APPENDIX

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APPENDIX A

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File Name: 19a0221p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 18-2181

[Filed August 29, 2019]

HEATHER BAKER, Personal Representative of the Estate of Kyle Baker, Deceased, *Plaintiff-Appellant*,	)
v.	)
CITY OF TRENTON; MARK DRISCOLL; STEVE LYONS; AARON BINIARZ; STEVE ARNOCZKI, *Defendants-Appellees.*	)

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:16-cv-12280—Marianne O. Battani,
District Judge.

Argued: June 25, 2019

Decided and Filed: August 29, 2019

Before: SUTTON, BUSH, and LARSEN,
Circuit Judges.

COUNSEL

ARGUED: Mark R. Bendure, BENDURE & THOMAS, PLC, Grosse Pointe Park, Michigan, for Appellant. Courtney A. Jones, KALLAS & HENK, PC, Bloomfield Hills, Michigan, for Appellees. **ON BRIEF:** Mark R. Bendure, BENDURE & THOMAS, PLC, Grosse Pointe Park, Michigan, for Appellant. Courtney A. Jones, KALLAS & HENK, PC, Bloomfield Hills, Michigan, for Appellees.

OPINION

JOHN K. BUSH, Circuit Judge. This case involves a tragedy of good intentions. Shortly before his high school graduation, eighteen-year-old Kyle Baker apparently experimented with LSD. The after-effects of the drug afflicted him for several days, resulting in his having to be removed from class because of behavioral issues. Kyle's friend, Collin Mathieu, checked in on him after school to see if everything was all right. It was not. Collin went to the police and told them that Kyle needed help and that Kyle was armed and upset with his mother. The police dispatcher sent four officers to the house; lost in the communication, however, was that the mother was not actually home with Kyle. Without waiting for a warrant, the officers entered Kyle's home. He appeared at the foot of the basement stairs, wielding a lawnmower blade. When the officers attempted to subdue Kyle with a taser, he came up the basement stairs swinging. The lawnmower blade

struck an officer, who fell back on some stairs or a landing in front of Kyle. The officer then shot and killed the young man.

Kyle's mother, Heather Baker, sued the individual officers and their employer, the City of Trenton, under 42 U.S.C. § 1983 for alleged violations of the Fourth Amendment guarantee against unreasonable searches and seizures, as incorporated against the States by the Fourteenth Amendment. After discovery, the district court granted summary judgment to the defendants, holding that the officers had not committed any such Fourth Amendment violation (and finding in the alternative that the officers had qualified immunity) and that the City could not be liable in the absence of any constitutional violation. Ms. Baker now appeals this determination.

This case is heart-rending, and we have deep sympathy for Kyle's family and friends. Nonetheless, given the circumstances and governing case law, we hold that the officers's entry into Kyle's home and use of force did not violate the Fourth Amendment, and therefore we **AFFIRM** the decision of the district court.

I. BACKGROUND[1]

In May of 2015, Kyle Baker was set to graduate from Trenton High School in June. His parents,

[1] This is a fact-intensive case, with many points of dispute between the parties. Because this case was decided on a motion for summary judgment, we construe the facts in the light most favorable to Ms. Baker, the non-moving party. *See Smith Wholesale Co. v. R.J. Reynolds Tobacco Co.*, 477 F.3d 854, 861 (6th Cir. 2007).

Heather and Tim Baker, were divorced, and Kyle split time between their houses, typically spending week nights with his father and stepmother and weekends with his mother. Sometime in mid- to late-May, Kyle participated in "senior skip day," the traditional day for seniors to cut class. Apparently, on this occasion, Kyle decided to try LSD.

About one week after, on May 28, Kyle was acting oddly at school. The parties agree that his strange behavior may have been caused by after-effects of the LSD. Kyle stared out the window and attempted to shield his eyes from the sun, although the sky was overcast that day. Also, he could not hold an intelligible conversation, instead merely repeating whatever was said to him. As a result, Kyle was sent to the principal's office. There, Kyle continued to behave peculiarly. For example, he said something to the effect that he was lying down, despite the fact that he was standing up. Suspicious that Kyle might be under the influence of drugs, the principal (Dr. Michael Doyle) called the police. In response, Officer Jake Davis of the Trenton Police Department visited the school and observed Kyle.

Davis reported that Kyle was unresponsive to verbal communication. The officer also voiced suspicion that Kyle was under the influence of an intoxicant and asked to speak with Dr. Doyle privately to determine the proper course of action. While they were in another room, Kyle was left alone, and he used that opportunity to leave the school. He did not return.

When Collin Mathieu, a friend of Kyle's, learned what had happened, he texted Kyle's mother to let her

know. Additionally, Dr. Doyle called Ms. Baker, as well as separately called Mr. Baker, to advise each of the situation. Ms. Baker reacted by calling Kyle's cell phone, but she initially was not able to reach him. Mr. Baker did reach Kyle, and he instructed his son to go home and remain there. At some point later in the afternoon, Kyle also answered one of his mother's phone calls. He told her that he did not know why Dr. Doyle had called the police, and did not tell his mother where he was. Alarmed by this call, Ms. Baker tried several more times to reach Kyle, but to no avail. She then texted Collin that she was worried about Kyle.

After school, Collin went looking for his friend. He first tried Mr. Baker's house, but Kyle was not there. Collin next checked a local park, but Kyle was not there either. Collin then returned to Mr. Baker's house, where he finally found his friend alone in the basement. Collin took out his cell phone and showed Kyle the text messages from Ms. Baker. Collin then called Ms. Baker, handing his cell phone to Kyle so that he could speak with his mother. The two talked briefly, after which Kyle refused to return the cell phone to Collin. Instead, according to Collin, Kyle showed him a pocket knife, though Kyle did not unfold the blade.

After this encounter with Kyle, Collin decided to contact the police. Because Kyle had Collin's phone and would not return it, Collin did not call 911 but instead went to the police station in person to ask for help. There, Collin described to Kelsey Pare, a police dispatcher, what had transpired. Collin told Pare about Kyle's call with his mother, but (again according to Collin's account) he did not tell the dispatcher that Ms.

Baker was present in the home with Kyle or that Kyle had made threatening remarks toward her. Pare has a different recollection of what Collin told her, and she testified that her dispatch accurately reflected what she had been told. Pare put out the following dispatch:

> We have a teenage male in the lobby here, states that a teenager there named Kyle Baker left school today. When he went to go check on him he states that he had a knife in his home. He was threatening towards his mother. He also stole his cell phone. He left after he pulled the knife out. As far as he knows he's still at the residence. We also have word he possibly may have purchased a shotgun last week. Try and make contact on the house phone but its [sic] just going busy.

R. 25, PageID 489.

Officers Driscoll, Arnoczki, Lyons, and Biniarz responded to the dispatch. After the officers reached Mr. Baker's house but before they entered, Pare communicated further details to them:

> Caller came into station to report that he went to check on a friend that had left school today and when he did, his friend (Kyle Christian Baker, 18 yo w m) was threatening and yelling at his mother. He tried to talk to him and pulled a knife out and took his cell phone. The subj[ect] then went upstairs; The caller left after the subj[ect] went upstairs and came to the [station]; Sgt. Cheplick made several attempts to contact

> the house phone, busy line[.] Attempted to make contact by cell as well. No answer.[2]

R. 25-4, PageID 715. Based on this message, the officers testified that they believed that Kyle, armed with a knife or a shotgun, or both, was holding his mother hostage.[3]

Driscoll knocked on the front door of the house, but there was no response. Arnoczki went around the back and found a door unlocked. He let himself in, followed by Driscoll and Lyons, while Biniarz stayed at the front door. Once inside, the three officers loudly announced their presence as the Trenton police and called out asking if anyone was home. Kyle responded from the basement by shouting obscenities at the police and demanding that they leave. Biniarz then went around to the back of the house, entering to join his colleagues. Two officers swept the house (save for the basement) but found neither Ms. Baker nor any weapon. The officers then positioned themselves at the top of the basement stairs. They tried to engage in dialogue with Kyle, who was at the foot of the stairs. The officers asked Kyle where his mother was. Kyle responded that

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[2] In this dispatch, Pare referred to Collin as "caller." There is no evidence in the record, however, that Collin ever "called" the police station; rather, the record is clear that Collin made his report in person.

[3] Officer Cheplick was working dispatch alongside Pare. Cheplick called Mr. Baker to let him know that police were at his house checking on Kyle and Ms. Baker. Mr. Baker told Cheplick that he did not believe that Ms. Baker was at the house. This conversation, however, occurred after the responding officers had already entered Mr. Baker's house.

he did not know. The officers noticed that Kyle was holding a lawnmower blade. They asked him to come upstairs, but he refused. The four officers would not budge from their positions either. After several minutes of this standoff, Kyle finally decided to take a couple of steps up the basement stairs. At that point, Lyons and Biniarz tasered him with projectile tasers from the top of the stairs. With Kyle seemingly stunned, Driscoll then started down the stairs to subdue him.

As Driscoll descended, however, Kyle stood back up and resumed heading up the stairs. Biniarz, Arnoczki, and Lyons backed off the stairs and into the upstairs kitchen, but Driscoll was unable to fully retreat. He lost his footing and fell into a seated or semi-seated position on some stairs or on a landing near the top of the staircase. From his position, Driscoll saw that Kyle was still moving up the stairs with the lawnmower blade in his hand, swinging it erratically. As Driscoll remained pinned on the stairs or the landing, Kyle struck him once with the lawnmower blade, producing a cut wound that required stitches. At that point, the officer shot his assailant once. According to Driscoll, he fired upward at Kyle, who stood over him. But, according to forensic evidence relied upon by Ms. Baker (which we must credit for purposes of summary judgment), Driscoll fired downward at Kyle, who at the time of the shot was seven feet away from the officer. The bullet passed through Kyle's abdomen, inflicting injuries that ultimately proved fatal. After Kyle was shot, Lyons went down into the basement and handcuffed him.

Kyle was then taken to the hospital, where he died from the gunshot wound. Only after Driscoll shot Kyle were the officers able to safely enter the basement and ascertain that Ms. Baker was not present. Although Kyle's shotgun was ultimately located under his bed, the record does not indicate whether or where Kyle's pocket knife was found.

In the aftermath of the shooting, the Michigan State Police and the Trenton Police Department investigated the incident, and both determined that the shooting was done in self-defense. The district court determined that the officers did not violate the Fourth Amendment in either their entry of the house or the shooting. Because it found that the officers had not committed any constitutional violation, the district court also held that there was no basis for finding the City liable. Accordingly, the district court granted the motion for summary judgment. Baker timely appealed.

II. DISCUSSION

We review the district court's grant of summary judgment de novo. *Maben v. Thelen*, 887 F.3d 252, 258 (6th Cir. 2018). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Because a motion for summary judgment "necessarily implicates the substantive evidentiary standard of proof that would apply at the trial," we must determine "whether reasonable jurors could find by a preponderance of the evidence that the

[non-moving party] is entitled to a verdict." *Id.* at 252. Once the moving party has met the initial burden of showing the absence of a genuine dispute of material fact, the non-moving party must then "come forward with specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted) (emphasis removed). The non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at 586. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252. However, in considering the evidence in the record, the court must view the evidence "in a light most favorable to the party opposing the motion, giving that party the benefit of all reasonable inferences." *Smith Wholesale Co. v. R.J. Reynolds Tobacco Co.*, 477 F.3d 854, 861 (6th Cir. 2007).

Ms. Baker has three Fourth Amendment claims: 1) that the officers violated Kyle's constitutional rights when they entered the home without a warrant, 2) that Driscoll violated Kyle's constitutional rights when he shot Kyle, and 3) that the City of Trenton violated Kyle's constitutional rights by failing to properly train and discipline its police officers.[4] As explained below,

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[4] Initially, Ms. Baker also claimed that the officers violated Kyle's Fifth Amendment rights by refusing to leave the home when Kyle refused to speak with them. However, she has abandoned this claim and we will not consider it.

Appellees were properly granted summary judgment as to each of these claims.

A. Warrantless Entry

"It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 585 (1980) (quotation omitted). "[T]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Id.* (quoting *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972)). Because the officers in this case entered the home without a warrant and without permission, their entry was unlawful unless it falls into an exception to this general rule. We conclude that the officers' entry was justified under the exigent-circumstances exception.[5]

"Exigent circumstances are situations where real[,] immediate[,] and serious consequences will certainly occur if the police officer postpones action to obtain a warrant." *Thacker v. City of Columbus*, 328 F.3d 244, 253 (6th Cir. 2003) (internal quotation marks and citations omitted). There are four recognized situations where exigent circumstances allow a warrantless entry: "(1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a

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[5] Because we find that exigent circumstances justified the officers' entry, we do not address Appellees' second argued basis for the warrantless entry—the community caretaker exception, which applies when officers are not engaged in "traditional law enforcement functions." *See United States v. Rohrig*, 98 F.3d 1506, 1521 (6th Cir. 1996).

suspect's escape, and (4) a risk of danger to the police or others." *United States v. Rohrig*, 98 F.3d 1506, 1515 (6th Cir. 1996). Baker argues that the first three circumstances do not apply here. Kyle was not a fleeing felon, no one believed him to be in the process of destroying evidence, and he was not a suspect attempting escape. Appellees do not dispute these points. Thus, our analysis focuses on the risk of danger.

"Under the exigent circumstances exception concerning the threat of violence to officers or others, police officers 'may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.'" *Goodwin v. City of Painesville*, 781 F.3d 314, 332 (6th Cir. 2015) (quoting *Schreiber v. Moe*, 596 F.3d 323, 329–30 (6th Cir. 2010)). We use an objective test to analyze the circumstances that gave rise to a warrantless entry: "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively*, justify [the] action.'" *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006) (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)). As applied to the danger-to-police-or-others exception, a lawful warrantless entry requires "an objectively reasonable basis for believing . . . that a person within the house is in need of immediate aid." *Goodwin*, 781 F.3d at 332 (quoting *Michigan v. Fisher*, 558 U.S. 45, 47 (2009)). More specifically, this standard requires us to determine whether "a reasonable person [would] believe that the entry was necessary to prevent physical harm to the officers or other persons."

Brigham City, 547 U.S. at 402 (citation omitted) (alteration in original).

The facts here indicate that a reasonable person in the officers' position would indeed believe that entry was necessary to prevent physical harm. The reasonableness standard of the Fourth Amendment requires us to examine the officers' actions in response to the information they had been given. When those officers arrived at the house, they had only the information they received from the dispatcher. Based on that information, they could have reasonably believed that Ms. Baker was inside with Kyle, that he was armed in some fashion, with the knife or the shotgun, or both, and that he was threatening her. We have previously considered similar cases.

In *Schreiber v. Moe*, 596 F.3d 323 (6th Cir. 2010), we considered the case of a police officer, William Moe, who entered a home without a warrant in response to a dispatch message from the police station. In that case, an anonymous 911 caller[6] reported a case of domestic abuse in the home of James Warren Schreiber. *Id.* at 326. The message was relayed to Moe

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[6] Ms. Baker notes that *Schreiber* involved a 911 call, but the instant case does not. *See* Appellant Br. at 35. Ms. Baker explains that 911 is "reserved for emergency calls, primarily calls about immediate danger." *Id.* Here, of course, instead of calling 911, Collin physically went to the police station to make his report. This distinction is not legally relevant, because the original source of the dispatcher's information does not affect our analysis of how a reasonable officer—who received the information from a dispatch, not from the original source—would act in response to the information.

(via a message sent to his in-car computer, *id.* at 326 n.1) and indicated that there was "a risk of physical harm to a person at the scene." *Id.* at 326. There was a dispute over what Moe observed when he arrived at the home—Moe testified that he saw both Schreiber and Schreiber's teenage daughter Sarah, who was the alleged victim of domestic abuse, whereas Schreiber testified that the only person that Moe could have seen was Schreiber himself. *Id.* In any event, Moe entered Schreiber's home without a warrant and against Schreiber's wishes, and a physical altercation between the two ensued. Schreiber subsequently sued Moe under § 1983 for excessive force and warrantless entry. *Id.* at 328.

Moe argued that exigent circumstances justified his entry into the home, and we agreed. Even if Schreiber was correct on the disputed factual point—that is, even if Moe could see only Schreiber, and not Sarah—"Moe's inability to see Sarah would have made it reasonable for him to investigate so that he could confirm that Sarah was okay." *Id.* at 331. We pointed out that "[o]fficers do not need ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception . . . . [I]t sufficed . . . that it was reasonable to believe that" a victim was about to be or had already been hurt. *Id.* (first alteration in original) (internal citations and quotation marks omitted). Further, we held that Moe committed no violation by remaining in the home even after he determined that Sarah was physically safe. *Id.* We pointed out that "a warrantless intrusion into a home must not exceed the exigency that permits it," *id.*; however, once Moe was inside the home, "Schreiber was on the brink of violence and . . .

even if . . . Sarah was at that point unharmed, a continued police presence was required for a time to prevent any future harm." *Id.*

The circumstances in the instant case are similar. Because of the language of the initial dispatch, the officers could reasonably believe that Ms. Baker was in the home with Kyle and that he was threatening her. They also had been informed that Kyle possessed a knife and had recently purchased a shotgun. From outside the home, the officers could not communicate with anyone inside. Additionally, while they were at the home (and before they entered) the officers were updated with a dispatch stating that attempts to call the house were getting only busy signals. These facts did not dispel them of the notion that Ms. Baker was inside, with Kyle. And because Officer Cheplick's conversation with Mr. Baker did not occur until after the officers had entered the home, it was not part of the mix of information they had to rely upon in deciding whether to enter. Based on the information that had been conveyed to them, those officers, upon arriving at the house and examining the scene from outside (coupled with the update from the station), reasonably could have determined, like the officers in *Schreiber*, that they needed more information to determine the proper course of action. The situation impelled further investigation, and reasonable officers would have believed that "serious consequences [would] certainly occur if [they] postpone[d] action to obtain a warrant." *Thacker*, 328 F.3d at 253.

Given these circumstances—that the officers could reasonably believe based on the dispatch that Kyle was

in the home with his mother, and that he was armed and threatening her—a reasonable jury could only conclude that the officers were justified in entering the home to determine that Ms. Baker was safe. And once the officers were inside, given Kyle's erratic behavior and the fact that he was armed with a lawnmower blade, no reasonable jury could fault the officers for remaining in the home.

Ms. Baker attempts to argue to the contrary that exigent circumstances did not justify the entry because Kyle posed no risk of danger to the police or others. She is certainly correct to point out that before the warrantless entry, Kyle did not in reality pose any risk to her. However, she is incorrect insofar as she argues that the officers should have known that Kyle posed no risk of injury to others. While it is true that Ms. Baker was not in the house with Kyle, the undisputed facts demonstrate that the officers reasonably believed that she was present. We must analyze the actions of those officers on the scene by reference to a reasonable understanding of the information *that they actually received*. As noted, their actions were reasonable in light of what they reasonably could have understood was happening in the house.

For these reasons, we find that the officers did not violate the Fourth Amendment by their warrantless entry. Having found no constitutional violation, we need not examine the second prong of qualified immunity (whether the right was clearly established at the time of the violation). We therefore **AFFIRM** the decision of the district court as to the warrantless entry.

B. Excessive Force

Ms. Baker' second claim is that Driscoll violated Kyle's rights under the Fourth Amendment by using excessive force to subdue him. We examine excessive-force claims under an objective-reasonableness standard: "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 396–97 (1989). This test is dependent on the facts of the individual case, most importantly "whether the suspect poses an immediate threat to the safety of officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396. A police officer "may not use deadly force against a citizen unless 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.'" *Sova v. City of Mt. Pleasant*, 142 F.3d 898, 902–03 (6th Cir. 1998) (quoting *Tennessee v. Garner*, 471 U.S. 1, 3 (1985)). Thus, the question here is whether the facts, taken in the light most favorable to Ms. Baker, would allow a jury to determine that Driscoll lacked probable cause to believe that Kyle posed a significant threat of death or serious physical injury.

The following facts are not in dispute: at the moment of the shooting, 1) Kyle was holding a lawnmower blade, 2) he was advancing or had partially advanced up the stairs towards Driscoll, 3) Driscoll had fallen backwards onto the stairs or a landing on the stairs, and was in a seated or semi-seated position, and

4) Kyle actually struck Driscoll with the lawnmower blade. We must judge these fats "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. Given these facts, no reasonable jury could find for Ms. Baker.

Chappell v. City of Cleveland, 585 F.3d 901 (6th Cir. 2009) is instructive. That case arose from a police shooting of an armed adolescent. *Id.* There, two Cleveland police officers executed a search warrant at the residence of a suspected armed robber. *Id.* at 904. In the course of executing the warrant, the officers conducted a protective sweep of the premises. *Id.* During the protective sweep, the officers entered a bedroom that they believed to be unoccupied. *Id.* at 905. After they entered the room, however, they discovered fifteen-year-old Brandon McCloud (the suspected robber) hiding in the closet. *Id.* The officers ordered McCloud to exit the closet and show his hands. *Id.* When McCloud came out of the closet, he was carrying a knife. *Id.* McCloud moved toward the officers, ignoring their commands to stop, and they fired, killing him. *Id.* Subsequently, McCloud's grandmother sued on his behalf under § 1983, alleging that the officers used excessive force in violation of the Fourth Amendment. *Id.* The officers sought summary judgment on the ground that their actions were shielded by qualified immunity, but the district court denied their motion. *Id.*

On appeal, we determined that the district court erred and that the defendants were entitled to summary judgment. As we explained, the key factual

question was "whether McCloud posed a serious and immediate threat of harm." *Id.* at 909. Although the district court had determined that the record of that case presented a genuine dispute as to that question, we disagreed:

> The knife-wielding suspect was undisputedly moving toward the officers and had closed to within five to seven feet in a dark, cluttered, enclosed space. Both detectives were backed up against a wall in the small bedroom and there was no ready means of retreat or escape. Considering McCloud's stature (5' 7" 165 lbs.) and the size of the knife (described and depicted in photograph as a standard "steak knife" with serrated edge), it is apparent that if the detectives had hesitated one instant, i.e., long enough to allow McCloud to take even one more step, they would have been within his arm's reach and vulnerable to serious or even fatal injury. These undisputed circumstances clearly support probable cause to believe that serious harm was imminently threatened and that use of deadly force in self-defense was justified.

Id. at 911.

The similarities between the relevant facts in *Chappell* and those here are striking. Both circumstances involved victims bearing bladed weapons, who approached officers in a narrow, confined space, moved within about six feet of the officers, and were shot and killed by the officers. In the instant case (unlike the deceased in *Chappell*), Kyle actually landed a blow upon the police officer before he was shot. There

is some dispute about the actual distance between Kyle and Driscoll at the moment of the shooting, and whether Driscoll fired upward or downward. Appellees assert that Kyle was standing directly over Driscoll at the time of the shooting, and that the officer fired upward defensively. By contrast, Ms. Baker asserts that Kyle was seven feet away from Driscoll, who fired down the stairs at Kyle. Even crediting Ms. Baker's version of the facts, Kyle was within the same five-to-seven-foot zone as the victim in *Chappell*, had already cut Driscoll once with a lawnmower blade, and could have immediately pressed home another assault, perhaps with fatal results. Even on Ms. Baker's version of the facts, no reasonable jury could find that Driscoll used excessive force.

Ms. Baker urges us to distinguish *Chappell* from the facts here. She emphasizes that the victim in *Chappell* was a suspected armed robber, that the officers in *Chappell* had obtained a warrant before entering, and that the officers in *Chappell* had no means of retreat, whereas Driscoll "could have readily retreated, just as the other officers had." Appellant Br. at 47. Baker urges us instead to analogize the instant case to *Bletz v. Gribble*, 641 F.3d 743 (6th Cir. 2011).

In *Bletz*, two police officers were sued for excessive force after shooting Fred Bletz during the execution of a warrant. *Id.* at 747. The officers had a warrant for failure to appear against Zachary Bletz, who was the son of, and lived with, Fred Bletz. *Id.* When Zachary answered the door and stepped outside to talk with the officers, they told him they were there to arrest him for failure to appear. *Id.* at 747–48. However, because

Zachary was wearing slippers, the police allowed him to re-enter the house to put on more appropriate footwear before taking him to jail. *Id.* at 748. When the officers followed Zachary into the house, they encountered Fred, who was holding a handgun. *Id.* The officers ordered Fred to put the weapon down. He allegedly was lowering his weapon when the officers fired, killing him. *Id.*

When the dcedent's estate sued under § 1983, the district court denied summary judgment to the defendants on qualified immunity grounds. *Id.* at 749. On appeal, we affirmed the denial of qualified immunity. *Id.* In so doing, we distinguished *Bletz* from *Chappell*:

> There are . . . several key differences between the facts in *Chappell* and the instant case. In *Chappell*, the officers had certain knowledge that the suspect had engaged in prior armed robberies using a knife. Here, there was no imputation of past or potential future violence on the part of Fred. In *Chappell,* the officers were in a small room with no opportunity to retreat. Here, the officers were in a breezeway, only feet away from the outside and, arguably, safety. In *Chappell,* the subject had advanced to within five to seven feet and was apparently lunging forward with a knife. Here, Fred was fifteen feet away and was allegedly lowering his weapon.
>
> Most importantly, in *Chappell,* "[n]one of [the] facts [were] refuted by physical or circumstantial evidence and none [were]

> disputed by contrary testimony. In fact, there [were] no other witnesses who could testify to the circumstances facing the detectives in the bedroom immediately before they fired their weapons." In contrast, here, plaintiff's allegations rest not only on the eyewitness testimony of Zachary, but also on the differences of the testimony and actions of the two defendants.

Bletz, 631 F.3d at 753 (internal citations omitted). Ms. Baker asserts that this case is more like *Bletz* than *Chappell*. We disagree.

It is true that Kyle, unlike the deceased who was a previous armed robber in *Chappell*, had not engaged in any known prior violent criminal acts before his encounter with the police. However, the responding officers could reasonably believe from the dispatch that Kyle had threatened his mother and they knew he had shouted obscenities at them and was erratically swinging a lethal object. And unlike the officer in *Bletz*, Driscoll had just been struck by a potentially lethal object, and faced the risk of being struck again. Unlike in *Bletz*, there was no evidence from which a reasonable jury could find that the person who confronted the police was putting his weapon down. Furthermore, although his fellow officers had successfully retreated, Driscoll was in no position to back away from the encounter, as was the case for the officers in *Bletz*. Driscoll had fallen down and was in a vulnerable position. Because Kyle was armed and was at that moment engaged in violence against Driscoll (and further, because previous attempts to nonlethally

subdue Kyle had failed), Driscoll justifiably acted in self-defense.

Given that Driscoll had probable cause to believe that Kyle would cause death or serious injury, his use of deadly force was not a violation of Kyle's rights under the Fourth Amendment. Once again, finding no constitutional violation on this count, we need not examine the second prong of qualified immunity. We therefore **AFFIRM** the district court's grant of summary judgment on the excessive-force claim.

C. Municipal Liability

Municipalities may be held liable under § 1983 for constitutional violations committed by their employees if the violations result from municipal practices or policies. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). However, where there has been no showing of individual constitutional violations on the part of the officers involved, there can be no municipal liability. *See Watkins v. City of Battle Creek*, 273 F.3d 682, 687 (6th Cir. 2001) ("If no constitutional violation by the individual defendants is established, the municipal defendant[s] cannot be held liable under § 1983."). Because Ms. Baker has not shown that the individual officers committed any constitutional violation, her claims against the City of Trenton must also fail. Accordingly, we **AFFIRM** the district court's grant of summary judgment as to the municipal liability claim as well.

III. CONCLUSION

The facts which gave rise to this case are tragic. However, for the foregoing reasons, we **AFFIRM** the decision of the district court.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 18-2181

[Filed August 29, 2019]

HEATHER BAKER, Personal Representative of the Estate of Kyle Baker, Deceased, Plaintiff - Appellant,	)
v.	)
CITY OF TRENTON; MARK DRISCOLL; STEVE LYONS; AARON BINIARZ; STEVE ARNOCZKI, Defendants - Appellees.	)

Before: SUTTON, BUSH, and LARSEN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT
/s/ Deborah S. Hunt
Deborah S. Hunt Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 16-12280
Hon. Marianne O. Battani

[Filed September 24, 2018]

HEATHER BAKER, Personal Representative of the Estate of KYLE BAKER, Deceased, Plaintiff,	)
v.	)
CITY OF TRENTON, MARK DRISCOLL, STEVE LYONS, AARON BINIARZ, and STEVE ARNOCZKI, Defendants.	)

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff Heather Baker, the personal representative of the estate of her deceased son, Kyle Baker ("Kyle"), commenced this action in this Court on June 21, 2016, alleging that four police officers employed by the Defendant City of Trenton —

Defendants Mark Driscoll, Steve Lyons, Aaron Biniarz, and Steve Arnoczki — violated Kyle's rights under the U.S. Constitution by entering Kyle's stepmother's home without a warrant and shooting Kyle in the abdomen, inflicting a fatal wound from which Kyle died the next day. Plaintiff also seeks to hold the Defendant City liable for the alleged violations of Kyle's constitutional rights, by virtue of municipal policies and customs that allegedly brought about these violations. This Court's subject matter jurisdiction rests upon Plaintiff's assertion of federal claims under 42 U.S.C. § 1983.

Presently before the Court is Defendants' motion for summary judgment. In support of this motion, Defendants first contend that the Defendant police officers were lawfully entitled to enter Kyle's stepmother's home without a warrant because they did so to check on Kyle's well-being, and not for the purpose of investigating suspected criminal activity. Defendants further maintain that the officers did not use excessive force in shooting Kyle, but instead acted in self-defense after Kyle approached them wielding a lawnmower blade. Finally, Defendants argue that the Defendant City cannot be held liable under § 1983, where Plaintiff has failed to establish a violation of Kyle's constitutional rights that might trigger such liability, and where Plaintiff has failed to produce evidence of a municipal custom or policy that might have brought about any such constitutional violation.

Defendants' motion has been fully briefed by the parties, and on May 29, 2018, the Court heard argument on this motion. For the reasons set forth

below, the Court **GRANTS** Defendants' motion for summary judgment.

II. FACTUAL BACKGROUND

The claims in this case arise from an incident that occurred on May 28, 2015, shortly after Plaintiff Heather Baker's son, Kyle Baker ("Kyle"), had turned 18 years old. At the time, Kyle was a senior at Trenton High School who was scheduled to graduate within the next few days. Kyle's parents, Plaintiff Heather Baker and Tim Baker, were divorced, and Kyle typically spent weekdays with his father and stepmother, whose home was closer to Kyle's school. On weekends, Kyle usually stayed with his mother.

For about a week leading up to May 28, Kyle's family and friends noticed that he began to act differently. Kyle's friend, Collin Mathieu, testified that Kyle was "a little bit off," had "started acting weird," and was withdrawn and wanted to be left alone. (Dkt. 25, Plaintiff's Response, Ex. 1, Mathieu Dep. at 9, 29, 32-33.) Similarly, Kyle's father, Tim Baker, reported that Kyle "seemed to be more paranoid" and "nervous" during this period, and that he "didn't go anywhere" but instead "stayed at home every day after school." (Plaintiff's Response, Ex. 4, T. Baker Dep. at 21-23.) According to Mr. Baker, Kyle told him that he had taken "acid or LSD or something like that" on "senior skip day" a few days earlier, and Mr. Baker speculated that this drug use might have triggered Kyle's unusual behavior. (*Id.* at 23.)

In the middle of the school day on May 28, 2015, Officer Jake Davis of the Trenton Police Department

was summoned to Trenton High School after one of Kyle's teachers reported that he was acting strangely in class. According to a Michigan State Police ("MSP") investigative report, Kyle was escorted by a school administrator to the principal's office, where the principal observed that Kyle "repeated everything that was said to him" and claimed that he was lying down even though he was leaning against a wall at the time. (Dkt. 21, Defendants' Motion for Summary Judgment, Ex. B, MSP Investigative Report at 5.) Similarly, Officer Davis stated in an incident report that when he approached Kyle and introduced himself, he "stared blankly at [the officer] without speaking," acted "obstinate" in response to the officer's requests and queries, and behaved generally as though he was "possibly under the influence of an intoxicant." (Defendants' Motion, Ex. C, Davis Incident Report at 2.) As Officer Davis and the school principal stepped into another room to discuss options for addressing Kyle's behavior, they were advised by a school staff member that Kyle had left the premises. (*Id.*)

The school principal then contacted Kyle's parents and arranged for them to meet with school officials the following morning. During his conversation with Kyle's mother, Plaintiff Heather Baker, the principal stated that the police had been called to the school because Kyle had been "acting strange in the classroom" and "looked like he could be on something," but he assured Ms. Baker that Kyle "didn't do any property damage [and] . . . wasn't violent." (Plaintiff's Response, Ex. 3, H. Baker Dep. at 25-26.) Likewise, Kyle's father, Tim Baker, was told that Kyle was "acting strange in class," that the police had done a "wellness check" on Kyle but

had not placed him under arrest, and that Kyle had left the school while the principal and police officer were discussing what to do. (T. Baker Dep. at 31.)

Following this conversation with the principal, Mr. Baker called Kyle and "asked him what was going on." (*Id.* at 33.) Kyle responded that "everything [wa]s fine" and advised his father he was going home, and Mr. Baker instructed him to remain there. (*Id.*) Ms. Baker also called her son, who told her that he did not know why the police had been called, would not tell her where he was, and was otherwise "being very vague" and "whispering" in response to his mother's questions. (H. Baker Dep. at 29-30.) Kyle then told his mother than he "ha[d] to go," and Ms. Baker's further attempts to reach her son were unsuccessful. (*Id.* at 31-32.)

Concerned about this interaction with her son, Ms. Baker sent a text to Kyle's friend, Collin Mathieu ("Collin"), to see if he could provide any more information about Kyle's condition. (*Id.* at 33.) After an exchange of additional text messages, (*see id.*), Collin went looking for his friend at the home of Kyle's father, (*see* Mathieu Dep. at 10, 72). Collin knocked on the door and also opened the door and yelled inside, but he received no answer. (*Id.* at 10.) Collin next looked for Kyle at a nearby park, and then returned to Mr. Baker's home, this time entering the residence through a sunroom in the back and calling out Kyle's name. (*Id.* at 10-11, 48.)

After searching the main floor for his friend, Collin descended the basement stairs and found Kyle holding a frying pan. (*Id.* at 11, 18.) Collin told Kyle that he had been in contact with Kyle's mother and that she

was worried about him, but Kyle refused to believe him. (*Id.* at 14, 19, 49.) In an effort to prove that he was telling the truth, Collin retrieved his cell phone from his car, returned to the basement, called Kyle's mother on his phone, and then handed the phone to his friend. (*Id.* at 14, 49.) According to Collin, Kyle listened to his mother but did not speak, eventually ending the call and keeping Collin's phone. (*Id.* at 14-16, 49-50.) Collin asked for his phone several times, explaining that he was getting ready to leave, but Kyle refused to return it. (*Id.* at 17, 50.) Instead, as Collin approached his friend in an attempt to retrieve his phone, Kyle pulled out a knife and told Collin to "back up." (*Id.* at 17, 50.)

In light of this troubling interaction with his friend, Collin went to the Trenton police station to seek assistance in checking on Kyle's welfare. (*Id.* at 44-45, 51.) He spoke to a dispatcher, Kelsey Pare, advising her (i) that he had gone to Kyle's house to check on him, (ii) that Kyle was upset and had some sort of dispute with his mother, (iii) that Kyle had taken his phone and refused to return it, (iv) that Kyle had pulled out a knife when Collin approached him and attempted to retrieve his phone, and (v) that Kyle had recently purchased a gun. (*Id.* at 21, 45; *see also* Defendants' Motion, Ex. F, Pare Dep. at 19-20.)[1] According to Ms. Pare, she repeated back what Collin told her and he confirmed the accuracy of this account. (*See* Pare Dep. at 20.) Ms. Pare then relayed this information to a sergeant, who told her to send police

[1] Mr. Baker confirmed at his deposition that Kyle had, in fact, purchased a shotgun earlier in May. (*See* T. Baker Dep. at 47-48.)

officers to Kyle's home to check on his well-being. (*Id.* at 18.)

Pursuant to this instruction, Ms. Pare issued a dispatch directing officers to Mr. Baker's residence, and stating as follows:

> We have a teenage male in the lobby here, states that [a] teenager there named Kyle Baker left school today. When he went to go check on him he states that he had a knife in his home. He was threatening toward his mother. He also stole his cell phone. He left after he pulled the knife out. As far as he knows he's still at the residence. We also have word he possibly may have purchased a shotgun last week. Try and make contact on the house phone but it's just going busy.

(Defendants' Motion, Ex. G, Dispatch Tr. at 2-3.) In response to this dispatch, the four individual Defendants — Trenton police officers Mark Driscoll, Steve Lyons, Aaron Biniarz, and Steven Arnoczki — drove in separate vehicles to Mr. Baker's home. As they did so, Ms. Pare advised them over the police radio that a sergeant at the station had attempted to call a phone at the house but the line was busy, and that a call to a cell phone had not been answered. (*See* Defendants' Motion, Ex. L, Dispatch Narrative.)

Upon their arrival at Mr. Baker's residence, the officers knocked several times on the front door but no one responded. (*See* Defendants' Motion, Ex. H, Driscoll Dep. at 28, 52; Ex. I, Lyons Dep. at 24.) In the meantime, Officer Arnoczki proceeded to the rear of the

house and, upon discovering that the door to the sunroom was unlocked, he called for the other officers to join him. (*See* Defendants' Motion, Ex. M, Arnoczki Incident Report at 2; Ex. K, Arnoczki Dep. at 15; Lyons Dep. at 24; Driscoll Dep. at 52.) While Officer Biniarz remained at the front door of the Baker home, Officers Arnoczki, Driscoll, and Lyons entered the residence through the rear sunroom, with Officer Arnoczki loudly announcing their presence as Trenton police officers and asking if anyone was in the home. (*See* Defendants' Motion, Ex. J, Biniarz Dep. at 13; Lyons Dep. at 25; Arnoczki Incident Report at 2.) Kyle responded from the basement, yelling obscenities at the officers and demanding that they leave. (*See* Defendants' Motion, Ex. M, Lyons Incident Report at 1; Lyons Dep. at 25, 32; Arnoczki Dep. at 24-25.)

When Officer Biniarz learned that his fellow officers had entered the residence and made contact with someone inside, he came around to the back door and joined the other officers. (*See* Lyons Dep. at 25-26; Lyons Incident Report at 1.) While Officers Biniarz and Lyons checked the main floor of the residence for other occupants, Officers Driscoll and Arnoczki took up positions at the top of the basement stairs and advised Kyle that he was not in trouble, but that they were not going to leave until he agreed to speak with them. (*See* Lyons Dep. at 29-30; Biniarz Dep. at 34; Arnoczki Dep. at 28; Arnoczki Incident Report at 2.) In addition, the officers asked Kyle where his mother was, and he responded that he did not know and again insisted that they "get the f*** out of here." (Lyons Dep. at 32; Driscoll Dep. at 28, 31.) As the officers continued to call down into the basement and were told in response to

leave the premises, Kyle eventually appeared at the bottom of the basement stairs holding a lawnmower blade in his right hand. (*See* Lyons Dep. at 40; Biniarz Dep. at 35; Arnoczki Dep. at 29; Arnoczki Incident Report at 2.)

Upon seeing Kyle at the bottom of the stairs, Officer Lyons took out his taser and repeatedly instructed Kyle to drop the lawnmower blade, while Officer Arnoczki drew his pistol from its holster and held it at his side. (*See* Lyons Dep. at 41-42; Arnoczki Dep. at 29-30; Arnoczki Incident Report at 2; Lyons Incident Report at 1.) Kyle did not heed Officer Lyons' commands, but instead said "shoot me" and started up the stairs toward the officers with the lawnmower blade still in his hand. (*See* Driscoll Dep. at 88; Lyons Dep. at 41-42; Arnoczki Incident Report at 2; Lyons Incident Report at 1.) Despite Officer Lyons' continued pleas for Kyle to drop the blade and assurances that the officers just wanted to talk to him and ensure that he was okay, Kyle continued moving up the stairs. (*See* Lyons Dep. at 42, 45; Lyons Incident Report at 1.) Officer Lyons then turned on his taser, aimed its targeting dot at Kyle's chest, and warned Kyle that "I'm going to have to tase you if you continue up the stairs." (Lyons Dep. at 45, 47; Lyons Incident Report at 1.) When Kyle continued up the stairs with the lawnmower blade in his hand, Officer Lyons gave a warning of "taser, taser, taser" and deployed his taser, making contact with Kyle's chest. (Lyons Dep. at 47; Arnoczki Incident Report at 2; Lyons Incident Report at 1.) Kyle froze for a moment and briefly stumbled back down the stairs, but then started back up the stairs toward the officers

a few seconds later. (Lyons Dep. at 47-48; Lyons Incident Report at 1.)

As Kyle continued up the stairs, he raised the lawnmower blade above his head. (*See* Arnoczki Dep. at 33; Arnoczki Incident Report at 3; Lyons Incident Report at 1.) Officer Lyons then used his taser a second time, and Officer Biniarz also deployed his taser on Kyle. (*See* Lyons Dep. at 48 ; Biniarz Dep. at 39; Lyons Incident Report at 1.) Although Kyle still held onto the lawnmower blade, Officer Driscoll perceived that the tasers had been effective, and he proceeded down the stairs in order to place Kyle in handcuffs, for his safety and the safety of the other officers. (*See* Driscoll Dep. at 93-95; Biniarz Dep. at 40.)

As Officer Driscoll moved down the stairs, Kyle stood back up and "started swinging the [lawnmower] blade erratically" back and forth. (Driscoll Dep. at 95-96.) Officer Driscoll then retreated backward up the stairs, losing his footing and falling on his backside as he worked his way past the landing and toward the kitchen floor at the top of the stairs. (Driscoll Dep. at 98-100.) At some point during Officer Driscoll's retreat up the stairs, Kyle sliced the officer's left hand with the lawnmower blade, and he continued advancing up the stairs toward Officer Driscoll and his fellow officers, holding and swinging the blade at or above shoulder height. (*See id.* at 97-100.) As Officer Driscoll slid on his backside up the stairs and reached the kitchen floor, he "drew [his] weapon at some point," and when Kyle reached "probably [within] striking distance" and "turned towards" the officer, he fired a single round

from his weapon, hitting Kyle in the abdomen. (*Id.* at 100-01.)

After Kyle was shot and fell, Officer Lyons handcuffed him and applied pressure to his wound with a towel. (*See* Lyons Dep. at 54-56.) As Officer Lyons tended to his wound, Kyle asked "[w]hy are you helping me," and told the officer to "[l]eave me alone." (*Id.* at 56.) Paramedics from the Trenton Fire Department arrived a few minutes later, and their report states that Kyle was "kicking, yelling, and being combative." (Defendants' Motion, Ex. Q, Fire Department Report at 4.) Kyle was transported to Oakwood Hospital-Southshore, where he was pronounced dead the next morning. (*See* Defendants' Motion, Ex. N, Autopsy Report at 2.) The medical examiner determined that Kyle died of "a gunshot wound to the abdomen," and also reported finding a laceration on Kyle's right palm between his thumb and index finger. (*Id.* at 1.)[2]

The Michigan State Police investigated the shooting. (*See* Defendants' Motion, Ex. B, MSP Investigative Report.) Upon reviewing the record of this investigation, the Wayne County Prosecutor determined that Officer Driscoll had acted in "self-defense and/or the defense of others," and that no criminal charges were warranted. (Defendants' Motion,

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[2] In Defendants' view, this cut in Kyle's hand is consistent with the Defendant officers' reports and testimony that the young man was wielding a lawnmower blade during his encounter with the officers. Defendants also point to evidence that Officer Driscoll was taken to the hospital for treatment of the wound to his hand. (*See* Driscoll Dep. at 99-100; Arnoczki Incident Report at 3; Defendants' Motion, Ex. X, Driscoll Incident Report at 1.)

Ex. R, Wayne County Prosecutor's Office 8/11/2015 Letter.) This suit followed on June 21, 2016, with Plaintiff Heather Baker, as personal representative of the estate of her son Kyle, asserting claims under 42 U.S.C. § 1983 of (i) unlawful warrantless entry, in violation of Kyle's rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, against the four individual Defendant police officers; (ii) unreasonable use of force, in violation of the Fourth and Fourteenth Amendments, against Defendant Driscoll; and (iii) municipal liability against the Defendant City of Trenton.[3]

III. STANDARD OF REVIEW

Through the present motion, Defendants seek an award of summary judgment in their favor on each of the claims asserted in Plaintiff's complaint. Under the pertinent Federal Rule governing this motion, 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." Fed. R. Civ. P. 56(a). As the Supreme Court has explained, "the plain language of Rule 56[] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the

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[3] Plaintiff also asserted a claim against the individual Defendant officers under the Fifth and Fourteenth Amendments, alleging that the officers violated Kyle's right to decline to speak to law enforcement agents by insisting that he speak with them before they would agree to leave his home. In response to Defendants' present motion, however, Plaintiff states that she is no longer pursuing this claim.

existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986).

In deciding a motion brought under Rule 56, the Court must view the evidence "in a light most favorable to the party opposing the motion, giving that party the benefit of all reasonable inferences." *Smith Wholesale Co. v. R.J. Reynolds Tobacco Co.,* 477 F.3d 854, 861 (6th Cir. 2007). Yet, the nonmoving party may not rely on bare allegations or denials, but instead must support a claim of disputed facts by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A). Moreover, any supporting or opposing affidavits "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). Finally, "[a] mere scintilla of evidence is insufficient" to withstand a summary judgment motion; rather, "there must be evidence on which the jury could reasonably find for the non-moving party." *Smith Wholesale,* 477 F.3d at 861 (internal quotation marks and citation omitted).

IV. ANALYSIS

A. The Facts Known to the Defendant Police Officers Justified Their Warrantless Entry into the Home of Kyle Baker's Father.

As the first issue raised in the present motion, the individual Defendant police officers seek a ruling as a matter of law that their warrantless entry into the home of Kyle Baker's father, Tim Baker, was lawful under the circumstances. Alternatively, they contend that the doctrine of qualified immunity shields them from liability for any Fourth Amendment violation they might have committed in entering Mr. Baker's home without a warrant. As stated by another court in this district in a case that, like this one, involved allegations of an unlawful warrantless entry into a private residence:

> It is a fundamental tenet of Fourth Amendment jurisprudence that "searches and seizures inside a home without a warrant are presumptively unreasonable." *United States v. Rohrig,* 98 F.3d 1506, 1513 (6th Cir. 1996) (quoting *Payton v. New York,* 445 U.S. 573, 586, 100 S. Ct. 1371, 1380 (1980)). "The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," and "the warrant procedure minimizes the danger of needless intrusions of that sort." *Payton,* 445 U.S. at 585-86, 100 S. Ct. at 1379-80 (internal quotations, citation, and footnote omitted). Absent a warrant, only "exigent circumstances" may justify governmental entry

> into a private home. *See Payton,* 445 U.S. at 590, 100 S. Ct. at 1382; *Rohrig,* 98 F.3d at 1515.

Strutz v. Hall, 308 F. Supp.2d 767, 776 (E.D. Mich. 2004), *appeal dismissed,* 124 F. App'x 939 (6th Cir. Feb. 25, 2005). Here, as in *Strutz,* the Defendant police officers did not secure a warrant before entering Mr. Baker's home. Consequently, this entry may be justified, if at all, only through an appeal to exigent circumstances.

The Sixth Circuit has explained that "[e]xigent circumstances are situations where real[,] immediate and serious consequences will certainly occur if the police officer postpones action to obtain a warrant." *Thacker v. City of Columbus,* 328 F.3d 244, 253 (6th Cir. 2003) (internal quotation marks and citations omitted). In determining whether a warrantless entry is justified by exigent circumstances, the subjective motivation or state of mind of the entering officer is immaterial, "as long as the circumstances, viewed *objectively,* justify [the] action." *Brigham City v. Stuart,* 547 U.S. 398, 404, 126 S. Ct. 1943, 1948 (2006) (internal quotation marks and citation omitted) (emphasis and alteration in original); *see also Stricker v. Township of Cambridge,* 710 F.3d 350, 358 (6th Cir. 2013). Moreover, in making this determination, this Court must "consider the totality of the circumstances and the inherent necessities of the situation at the time." *Rohrig*, 98 F.3d at 1511 (internal quotation marks and citations omitted).

In an effort to establish that the entry at issue here was justified by exigent circumstances, the Defendant officers appeal to the recognized authority of law

enforcement officers to "enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Stuart,* 547 U.S. at 403, 126 S. Ct. at 1947. This "risk of danger" exigency — sometimes referred to, as Defendants do here, as the "community caretaker" exception to the Fourth Amendment warrant requirement, *see Rohrig,* 98 F.3d at 1521-22; *United States v. Lewis,* 869 F.3d 460, 462 (6th Cir. 2017) — applies most frequently "in cases where the Government is acting in something other than a traditional law enforcement capacity." *Rohrig,* 98 F.3d at 1516. Under this exception, an officer may enter a home without a warrant where the circumstances known to the officer make it "objectively reasonable to believe a medical emergency exists" on the premises, *Stricker,* 710 F.3d at 358, or where the officer "reasonably believe[s] that a person within [the home] is in need of immediate aid," *Thacker,* 328 F.3d at 253 (internal quotation marks and citation omitted). "Officers do not need ironclad proof of a likely serious, life-threatening injury to invoke" this exception. *Michigan v. Fisher,* 558 U.S. 45, 49, 130 S. Ct. 546, 549 (2009) (internal quotation marks omitted). Yet, "their decision to enter [the premises] must be based on more than a hunch or the mere possibility that someone inside needs immediate aid." *Gradisher v. City of Akron,* 794 F.3d 574, 584 (6th Cir. 2015) (internal quotation marks and citation omitted).

Turning to the evidence presented here, the record discloses that the Defendant police officers derived their knowledge of the situation at Mr. Baker's home solely from a radio transmission by dispatcher Kelsey

Pare after she spoke with Kyle Baker's friend, Collin Mathieu, at the Trenton police station. Specifically, Ms. Pare stated in this dispatch:

> We have a teenage male in the lobby here, states that [a] teenager there named Kyle Baker left school today. When he went to go check on him he states that he had a knife in his home. He was threatening toward his mother. He also stole his cell phone. He left after he pulled the knife out. As far as he knows he's still at the residence. We also have word he possibly may have purchased a shotgun last week. Try and make contact on the house phone but it's just going busy.

(Defendants' Motion, Ex. G, Dispatch Tr. at 2-3.) Through this dispatch, the Defendant officers were advised (i) that Kyle had left school earlier that day, (ii) that his friend had found him at home with a knife, (iii) that Kyle had engaged in unspecified threatening behavior toward his mother, (iv) that he had stolen his friend's cell phone, (v) that his friend had left the premises after Kyle had pulled out the knife in his possession, (vi) that Kyle possibly had purchased a shotgun a week earlier, and (vii) that efforts to reach a resident of the household were unsuccessful due to a busy signal.

As confirmed by the pertinent case law, these facts known to the Defendant police officers gave rise to an objectively reasonable belief that someone in Mr. Baker's home was in need of immediate aid or faced imminent injury. Although the decisions cited by the parties are factually distinguishable in certain

respects, some relevant principles nonetheless emerge from the Sixth Circuit case law addressing the community caretaker exception to the warrant requirement. In *Johnson v. City of Memphis,* 617 F.3d 864, 866 (6th Cir. 2010), for example, two police officers were dispatched to a home in response to a "911 hang call" from the residence.[4] When the officers arrived at the home, they "found the front door wide open" and announced their presence but received no response. *Johnson,* 617 F.3d at 866. The officers then entered the premises with their weapons drawn, and "agreed they should sweep the building to make sure that no one was hurt or in need of assistance." 617 F.3d at 866. As they did so, they encountered the plaintiff's decedent, Xavier Johnson, who failed to respond to the officers' inquiries and instead "jumped on" one of the officers. 617 F.3d at 866. After a struggle in which Johnson grabbed the gun hand of one of the officers and continued to attack both officers even when they fired their weapons at him, Johnson eventually succumbed to the gunfire and fell dead at the officers' feet. 617 F.3d at 866-67. Only later did the officers learn (i) that Johnson "was not ordinarily dangerous, but was bipolar and off his medication," and (ii) that after the initial 911 hang call, Johnson's wife called 911 "a few minutes later and informed the dispatcher of the medical situation." 617 F.3d at 867.

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[4] The court explained that "[a] 911 hang call occurs when a caller dials 9-1-1, hangs up before speaking with the operator, and the operator is unable to reach the caller when attempting to return the call." *Johnson,* 617 F.3d at 866 n.1.

The district court in *Johnson* found that the officers' warrantless entry was justified under the community caretaker exception, and the Sixth Circuit affirmed, holding that "the combination of a 911 hang call, an unanswered return call, and an open door with no response from within the residence is sufficient to satisfy the exigency requirement." 617 F.3d at 869. In so ruling, the court reasoned that "[t]he whole point of the 911 system is to provide people in need of emergency assistance an expeditious way to request it." 617 F.3d at 870. Thus, "[b]ecause a 911 call is by its nature an appeal for help in an emergency, the emergency aid exception best fits the attitude of police responding to a 911 call." 617 F.3d at 870; *see also Gradisher,* 794 F.3d at 584 (citing "a 911 hangup call that was made from the residence" as "indicat[ing] that someone inside may need an officer's aid"); *Stricker,* 710 F.3d at 360 (reasoning that "a 911 call made by a resident affirmatively requesting emergency assistance at her home and providing some description of the nature of the emergency contributes to an objectively reasonable basis for believing that a person within the house was in need of immediate aid" (internal quotation marks and citation omitted)). The court in *Johnson* further emphasized that "[t]he officers' actions — announcing their presence and, after receiving no answer, entering in order to perform a cursory search for any endangered or injured persons — was an objectively reasonable response." *Johnson,* 617 F.3d at 870.

Returning to the present case, the Court recognizes that the outcome here is not dictated by the Sixth Circuit's decisions in *Johnson* and similar cases, since

no 911 call was placed from Mr. Baker's residence. Despite this factual distinction, however, this case law tends to support Defendants' appeal to exigent circumstances, where the Defendant officers here relied on the first-hand account of Kyle Baker's friend, Collin Mathieu, rather than a more ambiguous 911 hangup call or a 911 call from an anonymous (and possibly unreliable) source. Collin was sufficiently troubled by his encounter with Kyle that he proceeded immediately to the Trenton police station, explaining that he was worried about Kyle and wanted the police to check on his friend's well-being. (*See* Mathieu Dep. at 44-45.) Moreover, Collin's report to the police did not rest merely on abstract concerns about his friend's unusual behavior, but also on express statements that Kyle had pulled a knife on Collin and had recently purchased a gun. This report, with its disclosure that Kyle had explicitly threatened physical harm to his friend and its clear-cut indicia that Kyle posed a risk of still greater harm to himself or others, surely warranted the very response that Collin was seeking — namely, an officer visit to Mr. Baker's home to check on Kyle's welfare.

As they arrived at the Baker residence, the Defendant officers confronted circumstances that provided further justification for a warrantless entry into the home. First, they learned along the way that attempts to reach the residence by phone had not succeeded because the line was busy. This confirmed that someone likely was at the premises, yet did nothing to dispel the concerns that triggered the officers' visit. Then, when the officers arrived and knocked on the door, no one answered. Upon circling

the home, the officers discovered that a rear door was unlocked and entered the residence through a sunroom. Only then did Kyle acknowledge the officers' presence, yelling obscenities at them from the basement and demanding that they leave. *See Schreiber v. Moe,* 596 F.3d 323, 330 (6th Cir. 2010) (citing the plaintiff homeowner's "hostile and uncooperative" response to a knock on the door by police investigating a 911 call as supporting a finding of exigent circumstances); *Thacker,* 328 F.3d at 255 (observing that the plaintiff's "demeanor and attitude" when answering the door "indicated that [he] could have posed a threat to the safety of the [defendant] officers," and that his "lack of cooperation" meant the officers could only dispel their concerns "by entering the home and investigating further"). Although the officers assured Kyle that he was not in trouble and asked him to speak with them, he refused to comply with this request and instead continued to yell at the officers to leave, ultimately appearing at the bottom of the basement stairs with a lawnmower blade in his hand. Again, nothing in this record could reasonably be understood as undermining the conclusion that the Defendant officers' warrantless entry into the Baker residence was justified by a need to render emergency aid or "protect an occupant from imminent injury." *Stuart,* 547 U.S. at 403, 126 S. Ct. at 1947.

Plaintiff seeks to avoid this result on two grounds, but neither is persuasive. First, she contends that the "community caretaker" exception to the warrant requirement applies only to "police action 'totally divorced from the detection, investigation[,] or acquisition of evidence relating to the violation of a

criminal statute.'" (Dkt. 25, Plaintiff's Response Br. at 11 (quoting *United States v. Williams,* 354 F.3d 497, 507 (6th Cir. 2003)).) In Plaintiff's view, the dispatch issued to the Defendant officers was suggestive of two sorts of criminal activity that the officers might have sought to investigate upon their arrival at Mr. Baker's home: (i) the possible theft of Collin Mathieu's phone, and (ii) the possibility that Kyle was threatening his mother with a knife. Indeed, Plaintiff points to the testimony of Officer Biniarz that he understood the dispatch as indicating that Kyle was "holding his mother with [a] knife . . . against her will." (Biniarz Dep. at 16.) It follows, according to Plaintiff, that the Defendant officers cannot invoke the "community caretaker" exception to justify their warrantless entry into the Baker residence, where they purportedly were motivated by suspicions of criminal activity.

This argument is defeated by the Supreme Court's ruling in *Stuart.* In that case, the respondents contended that the officers who had carried out the warrantless entry at issue "were more interested in making arrests than quelling violence," and they "urg[ed] [the Court] to consider, in assessing the reasonableness of the entry, whether the officers were indeed motivated primarily by a desire to save lives and property." *Stuart,* 547 U.S. at 404, 126 S. Ct. at 1948 (internal quotation marks and citations omitted). The Court declined this invitation, explaining that it had "repeatedly rejected this approach" in prior decisions holding that an "officer's subjective motivation is irrelevant" to a Fourth Amendment inquiry. *Stuart,* 547 U.S. at 404, 126 S. Ct. at 1948. Instead, the Court read its precedents as confirming

that "[a]n action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed *objectively,* justify the action." 547 U.S. at 404, 126 S. Ct. at 1948 (internal quotation marks, alteration, and citation omitted) (emphasis in original); *see also Stricker,* 710 F.3d at 360 n.2 (rejecting the plaintiffs' contention that "there were no exigent circumstances because the officers demonstrated an ulterior motive" for their warrantless entry "through their failed attempt to obtain a warrant" to arrest one of the occupants, and explaining that this argument "leads to a subjective analysis" that "the Supreme Court has repeatedly, and recently, disavowed"). Accordingly, it does not matter in this case whether the Defendant officers were given information suggestive of criminal activity at Mr. Baker's home, or whether one or more of the officers might have subjectively intended to investigate these suspicions or gather evidence of a crime upon entering the home. The relevant inquiry is whether the facts known to the officers gave rise to an objectively reasonable belief that a warrantless entry was necessary "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Stuart,* 547 U.S. at 403, 126 S. Ct. at 1947. As explained, the Court finds that this standard is met here.

Next, Plaintiff challenges Defendants' claim of exigent circumstances as based upon an incorrect understanding of the situation at Mr. Baker's home. Most notably, the dispatcher's statement led the Defendant officers to believe that Kyle's mother, Heather Baker, was present at the home and that Kyle

was threatening her, perhaps with a knife. (*See* Driscoll Dep. at 27, 53; Biniarz Dep. at 16-17, 19; Lyons Dep. at 19-20; Arnoczki Dep. at 17, 23.) Yet, it turned out that Ms. Baker was not at the premises, and that the officers' belief to the contrary evidently rested upon the dispatcher's ambiguous and arguably misleading characterization of Collin Mathieu's statements to her at the Trenton police station. Specifically, although Collin apparently told the dispatcher that Kyle had pulled a knife on him and had engaged in some sort of dispute with his mother, (*see* Mathieu Dep. at 45), the dispatcher's statement advised that Kyle was "threatening toward his mother" and had pulled out a knife, (Defendants' Motion, Ex. G, Dispatch Tr. at 2), thereby suggesting that Ms. Baker was actually present with Kyle at the time. Thus, at least some of the facts conveyed to the Defendant officers as they responded to the Baker home were not accurate, or at least led the officers to draw incorrect inferences. It follows, in Plaintiff's view, that contrary to the officers' understanding, there was no objectively reasonable basis for believing that Ms. Baker faced any risk of harm that could justify a warrantless entry.

This challenge fails on two grounds. First, the Sixth Circuit and other courts have held that a warrantless entry based on exigent circumstances "may not be held unconstitutional simply because the reasonable concerns of the officers were not substantiated after-the-fact." *United States v. Huffman,* 461 F.3d 777, 785 (6th Cir. 2006); *see also Hunsberger v. Wood,* 570 F.3d 546, 556 (4th Cir. 2009) (emphasizing that "[w]hen policemen . . . are confronted with evidence which would lead a prudent and reasonable official to see a

need to act to protect life or property, they are authorized to act on that information, even if ultimately found erroneous" (internal quotation marks and citation omitted)); *United States v. Holloway,* 290 F.3d 1331, 1340 (11th Cir. 2002) ("The fact that . . . the information [relayed to the police] ultimately proves to be false or inaccurate[] does not render the police action any less lawful."). Applying this principle here, although the Defendant officers incorrectly believed that Ms. Baker was in harm's way at the home of her ex-husband, they had a reasonable basis for this belief in light of what the dispatcher told them.

Moreover, even if the Defendant police officers had not operated under the mistaken belief that Ms. Baker was at the residence and faced a risk of harm, the remaining information they were given was accurate and would have sufficed, standing alone, to justify a warrantless entry. In particular, the officers reasonably could have concluded that Kyle posed a danger to himself, as well as anyone else at the premises with him, where the information disclosed by Collin Mathieu indicated that Kyle (i) had behaved erratically by taking his friend's cell phone and pulling a knife when his friend sought to retrieve it, (ii) had been involved in some sort of dispute with his mother, albeit over the phone, and (iii) had recently purchased a shotgun. In addition, by the time the officers arrived at Mr. Baker's house, they had learned additional information consistent with their concerns for Kyle's well-being, including (i) that attempts to reach someone at the residence had failed because the phone line was busy, and (ii) that their knocks on the front door went unanswered, despite indications that Kyle was still in

the home. Consequently, even absent the officers' mistaken belief that Kyle's erratic behavior might pose an immediate threat to his mother's health and well-being, the other facts known to the officers were sufficient to justify their warrantless entry into the Baker residence.

But even if the Court were to conclude otherwise, and instead find that the Defendant officers' warrantless entry was not justified by exigent circumstances, the officers nonetheless contend that they would be shielded from liability under the doctrine of qualified immunity. As explained by the Sixth Circuit, "[q]ualified immunity ordinarily applies unless it is obvious that no reasonably competent official would have concluded that the actions taken were lawful." *Chappell v. City of Cleveland,* 585 F.3d 901, 907 (6th Cir. 2009). Plaintiff "bears the burden of showing that [the Defendant] officers are not entitled to qualified immunity." *Chappell,* 585 F.3d at 905. This, in turn, entails a two-pronged inquiry: Plaintiff must show "both that, viewing the evidence in the light most favorable to [Plaintiff], a constitutional right was violated[,] and that the right was clearly established at the time of the violation." 585 F.3d at 907. To demonstrate that a right is "clearly established," Plaintiff must show that the contours of this right "are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd,* 563 U.S. 731, 741, 131 S. Ct. 2074, 2083 (2011) (internal quotation marks, alteration, and citation omitted). Plaintiff need not identify "a case directly on point, but existing precedent must have placed the statutory or constitutional

question beyond debate." *al-Kidd,* 563 U.S. at 741, 131 S. Ct. at 2083.

Plaintiff's effort to make this showing is cursory at best. In particular, she offers only the wholly conclusory statement that "in several comparable cases, courts in this circuit have recognized that the constitutional right to be free of a warrantless intrusion under circumstances like this was 'clearly established,' rendering the qualified immunity defense inapplicable," and she supports this assertion with citations to two Sixth Circuit decisions (one unpublished) and two rulings from district courts in this circuit. (Plaintiff's Response Br. at 13.) Yet, Plaintiff provides no analysis whatsoever of the facts and holdings of these purportedly "comparable" cases, but instead leaves the Court to its own devices in conducting this inquiry. Upon performing this task, the Court finds that the cited decisions do not assist Plaintiff in defeating the Defendant officers' appeal to qualified immunity.

In one of these cases, the Sixth Circuit explained that there were issues of fact as to the credibility of the defendant officers and a complaining witness, such that the existence of exigent circumstances could not be determined as a matter of law. *See Goodwin v. City of Painesville,* 781 F.3d 314, 332 (6th Cir. 2015). Similarly, in the second Sixth Circuit decision cited by Plaintiff, the court found that "most of the reasons" given by the defendant officers to justify their warrantless entry were "genuinely disputed," and that the remaining justifications for this entry — property damage and "unsubstantiated complaints of drug

activity" in the "general area of the apartment complex" at which the plaintiff resided — did not provide a basis for believing that anyone in the plaintiff's apartment was in need of immediate medical attention. *Nelms v. Wellington Way Apartments, LLC,* No. 11-3404, 513 F. App'x 541, 546-47 (6th Cir. Feb. 4, 2013). Here, in contrast, there is no such material dispute as to the facts known to the officers when they elected to enter Mr. Baker's home without a warrant. Rather, the issue here is a purely legal one — namely, whether these facts give rise to exigent circumstances that would justify a warrantless entry. The Sixth Circuit cases cited by Plaintiff do not place the resolution of this issue "beyond debate," *al-Kidd,* 563 U.S. at 741, 131 S. Ct. at 2083, such that it would have been obvious to a reasonable police officer in Defendants' position that a warrantless entry would be unlawful.

As for the two district court cases cited by Plaintiff, it bears noting at the outset that such cases do not qualify as "controlling authority in [this] jurisdiction," nor are they illustrative of a "consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful." *Wilson v. Layne,* 526 U.S. 603, 617, 119 S. Ct. 1692, 1700 (1999). In any event, these decisions are readily distinguishable. In *Modrell v. Hayden,* 636 F. Supp.2d 545, 549-50 (W.D. Ky. 2009), the plaintiff and his son lived in separate upstairs and downstairs residences within the same building, and the police went to the premises to investigate reports that the plaintiff's son had engaged in illegal drug activity. After the police had entered and searched the son's downstairs

residence with his consent and had placed him under arrest, they then entered the father's upstairs residence, without a warrant and over his objections, for the stated purpose of securing everyone in the building for the safety of the officers. *See Modrell,* 636 F. Supp.2d at 550, 553. The court held that this warrantless entry was not justified by exigent circumstances, where the defendant police officers had "no reason to believe that anyone in [the plaintiff's] residence was in danger," and where everyone in the downstairs residence who might have posed a threat to the officers' well-being had already been detained. 636 F. Supp.2d at 553. The present case, unlike *Modrell,* does not involve officers citing a risk of harm at one residence to justify a warrantless entry into an adjacent residence.

Finally, Plaintiff points to *Grove v. Wallace,* No. 15-166, 2016 WL 7334841, at *1 (W.D. Mich. Dec. 19, 2016), in which the defendant police officer was dispatched to the plaintiff's residence "for a so-called 'civil standby'" requested by the ex-wife of the plaintiff's fiancé as she went to pick up her three children from the residence. The defendant officer knocked on the door of the residence several times but received no response, and he ultimately elected to enter the residence without a warrant when he heard the sound of a child or baby crying. *Id.* As observed by the court, "[the facts boil down to this: someone was home but not answering the door and a baby was crying." *Id.* at *3. Under these circumstances, the court found that there was no objectively reasonable basis for believing that someone within the home was in need of immediate aid or protection, and that "[a] conclusion

that exigent circumstances existed on these facts requires a fair degree of speculation." *Id.* In this case, by comparison, the Defendant police officers acted on the basis of an eyewitness account of Kyle Baker's erratic behavior and his brandishing of a knife at a friend who had visited him to check on his well-being. This is far more than a mere failure to answer the door under circumstances where there is reason to believe that someone is present at the home.

As the Supreme Court has observed, "[qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions," and this doctrine "protects all but the plainly incompetent or those who knowingly violate the law." *al-Kidd,* 563 U.S. at 743, 131 S. Ct. at 2085 (internal quotation marks and citation omitted). In addition, "[qualified immunity applies irrespective of whether the official's error was a mistake of law or a mistake of fact." *Chappell,* 585 F.3d at 907. More generally, the Supreme Court has emphasized that "the ultimate touchstone of the Fourth Amendment is 'reasonableness,'" *Stuart,* 547 U.S. at 403, 126 S. Ct. at 1947, and that "[the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments . . . in circumstances that are tense, uncertain, and rapidly evolving," *Graham v. Connor,* 490 U.S. 386, 396-97, 109 S. Ct. 1865, 1872 (1989). Applying these principles to this case, even assuming the Defendant officers misapprehended the danger of the situation in their belief that Kyle was threatening his mother with a knife, any such mistaken assessment made with limited information and in uncertain circumstances

was not so plainly unlawful and violative of Kyle's Fourth Amendment rights as to defeat the officers' appeal to qualified immunity.

B. Officer Driscoll's Use of Deadly Force Was Justified in Light of Kyle Baker's Continued Advancement Toward the Officer Despite Repeated Warnings and While Brandishing a Dangerous Weapon.

In Count IV of her complaint, Plaintiff has asserted a claim under 42 U.S.C. § 1983 against Officer Mark Driscoll, alleging that this officer violated Kyle Baker's Fourth Amendment protection against unreasonable seizures by using deadly force against Kyle under circumstances that did not permit this degree of force. In their present motion, Defendants seek an award of summary judgment in Officer Driscoll's favor on this claim, arguing that this officer's use of lethal force against Kyle was reasonable as a matter of law under the circumstances he faced at the time. In particular, Defendants point to the undisputed evidence that Kyle continued to advance toward Officer Driscoll with a dangerous weapon in his hand — namely, a lawnmower blade — and that he did so despite repeated warnings and despite the Defendant officers' use of a lesser degree of force in an effort to neutralize the threat posed by this young man's erratic behavior. As discussed below, the Court agrees that Officer Driscoll is entitled to summary judgment in his favor on this claim.

The Supreme Court has held that claims of excessive force "should be analyzed under the Fourth Amendment and its 'reasonableness' standard," and that determining whether a particular use of force "is 'reasonable' under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham v. Connor,* 490 U.S. 386, 395-96, 109 S. Ct. 1865, 1871 (1989) (internal quotation marks and citations omitted). The Court has further explained that the "reasonableness" inquiry in an excessive force case, "[a]s in other Fourth Amendment contexts," is governed by an objective standard, under which "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham,* 490 U.S. at 397, 109 S. Ct. at 1872. The Court has cited a non-exclusive list of factors to be considered in this inquiry, including "whether the suspect poses an immediate threat to the safety of the officers or others." 490 U.S. at 396, 109 S. Ct. at 1872. Finally, the Court has cautioned that "[the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." 490 U.S. at 396, 109 S. Ct. at 1872.

In *Tennessee v. Garner,* 471 U.S. 1, 105 S. Ct. 1694 (1985), the Supreme Court applied these standards to the specific context of deadly force. As a threshold matter, the Court observed that "[w]henever an officer restrains the freedom of a person to walk away, he has

seized that person." *Garner,* 471 U.S. at 7, 105 S. Ct. at 1699. It followed, therefore, that "apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Garner,* 471 U.S. at 7, 105 S. Ct. at 1699. The Court then reasoned that "[w]here the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." 471 U.S. at 11, 105 S. Ct. at 1701. On the other hand, "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others," the Court found that "it is not constitutionally unreasonable to prevent escape by using deadly force." 471 U.S. at 11, 105 S. Ct. at 1701. "Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given." 471 U.S. at 11-12, 105 S. Ct. at 1701.

Returning to the present case, Defendants submit that the facts here are similar to those presented in *Chappell,* and that the Court therefore should reach the same result. In *Chappell,* 585 F.3d at 904, the two defendant police detectives were investigating an armed robbery, and the circumstances of this offense led the detectives to suspect a 15-year-old boy named Brandon McCloud, "who lived in the vicinity of the robbery and had admitted committing 10-12 similar armed robberies." On all but one of these past occasions, McCloud has used a knife in the course of his

criminal activity. Against this backdrop, the detectives secured a warrant to search the home where McCloud lived with his grandmother, plaintiff Dorothy Chappell, and his uncle. The detectives arrived at the home at around 5:00 a.m. and "proceeded to conduct a protective sweep of the residence." 585 F.3d at 904.

The house was still dark at the time, and the two detectives "proceeded from one room to another with flashlights, firearms drawn." 585 F.3d at 905. The detectives claimed that they announced their presence several times as police officers, but others who were present at the house "did not recall hearing this." 585 F.3d at 905. The court described the detectives' encounter with McCloud as follows:

> As the detectives approached what turned out to be McCloud's bedroom on the second floor, they found the door closed. The barged into the small bedroom, each taking a position inside the room on either side of the "fatal funnel" formed by the opening into the room. Across the dark room, they spotted McCloud hiding in the closet. Their flashlights and firearms trained on him, they ordered him to come out of the closet and show his hands. After first hesitating, McCloud turned and came out of the closet holding a knife in his right hand with the blade pointing upward. Ignoring their commands to drop the knife, McCloud continued to move quickly toward the detectives. Believing they were threatened with imminent serious bodily harm, both detectives simultaneously opened fire, each striking McCloud with several shots, killing him

> instantly. The entire encounter transpired in a matter of seconds.

585 F.3d at 905.

The district court held that the two detectives were not entitled to qualified immunity due to outstanding issues of fact, but the Court of Appeals reversed. At the outset of its analysis, the Sixth Circuit agreed with the court below that "*if* there is some evidence — more than a mere scintilla of evidence — that McCloud, through his conduct, judged from the perspective of reasonable officers on the scene, did not give the officers probable cause to believe that he posed a serious threat of harm, a genuine fact dispute is created." 585 F.3d at 909 (emphasis in original). The court then determined, however, that the record did not give rise to any such genuine dispute of material fact that would preclude an award of summary judgment in the detectives' favor. Rather, "[c]onsidering what the record shows [the detectives] knew at the moment of McCloud's attack," the court found that the detectives' "use of deadly force to defend themselves in close quarters against a knife-wielding assailant who had closed to within five to seven feet and was still advancing toward them cannot be deemed objectively unreasonable." 585 F.3d at 916; *see also Rush v. City of Lansing,* No. 15-1225, 644 F. App'x 415, 421 (6th Cir. Feb. 29, 2016) (finding that "it was not unreasonable" for the defendant police officer "to use deadly force by shooting at" an individual who, immediately before the shot was fired, had "dr[awn] a knife and slashed at [the officer] from an arm's length away"); *Rhodes v. McDannel,* 945 F.2d 117, 120 (6th Cir. 1991) (finding

that the defendant police officers were "justified in using deadly force" where the plaintiff's decedent had "advanced upon [them] . . . with a raised machete, despite several warnings to halt").

In response, Plaintiff contends that *Chappell* is distinguishable on various grounds, and she points to rulings by the Sixth Circuit and by district courts in this circuit and elsewhere that purportedly illustrate these distinctions. In *Bletz v. Gribble,* 641 F.3d 743, 752 (6th Cir. 2011), for instance, a witness testified that the shooting victim, Fred Bletz, "was lowering his gun in response to [the defendant police officer's] command to do so." Under these circumstances, the court held that "[i]f [the officer] shot Fred Bletz while the latter was complying with the officer's command, then [the officer] violated Fred Bletz's clearly established Fourth Amendment right to be free from deadly force." *Bletz,* 641 F.3d at 752. The court then explained why *Chappell* was distinguishable:

> There are . . . several key differences between the facts in *Chappell* and the instant case. In *Chappell,* the officers had certain knowledge that the suspect had engaged in prior armed robberies using a knife. Here, there was no imputation of past or potential future violence on the part of Fred. In *Chappell,* the officers were in a small room with no opportunity to retreat. Here, the officers were in a breezeway, only feet away from the outside and, arguably, safety. In *Chappell,* the subject had advanced to within five to seven feet and was apparently lunging forward with a knife. Here, Fred was

> fifteen feet away and was allegedly lowering his weapon.
>
> Most importantly, in *Chappell,* "[n]one of [the] facts [were] refuted by physical or circumstantial evidence and none [were] disputed by contrary testimony. In fact, there [were] no other witnesses who could testify to the circumstances facing the detectives in the bedroom immediately before they fired their weapons." [*Chappell,* 585 F.3d] at 910. In contrast, here, plaintiff's allegations rest not only on . . . eyewitness testimony . . . , but also on the differences of the testimony and actions of the two defendant[] [officers]. Thus, . . . the district court's ruling was driven by two obviously conflicting versions of the facts. Given that these two versions presented a classic factual dispute, the district court properly held the reasonableness of the shooting was a jury question.

Bletz, 641 F.3d at 753 (internal quotation marks and citations omitted).

Although Plaintiff maintains that "[t]his case is much more factually akin to Bletz than to Chappell," (Plaintiff's Response Br. at 18), she does not explain why this is so, and the opposite appears to be true. Most notably, just as in *Chappell* but unlike in *Bletz,* the testimony of the Defendant officers stands unrefuted by the statements of any other eyewitnesses or any other evidence in the record. To be sure, Plaintiff asserts that the testimony of Officer Driscoll is contradicted in certain respects by the findings in the

autopsy report — specifically, regarding the trajectory of the bullet fired by the officer and the absence of gunpowder residue that purportedly would have been found if Kyle had been shot at close range. (*See* Plaintiff's Response Br. at 17.) Yet, as Defendants aptly observe in their reply brief, these claimed inconsistencies are not supported by the report or testimony of an expert in ballistics or crime scene reconstruction, but instead reflect only an attempt by Plaintiff and her counsel to "craft[] [their] own narrative" of the shooting by "pulling bits and pieces out of the autopsy report." (Dkt. 26, Defendants' Reply Br. at 4.) Such speculation by Plaintiff and her counsel, unbacked by any evidentiary support or expert opinion, cannot give rise to an issue of fact as to the accuracy of Officer Driscoll's account of his shooting of Kyle Baker.

Plaintiff also seeks to undermine Officer Driscoll's account by noting that he waited over a month before giving a statement about the shooting. However, she cites no authority for the proposition that this statement should be deemed untimely under some relevant standard, or that Officer Driscoll's delay might somehow serve to diminish the weight accorded to his statement.[5] Plaintiff further suggests that the accounts of the Defendant officers regarding the circumstances surrounding the shooting are open to question because

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[5] Notably, Plaintiff had the opportunity to depose Officer Driscoll on this and any other desired subject, but she does not point to any portion of his deposition testimony that might support her challenge to the veracity of Officer Driscoll's post-shooting statement. Nor has Plaintiff identified any arguable inconsistencies between Officer Driscoll's statement and his deposition testimony.

the three other officers on the scene acknowledged that they did not see Officer Driscoll shoot Kyle. Yet, as Defendants correctly observe in response, each of these three officers "describe[d] their locations at the time of the shooting," and their testimony about their restricted lines of sight at the time of the shooting is fully consistent with their descriptions of the "narrow residential stairwell" in which the shooting occurred. (Defendants' Reply Br. at 3 n.3.) Accordingly, unlike the plaintiffs in *Bletz,* Plaintiff here has failed to identify anything in the record — whether testimony, physical evidence, or circumstantial evidence — that could give rise to a material factual dispute concerning the circumstances surrounding Kyle's shooting.

Indeed, the uncontroverted testimony of the Defendant officers reveals that the circumstances here are fairly similar to those in *Chappell* but distinct from those in *Bletz.* In this case, as in *Chappell* but unlike in *Bletz,* the Defendant officers were in a confined space — *i.e.,* a residential stairway leading down to a basement — as they interacted with Kyle, and their only avenue of retreat was back up those stairs and into the kitchen. The officers, in fact, availed themselves of this opportunity to retreat from Kyle as he approached them with a lawnmower blade in his hand, but Officer Driscoll lost his footing during this effort and had to slide up the remaining stairs on his backside. Thus, while the officers in *Bletz* were "in a breezeway, only feet away from the outside and, arguably, safety," 641 F.3d at 753, Officer Driscoll was not in a comparable position to retreat from Kyle as he approached with a lawnmower blade in his hand. Moreover, the shooting victim in *Bletz* "was fifteen feet

away [from the officers] and was allegedly lowering his weapon," 641 F.3d at 753, but Kyle was far closer to Officer Driscoll, was continuing to advance up the stairs toward the officers, and was swinging the lawnmower blade erratically back and forth at or above shoulder level. Indeed, the record makes clear that Kyle was within arm's reach of Officer Driscoll at some point as the officer slid backward up the stairs and Kyle continued to advance toward him, given that Kyle sliced the officer's hand with the lawnmower blade during this encounter.

To be sure, the shooting victim in *Chappell* had a known history of carrying out armed robberies using a knife, while Kyle had no such history of violent acts — with the exception, of course, that he had pulled a knife on his friend Collin Mathieu just a short time earlier. Yet, to the extent that this factual distinction weakens the justification for the use of deadly force here, other factual distinctions strengthen it. Specifically, the Defendant officers in this case repeatedly warned Kyle to drop the lawnmower blade, and then deployed their tasers three times in an attempt to subdue Kyle and secure his cooperation, but these efforts proved unavailing. The officers' warnings and use of less severe measures are important considerations in assessing the reasonableness of Officer Driscoll's subsequent resort to deadly force, and these factors, when evaluated alongside the other circumstances common to *Chappell* and this case, tip the balance decisively toward the conclusion that this use of deadly force was objectively reasonable.

A second case relied on by Plaintiff in her effort to distinguish *Chappell* is equally unavailing. In *Scozzari v. City of Clare,* 723 F. Supp.2d 945 (E.D. Mich. 2010), *aff'd sub nom. Scozzari v. Miedzianowski,* 454 F. App'x 455 (6th Cir. Jan. 4, 2012), the two defendant officers asserted that the facts of that case were "like those of *Chappell,*" where both cases purportedly "involve[d] the fatal firing of weapons at a suspect who threatened the officers with a knife, refused the officers' commands to drop the weapon and continued to approach the officers, coming within seven feet of the officers and causing them to believe that they were in immediate harm." 723 F. Supp.2d at 964 (internal quotation marks and citations omitted). The district court disagreed, noting the testimony of multiple witnesses (i) that the shooting victim "was as far as ten to twenty feet from [one officer], and even further from the [other]," (ii) that one of the officers, contrary to his assertions, had fired at the victim from a standing position and had not fallen while backing away from the victim, (iii) that the officers had "open space behind" them that would have enabled them to retreat, and (iv) that the victim was moving slowly, which further enhanced the officers' opportunity to retreat. 723 F. Supp.2d at 964. In light of these "more than minor" conflicts in the witness testimony, the district court found that the defendants had failed to establish their entitlement to qualified immunity. 723 F. Supp.2d at 964. The Sixth Circuit then affirmed this ruling, observing that "the differences between *Chappell* and this case are significant," and citing as examples the evidence in that case (i) that "the [o]fficers were standing 15 to 20 feet from [the victim] when they shot him," (ii) that raised questions as to

"whether [the victim] was wielding a knife and hatchet over his head," as the officers claimed, and (iii) that the victim was "moving slowly or not at all," thus suggesting that options were available to the officers and "present[ing] a genuine question whether the situation compelled a split-second decision to use lethal force." *Scozzari,* 454 F. App'x at 463.

Again, the factual distinctions between *Scozzari* and this case are readily apparent. First, *Scozzari* (like *Bletz)* featured conflicting eyewitness testimony on such material factual issues as (i) the distance between the officers and the victim at the time of the shooting, (ii) the opportunity for the officers to retreat from the danger posed by the victim, and (iii) whether the victim was wielding a weapon at the time of the shooting. As already discussed, the testimony and other evidence in this case do not give rise to any such genuine issues of material fact as to the circumstances surrounding the shooting of Kyle Baker. Moreover, the record in *Scozzari,* when viewed in a light most favorable to the plaintiff, disclosed that the defendant officers were 15 to 20 feet away from the victim when they shot him, that retreat was a viable option, that the victim was moving only slowly, if at all, in the officers' direction at the time, and that he was not wielding a weapon when he was shot. Here, in contrast, the unrefuted record demonstrates (i) that Kyle and Officer Driscoll were in close proximity — to the point, as already observed, that Kyle was able to slice Officer Driscoll's hand with the lawnmower blade moments before he was shot; (ii) that Officer Driscoll lost his footing while backing up the stairs, thus foreclosing his opportunity to retreat from Kyle as he advanced up the stairs toward

the officer; and (iii) that Kyle was swinging the lawnmower blade and had raised it to shoulder height at the time he was shot. These circumstances pose precisely the need for a "split-second decision to use lethal force" that was found lacking in *Scozzari.*

Plaintiff cites one final decision, *Maddox v. City of Sandpoint,* No. 16-00162, 2017 WL 4343031 (D. Idaho Sept. 29, 2017), in her effort to distinguish *Chappell,* but this case warrants little further discussion — not least because this unpublished, out-of-circuit district court ruling has no bearing on the qualified immunity inquiry here. In *Maddox,* 2017 WL 4343031, at *1, the victim, Jeanetta Riley, was shot outside a hospital after the defendant officers responded to a report of a female outside the hospital "with a knife, threatening to kill people." The officers directed Ms. Riley several times to show her hands and drop the knife, but she refused and responded with obscenities. The officers initially took out their tasers, but when Ms. Riley continued to refuse the officers' commands to drop her knife and instead began walking toward the officers, two of them shot and killed her. Under these facts, the court held that the defendant officers were not entitled to qualified immunity, finding that "a jury could conclude that a reasonable officer would not believe that the use of deadly force was justified." *Maddox,* 2017 WL 4343031, at *12. In so ruling, the court distinguished the Sixth Circuit's decision in *Chappell* on the grounds (i) that by the defendant officers' own admission, Ms. Riley approached them "at a slower pace," (ii) that, according to an eyewitness, Ms. Riley did not "make a threatening move towards the officers" or "place[] the knife in [a] threatening position," but merely walked

toward the officers, (iii) that the officers were not in a confined space but instead "confronted [Ms. Riley] in an open area, from an initial distance of approximately twenty feet," (iv) that the officers limited their own opportunity to retreat by choosing to move toward Ms. Riley at various points during their encounter, and (v) that when Ms. Riley was shot, the nearest officer was about 10 to 12 feet away. *Id.* at *6-*8 (internal quotation marks and citations omitted).

Maddox is distinguishable from this case on many of the same grounds already discussed. First, that case featured the conflicting accounts of the defendant police officers and other eyewitnesses, but this case does not. Next, the defendant officers in *Maddox* had a far greater opportunity to retreat or otherwise avoid danger than did Officer Driscoll in this case. Likewise, Kyle was in much closer proximity to Officer Driscoll and, due to his aggressive behavior and the confined space in which he carried out his threatening acts, posed a much greater and more imminent threat of serious injury to the officer than did Ms. Riley in *Maddox*.

Accordingly, given the factual similarities between this case and *Chappell,* the Court finds that the outcome here should be the same. Just as the Sixth Circuit held in that case that the defendant detectives' use of deadly force was objectively reasonable under the circumstances, Officer Driscoll's use of lethal force in this case was likewise objectively reasonable under comparable circumstances. And even if this use of force could be deemed mistaken, or at least open to question, Officer Driscoll would be entitled to qualified immunity

from liability arising from his purportedly questionable judgment, where Plaintiff has not identified any basis for concluding that Officer Driscoll acted contrary to clearly established law. Although the shooting death of Kyle Baker was undoubtedly tragic, the Court holds that Officer Driscoll is entitled to summary judgment in his favor on Plaintiff's § 1983 claim of excessive force arising from this shooting.

C. Plaintiff Has Failed to Identify a Basis in the Record for Holding the Defendant City of Trenton Liable for a Violation of Kyle Baker's Constitutional Rights.

In the first count of her complaint, Plaintiff has asserted a § 1983 claim against the Defendant City of Trenton, alleging that the City is subject to liability for the alleged violations of Kyle Baker's constitutional rights by virtue of its failure to adequately train its officers, its adoption of policies and customs that led to these alleged constitutional violations, and its ratification of the conduct of its officers as they engaged in these alleged violations. Defendants now seek an award of summary judgment in the City's favor on this claim of municipal liability, arguing (i) that Plaintiff has failed to establish an underlying violation of Kyle's constitutional rights that could give rise to the City's liability, and (ii) that Plaintiff has failed to produce evidence that could forge the requisite causal link between any such violation and a municipal policy or custom.

Under well-settled principles, the Defendant City of Trenton "cannot be held liable under § 1983 for an injury inflicted solely by its employees or agents."

Gregory v. Shelby County, 220 F.3d 433, 441 (6th Cir. 2000) (citing *Monell v. Department of Social Servs.,* 436 U.S. 658, 694, 98 S. Ct. 2018, 2037 (1978)). Rather, "[f]or liability to attach, there must be execution of a government's policy or custom which results in a constitutional tort." *Gregory,* 220 F.3d at 441. Moreover, Plaintiff must establish that "through its deliberate conduct, the municipality was the 'moving force' behind" the alleged violation of Kyle's constitutional rights — that is, it "must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Gregory,* 220 F.3d at 442 (quoting *Board of County Comm'rs of Bryan County v. Brown,* 520 U.S. 397, 405, 117 S. Ct. 1382, 1389 (1997)).

In seeking an award of summary judgment in its favor, the Defendant City first points out, and Plaintiff does not dispute, that if Plaintiff fails to establish a violation of Kyle's constitutional rights by the Defendant police officers, then the City likewise is free from liability. *See Watkins v. City of Battle Creek,* 273 F.3d 682, 687 (6th Cir. 2001) (explaining that "[i]f no constitutional violation by the individual defendants is established, the municipal defendants cannot be held liable under § 1983"). For reasons already discussed, the Court doubts that Plaintiff can succeed on her claims (i) that the Defendant officers acted unlawfully by entering Mr. Baker's home without a warrant, or (ii) that Officer Driscoll violated Kyle's Fourth Amendment protection against unreasonable seizures by using deadly force in circumstances that did not justify this degree of force. To the extent that Plaintiff

cannot establish at least one of these alleged constitutional violations, it follows that her § 1983 claim against the City is subject to dismissal as well. Yet, because the Court has concluded in the alternative that Plaintiff's claims against the individual Defendant officers are defeated by qualified immunity, the Court proceeds to analyze Plaintiff's claim against the City.

In an effort to identify support for this claim, Plaintiff first contends that the Defendant City's liability for these violations may be established solely by resort to the uniform testimony in the record that "the conduct of the [Defendant officers] was consistent with the City's policies." (Plaintiff's Response Br. at 22.) Plaintiff reasons that "if storming the Baker house was unconstitutional, and if killing [Kyle] was unconstitutional, then the policies with which those actions are consistent must likewise be unconstitutional." (*Id.*) Yet, Plaintiff cites nothing whatsoever in support of this *ipse dixit* claim of municipal liability. In particular, she does not even attempt to forge a link between an unlawful act by a Defendant police officer and language in a City of Trenton policy that could be viewed as the "moving force" behind this illegal conduct. The Court cannot simply assume, based on Plaintiff's bare and unsupported speculation, that something somewhere within the policies and procedures governing Trenton police officers served as the authorization and basis for a violation of Kyle's constitutional rights. To do so, as Defendants observe, would impose municipal liability under a theory of *respondeat superior,* which *Monell* and its progeny squarely foreclose.

Next, Plaintiff asserts that the Defendant City is subject to liability by virtue of its failure to discipline anyone in connection with the Defendant officers' warrantless entry into Mr. Baker's home or Officer Driscoll's fatal shooting of Kyle. In response, Defendants first observe that Plaintiff's failure-to-discipline theory of municipal liability assumes that the Defendant officers or some other Trenton employee engaged in unlawful conduct that would warrant discipline, and they contend, as already discussed, that Plaintiff has failed to establish any of the constitutional violations alleged in her complaint. In any event, to sustain this theory, Plaintiff cannot rely solely on the Defendant City's failure to discipline any of its employees in this particular instance, but instead must produce evidence of a "history of widespread abuse that has been ignored by the City." *Berry v. City of Detroit,* 25 F.3d 1342, 1354 (6th Cir. 1994); *see also Hill v. City of Detroit,* No. 11-10413, 2012 WL 2526931, at *3 (E.D. Mich. June 29, 2012). The record contains no such evidence of a broader pattern of similar misconduct that the City has disregarded.

Finally, Plaintiff maintains that the City effectively ratified the alleged misconduct of the Defendant officers by failing to conduct a "meaningful investigation" of the incident giving rise to this suit. (Plaintiff's Response Br. at 23.) Yet, within a short time after Kyle's shooting, Sergeant Joseph White of the Michigan State Police ("MSP") arrived at the scene, and he later produced a several-page report in which he described the witnesses he had interviewed, the evidence and statements he had reviewed, and the other steps he took in the course of his investigation.

(Defendants' Motion, Ex. B, MSP Investigative Report.) Although Plaintiff identifies various purported deficiencies in this investigation — *e.g.,* that Sergeant White reviewed the incident reports prepared by Defendants Lyons, Biniarz, and Arnoczki in lieu of interviewing these officers, (*see id.* at 4), and that he allegedly pre-judged the outcome of his investigation by referring to Officer Driscoll's shooting of Kyle as "self-defense" when he interviewed Collin Mathieu a few hours after the shooting, (*see* Plaintiff's Response, Ex. 2, Mathieu Interview Tr. at 12) — she makes no effort to explain how these shortcomings rendered the MSP investigation wholly inadequate. Nor does she cite any authority for the proposition that this investigation was so deficient that it evidences the City's "deliberate indifference" to the constitutional rights of its citizens. *See Thomas v. City of Chattanooga,* 398 F.3d 426, 429 (6th Cir. 2005).

In any event, Plaintiff once again seeks to "infer a municipal-wide policy based solely on one instance" of an allegedly inadequate investigation. As the Sixth Circuit has recognized, "[t]his argument, taken to its logical end, would result in the collapsing of the municipal liability standard into a simple *respondeat superior* standard," a "path to municipal liability [that] has been forbidden by the Supreme Court." *Thomas,* 398 F.3d at 432-33. Accordingly, Plaintiff has failed to produce evidence that could sustain a viable § 1983 claim against the Defendant City.

V. CONCLUSION

For these reasons, the Court **GRANTS** Defendants' January 29, 2018 motion for summary judgment (Dkt. 21).

IT IS SO ORDERED.

Date: September 24, 2018

s/Marianne O. Battani
MARIANNE O. BATTANI
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on September 24, 2018.

s/ Kay Doaks
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 16-cv-12280
Honorable Marianne O. Battani

[Filed September 24, 2018]

HEATHER BAKER, Personal Representative of the Estate of KYLE BAKER, Deceased, Plaintiff,	)
v.	)
CITY OF TRENTON, MARK DRISCOLL, STEVE LYONS, AARON BINIARZ, and STEVE ARNOCZKI, Defendants.	)

JUDGMENT

For the reasons stated in the Opinion and Order Granting Defendants' Motion for Summary Judgment,

IT IS HEREBY ORDERED that Judgment is entered in favor of Defendants and against Plaintiff.

Date: September 24, 2018

s/Marianne O. Battani
MARIANNE O. BATTANI
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on September 24, 2018.

s/ Kay Doaks
Case Manager