No. 25-

IN THE

Supreme Court of the United States

JAMES GRIFFITHS, IN HIS INDIVIDUAL CAPACITY AND CAPACITY AS AN EMPLOYEE OF THE CUYAHOGA METROPOLITAN HOUSING AUTHORITY,

Petitioner,

v.

RITA KEITH, AS ADMINISTRATOR OF THE ESTATE OF ARTHUR KEITH, DECEASED, AND INDIVIDUALLY AS THE NATURAL PARENT AND MOTHER OF ARTHUR KEITH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a police officer must wait until an armed, fleeing suspect turns and points his gun at the officer before using deadly force where, as here, the suspect refuses to comply with an officer's commands to drop his weapon, and proceeds to flee with the gun in his hand and could, at any moment, turn and fire upon the officer in a split second.

2. Whether the court of appeals violated existing Supreme Court precedent by merely citing the general rule in defining a clearly established right, and by failing to identify any case where an officer acting under similar circumstances was held to have violated the Fourth Amendment.

PARTIES TO THE PROCEEDINGS BELOW

Rita Keith, as Administrator of the Estate of Arthur Keith, Deceased, and Individually as the Natural Parent and Mother of Arthur Keith, was the plaintiff in the district court and the appellant in the court of appeals.

James Griffiths, in his individual capacity and capacity as an employee of the Cuyahoga Metropolitan Housing Authority, was the defendant in the district court and the appellee in the court of appeals.

STATEMENT OF RELATED PROCEEDINGS

The proceedings directly related to this petition within the meaning of Rule 14.1(b)(iii) are:

- *Keith v. Griffiths*, No. 1:22 CV 1809 (N.D. Ohio), judgment entered on April 30, 2024;
- *Keith v. Griffiths*, No. 24-3444 (6th Cir.), judgment entered on June 6, 2025).

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James Griffiths, a police officer for the Cuyahoga Metropolitan Housing Authority, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The court of appeals' opinion, dated June 6, 2025, is available on WESTLAW, *Keith v. Griffiths*, No. 24-3444, 2025 WL 1604493 (6th Cir. June 6, 2025), and is included in the Appendix at App. 1a-15a. The district court's opinion, dated April 30, 2025, is available on WESTLAW, *Keith v. Griffiths*, No. 1:22 CV 1809, 2024 WL 1909129 (N.D. Ohio Apr. 30, 2024), and is included in the Appendix at App. 16a-53a.

STATEMENT OF JURISDICTION

The court of appeals entered its original judgment on June 6, 2025, App. 1a-15a. It denied rehearing and rehearing en banc on July 17, 2025. *Id.* at 54a-55a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant portions of 42 U.S.C. § 1983 are set forth in the Appendix. App. 56a.

STATEMENT

This action under 42 U.S.C. § 1983 concerns the use of deadly force by a police officer who was confronted with an armed suspect that ignored repeated commands to drop a weapon, and proceeded to flee with gun in hand, and was in a position to fire his weapon at the officer or nearby bystanders at any moment. In the proceedings below, the District Court ruled that Officer Griffiths was entitled to qualified immunity on the alleged excessive force claim, but upon review, the Sixth Circuit reversed, wrongfully ruling that Griffiths was not entitled to

qualified immunity because "[a]n individual's possession of a gun alone does not create a threat that justifies the use of deadly force," and that the ultimate question of "whether deadly force was justified depends on whether Keith turned and pointed his gun at Griffiths." *See* App., *infra*, 8a and 12a.

This proposition of law – that a police officer cannot use deadly force against an armed, fleeing suspect who has refused to drop his weapon unless the suspect turns and points his gun at the officer – presents an issue of exceptional importance that warrants Supreme Court review because it conflicts with existing Supreme Court precedent and the authoritative decisions of other U.S. Courts of Appeal. Indeed, if permitted to stand, the Sixth Circuit's opinion will set a very dangerous precedent that would negatively impact the ability of police officers to protect themselves and others when confronted with an armed suspect who ignores commands to drop his weapon and could turn and fire his gun at the officer (or others) in a matter of seconds. Accordingly, the Court should grant this petition in order to resolve this inter-circuit conflict and adopt a rule of law that recognizes the dangerous threats posed by armed suspects in the real world.

The existence of an inter-circuit conflict is clear and should be resolved by this Court. As discussed below, the Fifth and Eleventh Circuits have both held that where, as here, an armed suspect ignores an officer's commands to drop his weapon and begins to flee with gun in hand, it does not matter whether the suspect actually turns and points his weapon at the officer because "there was nothing to prevent him from doing either, or both, in a split second." *Garczynski v. Bradshaw*, 573 F.3d 1158, 1169 (11th Cir. 2009) (citations omitted); *Wilson v. City of Bastrop*, 26 F.4th 709, 714-715 & n.3 (5th Cir. 2022)

(rejecting argument that a fleeing, armed suspect "posed no threat because he never actually aimed his gun at an officer" because "a fleeing, armed suspect could turn a gun on him at a moment's notice"). Moreover, the Fourth and Tenth Circuits have held that "an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action." *Anderson v. Russell*, 247 F.3d 125, 131 (4th Cir. 2001); *Palacios v. Fortuna*, 61 F.4th 1248, 1255 (10th Cir. 2023) (granting immunity to officers who shot armed suspect, "even if Mr. Palacios was not pointing his gun directly at the officers"). Accordingly, the Court should grant the petition for writ of certiorari in order to resolve this inter-circuit conflict.

Further, the Court should grant the petition and reverse the Sixth Circuit's decision because it wrongfully violates existing Supreme Court precedent, which has repeatedly held that the lower courts must not "define clearly established law at a high level of generality." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018); *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 613 (2015); *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011) (citations omitted). Indeed, where this well-established principle has been violated by the lower courts in a use of deadly force case, this Court has often granted the petition and summarily reversed the lower court's denial of qualified immunity. *See, e.g., Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5-8 (2021); *City of Escondido, Cal. v. Emmons*, 586 U.S. 38, 43-44 (2019); *Kisela v. Hughes*, 584 U.S. 100, 104-108 (2018); *White v. Pauly*, 580 U.S. 73, 78-81 (2017); *Mullenix v. Luna*, 577 U.S. 7, 12-19 (2015).

The same result should occur in this case. Here, the Sixth Circuit blatantly violated existing Supreme Court precedent because it merely cited the general rule that "individuals have the right 'not to be shot unless [they are]

perceived to pose a threat to the pursuing officers or to others.'" App., *infra*, 13a. As this Court has repeatedly held, however, a citation to the general rule about the use of deadly force is not legally sufficient to justify the denial of qualified immunity because it "does not provide sufficient notice to officers about specific uses of deadly force." *Rivas-Villegas*, 595 U.S. at 5 (citations omitted). Accordingly, for this additional reason, the Court should grant the petition and reverse the Sixth Circuit's denial of qualified immunity to Officer Griffiths.

I. LEGAL FRAMEWORK

A. The legal standard governing the use of deadly force by police officers was established by this Court in *Tennessee v. Garner*, 471 U.S. 1, 7 (1985), which held the question of whether the use of deadly force is objectively reasonable under the Fourth Amendment "depends upon whether 'the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.'" *Id.* at 7.

This objective test requires courts to judge the use of force from the perspective of a reasonable officer on the scene "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397 (1989). In so doing, the court must analyze the use of force by focusing "on the 'split-second judgment' made immediately before the officer used allegedly excessive force, not on the poor planning or bad tactics that might have 'created the circumstances' that led to the use of force." *Reich v. City of Elizabethtown, Ky.*, 945 F.3d 968, 978 (6th Cir. 2019) (citations omitted).

B. It is well established that police officers are entitled to qualified immunity "from liability for civil damages insofar as their conduct does not violate clearly

established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). "Whether qualified immunity can be invoked turns on the 'objective legal reasonableness' of the official's acts," as assessed "'in light of the legal rules that were clearly established at the time.'" *Ziglar* v. *Abbasi*, 582 U.S. 120, 151 (2017) (citation omitted). Although a "'case directly on point'" is not required, "'existing precedent must have placed the statutory or constitutional question beyond debate.'" *White*, 580 U.S. at 79 (citing *Mullinex*, 577 U.S. at 12).

Although *Garner* established the general rule that deadly force may not be used unless a suspect poses a threat of serious physical harm to the officer or others, this Court has "repeatedly told courts . . . not to define clearly established law at a high level of generality" because "[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Mullenix*, 577 U.S. at 12. Thus, as this Court held, it is not legally sufficient merely to cite to the general rule because it "does not provide sufficient notice to officers about specific uses of deadly force." *Rivas-Villegas*, 595 U.S. at 5.

II. PROCEEDINGS BELOW

A. THE USE OF DEADLY FORCE INCIDENT

The case involves the use of deadly force on November 13, 2020, by Officer James Griffiths ("Griffiths") of the Cuyahoga Metropolitan Housing Authority ("CMHA") Police Department ("PD") that resulted in the shooting death of Arthur Keith ("Keith"). As set forth in the Sixth Circuit's decision, the use of deadly force incident arose after Officer Griffiths and two other CMHA officers (Robert Lenz and Paul Styles) responded to call about a black van with tinted windows that had allegedly been

involved in a shooting incident in a parking lot near CMHA residential property. App., *infra*, 2a-3a. Upon approaching the van, Griffiths opened the front passenger door, saw Keith in the back seat, and announced, "police" and "let me see your hands." Griffiths observed that Keith was holding a gun across his stomach, while attempting to open the van's door. Griffiths then ordered Keith to drop the gun, but Keith did not comply.

As Griffiths was yelling "drop the gun," Keith exited the van and took three or so steps toward the sidewalk and the back bumper of the car parked next to the van. As he was moving toward the sidewalk, Keith turned sideways, raised his left arm, and pointed his gun at Griffiths. Griffiths then fired his weapon in self-defense. After the shots were fired, Keith ran down the sidewalk and around a residential building, and eventually dropped to the ground. Styles was the first to reach Keith and saw Keith's gun on the ground in front of Keith's right hand. As the Sixth Circuit found, "[t]he DNA on the gun matched Keith." App., *infra*, 5a.

B. The Lower Court Decisions

In proceedings below, the district court granted qualified immunity to Officer Griffiths and entered summary judgment in his favor on all claims. App., *infra*, 16a-53a. Upon review, however, the Sixth Circuit reversed. App., *infra*, 1a-15a. In its Opinion, the Sixth Circuit did not cite to any evidence to dispute that Keith was holding a gun and refused to drop the weapon when he exited the vehicle. While the Sixth Circuit found that Griffiths' description of the shooting conflicted with the testimony of two juvenile witnesses (Melton and Starr), the court's opinion admitted that "none of the other witnesses could see Keith's hands during the entire duration of the encounter." App., *infra*, 4a. Thus, there is

no witness who can dispute that Keith was actually holding a gun in his hand, and that he was only a short distance from Griffiths (and other officers and bystanders) at the time of the shooting. *Id.*

Yet, the Sixth Circuit denied qualified immunity to Officer Griffiths because it held that "[u]ltimately, whether deadly force was justified depends on whether Keith turned and pointed a gun at Griffiths." App., *infra*, 12a. It is this legal principle that warrants Supreme Court review because it wrongfully imposes a new, legal standard that negatively impacts the ability of police officers to defend themselves (and others) when confronted with armed and dangerous suspects in the line of duty.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RESOLVE THE INTER-CIRCUIT CONFLICT OVER WHETHER A POLICE OFFICER MUST WAIT UNTIL AN ARMED SUSPECT TURNS AND POINTS HIS GUN AT THE OFFICER BEFORE USING DEADLY FORCE.

The Sixth Circuit's denial of qualified immunity in this case was based upon the legal proposition that a police officer may not use deadly force against an armed, fleeing suspect who has refused to drop the weapon in his hand unless the suspect "turned and pointed his gun" at the officer. App. 12a. In so doing, the Sixth Circuit wrongfully held that a police officer violates clearly established law if he or she uses deadly force when confronted with an armed suspect who repeatedly refuses to comply with commands to drop his weapon and can turn at any moment to fire his weapon at the officer (or others) in a matter of seconds.

This proposition of law establishes a very dangerous precedent that conflicts with the holdings of other

appellate courts, including the Fourth, Fifth, Tenth, and Eleventh Circuits, which have held that an officer does not need to wait for an armed suspect to turn and point his weapon, particularly where, as here, the suspect refuses to comply with commands to drop the gun, attempts to flee with gun in hand, and is in a position where he could turn and fire upon the officer (or others) in a matter of seconds. *Wilson v. City of Bastrop*, 26 F.4th 709, 714-715 (5th Cir. 2022) (rejecting argument that a fleeing, armed suspect "posed no threat because he never actually aimed his gun at an officer," given that "a fleeing, armed suspect could turn a gun on him at a moment's notice"); *Palacios v. Fortuna*, 61 F.4th 1248, 1255 (10th Cir. 2023) (granting immunity to officers who shot armed, fleeing suspect, "even if Mr. Palacios was not pointing his gun directly at the officers"); *Garczynski v. Bradshaw*, 573 F.3d 1158, 1169 (11th Cir. 2009) (granting immunity to officers who shot an armed suspect because "[e]ven if we assume that Garczynski did not point his gun in the officers' direction, the fact that Garczynski did not comply with the officers' repeated commands to drop his gun justified the use of deadly force"); *see also Anderson v. Russell*, 247 F.3d 125, 131 (4th Cir. 2001) ("This Circuit has consistently held that an officer does not need to wait until a gun is pointed at the officer before the officer is entitled to take action").

In this regard, it does not matter whether the suspect turns and points his weapon at the officer because, as the Eleventh Circuit explained in *Garczynski*, "there was nothing to prevent him from doing either, or both, in a split second." *Id.*, 573 F.3d at 1169 (citing *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997)). Other appellate courts have reached the same conclusion. *See Wilson*, 26 F.4th at 715, n.3 (rejecting argument that "Johnson posed no threat because he never actually aimed his gun at an

officer" because "a fleeing, armed suspect could turn a gun on him at a moment's notice"); *Terrell v. Town of Woodworth*, 2024 WL 667690, *6 (5th Cir. Feb. 19, 2024) (granting immunity to officer who shot fleeing suspect because he reasonably believed that "Terrell, who he thought was still armed, could turn at any moment and point his gun back on Malone or Gonzales").

In its Opinion, the Sixth Circuit failed to appreciate that an officer has probable cause to believe that a fleeing, armed suspect is dangerous and poses an imminent threat of serious harm where, as here, the suspect has repeatedly ignored the officer's commands to drop the weapon, and could have turned and fired his weapon at the officer (or others) in a matter of seconds. As the Eleventh Circuit explained in *Garczynski*, "[e]ven if we assumed that Garczynski did not point his gun in the officers' direction, the fact that Garczynski did not comply with the officers' repeated commands to drop his gun justified the use of deadly force under these particular circumstances" because, "[a]t least where orders to drop the weapon have gone unheeded, an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force." *Id.*, 573 F.3d at 1169.

Indeed, where, as here, a suspect ignores an officer's command to drop his firearm, and proceeds to flee with gun in hand, it is reasonable for the officer to believe that the suspect is in fact dangerous and poses an imminent threat to the lives and safety of the officers and other nearby bystanders. Thus, in *Wilson*, the Fifth Circuit held that an officer who shot an armed, fleeing suspect was legally entitled to qualified immunity because "[w]hen Johnson ran, armed and disobeying Green's commands to drop the gun despite the presence of

onlookers, Green's use of deadly force became justified." *Id.*, 26 F.4th at 714.

This is a critical distinction that makes this case different from other cases where a suspect merely possesses a gun, but never receives any warning or command to drop the weapon. In *Cooper v. Sheehan*, 735 F.3d 153 (4th Cir. 2013), for example, the police officers shot a resident who came to his back door with a shotgun to investigate "a nocturnal disturbance on his own property." *Id.* at 160. When the officers "commenced firing without warning," the Fourth Circuit held that the use of deadly force was not justified because "the mere possession of a firearm by a suspect is not enough to permit the use of deadly force." *Id.* at 156, 159-160. But, importantly, the Fourth Circuit never held that an armed suspect must point, aim, or shoot the weapon in order to pose an imminent threat. *Id.* at 159 ("To be clear, an armed suspect need not engage in some specific action – such as pointing, aiming, or firing his weapon – to pose a threat").

To the contrary, in *Hensley v. Price*, 876 F.3d 573 (4th Cir. 2017), the Fourth Circuit explained that an officer may reasonably perceive that an armed suspect poses an imminent threat if he or she refuses to drop a weapon after receiving a verbal command and runs from the scene. *Id.* at 585. "[O]nce the officer issued a verbal command, the character of the situation transformed. If an officer directs a suspect to stop, to show his hands or the like, the suspect's continued movement likely will raise in the officer's mind objectively grave and serious suspicions about the suspect's intentions. Even when those intentions turn out to be harmless, . . . the officer can reasonably expect the worst at the split-second when he acts." *Id.* (emphasis added). Thus, the Sixth Circuit's

decision should be subject to Supreme Court review because it conflicts with the authoritative precedent of other circuits on an issue of exceptional importance that directly affects the lives and safety of officers who are confronted with armed and dangerous criminal suspects.

II. THIS COURT SHOULD REVERSE THE SIXTH CIRCUIT'S DECISION BECAUSE IT VIOLATES EXISTING SUPREME COURT PRECEDENT BY DEFINING CLEARLY ESTABLISHED RIGHTS WITH A HIGH LEVEL OF GENERALITY.

Supreme Court review is also warranted because the Sixth Circuit's Opinion conflicts with existing Supreme Court precedent that the lower courts must not "define clearly established law at a high level of generality." *Kisela*, 584 U.S. at 104; *White*, 580 U.S. at 79. Indeed, this Court has "repeatedly told courts ... not to define clearly established law at a high level of generality" because "[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Mullenix*, 577 U.S. at 12. Thus, it violates this Supreme Court precedent for the Sixth Circuit merely to cite the general rule (which simply repackages *Garner's* deadly force test) because it "does not provide sufficient notice to officers about specific uses of deadly force." *Rivas-Villegas*, 595 U.S. at 5.

Here, as in *Rivas-Villegas*, *Kisela*, *White*, and *Mullenix*, the Sixth Circuit's Opinion violates this Supreme Court precedent because it merely cites the general rule that "individuals have the right 'not to be shot unless [they are] perceived to pose a threat to the pursuing officers or to others.'" App., *infra*, 13a. As this Court has held, however, the "clearly established" test requires that the panel "identify a case where an officer

acting under similar circumstances" was held to have violated the Fourth Amendment. *White*, 580 U.S. at 79. While the Court "do[es] not require a case directly on point ..., existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* (citation omitted). Thus, a police officer is entitled to qualified immunity if the existing case law "would create uncertainty." *See N.S. through Lee v. Kansas City Bd. of Police*, 35 F.4th 1111, 1115 (8th Cir. 2022) (granting immunity because applicable case law "would create uncertainty for someone in Officer Thompson's shoes").

In this case, the Sixth Circuit's opinion does not identify a single case where a police officer acting under similar circumstances was held to have violated the Fourth Amendment. While the panel cited three cases to justify the denial of qualified immunity – *Hicks v. Scott*, 958 F.3d 431 (6th Cir. 2020); *Jacobs v. Alam*, 915 F.3d 1028 (6th Cir. 2019), and *Thomas v. City of Columbus*, 854 F.3d 361 (6th Cir. 2017) – none of the foregoing cases stand for the proposition that immunity should be denied where, as here, an officer uses deadly force after being confronted with an armed, fleeing suspect who has disregarded commands to drop a gun, and presents a serious threat to life and safety of the officers and other bystanders.

In *Thomas*, in fact, the Sixth Circuit granted immunity to officers who shot an armed suspect, even though the suspect "never raised his [weapon]" because he was only 40 feet away, and "[a]t this range, a suspect could raise and fire a gun with little or no time for an officer to react." *Id.*, 854 F.3d at 366. Thus, in *Thorton v. City of Columbus*, 727 F. App'x 829 (6th Cir. 2018), the Sixth Circuit observed that *Thomas* rejected a "categorical rule that force can only be reasonable if a suspect raises his gun,"

and then cited *Anderson* to hold that "[a]n officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action." *Id.* at 838.

While *Thomas* did not involve a fleeing suspect, it does not matter whether the suspect was attempting to flee because, as previously discussed, Griffiths had probable cause to believe that Keith was dangerous and presented a serious threat to himself (and others) after Keith ignored repeated commands to drop his gun and attempted to flee with gun in hand. Indeed, "[o]nce an officer reasonably believes a suspect is dangerous to him, other officers, or other citizens, he may use deadly force and may do so even if the suspect attempts to flee." *Wilkerson v. City of Akron, Ohio*, 906 F.3d 477, 483 (6th Cir. 2018) (granting immunity to officers who shot an armed, fleeing suspect because "nothing prevented Thomas from turning to fire upon the officers").

This is a critical point because in *Thorton*, for example, the Sixth Circuit granted immunity to police officers who shot an armed suspect in his home, even "though *Thorton* never pointed the shotgun at the Officers," because he "failed to comply with the Officers' orders" to drop the shotgun, and because "the deadly threat posed by Thornton could have easily and quickly transformed into deadly action in a split-second." *Id.*, 727 F. App'x at 837. Thus, the rulings in *Thomas, Thorton* and *Wilkerson* are consistent with the rulings of the Fourth, Fifth, Tenth, and Eleventh Circuits cited above because they all recognize that an armed suspect who refuses to comply with commands to drop a gun poses an imminent threat, even if the suspect does not point the weapon at the officer.

In light of the foregoing Sixth Circuit case law, and the authoritative decisions of the Fourth, Fifth, Tenth, and Eleventh Circuits cited above, it was far from "clearly established" or "beyond debate" that an officer must wait until an armed, fleeing suspect turns and points his gun at the officer before using deadly force, particularly where, as here, the suspect refuses to comply with an officer's commands to drop his weapon, and could turn, at any moment, and fire upon the officer in a split second. In light of the foregoing case law, therefore, Officer Griffiths was entitled to immunity because a reasonable officer would not have clearly known that the use of deadly force was unconstitutional based upon the particularized facts circumstances confronting Griffiths in the moments preceding the shooting.

For all these reasons, this Court should grant the petition and, as it has done in other use of deadly force cases, reverse the Sixth Circuit's denial of qualified immunity in this case. *See, e.g., Rivas-Villegas*, 595 U.S. at 8; *City of Escondido*, 586 U.S. at 44; *Kisela*, 584 U.S. at 108; *White*, 580 U.S. at 81; *Mullenix*, 577 U.S. at 19. Indeed, if the Sixth Circuit's decision is permitted to stand, it would place police officers in the dangerous position of questioning whether they may use deadly force when confronted with an armed suspect who refuses to drop his weapon and presents a serious threat to the officer and other bystanders. Accordingly, the Court should grant the petition because the Sixth Circuit's opinion not only conflicts with the existing Supreme Court precedent and the decisions of other circuit courts, but places the lives of police officers (and the lives of other innocent bystanders) at great risk.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED JUNE 6, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 24-3444

RITA KEITH, AS ADMINISTRATOR OF THE ESTATE OF ARTHUR KEITH, DECEASED, AND INDIVIDUALLY AS THE NATURAL PARENT OF ARTHUR KEITH, DECEASED,

Plaintiff-Appellant,

v.

JAMES GRIFFITHS, IN HIS INDIVIDUAL AND CAPACITY AS AN EMPLOYEE OF THE CUYAHOGA METROPOLITAN HOUSING AUTHORITY,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

OPINION

Before: COLE, WHITE, and MATHIS, Circuit Judges.

Appendix A

COLE, Circuit Judge. On November 13, 2020, officer James Griffiths fatally shot Arthur Keith. Rita Keith—Keith's mother and the administrator of his estate—sued Griffiths, asserting a claim under 42 U.S.C. § 1983 for the violation of Keith's Fourth Amendment rights and various state-law claims.[1] Griffiths moved for summary judgment, and the district court granted his motion, finding that Griffiths was entitled to qualified and statutory immunity. Plaintiff challenges the district court's decision. We reverse and remand for further proceedings.

I.

On November 12, 2020, Cuyahoga Metropolitan Housing Authority Police Department (CMHA PD) received a phone call reporting that a black van with tinted windows allegedly involved with a shooting incident earlier that week was parked in a parking lot near a Cuyahoga Metropolitan Housing Authority property. Officers responded but did not find the van.

The following day, CMHA PD received a second call reporting the same van in the same parking lot. Three CMHA PD officers—Griffiths, Robert Lenz, and Paul Styles—responded. Griffiths proceeded to the passenger's s*id.* of the van, while Styles went to the driver's side.

From the officers' perspective, the following occurred. Griffiths opened the van's front passenger door, saw

1. Rita Keith is the administrator of Arthur Keith's estate. For clarity, we refer to Rita Keith as "plaintiff" and refer to Arthur Keith as "Keith."

Keith in the backseat, announced it was the police, and instructed Keith: "Let me see your hands." (Griffiths Dep., R. 69-1, PageID 3066–69.) Keith exited the vehicle on the passenger's side, sliding the van door open and stepping out. Griffiths observed Keith holding a gun in his left hand "against his stomach, not pointing down, pointing straight across" while attempting to open the van's door with his right hand. (*Id.* at PageID 3074.) He ordered Keith to drop the gun. When Keith did not comply, Griffiths drew his gun. Keith "ma[de] three to four steps" away from Griffiths and towards the sidewalk. (*Id.* at PageID 3083–84.) Then, Keith "turned and raised his left hand up at [Griffiths] as if he was going to shoot." (*Id.* at PageID 3083.) Griffiths fired multiple shots—one of which hit Keith in his "left upper back" and exited through his "right chest." (Armstrong Dep., R. 66-1, PageID 1136, 1140.)

Keith fled on foot. Styles and Griffiths pursued for a short distance, until Keith fell to the ground. Styles was the first to reach Keith and observed a gun on the ground near Keith's right hand. When Griffiths arrived, he also saw the gun next to Keith. Lenz arrived last and administered aid to Keith. Lenz did not see the gun on the ground, but he observed Griffiths holding it.

Griffiths claimed he secured the gun because residents of the housing complex began to arrive on the scene. Once commanding officers responded, they secured the weapon in the trunk of a police cruiser. One of those officers declared that when he arrived on the scene, he observed Griffiths holding a non-CMHA PD weapon, which Griffiths confirmed was recovered from the ground where Keith had fallen.

Appendix A

Two juveniles, Jahzir Melton and Demarion Starr, witnessed the incident and offer a different account of the events. According to Melton, who was taking out the trash when officers arrived on the scene, Keith "tried to get up and run [a]nd . . . before he could turn around, [Griffiths] started shooting, boom, boom." (Melton Dep., R. 63-1, PageID 661–62.) At the time Griffiths fired, Melton could view Keith only from the shoulders up. Following the shots, Melton ran into his apartment.

Starr was with some friends outside the apartment complex when the incident occurred. According to Starr, Keith "tried to run. When he got out the car, he tried to run and it looked like he almost tripped, and he got back up and ran, and that is when the five or six shots was let off." (Starr Dep., R. 64-1, PageID 840.) He elaborated, "[Keith] was trying to – when he got out the car, he was running straight and he tried to make like a turn, but he didn't even get to make the turn because the shots was let off. After the shots was let off, he fell." (*Id.* at PageID 842.) Responding to questions about whether Keith was facing Griffiths, Starr explained, "He was always – when he got out the car, he was to the side . . . and he turned to – as soon as he got out and turned to the side, he turned to us, the way that we was facing, to run away." (*Id.* at PageID 869–70.) Starr admitted he could not see Keith's hands at all points during the incident. He could, however, see Keith's hands as Keith was running and did not see a gun or anything else in Keith's hands. Starr also ran inside his apartment after the shots were fired.

In addition to eyewitness testimony, the record contained the following evidence. The gun Keith allegedly

possessed was photographed only in the trunk of a police cruiser. The DNA on the gun matched Keith. The autopsy reported that the entrance wound from the bullet was in the "postero-lateral left upper trunk." (Medical Examiner's Verdict, R. 66-3, PageID 1343.) The medical examiner clarified that the bullet entered Keith's "left upper back" and exited through his "right chest." (Armstrong Dep., R. 66-1, PageID 1136, 1140.)

Plaintiff sued, alleging a federal claim under 42 U.S.C. § 1983 for excessive force and state-law claims for survivorship, wrongful death, and loss of consortium. Griffiths moved for summary judgment, arguing that he is entitled to qualified immunity on the claim under § 1983 and statutory immunity under Ohio Revised Code § 2744 on the state-law claims. The district court granted summary judgment to Griffiths, finding that he is entitled to qualified and statutory immunity. Plaintiff timely appealed.

II.

We review de novo a district court's grant of summary judgment for movants raising a qualified immunity defense or a statutory immunity defense under Ohio law. *See Heeter v. Bowers*, 99 F.4th 900, 908, 921 (6th Cir. 2024). Qualified immunity shields government officials from liability for civil damages so long as "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

A government "official is entitled to summary judgment unless a 'genuine dispute of material fact' precludes the defense." *Heeter*, 99 F.4th at 908; *see* Fed. R. Civ. P. 56(a). There is no genuine issue of material fact "[w]here the record taken as a whole could not lead a rational trier of fact to find for the [plaintiff]." *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). At this stage, we must view the evidence in the light most favorable to the nonmoving party—here, plaintiff—and draw all reasonable inferences in her favor. *See Hicks v. Scott*, 958 F.3d 421, 430 (6th Cir. 2020). And "[w]here, as here, a police officer is the lone survivor of the encounter giving rise to the plaintiff's claims, we take 'particular care' in assessing the district court's grant of summary judgment." *Roberts v. Cruz*, Nos. 22-5687/22-5701, 2023 WL 2181145, at *2 (6th Cir. Feb. 23, 2023) (quoting *Burnette v. Gee*, 137 F. App'x 806, 809 (6th Cir. 2005)). We examine the applicability of qualified immunity and statutory immunity in turn.

III.

The Fourth Amendment prohibits "unreasonable searches and seizures[.]" U.S. Const. amend. IV. "[A]n officer seizes a person when he uses force to apprehend [them]." *Torres v. Madrid,* 592 U.S. 306, 309 (2021). Such force must be reasonable and cannot be excessive. *Stewart v. City of Euclid,* 970 F.3d 667, 672 (6th Cir. 2020). This appeal concerns one alleged constitutional violation: Griffiths's use of excessive force against Keith.

To determine whether qualified immunity applies, we view the facts alleged and the evidence produced in

the light most favorable to the plaintiff and determine (1) "'whether the allegations give rise to a constitutional violation[,]'" and (2) "'whether the right was clearly established at the time of the incident.'" *Coley v. Lucas County*, 799 F.3d 530, 537 (6th Cir. 2015) (quoting *Burgess v. Fischer*, 735 F.3d 462, 472 (6th Cir 2013)). Importantly, at this stage, we do not need to conclusively decide these questions. Instead, we need to determine if Keith presented sufficient evidence to create a genuine dispute of material fact. *See Goodwin v. City of Painesville*, 781 F.3d 314, 321 (6th Cir. 2015).

A.

We first consider if there is a genuine dispute of material fact as to whether Griffiths's use of force violated Keith's Fourth Amendment rights. *See Coley*, 799 F.3d at 537. An officer is entitled to qualified immunity on an excessive force claim if the officer's use of force was objectively reasonable. *Graham v. Connor*, 490 U.S. 386, 397 (1989). This inquiry turns on: (1) "the severity of the crime at issue"; (2) whether the individual posed an immediate safety threat; and (3) whether the individual was "actively resisting arrest or attempting to evade arrest[.]" *Id.* at 396. These factors are not exhaustive. *LaPlante v. City of Battle Creek*, 30 F.4th 572, 579 (6th Cir. 2022). We evaluate these factors "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Goodwin*, 781 F.3d at 321 (quoting *Graham*, 490 U.S. at 396).

For the use of deadly force, the threat of immediate harm is a "minimum requirement." *Untalan v. City of*

Lorain, 430 F.3d 312, 314 (6th Cir. 2005); *see also Palma v. Johns*, 27 F.4th 419, 432 (6th Cir. 2022). Deadly force is reasonable only "[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[.]" *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

An individual's possession of a gun alone does not create a threat that justifies the use of deadly force. *Jacobs v. Alam*, 915 F.3d 1028, 1040 (6th Cir. 2019); *see also Thomas v. City of Columbus*, 854 F.3d 361, 366 (6th Cir. 2017) ("[W]e do not hold that an officer may shoot a suspect merely because he has a gun in his hand."). And where a dispute of material fact exists pertaining to whether the suspect was pointing a gun at someone, we deny qualified immunity and permit the case to proceed to a jury. *Hicks*, 958 F.3d at 436 (collecting cases).

Here, plaintiff contends that the proffered evidence, viewed in the light most favorable to her, creates a genuine dispute of material fact as to two questions: whether Keith turned and pointed a gun at Griffiths and whether a gun was recovered from the ground near Keith's body. Considering the testimony of Griffiths and the juvenile eyewitnesses and viewing the evidence in the light most favorable to plaintiff, we agree that there is a genuine dispute of material fact as to the first question: whether Keith turned and pointed a gun at Griffiths. We therefore need not address the second alleged factual dispute, as the first precludes summary judgment.

Appendix A

1.

Griffiths asserts that before he fired at Keith, Keith turned and pointed a gun at him. Griffiths recounted the events as follows. Keith exited the van, and Griffiths observed Keith holding a gun in his left hand "against his stomach, not pointing down, pointing straight across" while trying to open the van's door with his right hand. (Griffiths Dep., R. 69-1, PageID 3073– 76.) He ordered Keith to drop the gun. Keith did not comply. Keith "ma[de] three to four steps" away from Griffiths and towards the sidewalk. (*Id.* at PageID 3083–84.) Then, Keith "turned and raised his left hand up at [Griffiths] as if he was going to shoot." (*Id.* at PageID 3083.) Griffiths fired multiple shots. Two other officers were present on the scene and heard portions of the incident, but neither witnessed the moment Griffiths fired his gun.

The two juvenile eyewitnesses—Melton and Starr—tell a different story.[2] On the day of the incident, Melton described what he had observed to a Cleveland police officer. According to Melton, Keith exited his vehicle and tried to run "when the police officers shot him 2 times." (Resp. to Mot. for Summ. J., Divisional Info., R. 81-17, PageID 4949.) During a subsequent deposition, Melton further explained that Keith "like tried to get up and run [a]nd . . . before he could turn around, [Griffiths] started

2. Plaintiff also mentions an interview of Rayshawn Stewart, but the district court excluded Stewart as a witness for purposes of summary judgment and trial. Plaintiff did not oppose the motion to exclude Stewart's testimony, and we do not consider it in our analysis.

shooting[.]" (Melton Dep., R. 63-1, PageID 661–62.) When asked where Keith was when the shots were fired, Melton elaborated that Keith was "still trying to get out the van door" to run away, but that Keith "couldn't even turn" before Griffiths started shooting. (*Id.* at PageID 708–09.)

Defense counsel also deposed Starr. According to Starr, Keith "tried to run . . . almost tripped, and [] got back up and ran," and then Griffiths fired "five or six shots[.]" (Starr Dep., R. 64-1, PageID 840.) And after the shots were fired, Starr stated that Keith took "[p]robably about three or four [steps]." (*Id.* at PageID 843.)

The district court found that neither Melton nor Starr "could see Keith's hands immediately before, during, or after the discharge." (Op. and Order, R. 85, PageID 4986.) That said, Melton's and Starr's accounts undermine Griffiths's recitation of the events. According to Griffiths, Keith took a few steps away from Griffiths before "turn[ing] and rais[ing] his left hand up at [Griffiths] as if he was going to shoot." (Griffiths Dep., R. 69-1, PageID 3083.) But according to both Melton and Starr, Keith was running, or trying to run, from Griffiths when he was shot. Melton testified that Keith "got out the van and tried to turn and run." (Melton Dep., R. 63-1, PageID 706.) Starr also testified that Keith "didn't point anything, he just ran away, like he was trying to get away from something." (*Id.* at PageID 850.) But neither witness testified that Keith turned back towards Griffiths as if he was about to shoot after Keith started to run.

2.

Griffiths argues that the physical evidence nonetheless justified the district court's grant of summary judgment in his favor. But the physical facts rule does not alter our analysis. Under the physical facts rule, we do not assign probative value to witness testimony that "is positively contradicted by the physical facts[.]" *Lovas v. Gen. Motors Corp.*, 212 F.2d 805, 808 (6th Cir. 1954) (citations omitted). We apply this rule only if there are "undisputed physical facts" or a "lack of a triable issue of fact" fatal to the claim for relief. *Harris v. Gen. Motors Corp.*, 201 F.3d 800, 803 (6th Cir. 2000) (emphasis in original).

The district court, relying on an unpublished case, noted that "when the defendant police officer is the sole witness, summary judgment is appropriate where there is no direct evidence to rebut the defendant's version of the events." (Op. and Order, R. 85, PageID 4980 (citing *Burnette*, 137 F. App'x at 809).) Here, however, Griffiths was not the sole witness. Starr, Melton, and the other officers witnessed the events. Admittedly, none of the other witnesses could see Keith's hands during the entire duration of the encounter, but the juvenile witnesses could observe whether Keith turned back towards Griffiths. Therefore, the fact that the witnesses did not observe Keith's hands does not resolve this particular issue of fact.

The district court also relied on inconsistencies between Starr's testimony and the facts at the scene including the van color, the window tint, the direction of the van, and the location where Keith ultimately fell.

These physical facts are not fatal to plaintiff's claim for relief because they do not directly contradict his key testimony on the disputed fact: that Keith was turned and running away from Griffiths when he was shot. As such, any contradictions in Starr's testimony are best left to the jury to resolve.

Additionally, even if the factual evidence indisputably established that Keith was holding a gun, the physical evidence still does not resolve whether Keith turned and pointed the gun at Griffiths. *See Hicks*, 958 F.3d at 436. The medical examiner acknowledged that the entrance wound is consistent with either Keith turning and pointing a gun or with flight. And the remaining physical evidence does not resolve this issue of fact. Thus, the eyewitness testimony regarding whether Keith turned and pointed a gun at Griffiths is not "'obviously inconsistent with, contradicted by, undisputed physical facts.'" *See Harris*, 201 F.3d at 803 (quoting *Lovas*, 212 F.2d at 12–13).

Ultimately, whether deadly force was justified depends on whether Keith turned and pointed a gun at Griffiths. The parties offer competing testimony, and the medical examiner's findings permit either conclusion. Although we recognize that there are some inconsistencies in Melton's and Starr's testimony, determinations of witnesses' credibility are best left to the jury. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions[.]"). "[S]imply because [plaintiff] might find it difficult to convince a jury to believe [the juvenile

witnesses] does not allow us to ignore [their] testimony now." *See Gambrel v. Knox County*, 25 F.4th 391, 404 (6th Cir. 2022).

Therefore, viewing the evidence in a light most favorable to plaintiff, we conclude that there is a genuine dispute of material fact as to whether Griffiths's use of force violated Keith's Fourth Amendment rights.

B.

Because a reasonable juror could conclude that Griffiths violated Keith's Fourth Amendment rights, we next consider whether the right at issue was clearly established. An officer's use of excessive force violates the Fourth Amendment. *Binay v. Bettendorf*, 601 F.3d 640, 647 (6th Cir. 2010). We have consistently held that the general right to be free from excessive force is clearly established. *See, e.g., Brown v. Lewis*, 779 F.3d 401, 419 (6th Cir. 2015) ("The right to be free of excessive force, as a general matter, is clearly established.").

Viewing the facts in the light most favorable to plaintiff and accepting the genuine dispute that remains, a reasonable juror could find that Griffiths violated Keith's constitutional rights through his potentially unreasonable use of force. It has long been established in this circuit that individuals have a right "'not to be shot unless [they are] perceived to pose a threat to the pursuing officers or to others[.]'" *See Yates v. City of Cleveland*, 941 F.2d 444, 447 (6th Cir. 1991) (quoting *Robinson v. Bibb*, 840 F.2d 349, 351 (6th Cir. 1988)). If Keith did not turn and point a gun

at Griffiths, Griffiths violated Keith's clearly established right to be free from deadly force, as a reasonable officer in Griffiths's shoes would have been on sufficient notice that "his specific conduct was unlawful." *See Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021).

Viewing the facts in the light most favorable to plaintiff, her claim survives Griffiths's qualified immunity defense and should proceed to trial.

IV.

We next turn to plaintiff's state-law claims. The district court determined Griffiths was entitled to statutory immunity on plaintiff's claims under Ohio law because "he did not violate the Fourth Amendment's reasonableness requirement." (Op. and Order, R. 85, PageID 4991.) On appeal, plaintiff asserts that the district court's grant of statutory immunity under Ohio law was erroneous because "there is a dispute of material fact as to whether the actions of Griffiths were reasonable under the Fourth Amendment, and whether his actions 'were with malicious purpose, in bad faith, or in a wanton or reckless manner.'" (Appellant Br. 47 (quoting Ohio Rev. Code § 2744.03(A)(6)(b)).) We agree.

Ohio law does not immunize "acts or omissions [done] with malicious purpose, in bad faith, or in a wanton or reckless manner." Ohio Rev. Code § 2744.03(A)(6)(b). Here, the resolution of the state-law immunity issue depends on the same disputed material fact as the federal qualified immunity determination—whether Keith turned

and pointed a gun at Griffiths. Accordingly, Griffiths's "statutory immunity defense stands or falls with [his] federal qualified immunity defense." *See Hopper v. Phil Plummer*, 887 F.3d 744, 760 (6th Cir. 2018).

We therefore conclude that Griffiths the district court erred in granting Griffiths statutory immunity on summary judgment.

V.

For these reasons, we reverse the district court's grant of qualified and statutory immunity to Griffiths and remand to the district court for further proceedings consistent with this opinion.

APPENDIX B — MEMORANDUM OF OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION, FILED APRIL 30, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO.1:22 CV 1809

RITA KEITH, AS ADMINISTRATOR OF THE ESTATE OF ARTHUR KEITH, DECEASED, AND INDIVIDUALLY AS THE NATURAL PARENT AND MOTHER OF ARTHUR KEITH,

Plaintiff,

vs.

JAMES GRIFFITHS,

Defendant.

Filed April 30, 2024

JUDGE PATRICIA A. GAUGHAN

MEMORANDUM OF OPINION AND ORDER

Introduction

This matter is before the Court upon defendant's Motion for Summary Judgment. (Doc. 78). This case arises

from the fatal shooting of Arthur Keith by defendant. For the following reasons, the motion is GRANTED.

Facts

Plaintiff Rita Keith, as Administrator of the Estate of Arthur Keith, Deceased, and Individually as the Natural Parent and Mother of Arthur Keith, filed this Complaint against defendant James Griffiths, in his individual capacity and capacity as an employee of the Cuyahoga Metropolitan Housing Authority. The Complaint alleges that plaintiff's son, Arthur Keith ("Keith"), was shot and killed on November 13, 2020, by defendant, an officer with the Cuyahoga Metropolitan Housing Authority Police Department ("CMHA PD"), at the King Kennedy Housing Complex located in Cuyahoga County, Ohio.

The undisputed facts establish that defendant has been employed as a police officer with the CMHA PD since 1992. On November 12, 2020, CMHA PD received a call from a male reporting that a black van with tinted windows, suspected of being involved in the recent discharge of a firearm and illegal activity, was parked in a parking lot near 6201 Haltnorth, a CMHA property.[1] Officers were dispatched to the location, but the van was not located. On November 13, 2020, CMHA PD received another call, believed to be from the same male who had called the previous day, again reporting that a black van with tinted windows, suspected of being involved in illegal activity, was parked in the same parking lot. CMHA PD

1. Audio of the dispatch calls has been filed. (Doc. 77).

Officers Robert Lenz and defendant and Sergeant Paul Styles responded to the call. (CMHA PD Chief of Police Andres Gonzalez decl.). Defendant arrived on the scene, followed by Sergeant Styles and Officer Lenz. Defendant proceeded to the front, passenger side of the vehicle. The other officers went to the opposite side. A male, later identified as Keith, exited on the passenger side. Styles and Lenz heard defendant yell that Keith had a gun. Then they heard gunshots. Keith ran a short distance and fell to the ground. Styles arrived first to his prone body and observed a gun which was then secured, photographed, and examined by the Cuyahoga County Regional Forensic Science Laboratory. The DNA on the gun matched only Keith's DNA.

Members of the Cleveland Division of Police Use of Deadly Force Investigation Team ("UDFIT") responded to the scene and interviewed Sergeant Styles and Officer Lenz. They then did further investigation, including follow-up interviews and an interview of the defendant. Styles told the UDFIT that he received a call for a male suspect with a firearm in the area of 6201 Haltnorth in a vehicle with an out-of-state plate. He spotted the vehicle in the parking lot. Defendant and Officer Lenz also arrived on the scene. Styles was at the rear of the suspect vehicle while defendant was at the front. Styles heard defendant yell, "Drop the gun, drop the gun!" Styles heard several gunshots, but did not know who fired the shots. He saw the suspect run south and then west through the courtyard. All three officers pursued the suspect on foot. When Styles rounded the corner, he saw the suspect lying supine on the ground. The suspect's Glock model 19 was on the ground

near the suspect's right hand. After observing that the suspect had been shot, Styles notified CMHA radio to send EMS and additional units. Defendant secured the suspect's firearm. (Doc. 81 Ex. 2).

Styles provided a videotaped interview to the UDFIT on December 11, 2020. A summary of the interview provides that Styles stated he was closer to the back of the van when he heard defendant state, "He's got a gun!"[2] Styles heard gunshots, a slight pause, and more gunshots. Styles did not see who was shooting. Styles then saw Keith lying prone on the ground near a tree stump. Styles ran over to Keith and saw a black firearm on the ground near Keith's right hand. After requesting EMS, and finding no pulse on Keith, defendant secured the firearm which looked like a Glock with an extended magazine. Lenz started administering first aid, and residents began arriving on the scene who were hostile towards the police officers. (Doc. 81 Ex. 11).

Styles testified at a deposition that when he walked up to the vehicle he did not see Keith holding a gun, did not see Keith pointing a gun at defendant, and did not see a gun when he was chasing Keith. (Styles depo. at 84).

Styles also submitted a declaration with the Motion for Summary Judgment. He states that he arrived on the scene after defendant and before Lenz. The van was backed into the parking spot and was running. Just behind

2. Upon viewing the videotaped interview, Sgt. Styles said that he heard defendant say, "Stop, don't move, gun." This was followed by multiple shots.

the back bumper of the van was a sidewalk. Defendant's vehicle was stopped beyond the passenger side of the van which had tinted windows. Defendant approached the van from the passenger side and Styles from the driver's side. Lenz was behind Styles. Once they confirmed no one was in the driver's seat or front passenger seat, Styles moved toward the backseat. It was difficult to see because of the tinted windows, but Styles could see a silhouette of a person in the back passenger side move forward. The van had a sliding door and it was opening. He heard defendant say, "Stop, don't move" and "gun." He then heard shots fired but could not see who had fired or if someone had been shot. As he was making his way around the van toward the other side, defendant yelled, "He has a gun, he has a gun." Styles did not see a suspect, but then looked down the sidewalk and saw a male wearing blue running toward 6201 Haltnorth. Styles started to run after him, but lost sight of him as he rounded the corner. When he peered around the corner of the building, Styles saw the suspect on the ground in front of 6201 Haltnorth by a tree. Styles was the first to reach the suspect where he had fallen and observed his gun on the ground a few inches from his right hand. Defendant arrived next and also saw the gun. The two secured the suspect in handcuffs and when Styles realized he had been shot, he called EMS. Lenz arrived and administered aid. A very angry and hostile crowd gathered quickly. While Styles watched the crowd, defendant secured the gun. (Styles decl.)

The on-scene statement that Officer Lenz provided to the UDFIT stated that defendant and Styles were the first to arrive on scene. Lenz exited the zone car and walked

up to the suspect vehicle. He heard defendant yell, "Drop the gun, drop the gun!" He then heard several gunshots, but did not know who fired the shots. He saw the suspect run south and then west through the courtyard. All three officers pursued the suspect who he then saw lying supine in the courtyard and not responding to verbal commands. First aid was administered. (Doc. 81 Ex. 2).

Lenz's December 11, 2020 videotaped interview stated that he heard defendant yell "show me your hands," and that "moments later gunshots happened." (Doc. 82).

Lenz testified at deposition that he first saw Keith when he was fleeing and he did not see him with a gun. (Lenz depo. at 59).

In his declaration, Lenz states that defendant arrived first on the scene, followed by Styles, and then himself. The van had very dark tinted windows and the officers were unable to see inside, even with the spotlight. Defendant approached the van from the passenger side and Styles approached from the driver's side. The van was backed in and running. As he walked toward the van, Lenz was watching someone in a red and white covering walk away from the van that matched the description of the dispatch call. He heard a door pop and defendant give the commands that included "show me your hands." Then he heard three or four shots fired and saw the suspect wearing a blue hoodie and jeans flee south toward 6201 Haltnorth. Styles was the first to chase the suspect followed by defendant. Lenz started to run but then returned to the van to make sure there were no additional occupants. Lenz heard

Styles call for EMS over the radio. Lenz grabbed his medical bag and ran to the location where the suspect was lying on the ground. He saw defendant holding Keith's gun. When he was rendering medical aid, a growing crowd of angry and hostile residents had gathered and were shouting at the officers. Since they were in an open area, it was necessary to secure the weapon. (Lenz decl.)

The UDFIT interviewed defendant on February 12, 2021. A brief synopsis[3] of the interview provided by the interviewing officers states that defendant responded to the area in connection with a male in a dark colored vehicle that was involved in an aggravated robbery, felonious assault shooting that occurred earlier in the week. Upon his arrival, defendant spotted a dark colored vehicle with out-of-state license plates. The vehicle involved in the prior crime also had out-of-state plates. Defendant parked his marked police car near the suspect vehicle and as he was approaching it, he observed a male exiting. Defendant ordered the male to show his hands and defendant observed the male holding a firearm in his left hand while attempting to close the vehicle door with his right hand. Defendant ordered the male to drop the gun but the male

3. Plaintiff filed a Notice of Manual Filing of Exhibits which contains the video recorded interview of defendant. Defendant objected to consideration of the exhibits on the basis that the notice was filed after the deadline for filing the brief in opposition, the notice does not identify the videos contained therein, and the videos have not been authenticated in accordance with Fed. R. Civ. P. 56. The objection is moot because the video provided by plaintiff lacks an audio component and, therefore, the Court was unable to consider it.

ran away from the vehicle. Defendant chased the male and the male turned towards defendant with the firearm still in his hand. The male then raised the firearm towards defendant. Defendant was in fear of his life and fired his service weapon at the male. The male continued to run a short distance and then fell to the ground. Defendant approached the male and observed the suspect's weapon on the ground near him. Defendant kicked the firearm away from the male. Defendant then handcuffed the suspect. (Doc. 81 Ex. 13).

At deposition, defendant testified that after Keith exited the van, he "ma[de] three to four steps" and then "turned and raised his left hand up at me as if he was going to shoot. I felt I was going to get shot at that moment and that's when I fired." (Griffiths depo. at 197).

Defendant's declaration further states his version of the events. He heard a dispatch regarding a suspicious black van with tinted windows and out of state license plates suspected of criminal activity which involved a shooting that had occurred a few days earlier. He, Sgt. Styles, and Officer Lenz responded to the call. He and the other officers were in full CMHA PD uniforms and individually operating CMHA PD marked units. Defendant was the first officer to arrive in the parking lot. He pulled past the suspicious van, which was backed into a parking spot, onto the passenger side of the van. Sergeant Styles pulled in after defendant and stopped his unit one or two spots away from the van on the driver's side. Officer Lenz pulled in behind Styles. Defendant exited his vehicle and initially walked toward the sidewalk one car from where

the van was parked. He saw Styles do the same thing on the driver's side of the van. When defendant and Styles arrived at the sidewalk, Styles was going to approach the driver's side of the van and defendant was going to approach the passenger side. As defendant walked up the passenger side of the van, he could not see inside the van due to the tinted windows. Defendant tried to look through the front passenger window but could not see in the van. He also tried to look through the front windshield but could not see in the van.

Because the van was running, defendant knocked on the front passenger door window and announced "police" but received no response. Defendant then flicked the handle on the front passenger door. He found it unlocked and opened it. Defendant was then able to confirm that there were no occupants in the driver's seat or front passenger seat. He saw a key fob on the front, center console of the van. Defendant then turned and looked at the back seat of the van from the front passenger door. He first looked at the seat behind the driver's seat and there was no one in that seat. Defendant then looked over at the right back passenger seat and saw a figure wearing a blue shirt move closer to the sliding door on the passenger side of the van attempting to hide or conceal himself. At that point defendant announced "police" and "let me see your hands." There was no response from the occupant.

Defendant then heard a click and the back passenger sliding door started to open. As the door started to slide open, defendant could see that the suspect, later identified as Keith, had his right hand on the door as if guiding it

open and he was holding a gun in his left hand straight across his stomach. Defendant yelled at Keith to "drop the gun" several times so that Styles would know that Keith had a gun. Keith did not comply with the command to drop the gun and held on to it. At that point defendant had his gun drawn.

As defendant was yelling "drop the gun," Keith started to slide out of the van and defendant tried to back away but his back was against the inside of the open front passenger door. Keith exited the van and took three or so steps toward the sidewalk and the back bumper of the car parked next to the van. As he was moving toward the sidewalk, he turned sideways half facing defendant, raised his left arm, and pointed his gun at defendant. Defendant felt that Keith was going to shoot him and feared for his life. Defendant fired his weapon. Keith then started running south and Styles ran after him. After a few seconds, defendant followed Styles on foot in the direction that Keith had fled.

Styles was the first officer to reach the area where Keith had fallen to the ground and saw the gun in front of Keith. When defendant saw the gun, he stepped on it and moved it out of reach for officer protection. Defendant then assisted Styles in handcuffing Keith. Defendant reached for Keith's left arm from underneath him and secured him. He realized that Keith had been shot when he saw blood.

As this was happening, a growing crowd of hostile and angry residents started to gather. For the officers' safety and protection and to prevent anyone from grabbing the

gun and using it on the officers or taking it, defendant secured it. In picking up the gun, defendant was careful to hold it in a manner so that he did not touch the trigger or the slide or the interior portion of the magazine. Once Chief Gonzalez and Commander Burdyshaw arrived, the Chief ordered Burdyshaw to secure the weapon. Defendant followed Commander Burdyshaw to his CMHA PD vehicle, and he secured the weapon in his trunk where it was ultimately photographed. (Griffiths decl.).

Chief Gonzalez's declaration provides that when he arrived on the scene with Commander Burdyshaw, he observed defendant holding a non-CMHA PD weapon which defendant confirmed was Keith's and found on the ground where he had fallen. Gonzalez ordered Burdyshaw to secure the weapon and it was immediately taken to the trunk of the police vehicle. (Gonzalez decl.) Burdyshaw testified that he took possession of the firearm from defendant and secured it in the trunk. (Burdyshaw depo. 22-28).

Crime scene reports include photographs where Keith fell to the ground, a key fob, a plastic bag containing suspected marijuana, and swabs of the suspected blood. (Doc. 81 Ex. 9). There are no crime scene photos of a gun near the body of Keith at the location in the courtyard where he fell to the ground. Cleveland police photographs of the crime scene include a Glock 9mm with an extended magazine identified as the suspect's weapon and photographed in the back of an unmarked CMHA police vehicle. (Sgt. David Borden depo. at 146, Ex.3).

Appendix B

A DNA Laboratory Examination Report states the conclusions of the examination of the Glock model 19. (Griffiths decl. Ex. B). The laboratory report found a match between the grip and trigger areas, the surface of the slide, and surface of the magazine and Keith. It found no statistical support for a match between these areas and defendant or Burdyshaw. (*Id.*).

Plaintiff identified two juvenile eyewitnesses[4]—Jahzir Melton and Demarion Starr.

A Cleveland Police Officer dispatched to the scene on November 13, 2020, reported:

> A young male juvenile by the name of (Jahzir Milton[5]) stated to me "I saw everything." Jahzir stated that he was taking out the trash when he saw 3 police cars pull into the parking lot. Jahzir then stated that when he was walking back from the trash dumpster, he saw the male later identified as Arthur Keith get out of his vehicle and tried to run and that when the police officers shot him 2 times. Arthur ran pass [sic] his apartment and around the corner.

(Doc. 81 Ex. 17). Melton's deposition was taken. When asked whether he saw Keith turn and point his gun at the police officer, he responded, "No." He testified that he did not know Keith had a gun, and that he was shot right

4. A third juvenile, Rayshawn Stewart, was previously excluded as a witness.

5. The witness's name is spelled Melton at deposition.

outside the passenger door of his vehicle and he was trying to run away. He also testified that he could not see Keith's left hand, but could only see Keith from the shoulders up. He could not see what was in his left hand, and he did not see what was in Keith's hands as he was running. (Doc. 63 at 79-89).

Demarion Starr was interviewed by members of the Cleveland police homicide unit in March 2021. (Doc. 81 Ex. 16). He stated that he saw CMHA police approach Keith's vehicle in the parking lot. The CMHA police officer was on the drivers side of the vehicle. As Keith exited the passenger side, the CMHA officer had his firearm out and pointed at Keith. Keith turned away from the officer and started to run around the front of the vehicle. Starr heard several gunshots and the officer shot Keith in the back. He did not see Keith with a firearm in his hand. (Doc. 81 Ex. 16). Starr's deposition was taken. As discussed below, his testimony was inconsistent with the other documented evidence at the scene. Further, he testified that he did not see Keith holding a gun, but he could not see Keith's hands at all times. (Doc. 64 at 98).

Monica Hatcher, an adult, was also interviewed after the incident. She told police that she observed Keith running from a CMHA police officer who yelled at him to stop. She heard gunshots and Keith fell down. She did not see Keith with a firearm. (Doc. 81 Ex. 16).

Erica Armstrong, M.D. conducted the autopsy and issued her report. (Doc. 81 Ex. 3). The report states in pertinent part:

Appendix B

EXTERNAL AND INTERNAL EVIDENCE OF RECENT INJURY:

Trunk

1. A gunshot wound is of the postero-lateral left upper trunk. Entrance wound: The wound consists of a 1/4" in diameter defect with eccentric pink marginal abrasion that measures up to 1/4" in width. The wound is located 54 1/2" from the left heel and 13" from the posterior midline. There is no fouling or stippling.

Path: After perforating the subcutaneous tissues, the gunshot wound perforates the posterior left 7" rib (with inward beveling and fracture fragmentation), left upper lobe of lung (through and through), pericardial sac, antero-lateral left ventricle (with transaction of proximal left anterior descending coronary artery), septum, anterior right ventricle, pericardial sac, right para-sternal soft tissues of intercostal space 3-4 (with grazing of the sternum), and the overlying subcutaneous tissues. There is acute hemorrhage along the wound track. One thousand one hundred and fifty millimeters and 600 ml of liquid and clotted blood are within the right and left pleural cavities, respectively. Minimal residual blood remains within the pericardial cavity.

> **Exit wound**: The exit wound is located on the right chest. The wound consists of a 3/4" x 1/4" Irregular defect located 52° from the right heel, 2 1/2" from the anterior midllne, and 1" superior to the right nipple.
>
> **Course and direction**: The gunshot wound proceeds from back to front, rightwards, and downwards.

(*Id.*). Dr. Armstrong's deposition was also taken.[6]

The Complaint asserts four claims for relief. Count One alleges excessive force under 42 U.S.C. § 1983. Counts Two, Three, and Four assert state law claims-survivorship action, wrongful death, and loss of consortium.

This matter is now before the Court upon defendant's Motion for Summary Judgment.

Standard of Review

Summary Judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (citing Fed. R. Civ. P. 56(c)); *see also LaPointe v. UAW, Local 600*, 8 F.3d 376, 378 (6th Cir. 1993). The

6. Following the Cleveland Police investigation, the Ohio Attorney General also reviewed this matter and presented it to the Grand Jury which issued a No Bill finding that defendant acted reasonably. (Doc. 67 Ex.34).

burden of showing the absence of any such genuine issues of material facts rests with the moving party:

> [A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits," if any, which it believes demonstrates the absence of a genuine issue of material fact.

Celotex, 477 U.S. at 323 (citing Fed. R. Civ. P. 56(c)). A fact is "material only if its resolution will affect the outcome of the lawsuit." *Anderson v. Liberty Lobby*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Accordingly, the nonmoving party must present "significant probative evidence" to demonstrate that "there is [more than] some metaphysical doubt as to the material facts." *Moore v. Philip Morris Cos., Inc.*, 8 F.3d 335, 340 (6th Cir.1993). The nonmoving party may not simply rely on its pleading, but must "produce evidence that results in a conflict of material fact to be solved by a jury." *Cox v. Kentucky Dep't. of Transp.*, 53 F.3d 146, 150 (6th Cir. 1995).

The evidence, all facts, and any inferences that may permissibly be drawn from the facts must be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *Eastman*

Kodak Co. v. Image Technical Servs., Inc., 504 U.S. 451, 456, 112 S. Ct. 2072, 119 L. Ed. 2d 265 (1992). However, "[t]he 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.

Summary judgment should be granted if a party who bears the burden of proof at trial does not establish an essential element of his case. *Tolton v. American Biodyne, Inc.*, 48 F.3d 937, 941 (6th Cir. 1995) (citing *Celotex*, 477 U.S. at 322). Moreover, if the evidence is "merely colorable" and not "significantly probative," the court may decide the legal issue and grant summary judgment. *Anderson*, 477 U.S. at 249-50 (citation omitted).

Discussion

(1) Excessive Force (§ 1983)

Plaintiff alleges that defendant used excessive force in violation of the Fourth Amendment when he shot Keith multiple times while Keith "was unarmed at the time, and running away from Officer Griffiths, striking Mr. Keith in the back, and killing him." (Doc. 1 at 15). Defendant maintains that he is entitled to qualified immunity.

The Sixth Circuit has recently reiterated:

> The defense of qualified immunity protects officials when "their conduct does not violate clearly established statutory or constitutional

> rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396(1982). When it is asserted, the plaintiff has the burden of showing that the defendant is not entitled to qualified immunity. *Burgess v. Fischer*, 735 F.3d 462, 472 (6th Cir. 2013). Applying qualified immunity requires asking: (1) whether an official violated a statutory or constitutional right and (2) whether that right was clearly established. *Pearson v. Callahan*, 555 U.S. 223, 232, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009). When the answer to either of those questions is "no," the other need not be addressed. *Price v. Montgomery County*, 72 F.4th 711, 723 (6th Cir. 2023) (citing *Pearson*, 555 U.S. at 236, 129 S.Ct. 808).

Mosier v. Evans, 90 F.4th 541, 546 (6th Cir. 2024). The contours of a claim involving deadly force by a police officer is well-established:

> The Fourth Amendment prohibits police from using excessive force while making an arrest, investigatory stop, or other type of seizure. See *Graham v. Connor*, 490 U.S. 386, 394-395, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). A use of force must be "objectively reasonable" to be constitutional. *Id.* at 397. Objective reasonableness is "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

Martin v. City of Broadview Heights, 712 F.3d 951, 958 (6th Cir. 2013) (quoting *Graham*, 490 U.S. at 396). It allows for the fact that "police officers are often forced to make split-second judgments" about the amount of force necessary "in circumstances that are tense, uncertain, and rapidly evolving." *Mullins*, 805 F.3d at 766 67 (quoting *Graham*, 490 U.S. at 396-97.

Under the Fourth Amendment, an officer's use of deadly force is objectively reasonable only when there is probable cause to believe that the suspect poses an immediate threat to the officer or to others. *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985); *Graham*, 490 U.S. at 396. To determine whether such probable cause exists, we consider "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. Our precedent establishes that the question of whether a suspect posed an immediate danger is dispositive: where the suspect poses no immediate threat to the safety of an officer or others, the use of deadly force is unreasonable and violates the Fourth Amendment. *Foster v. Patrick*, 806 F.3d 883, 887 (6th Cir. 2015).

Raimey v. City of Niles, Ohio, 77 F.4th 441, 448 49 (6th Cir. 2023). See also *England v. City of Columbus Ohio*, 2023 U.S. App. LEXIS 13719, 2023 WL 3756177 (6th Cir. June 1, 2023) (citing *Lee v. Russ*, 33 F.4th 860, 863 (6th Cir. 2022) (citing *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)) ("The use of deadly force is objectively unreasonable unless an officer has probable cause to believe a suspect poses an immediate threat of serious physical harm to the officer or others."); *Roberts v. Cruz*, 2023 U.S. App. LEXIS 4538, 2023 WL 2181145, at *3 (6th Cir. Feb. 23, 2023) ("Broadly speaking, the Fourth Amendment prohibits the use of excessive force, and a determination of whether a particular use of force was excessive turns on its reasonableness under the totality of the circumstances. The relevant although not exhaustive circumstances for this analysis include the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.") (citations omitted).

Thus, the issue is whether, drawing all reasonable inferences in the plaintiff's favor, there is probable cause to believe that Keith posed an immediate threat to defendant. In particular, the question is whether there is an issue of fact as to whether Keith had a gun and pointed it toward defendant.

Plaintiff maintains that the issue of whether defendant's use of deadly force in shooting Keith was objectively reasonable is a jury question. Plaintiff asserts that the eyewitness accounts establish that Keith never

pointed a gun at defendant, Keith was never seen running with a gun, Keith was shot in the back while fleeing, and a gun was not observed on the ground where Keith fell after being shot. Plaintiff asserts that the testimony of the medical examiner and the autopsy report is consistent with the eyewitness accounts that Keith was shot in the back as he was attempting to flee.

Defendant argues that he was the single eyewitness to the shooting, and Melton and Starr are unable to contradict his testimony. Moreover, defendant's testimony is consistent with all the physical and forensic evidence which plaintiff has not refuted with an expert. Nor has plaintiff contradicted the testimony of Styles and Lenz regarding the fact that they heard defendant yell that Keith had a gun and commanded him to drop it. Plaintiff has also not contradicted the evidence that a gun was first seen by Styles just inches away from Keith's hand when he first reached Keith. Nor does plaintiff dispute the scientific evidence that confirmed Keith's DNA was on the recovered gun.

For the following reasons, the Court finds no issue of fact to preclude the granting of summary judgment.

Defendant's evidence shows that he was the only one of the three officers to witness the shooting as Officer Lenz and Sgt. Styles were on the opposite side of the van and admitted that they did not see who fired the gunshots. The on-scene statements of Styles and Lenz both establish that they heard defendant alerting them that Keith had a gun, followed almost immediately by gunshots. Styles

heard defendant yell, "Drop the gun, drop the gun!" Styles heard several gunshots, but did not know who fired the shots. Lenz heard defendant yell, "Drop the gun, drop the gun!" He then heard several gunshots, but did not know who fired the shots.

Defendant correctly maintains that Sixth Circuit precedent establishes that when the defendant police officer is the sole witness, summary judgment is appropriate where there is no direct evidence to rebut the defendant's version of the events. In *Burnette v. Gee*, 137 Fed.Appx. 806, 809 (6th Cir. 2005), the court recognized:

> where the officer defendant is the only witness left alive to testify, the award of summary judgment to the defense in a deadly force case must be decided with particular care. See *Plakas v. Drinski*, 19 F.3d 1143, 1147 (7th Cir.1994) (The "defendant knows that the only person likely to contradict him or her is beyond reach. . . . [s]o a court must undertake a fairly critical assessment of the forensic evidence, the officer's original reports or statements and the opinions of experts to decide whether the officer's testimony could reasonably be rejected at trial.").

Nonetheless,

> The district court concluded that there was no conflicting testimony on these issues because Gee and Wilson were the only two people to

> witness the event and because Wilson, now deceased, cannot offer a competing version of facts. Consequently, the district court accepted Gee's version of the shooting as true and decided that Gee did not violate Wilson's rights. Unfortunately for the appellants, no direct evidence exists to rebut Sheriff Gee's version of the events. Furthermore, even considering the circumstantial evidence presented by Appellants in a light most favorable to them, there is no reasonable basis for overturning the district court's finding that Wilson reached for or raised his rifle and struggled with Sheriff Gee over the weapon, and that as a consequence, Sheriff Gee reasonably feared for his life when he shot Wilson. We believe that the district court's thorough analysis of the facts supports its grant of summary judgment in favor of Sheriff Gee. See *Plakas*, 19 F.3d at 1146 47.

According to defendant's version of the events, Keith brandished his Glock with an extended magazine, defied defendant's commands to drop the gun, took several steps as though he was going to run, and then turned and pointed his weapon at defendant who fired his weapon at Keith in self-defense. Defendant maintains that under these facts, Keith did not have a Fourth Amendment right to be free of deadly force, and defendant's actions were justified under the rapidly evolving, undisputed circumstances. This Court agrees and finds that defendant's use of deadly force was objectively reasonable because Keith posed an

immediate threat to defendant's safety.[7] Plaintiff fails to raise an issue of fact on the following bases.

(a) eyewitnesses

Plaintiff asserts that "several eyewitnesses to the shooting reported that Mr. Keith did not have a gun in his hand when he exited the Pacifica, nor did they see a gun in Mr. Keith's hands as he was running from Officer Griffiths." (Doc. 81 at 7-8).

Initially, while plaintiff refers to the interview of Rayshawn Stewart, this Court has previously excluded this individual as a witness for purposes of summary judgment and/or trial. (Order, Nov. 30, 2023).

Plaintiff also discusses a report made by Cleveland Police Officers in March 2021 which summarizes statements made by Monica Hatcher to the police. Neither the officers nor Hatcher were deposed. The report conveys that Hatcher told police that she observed Keith running from a CMHA police officer who yelled at him to stop. She

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7. Because the question of whether a suspect posed an immediate danger is dispositive to the inquiry, the Court need not reach the two other factors. Even if it did, those factors are met as well. As for the severity of the crime, it is undisputed that the CMHA PD received two 911 calls from the same caller reporting the location of the van that was suspected of being involved in the recent discharge of a firearm and criminal activity. It was believed that the occupant of the van might have possession of a firearm. As to the final factor, it is undisputed that Keith was actively resisting arrest or attempting to evade arrest by flight.

heard gunshots and Keith fell down. She did not see Keith with a firearm. (Doc. 81 Ex. 16). However, as defendant points out, the report shows that Hatcher did not witness the critical events. The report states:

> Monica Hatcher stated that she observed Arthur Keith running from the police officer from across the street. Monica Hatcher pointed to 2573 Bundy Drive. Monica Hatcher stated Arthur Keith and the Officer were running towards her from the north side of the building located at 2573 Bundy Drive, across the Bundy Ave. and Arthur Keith fell in front of 6201 Haltnorth.
>
> Further investigation revealed that the incident did not start across the street where Monica Hatcher stated she observed Arthur Keith running from the officer. The incident actually started in the parking lot north of 6201 Haltnorth.

(*Id*). Thus, aside from the document being hearsay, it concludes that Hatcher did not witness the critical moments of the incident and that the incident occurred in a different area/parking lot.

This leaves the two juvenile witnesses Jahzir Melton and Demarion Starr. Defendant maintains that the deposition testimony of these witnesses establishes that neither witnessed the crucial events of November 13, 2020. For the following reasons, this Court agrees.

Appendix B

As set forth above, Melton reported to a Cleveland Police Officer on the day of the incident what he had observed. Melton did not mention whether or not he saw Keith with a gun. (Doc. 81 Ex. 17). Melton's deposition was taken in September 2023. He testified in relevant part:

Q. Where was Mr. Keith when the shots were fired?
A. Basically still trying to get out the van door. He trying to run and get out, but he couldn't even turn, for real. That's before he started shooting.
***
Q. Were your eyes on Officer—on the officer or the officers when Mr. Keith exited, or were they on Mr. Keith?
A. My eyes was on the van door to see like if somebody like—then I heard them yelling something, then that's when I seen somebody coming out, and it was Arthur, and that is when he tried to run. That is when he started shooting.

Q. Did you see Arthur turn and point his gun at the police officer?
A. No.
Q. Did you know that Arthur had a gun?
A. No.
Q. Did you know that when Arthur ran and fell by the tree, that his gun was right in front of his hands?
A. No.
***
Q. Did you see where Arthur fell?
A. Yes.
Q. When did you see him fall?
A. So when they starting shooting, boom, then that is

when—like before he got by like by the doorstep, I had heard—I had run in the house because I was scared . . .
***
Q. Okay. When you got [back] outside, was Arthur already—did he—was Mr Keith already on the ground?
A. Yes.
***
Q. So you believe he was shot right outside the passenger door?
A. Yeah.
***
Q. So your testimony is Mr. Keith was standing right by the door when he was shot?
A. He wasn't standing, he was running away, trying to run away.
***
A. When he got out the van, he tried to run. That is when the officer started shooting.
Q. Could you see Arthur's left hand?
A. No.
Q. You could not?
A. You really only see like all this. (Indicating).
Q. You only saw from you only saw Arthur from the shoulders up?
A. Yeah.
Q. Because of the distance and the cars?
A. Yeah.
Q. So you couldn't see what was in his left hand, right?
A. Right. No.
Q. No? And when you heard the shots fired, did you immediately run in the house?
A. Yeah. Not like like I seen it, like boom, boom. And then

when everybody start running and stuff, that's when I ran in the house
Q. Okay.
A.—because I was scared.
Q. So you didn't see what was in Arthur's hands when he was running, did you?
A. No. Like
Q. You said no?
A. No.
***
Q. So after you heard the shots—I want to make sure. Before you heard the shots, you said that all you could see was from the shoulders up of Mr. Keith, correct?
A. Because he was getting out the van.
Q. Okay. So you could not see his hands, correct?
A. Uh-uh.
Q. Is that correct?
A. Yes.
Q. Okay. And then after the shots were fired and he started to run, you ran in the house—
Q.—because you were afraid, correct?
A. Yes, came back out.
Q. And then after it was over and Mr. Keith had ended up in the grass by the tree in the front of 6201 Haltnorth, you came back outside; is that correct?
A. Yeah.

(Melton depo. at 76-91). Therefore, Melton's testimony shows that he could not see Keith's hands at the moment before and when he was shot.

Appendix B

As set forth above, Demarion Starr was interviewed by Cleveland police several months after the incident, and he stated that he did not see Keith with a firearm in his hand. Starr's deposition was taken. Starr's testimony was inconsistent with the established physical facts. Namely, Starr's testimony and the established facts are as follows:

- The van was red. However, the photographic evidence and the dispatch calls establish that it was black.
- The windows were not tinted and one would be able to see who was in the van. However, the photographic evidence and the dispatch calls establish that the windows were tinted.
- The van was facing forward. However, the photographic evidence establishes that it had been backed in.
- Keith was in the front driver's side of the van and exited from the front driver's side. However, all the other testimony, including that of lay witness Melton, establishes that Keith was in the back passenger side and exited from the back passenger side.
- Defendant was on the front driver's side of the van, shouting to the man to get out. However, all the other testimony, including that of lay witness Melton, establishes that defendant was on the front passenger side.
- Keith only took three or four steps before falling to the ground after the shots were fired. However, the photographic evidence shows that he ran a longer distance.

- Keith fell to the ground in front of the gate of the parking lot. However, the photographic evidence shows that Keith fell to the ground in front of 6201 Haltnorth by a tree.

(Starr depo. 36-67). Furthermore, Starr also testified that "after the shots had went off, [Keith] stayed right there. But I had went into the house. I had run into the house after that."

He did not come back outside until "like five minutes after everything had happened." (*Id.* at 67-68). He further testified:

Q. When he turned and faced the police officer, did you see him point his gun at the police officer?
A: No, he didn't point anything, he just ran away, like he was trying to get away from something.
Q. But when he turned—the police officer says that he did have a gun and he pointed it at him.
*** From your point of view, could you have seen him do that if he had his back to you?

A. He never had his back to me. It was his side, and the officer was pointing the gun at him.
Q. Could you see what he was holding in his left hand when he was behind the car door?
A: No.
Q. Is it possible Mr. Keith had a gun in his hand and you just couldn't see it from your point of view?
A: No.

(*Id.* 73-74). But, Starr also testified:

Q. You were asked about whether you saw Arthur Keith holding a gun, by Mr. Jackson, correct?
A. Yes.
Q. And you could not see Mr. Keith's hands at all times, could you?
A. No.
****
Q. And you can't say that he did not have a gun by his hand when he fell to the ground, can you?
A. No, but I can say that after he got shot—he was running. When he was—when I saw him running, he did not have anything in his hands. And then that is when he had got shot and fell. As he was falling, there was nothing in his hands.

(Starr depo. 98-99).

Plaintiff maintains that "while there may be contradictions, and even conflicts, in the accounts given by the eyewitnesses to this incident, any such conflicts and contradictions are to be viewed in the light most favorable to the plaintiff, and any credibility determinations made from this testimony, must be done by the jury and not at summary judgment." (Doc. 81 at 28).

The Court agrees with defendant that the undisputed physical evidence negates the need for the credibility determinations. As stated above, even Styles and Lenz testified that they did not see Keith holding a gun or pointing it at defendant. But, they did not see Keith's hands when he got out of the van. Nor did they notice Keith holding a gun as he was running. However, the undisputed physical evidence establishes that a gun was

found next to Keith's hand on the ground where he fell, the gun was photographed on-scene in the back of a CMHA police vehicle, and the gun only had Keith's DNA match. Additionally, the autopsy report and Dr. Armstrong's testimony (both discussed below) show that Keith was not shot in "the back" as plaintiff maintains, but in the extreme left side of the back. Dr. Armstrong agreed that defendant's version of the events is consistent with the gunshot wound. Defendant's description of the immediate events leading up to the discharge of his weapon is not contradicted by any witness, and no witness could see Keith's hands immediately before, during, or after the discharge. In particular, plaintiff does not dispute that Melton admitted he could not see Keith's hands at the moments leading to defendant's shooting and when Keith ran. Plaintiff further does not dispute that Starr admitted he could not see Keith's hands at all times.

(b) declarations of Lenz and Styles

Plaintiff asserts that Styles and Lenz have submitted declarations that "contain new and additional accounts of the incident that were never previously reported" in their previous two interviews to the police and their deposition testimony. Specifically, plaintiff contends that Styles now states in his declaration that "I heard Griffiths say "stop don't move" and "gun" and he heard defendant state "he has a gun, he has a gun" and "[t]hereafter, I heard shots. . . ." And, Lenz's declaration now states "I heard a door pop and I heard Griffiths give the commands that included 'show me your hands.' Thereafter, I heard 3 or 4 shots fired. . . ."

These statements are not new or contradictory to earlier statements. Styles's on-scene statement related that he heard defendant yell, "Drop the gun, drop the gun!" His later videotaped interview stated that he heard defendant say, "Stop, don't move, gun." Similarly, Lenz's on-scene statement stated that he heard defendant yell, "Drop the gun, drop the gun!" His videoptaped interview states that he heard defendant yell, "Show me you hands."

More importantly, all of the statements consistently establish that defendant yelled that Keith had a gun.

(c) declaration of Gonzalez

Plaintiff maintains that Chief Gonzalez's declaration "amends and supplements" his prior account. (Doc. 81 at 10). The Court disagrees. Plaintiff points out that Chief Gonzalez's declaration states that he observed defendant standing by a fence near where Keith had fallen and holding a weapon that he recognized as not a CMHA PD weapon. The portion of Gonzales's deposition testimony to which plaintiff compares this statement in not contradictory or supplemental in any way. Specifically, Gonzalez was asked by plaintiff's counsel whether he was aware of photographs showing the placement of the gun in the trunk of the police car. Gonzalez testified that he was not aware of any photos of defendant taking possession of the firearm or of Burdyshaw receiving possession. (Gonzalez depo. 111-113). This testimony is simply not inconsistent with the declaration testimony.

(d) autopsy report

As set forth above, the autopsy report found the gunshot wound to be in the "postero-lateral left upper trunk." Dr. Armstrong's deposition testimony explains that the side of the body is divided by an imaginary line and anything behind that line is "postero" and anything in front of that line is antero. The gunshot wound is several inches to the left of the dividing line in the postero portion of the body. (Armstrong depo. 117-118). This means that the wound is inches from the imaginary line down the side of Keith's body. The report also states that the wound is 13 inches from the posterior midline. Dr Armstrong explained at deposition that the posterior midline is the spine- the midline of the back. (*Id.* 120-121). Thus, while Dr. Armstrong testified that "the wound actually is not under the armpit," (*Id.* 129) the wound was only inches from the line along the side of the body and 13 inches from the spine.

A photo is submitted which shows the location of the gunshot wound. (Doc. 81 Ex. 4). Dr. Armstrong agreed that the decedent's arm in the photo is "being pulled forward by someone." (*Id.* at 118). Dr. Armstrong also testified:

Q: It's been reported that Mr. Keith pointed his gun at Officer Griffiths and was turning to run and escape from apprehension. And Officer Griffiths, after the gun was pointed at him, fired in self-defense. Would that be consistent with where you noted the entrance wound on—at the time you did the autopsy on Mr. Keith?

A: That scenario as presented would be consistent with the wound—entrance wound that I described.

(*Id.* 129). She also testified that "if the position of his arm is down, then, yes, the wound would appear that it would be closer to the upper part of the left arm." (*Id.* 120). And,

Q: And again, it's my understanding that it's consistent with what you noted that when Officer Griffiths reported that Keith turned, pointed the gun at him, and that's when he fired, he could have been turned, moving in this direction, and then the shot that was fired hit him in the area that you noted as the entrance wound in your report; correct?

A: That is one scenario, as I said before, that can explain my findings of the autopsy in relation to the wound.

(*Id.* 163). Thus, Dr. Armstrong's autopsy report and deposition testimony establish that the gunshot wound is consistent with defendant's version of the events.

Plaintiff argues that the autopsy report shows that Keith was shot in the back because the autopsy report states that the "gunshot wound proceeds from back to front, rightwards, and downwards." But, this is merely consistent with the fact that Keith was shot 13 inches to the left of his spine. Plaintiff points to the doctor's deposition testimony, but this also shows the same area:

A: . . . And then I went on to examine both externally and internally during the autopsy to determine that there was

a single entrance wound of the extreme left side upper back that was connected to an exit wound on the right chest.

Q: So just for clarification, the entry wound that you're talking about entered through the back of Mr. Keith and out through the front of his body?

A: So I described and photographed and documented the entry wound to be the left side and upper back. And then I also identified an exit wound of the right chest.

(*Id.* 19-20). Finally, plaintiff points out that she testified, "In this particular [autopsy] photograph, I can see where the bullet had come in the back left rib cage area and had fractured the rib in that location . . . " (*Id.* 32). Again, this does not establish that Keith was shot "in the back," but is consistent with the location described above.

Thus, the testimony plaintiff relies on does not establish that Keith was shot in the back, but in the "extreme left side upper back."

(e) the gun

Plaintiff does not address the forensic evidence that Keith's DNA alone was found on the recovered handgun. Plaintiff only addresses the fact that there is no crime scene photograph showing the gun lying next to Keith on the ground, and there is no evidence of any spent shell casings found in the area that were discharged from the Glock 9mm. Plaintiff maintains, "the extent to which these

officers have alleged that Officers Griffiths secured from the ground next to Mr. Keith's body the gun allegedly pointed at him by Mr. Keith, this account raises genuine issues regarding the truth of this account, and whether this account was concocted to rebut eyewitness accounts that Mr. Keith never pointed a gun at Officer Griffiths and was never seen running with a gun." (Doc. 81 at 28). However, plaintiff's suggestion is wholly unsupported by any evidence to refute the contemporaneous photograph of the suspect's gun in the police car or the forensic evidence establishing Keith's DNA on the gun.

The DNA Laboratory Examination Report states the conclusions of the examination of the Glock model 19. There is no evidence to dispute that this was the firearm found near Keith's hand where he fell. The laboratory report found a match between the grip and trigger areas, the surface of the slide, and surface of the magazine and Keith. It found no statistical support for a match between these areas and defendant or Burdyshaw. (Griffiths decl. Ex. B). This uncontroverted report is consistent with Keith having the gun in his hand as defendant reported even though no other witness saw it in his hand. Nor does plaintiff dispute the evidence establishing that it was Styles who first reached Keith and found the gun lying on the ground where Keith fell, or that a hostile crowd gathered immediately making it necessary to secure the gun. Plaintiff has not submitted evidentiary support for the assertion that Keith did not have a gun.

For these reasons, no issue of fact precludes the granting of qualified immunity.

(2) State law claims

Having found that defendant is entitled to qualified immunity, defendant is also entitled to summary judgment on the state law claims because he did not violate the Fourth Amendment's reasonableness requirement. As such, given that defendant's actions were objectively reasonable, he cannot be held liable for a survivorship action, wrongful death, or loss of consortium.

Conclusion

For the foregoing reasons, defendant's Motion for Summary Judgment is granted.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 4/30/24

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED JULY 17, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-3444

RITA KEITH, AS ADMINISTRATOR OF THE ESTATE OF ARTHUR KEITH, DECEASED, AND INDIVIDUALLY AS THE NATURAL PARENT OF ARTHUR KEITH, DECEASED,

Plaintiff-Appellant,

v.

JAMES GRIFFITHS, IN HIS INDIVIDUAL AND CAPACITY AS AN EMPLOYEE OF THE CUYAHOGA METROPOLITAN HOUSING AUTHORITY,

Defendant-Appellee.

ORDER

BEFORE: COLE, WHITE, and MATHIS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were

fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s_____
Kelly L. Stephens, Clerk

APPENDIX D — RELEVANT STATUTORY PROVISIONS

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. §1979; Pub. L. 96–170, §1, Dec. 29, 1979, 93 Stat. 1284 ; Pub. L. 104–317, title III, §309(c), Oct. 19, 1996, 110 Stat. 3853 .)