolina • 429 East Central
Avenue • Raeford, NC 28376
Phone: (910) 875-5111 • Fax (910) 875-2034

MEMORANDUM FOR: Sheriff Hubert A. Peterkin

FROM: Major Freddy L. Johnson Sr.,
Professional Standards

DATE: June 30, 2014

REFERENCE: IA-2014-05-04 Extension -
Sergeant Morant – Deadly
Force

Sheriff Peterkin:

As you know on May 31, 2014 during the early morning hours Sergeant Samuel Morant was involved in an officer involved shooting resulting in the shooting death of Mr. Sandy Jamal McCall. Although our preliminary investigation is complete, we have not received the official State Bureau of Investigation (SBI) report. Our evidence shows that the use of deadly force by Sergeant Morant Saturday morning May 31, 2014 was justified. I have also concluded that Sergeant Morant can be returned to duty, once cleared by the appropriate occupational health provider and our psychologist.

I'm requesting to postpone the completion of our internal investigation until the final disposition of the SBI report is submitted to the District Attorney.

72a

TO: Major Freddy L. Johnson Sr.,
Professional Standards

FROM: Sheriff Hubert Peter

DATE: 7-1-14

Extension Approved /Not Approved

[FILED: May 15, 2017]

Sargent Samuel L. Morant Jr.

May 31, 2014-2:22 AM

Major Johnson: You doing alright?

Sgt. Morant: Yes sir. ·

Major Johnson: Just tell me what happened. That's all I want you to do.

Sgt. Morant: Alright from the beginning

Major Johnson: Just the best that you can remember, and Morant listen to me, you're going ID have to tell the story at least a couple more times. Cause by standard we have to call the SBI and that's just the standard procedures that come in. Ok, so, start-you got the call-you went and just tell me what happened.

Sgt. Morant: I was in route to Archie loop in reference to a loud music call, and Deputy Arbos and Corporal Stanek were going to back me up. I was going down Scurlock School Road and that's when I saw the suspect. He was walking this way from Hillcrest, and the reason I stopped the suspect was cause the past couple of days, recently, we have had a lot of break-ins of vehicles in the area and so I stopped him, and asked him could you do anything on your own and as soon as I got out of the car and started talking to him, he started getting hostile. "What are you harassing me for?" I'm not harassing you-but-we have had a lot of break-ins, in the area. You know what I am saying. I just want to talk to you, have you seen anything, you know what I am

saying-anything suspicious. If you have an ID card on you, you know. He told me he did not have any ID. I asked "what is your name and date of birth" "Why do you need to know all that"—"Sir it's to identify you" I am not trying to accuse you of anything right now, I am not trying to harass you or anything like that. But there are thefts going on in this neighborhood right now. Ok, we just need to keep our eyes on, check stuff out. So he said he had no ID. I said "Sir If you don't have an ID card- I am going to have to detain you right now-until I can identify you, Ok. So, he kept putting his hands in his pockets. "Get your hands out of your pockets". So, we were standing right here, and the grass area in front of the fence. So, I told him "sir you need to back up put your hands on the fence." He's like "what are you bothering me for", I said "put your hands on the fence right now, I need to identify. you. "I'll not going to tell you who I am." Fine- so I put his hands behind his back. Then Abos and Corporal Stanek comes up-. comes up there to assist me, and I told him to get his hands behind his back. I was getting the cuff on and then is when he pushed away and pushed me away and pushed his arm away. So that's when I grabbed him, and that's when I got him on the ground. Corporal Stanek and Arbos assisted me getting him on the ground and his hands behind his back. He kept pulling away and pushing away from us. Put your hands behind your back-you're breaking my arm. We are not trying to break your arm, put your hands behind your back-you're the one making it worse. We got his left hand cuffed behind his back-tried to get his right arm. He kept pulling away and he kept trying to get up. When he pushed up Deputy Arbos fell back and I lost my footing and I started

falling back to. So that's when I said "sir we are going to have to tase you" So he kept moving again, kept fighting. So I pulled my Taser out. I held the taser, when I popped the taser, um, I think one prong hit, so I had to use the other one, the taser to get the full ride. After that he started pushing me off, he was pushing me off. I tried to get back up again. Deputy-Corporal Stanek used her taser. I backed away and she tased him, and he was still fighting, he would still not get on the ground, he would still not put his hands behind his back. So, we all tried to get on top of him again and he pushes us off and he gets up and tries to run. And, then I block him off, I said sir get on the ground right now, he started going after my gun. I said sir I am telling you to get on the ground right now. Corporal Stanek, Deputy Arbos were telling him the same thing get on the ground right now. Handcuff was still handcuffed around his right hand, and. he starts backing away towards the front yard over here by the driveway. And, I got over here-he kept saying "there's my cousin right there, there's my uncle right there" There was nobody standing over there he was trying to distract us. I said "sir, get on the ground right now" He pretends he, he pretends like he is going to get on the ground, and as soon as he comes in to get into the handcuff-he lunged back up-"sir get on the ground right now." I going to get on the ground, I'm going to get on the ground, there's my uncle right there." He lunged again and then the last time I said get on the ground and then I had the gun right there and he lunged at me-and that's when I fired.

Major Johnson: And, he saw. your gun right?

Sgt. Morant: Yes sir, he saw the gun, because when we got him on the ground, I mean after he got shot he went down on the ground. We tried to restrain him and he tried to reach for my gun again. I had to back off, and when Corporal Stanek and Deputy Arbos tried to restrain him, I put my gun up. We had called for EMS to come to the scene to come treat him. And, the whole entire time he kept trying to get up-you know-trying to fight us. That's when we started seeing the blood come out from his side. So I rushed back to my car, to the back of my car. I got the, I got the wraps, the blue wraps like blanket things-tarps. I got that and put my gloves on and went and got over there and tried to-um- slow down the bleeding. I didn't know exact, I didn't know exact where he was hit at because he was wearing a coat. But, we knew the blood was coming from him, so I tried to slow down the bleeding down till the paramedics got there to give him first aid. But, he kept resisting, he kept trying to fight us. Raeford PD came on scene-Officer Nos-the new deputy, I don't know his name, and Officer Vega came up there and they were trying to assist us trying to tell him to stay still, and he kept-he kept trying to get back up. We had to hold him down, Sir quit moving ok. EMS is on the way to come treat you. At one point— you know- he started-he started throwing up, I tried to turn him on his side, but he still kept trying to get up. So, I said "ok let me get the handcuff of you so EMS can treat you. He wouldn't let us, every time I tried to take the handcuff off, he would come off the ground, he would start pulling away from us and fight us again. So we had to try to hold him there. We had to hold him the whole time until EMS arrived. He stood up and we put the leg shackles on

his arms. And, then EMS arrived and they started treating him, but even then when they were trying to treat him, he was still resisting a little bit. And, then I left him and they took over and I gave my weapon to Corporal Stanek and she put it in the trunk

Major Johnson: Let me ask. you this, did you know the guy?

Sgt. Morant: I have seen him before, I have arrested him before

Major Johnson: You have dealt with him before

Sgt. Morant: Yes sir

Major Johnson: How long ago was that?

Sgt. Morant: It was last year or the year before last. But he-um- he has this demeanor to me where he is always-you know. The incident, I dealt with him was some kind of disturbance. It happened on Archie loop. Um, two people were fighting when I got over there, and I was asking do you know what is going on. And, he immediately came up to me and "what are you doing here, you ain't got— he was hostile then. And, myself and Deputy Kazee contained him right there. Until he settled down, and his family came up and said we will take care of him. So I was like, you just need to slow it down-he was hostile then too. So.

Major Johnson: So what your saying is-that started out as a traffic stop correct?

Sgt. Morant: It was an investigating a suspicious person

Major Johnson: Was he in a car?

Sgt. Morant: No sir, he was walking, walking in the middle of the road on a cell phone

Chief Deputy Hammond: Hey I hate to bother you, the two city guys, I don't know how much they were involved in it but they were here when it when off They were the only two in the city. We let them go and we a

Major Johnson: We can follow up on them

Chief Deputy Hammond: Ok

Major Johnson: Hey Gary, make sure you get their names.

Chief Deputy Hammond: Yea

Major Johnson: That's all we need.

Major Johnson: Um, did you know his name?

Sgt. Morant: Um, Corporal Stanek referred to him as Sandy. I didn't know his name or that, I just knew him from the area though

Major Johnson: Ok

Major Johnson: Ok so-Sgt. Morant-you all were going to a, a suspicious person in the area call

Sgt. Morant: It was a loud noise call, but I saw him walking, he was walking in the middle of the road-he had a cell phone to his ear.

Major Johnson: So you just stopped to investigate based on all the problems we have been having in

the area, which is good. Then he got to the point where he just started resisting, obstructing, not cooperating, and it just escalated from there, and at that point you were trying to arrest him and handcuff him for your own safety. I mean, he continued to fight, and it escalated more where you had to pull your service revolver, your service weapon, and at one point he lunged at you and you fired one time and shot him in the front.

Sgt. Morant: Yes sir, shot him right there

Major Johnson: Did he immediately go down?

Sgt. Morant: He went down to his leg, but he was still fighting and we had to actually had to restrain him and put him on the ground.

Major Johnson: After you shot him- you still had to restrain him?

Sgt. Morant: Yes sir

Major Johnson: OK, how are you feeling?

Sgt. Morant: I feel fine sir, I'm feeling, I, I'm ok. Like I said it wasn't just my concern for myself. at that point it was for corporal Stanek to because-like I said each time we made contact, when we made contact-you know there was that danger, he kept fighting us. And, like I said

[FILED: May 15, 2017]

Corporal Jessica (Stanek) Tyner

May 31, 2014

Major Johnson: Ok Jessica, just tell me what happened

Corporal Tyner: ok sir, I overheard Sgt. Morant on the radio, state that he was out with a suspicious person on 401 Business and Scurlock School Road. When myself and Deputy Arbos pulled up, I seen Sgt. Morant over there yelling at a black male, and he was yelling back at him. So I jumped out of my car and ran over there and he was. Sgt. Morant was asking him "What is your name, what's your name, what's your name" and he kept yelling and screaming at him. But, I don't remember what he was screaming at Sgt. Morant. So, Sgt. Morant tried to grab ahold of him and he resisted and lunged. So, Sgt. Morant placed him on the ground and I assisted him with holding him down, so this way he could get the handcuffs on him. And he kept fighting and resisting and would not remove his hands, would not listen to any verbal commands we were saying. I mean constantly, um, just resisting. So, Sgt. Morant pulled his Taser out and tased him. The male, I know him, his name is Sandy McCall, had pulled out the Tasers- the prongs and started trying to fight with Morant again-so I tased him. He pulled them out and started going across the road. Well, we followed him, and kept saying "hey look stop". He kept saying "hey look there's my cousin, there's my cousin" and would not listen to any verbal commands that we were saying. When we grabbed a hold of him, he kept trying to push away, and so, me and

Sgt. Morant drew our weapons and kept asking “hey please just listen to what we have to say-you know-just do what we ask you to do, stop trying to resist, stop trying to fight, and he said “hey look there’s my cousin” and as he said that he reached and tried to grab Sgt. Morant’s weapon. So Sgt. Morant backed up and he tried to do it again, and that’s when I heard a shot go off, So then I called for EMS, and as he was laying on the ground, he was still trying to fight and resist Sgt. Morant, Deputy Arbos, and myself. Still not listening to verbal commands, still trying to tight and resist the whole time. So.

Major Johnson: At what point did he get the handcuffs on him? Or part of the handcuff?

Corporal Tyner: There by the fence.

Major Johnson: By the fence over there?

Corporal Tvner: He ran, he had one on and when he got up (can’t hear-back ground radio to loud)

Major Johnson: So he had one there by the fence when it first started.

Major Johnson: Jessica is he a big guy?

Corporal Tyner: He is tall -skinny

Major Johnson: Did he appear like he might be impaired?

Corporal Tyner: I’m not

Major Johnson: or at least not his normal behavior cause you know him?

Corporal Tyner: Yea, he has a lot, he has a lot of mental issues

Major Johnson: he does?

Corporal Tyner: a huh, so.

Major Johnson: Does he live right around here?

Corporal Tyner: I'm not sure where he lives.

Major Johnson: So what your saying is-you heard Morant get out with a suspect on Scurlock School Road and Bypass?

Corporal Tyner: a huh

Major Johnson: not the bypass-business

Corporal Tyner: 401 Business

Major Johnson: and a, when you got here he was, a giving verbal commands or hollering at a black male.

Corporal Tyner: a huh

Major Johnson: and the black male refused all the verbal commands correct?

Corporal Tyner: Correct

Major Johnson: As, when he tried to put the handcuffs on him, he fought the whole time, and when he tased him, he pulled them out. You tased him and he pulled them out and he continued to resist.

Corporal Tyner: Yes sir.

Major Johnson: That right?

Corporal Tyner: Yes sir.

Major Johnson: At some point Morant pulled his weapon?

Corporal Tyner: After the defendant ran across the street, still not listening to us, Sgt. Morant pulled his weapon and I pulled my weapon as well.

Major Johnson: And then at some point he lunged, so there wasn't any physical contact with him prior to that happening, when he was on this side of the road

Corporal Tyner: I can't remember, I know he was resisting the whole time, and every time that myself, Deputy Arbos, or Sgt. Morant tried to grab a hold of him, he would, he would get away or push out of it. So there had to be physical contact. I am not exactly sure step by step of what it was.

Major Johnson: it the reality out here, when you're working out here · Jessica just to, is there a lot of B & E's out here.

Corporal Tyner: A lot of B&E's-there's a lot of gang related areas over that way by the fire department. There is a lot of people just walking up and down the road trying to break into cars. He, I have arrested him before for larceny. So, I know who he is and what he does.

Major Johnson: Now, while you were doing this, what was the trainee doing?

Corporal Tyner: She was assisting us with everything that we were doing, she was right there hands on the whole time with us.

Major Johnson: She was, what's her name?

Corporal Tyner: Deputy Arbos

Major Johnson: Arbos

Corporal Tyner: Arbos

Major Johnson: Ok.

Major Johnson: What if any statements did Morant make after that?

Corporal Tyner: He did not make any statements, he just said "I wish he would have fucking listened- all he had to do was listen" and he said "you tried to grab my gun", I remember that. But, he did not say anything to me, I am the one that told him "give me your gun, call BBA, go sit in the car."

Major Johnson: let me ask you this-a-

Corporal Tyner: Yes sir

Major Johnson: Jessica I wasn't here, so I wasn't there, you were there, this thing was fluid were you all scared?

Corporal Tyner: Yea, I was scared, I didn't know what he was going to do

Major Johnson: Right.

Major Johnson: Would you.

Corporal Tyner: and I didn't have a shot, I didn't shoot because my Sgt. and my trainee were in my cross fire.

Major Johnson: Ok, let me ask you this, a, do you feel that a, is it your belief that when Morant shot him -that he fear for his life?

Corporal Tyner: Yes sir

Major Johnson: Let me cut this off.

[FILED: May 15, 2017]

Deputy Lourdes Isabelle Arbos

May 31, 2014 2:50 AM

Major Johnson: Alright go forth.

Deputy Arbos: Ok, so there was a call that came out over the radio about a suspicious person. S9-said to communications be out with a suspicious person out on Scurlock School Road. When I heard them come over the radio, I, I asked Corporal Stanek, I said "can we go with them" and she said "yeah, let's go ahead." So I called out over the radio, I said "24 Hoke-I'm will be in route with S9." So; I turned on Scurlock Road and I saw his lights, I went toward the lights and he was parked where he is now. I pulled up behind him and turned on my lights, um-and I said 24 on scene. As soon as I looked up, I saw him, I saw Sgt. Morant with the male against the fence. He was trying to, he was trying to um-he was trying to handcuff him-and um, we crossed over and he was resisting, he was fighting. By the time we got out of the car he was fighting. So we ran to him. And um, we kept telling him "just lay down sir, just lay down, lay down. Stop resisting, stop resisting." He kept on fighting, um we were there what seemed like forever, trying to get him to stop fighting. Um-he wouldn't. Seemed like he was trying to run or trying to leave, and then he kept on like advancing towards Morant Um, they pulled out their Tasers and said "we are going to taz you if you don't stop." Because we had him on the floor and he kept on trying to handcuff him. We had-his right hand, I think was cuffed, but his left hand wasn't cuffed -so, we were trying to cuff him, and um, he got up and

they said we ate going to taze you if you don't give up. Just lay down and let us cuff you. He got up and started running toward that tree right there. Um, they tazed him, he was still over here, he hadn't moved over yet. But, they tazed him. Um, I heard a "POP", I think it was the Taser pop, Stanek's Taser pop. Um, nothing, like nothing, like it didn't affect him. Um, so he ran, he ran toward the tree, toward that dirt road. We followed after him, we told him to stop. Stop resisting, stop resisting. We got across the street, S9 and Stanek drew their weapons. I did not draw mine because I figured two weapons were enough, and I didn't want to. shoot anybody by mistake, because I was, I was nervous, but I was still yelling at him telling him to stop. Um, Sgt. Morant was in front of him, his back was like towards the residents, he was facing us, and the suspect was in front of him and we were, um Corporal Stanek was behind him and then I'm like asque. So we were, they were like in each other's line of fire, I was on the side and I was trying to back away. Um, when they drew their weapons they warned him, they said "Stop, (you know) stop resisting, just calm down, hey stop resisting, lay down" I was yelling at this point. We were all yelling, he didn't stop, he kept going, and he kept running away. At that point, he went for Morants gun, and um, when he went for Morants gun, Morant backed up, he went again for Morants gun, and he almost grabbed it that time. The Tasers were still attached to him, but, they had stopped tasing him. We were just walking along with him, and then he just shot him, right when he went for his gun the second time, he shot him, and I felt the, the wind whatever. Um, I backed up, Stanek backed up, she walked behind me and he was still, he was

still fighting-he went for Morant again. I'm, he was just like moving-um-aggressively and we kept telling him to lay down and he didn't lay down, and like in 2 minutes he finally fell down on his knees. And, that's when we, when we tried to lay him down. That's when I saw the blood coming out. So, he was finally laying down- still aggressive and Morant called for EMS and then he said for EMS to be upgraded and then I said "do we have anything to apply, you know pressure to the wound. Morant, he yelled for, like a rag, some kind of rag or something. I don't know what he called it. Um, I said where is it and he ran, he ran to his car and grabbed like a big blue sheet, he ran back with it and he put it on the male who was on the floor. He was still trying, he was still resisting us trying to move, trying to flip over. He went for me a few times when I was holding him down-that's how I got blood all over myself. He wouldn't move, he kept turning around, he kept on. I was like just lie down, just breathe you're going to be OK. Just lie down, just breathe. Um. Raeford PD came on scene, it was like three of them, it was Vega, I think it was Locklear-a skinny guy, and another white cop. I don't know his name. So, they were there, I mean they were trying to help us-like just make him still-cause he kept moving and moving towards us and trying to get up and all this and yelling and I mean we had trouble trying to keep him; trying to keep him laid down and trying to get pressure on the wound. And then, that's when the medics came, he was still, he was still for a little bit, and then he would move again, um, medics came and he threw up. The man on the floor did, he threw up. um; we got him handcuffed, we asked for shackles for his feet, cause he was trying to kick us.

So, somebody put the shackles on him, I don't know who did cause I was like-I was on the wound trying to keep pressure on it And then when the medics came I just backed up and let them do what they had to do. Um, so, that's it

Major Johnson: So the, Raeford PD Officers didn't see what happened, they came on scene after the fact.

Deputy Arbos: No they didn't see what happened, they came when we were trying to hold him down on the floor after he had been shot.

Major Johnson: Ok, what if any statements after the shooting did Morant make?

Deputy Arbos: Nothing, I did not hear anything from Morant,

Major Johnson: Did he

Deputy Arbos: I'm still asking people if he is ok-cause nobody knows where he went.

Major Johnson: So basically where he is laying right now- is where he got shot?

Deputy Arbos: He got; he got shot like three feet this way, before he got there, cause he. He was fighting us, so he crawled: When he was on his knees he crawled a little bit forward. That's when he fell, he kept fighting us. So, we tried to keep him as still as we could but, I mean. Raeford PD will tell you after he was shot he was still fighting