APPENDIX A — Opinion of the United States Court of Appeals for the Fourth Circuit

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1680

LATOYA K. BENTON, Administrator of the Estate of Xzavier D. Hill, Deceased,

Plaintiff – Appellant,

v.

SETH W. LAYTON, Individually and in his official capacity as a State Trooper for the Virginia State Police; BENJAMIN I. BONE, Individually and in his official capacity as a State Trooper for the Virginia State Police,

Defendants – Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:22-cv-00225-HEH)

Argued: May 9, 2024 Decided: June 3, 2025

Before THACKER, QUATTLEBAUM, and BENJAMIN, Circuit Judges.

Affirmed by published opinion. Judge Benjamin wrote the opinion, in which Judge Thacker and Judge Quattlebaum joined.

ARGUED: Zachary William Ezor, TIN FULTON WALKER & OWEN, PLLC, Durham, North Carolina, for Appellant. Frederick William Eberstadt, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees. **ON BRIEF:** Jason S. Miyares, Attorney General, Charles H. Slemp, III, Chief Deputy Attorney General, Calvin C. Brown, Senior Assistant Attorney General, Andrew N. Ferguson, Solicitor General, Erika L. Maley, Principal Deputy Solicitor General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

DEANDREA GIST BENJAMIN, Circuit Judge:

On January 9, 2021, 18-year-old Xzavier D. Hill was shot and killed by Virginia State Troopers Seth W. Layton and Benjamin I. Bone (collectively "Defendants"). Hill's estate, with his mother, LaToya K. Benton ("Plaintiff"), acting as administrator, filed a complaint in the United States District Court for the Eastern District of Virginia alleging Defendants used excessive force in violation of 42 U.S.C. § 1983 and committed state law torts. Defendants filed a motion for summary judgment contending they were entitled to qualified immunity. The district court granted the motion. This court's precedent forecloses a finding that Defendants utilized excessive force and there is no Supreme Court or Fourth Circuit precedent that clearly established Defendants' actions were unconstitutional. Therefore, we affirm the judgment of the district court.

I.

At 4:35 a.m. on January 9, 2021, Defendants were in a marked police vehicle in a highway median, with Layton in the driver's seat. Hill passed Defendants on the highway, Dashcam at 1:42,[1] and Layton U-turned from their position and drove up the three-lane highway. Bone confirmed with Layton that they were moving at 96 miles per hour. *Id.* at 2:07. At around Dashcam 2:37, Defendants caught up with Hill, and at Dashcam 2:51, Defendants again confirmed they were moving at a high rate of speed. *See id.* (Layton saying "[w]e're going 96 right now, 94"). Layton noted a few seconds later that "[Hill] is

[1] References to "Dashcam" refer to Defendants' police vehicle dashcam.

swerving," and it is clear on the dashcam that Hill, generally situated in the middle lane, was veering into and out of neighboring lanes. *Id.* at 2:56. At Dashcam 3:23, Defendants sped up to get directly behind Hill, and at Dashcam 3:37, Layton activated the police vehicle's blue lights. Hill immediately began pulling away from the police vehicle, and the engine throttle on the police vehicle can be heard as Defendants pursued him. *Id.* Layton then asked, "Did he turn his lights off?" *Id.* at 3:49. When the blue lights were activated, Hill's vehicle lights turned off, *id.* at 3:37, but it is unclear from the dashcam why that occurred.

At Dashcam 3:53, Hill's vehicle began swerving again, crossing from the middle lane to the right lane and back. Defendants then activated the police vehicle's sirens. Hill suddenly slowed down, *id.* at 4:19, briefly extended his left arm out of the front driver's side window, *id.* at 4:23, and subsequently came to a near-complete stop, *id.* at 4:25. Hill then pulled onto the right embankment of the now two-lane highway and again settled to a near-complete stop. *Id.* at 4:33. Suddenly, Hill took a U-turn across the two lanes of the highway. *Id.* When he reached the left embankment (with his vehicle pointed backwards down the highway), his vehicle slid down a steep slope and settled at the bottom against the median's tree line. *Id.* at 4:33–4:40.

Layton parked the police vehicle on the highway with the vehicle's nose (and Dashcam view) pointed at Hill's vehicle. *Id.* at 4:40. Defendants exited the police vehicle, and Bone immediately issued three verbal commands to "Get out of the car now." *Id.* at 4:48. Defendants appear on the dashcam with their guns drawn and pointed at Hill, who

remained in his vehicle throughout the encounter. The following verbal exchange occurred between Dashcam 4:48 and 5:06:

> BONE: Get out of the car now! Get out of the car now! Get out of the car now!
>
> LAYTON: Show me your hands! Do it now! Put your hands up! Put your hands up!
>
> BONE: You got him? I got you.[2]
>
> LAYTON: Put your hands up! Let me see your hands!
>
> HILL: My door doesn't open.
>
> BONE: Put your hands up!
>
> HILL: My door doesn't open.
>
> LAYTON: Put your hands out the door! Put your hands out the door! Do it now!

At this point, Defendants had progressed to within a few feet of Hill's vehicle, with Layton to the left of Bone. Mem. Supp. Summ. J. (D. ECF No. 43) at 6.[3] In response to Layton's commands, Hill put his left arm out of the front driver's side window. Dashcam at 5:07 His right arm remained in the vehicle at all times. *Id.* . Layton then continued to issue commands:

> LAYTON: Put your hands out the door! Stop moving!

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[2] Bone's words indicated that he was passing primary command authority to Layton. Mem. Supp. Summ. J. (D. ECF No. 43) at 7.

[3] Page numbers for citations to ECF documents utilize the page numbers in the red header on each document.

Right after this command, Hill quickly pulled his left arm inside the vehicle. Layton again commanded Hill to put his hands out the door.

Defendants then moved to a position nearly directly outside Hill's door. Between Dashcam 5:11 and 5:13, Bone moved to a position near the back driver's side door of Hill's vehicle, shined his flashlight into the vehicle, and then moved back to his original position near the front driver's side door.

> LAYTON: Put your hands out the window! Put your hands out the window! Reaching, reaching, reaching!

As he said the above at Dashcam 5:14, Layton backed away from Hill's vehicle, and Bone swiftly stepped forward, positioning himself directly outside Hill's window. Bone pointed his flashlight directly into the window, and backed away quickly as the following was said near-simultaneously:

> BONE: Stop reaching, he's got a gun!
>
> LAYTON: Gun!

When Defendants commanded Hill to stop reaching, the Dashcam shows Hill making movements around the center console and obscured passenger side of his vehicle. Directly after the command to stop reaching, two gunshots were fired by Bone and one by Layton. *Id.* at 5:17. Bone fired one last gunshot at Dashcam 5:19. After firing, Defendants both said they could no longer see the gun. *Id.* at 5:23–6:38. Bone went around to the

passenger side of Hill's vehicle, where he found a gun in the front passenger seat. *Id.* at 6:51; J.A. 363–68.[4] Hill died at the scene.

II.

A.

Plaintiff filed a complaint in federal district court alleging a Fourth Amendment excessive force claim pursuant to 42 U.S.C. § 1983 and state law claims. Specifically, Plaintiff asserted that Defendants shot Hill while Hill "was trapped inside his vehicle, posed no danger to [Defendants] . . . and was pleading with [Defendants] his car door was stuck." J.A. 18.

Defendants filed a motion for summary judgment claiming they were entitled to qualified immunity. Defendants argued their use of force was objectively reasonable because Hill pointed a gun at Layton, Hill refused to follow commands to show his hands, and, even if the shooting was unjustified, that no Supreme Court or Fourth Circuit precedent clearly established their conduct was unlawful. *See* Mem. Supp. Summ. J. at 21–30.

Plaintiff responded that Hill posed no danger to Defendants. Plaintiff argued there was no reason for Defendants to get out of their vehicle and engage Hill, and that Hill complied when they began issuing commands. *See* Mem. Opp'n. Summ. J. (D. ECF No. 46) at 20–21. Plaintiff also asserted that "Hill did not pose an imminent threat to the safety

[4] Citations to "J.A." refer to the joint appendix filed by the parties. The J.A. contains the record on appeal from the district court.

of [Defendants] . . . after Bone fired the first shot." *Id.* at 21. So, even if the first gunshot was justified, the three subsequent gunshots were unlawful.

B.

The district court granted summary judgment in favor of Defendants. The court found that Defendants were entitled to qualified immunity under both the constitutional and clearly established prongs. *Benton v. Layton*, 675 F. Supp. 3d 606, 623 (E.D. Va. 2023). On the constitutional prong, where the court considered whether "[Defendants'] actions were objectively reasonable," *id.* at 616, the court found that "[Defendants] reasonably believed that Hill posed a danger in disobeying [Defendants'] commands and reaching towards what they perceived to be—and actually turned out to be—a handgun," *id.* at 620.

On the clearly established prong, "the 'salient question' . . . ' "is whether the state of the law" at the time of an incident provided "fair warning" to the defendants "that their alleged [conduct] was unconstitutional." ' " *Id.* The court determined that "Plaintiff ha[d] not demonstrated that a reasonable officer would have understood, based on the information and knowledge [Defendants] possessed, that firing upon a non-compliant suspect who is reaching for what [Defendants] believe is a firearm would constitute a violation of the Fourth Amendment." *Id.*[5]

[5] The district court additionally found that "[b]ecause the state-law tort claims will fail or proceed with the success of Plaintiff's federal excessive force claim, the [c]ourt's finding that [Defendants] are entitled to qualified immunity precludes . . . [the] state-law tort claims from moving forward." *Benton v. Layton*, 675 F.Supp.3d 606, 623 (E.D. Va. 2023).

Plaintiff subsequently filed a notice of appeal. We have jurisdiction pursuant to 28 U.S.C. § 1291.

III.

A.

"We review de novo district court decisions on motions for summary judgment and qualified immunity." *Aleman v. City of Charlotte*, 80 F.4th 264, 283 (4th Cir. 2023), *cert. denied Charlotte, NC v. Aleman*, 144 S. Ct. 1032 (2024) (citing *Franklin v. City of Charlotte*, 64 F.4th 519, 529 (4th Cir. 2023)). "Summary judgment is appropriate only 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' " *Id.* at 283 (citations omitted). "A fact is material if it 'might affect the outcome of the suit under the governing law,' and a genuine dispute exists 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' " *Id.* (citations omitted).

"[T]he facts and all reasonable inferences drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Id.* at 283–84. "That means 'we may not credit [the movant's contrary] evidence, weigh the evidence, or resolve factual disputes in the [movant's] favor,' even if 'a jury could well believe the evidence forecast by the [movant].' " *Id.* at 284 (alteration in original & citations omitted).

B.

"Qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable

person would have known.' " *Brown v. Elliott*, 876 F.3d 637, 641 (4th Cir. 2017) (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam)). "It protects 'all but the plainly incompetent or those who knowingly violate the law.' " *Franklin*, 64 F.4th at 530 (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018)). "[T]he qualified immunity analysis consists of two prongs: (1) whether a statutory or constitutional violation occurred, and (2) whether the right was clearly established at the time of the violation." *Aleman*, 80 F.4th at 284 (citing *Mays v. Sprinkle*, 992 F.3d 295, 301 (4th Cir. 2021)).

We have discretion to analyze the constitutional prong or the clearly established prong first. *See Rambert v. City of Greenville*, 107 F.4th 388, 398 (4th Cir. 2024) (citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)). Like the district court, we will address both prongs, beginning with the constitutional prong in section C, *infra*, and the clearly established prong in section D, *infra*.

C.

The Supreme Court has directed courts to review excessive force cases pursuant to the Fourth Amendment's reasonableness standard. *See Graham v. Connor*, 490 U.S. 386, 395 (1989). The *Graham* factors, which provide guideposts for this analysis, are: (1) the "severity of the crime" that is the subject of the stop or arrest, (2) "whether the suspect poses an immediate threat to the safety of the officers or others," and (3) "whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396.

Analyzing the *Graham* factors "requires careful attention to the facts and circumstances of each particular case," *id.*, and "[i]n excessive force cases where an officer

uses deadly force, the second *Graham* factor is particularly important." *Franklin*, 64 F.4th at 531. As the court has explained:

> In these matters, the question comes down to whether the circumstances presented an immediate threat that justified the officer's resort to lethal force as objectively reasonable, "without regard to [the officer's] underlying intent or motivation." In other words, the Fourth Amendment permits the use of deadly force when a police officer "has probable cause to believe that a suspect poses a threat of serious physical harm, either to the officer or to others."

Id. (alteration in original).

The inquiry under the constitutional prong is "based on the totality of the circumstances." *Aleman*, 80 F.4th at 285 (citation omitted). "[A] court cannot . . . 'narrow' the totality-of-the-circumstances inquiry, to focus on only a single moment. It must look too . . . at any relevant events coming before. *Barnes v. Felix*, __ S. Ct. __, __, No. 23-1239, 2025 WL 1401083, at *5 (U.S. May 15, 2025). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396–97.

i.

Graham factor one—the severity of the crime—weighs in favor of Defendants. It is undisputed that Hill was traveling over 90 miles per hour from the moment he passed Defendants in the highway median to when he slowed and U-turned at Dashcam 4:19. And

when Defendants activated their blue lights, Hill increased his speed and swerved across lanes. These actions—driving in a manner that could endanger the officers or other drivers—would have provided probable cause for felony disregarding signal by law-enforcement/eluding police pursuant to Virginia Code Ann. § 46.2-817(B).[6]

Plaintiff suggests that misdemeanor eluding pursuant to Virginia Code Ann. § 46.2-817(A)[7] would be the more appropriate alleged offense. *See* Appellant's Br. (ECF No. 14) at 20 (hereinafter "Opening Br."). But this would ignore that Hill drove recklessly at a high rate of speed on a dark highway, including making a U-turn across two lanes of traffic. Even when viewed in the light most favorable to Plaintiff, Hill's actions were indisputably calculated to elude officers and could have caused harm to both Defendants and other motorists. Thus, Hill's dangerous driving and attempts to evade Defendants are enough to weigh *Graham* factor one in their favor.

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[6] "Any person who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person is guilty of a Class 6 felony. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows he reasonably believed he was being pursued by a person other than a law-enforcement officer." Va. Code Ann. § 46.2-817(B).

[7] "Any person who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal or who attempts to escape or elude such law-enforcement officer whether on foot, in the vehicle, or by any other means, is guilty of a Class 2 misdemeanor. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows he reasonably believed he was being pursued by a person other than a law-enforcement officer." Va. Code Ann. § 46.2-817(A).

ii.

Graham factor two—immediate threat to officers—also weighs in favor of Defendants. "Distilling general guiding principles from Fourth Circuit excessive force precedent is well-nigh impossible. There is nothing generic about the scenarios that lead a police officer to shoot another person." *Franklin*, 64 F.4th at 531. "When the [c]ourt has discerned an objective basis for lethal force, the case involved 'a person in possession of, or suspected to be in possession of, a weapon' who does not 'obey commands' and instead 'makes some sort of furtive or other threatening movement with the weapon.' " *Id.* (quoting *Knibbs v. Momphard*, 30 F.4th 200, 225 (4th Cir. 2022), *cert denied Momphard v. Knibbs*, 143 S. Ct. 303 (2022) (mem.)).

Here, it is uncontested that Layton gave four commands for Hill to put his hands out the door and two commands to put his hands out the window. It is also uncontested that between the third and fourth commands for Hill to put his hands out the door, he pulled his left arm *inside* the window. And it is uncontested that Hill never put his right hand or arm outside the window. *Scott v. Harris*, 550 U.S. 372, 380 (2007) (recognizing facts should be viewed in the light depicted by the videotape and cautioning courts not to adopt a version of the facts blatantly contradicted by the record for the purposes of ruling at summary judgment); *see also Doriety for Est. of Crenshaw v. Sletten*, 109 F.4th 670, 679 (4th Cir. 2024) ("As the phrase 'blatantly contradicts' implies, '[t]his standard "is a very difficult one to satisfy" ' and requires that the plaintiff's version of events be 'utterly discredited' by the video recording." (quoting *Lewis v. Caraballo*, 98 F.4th 521, 529 (4th Cir. 2024) (alteration in original))).

But it is disputed whether Hill ever held a gun in his hand or pointed it at Layton, or whether Defendants even saw a gun. The dashcam is not particularly helpful on this point. Neither party can reasonably assert that the dashcam clearly shows the presence or absence of a gun in Hill's hand. And, viewing the facts in Hill's favor, we are arguably constrained to review the available facts as if there was no gun in Hill's hand or pointed at Layton. *See Benton*, 675 F. Supp. 3d at 617 ("[E]ven though a firearm was recovered from the passenger seat, the [c]ourt acknowledges that the fact of whether Hill actually held the gun is in dispute, precluding a definitive finding at this stage that Hill pointed the gun at either of [Defendants].").

At the moment Hill was shot, however, it is clear from the dashcam that Layton gave several clear commands in a row, that Hill disobeyed these orders, and that he was reaching towards the center console/passenger side of his vehicle. This court's "furtive movement" cases are instructive.

In *Slattery v. Rizzo*, 939 F.2d 213 (4th Cir. 1991), officers conducted a raid in an area that "had the reputation of being an open-air drug market" and a history of violent activity. *Id.* at 214. The officer in that case approached a car window and told the plaintiff to put his hands up several times. *See id.* at 215. When the plaintiff turned his upper body towards the officer with his left hand not fully visible but "partially closed around an object," the officer shot the plaintiff. *See id.*

In *Elliot v. Leavitt*, 99 F.3d 640 (4th Cir. 1996), an officer stopped the plaintiff and placed him in the front passenger seat of his police vehicle with the window up. *See id.* at 641. When speaking with another officer by the police vehicle, the first officer "noticed a

movement and looked to find [the plaintiff] with his finger on the trigger of a small handgun pointed at" both officers. *See id.* at 642. The officers shot the plaintiff after the first officer gave a clear command to drop the weapon. *See id.*

In *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001), an officer received a report from "a mall patron . . . that a man appeared to have a gun under his sweater, pointing to [the plaintiff]." *Id.* at 128. The officer "perceived a bulge consistent with the shape of a gun," and the plaintiff disregarded an order to put his hands up. *See id.* at 130. The plaintiff then "lower[ed] his hands in the direction of the bulge," and the officer shot him. *See id.*[8]

In sum, the court has consistently found that excessive force was justified where officers reasonably feared they were in imminent danger due to sudden movements that followed verbal commands. Plaintiff views these cases as requiring both an immediate sense of danger *and* "prior indication that . . . [a suspect] might be armed," Opening Br. at 28, as they involve officers either seeing a gun or being in areas or situations where they were primed to believe there were guns. *See id.* at 21–22. But there is no requirement in the Supreme Court's or this circuit's jurisprudence for officers to have prior knowledge of or suspicion that a suspect has a weapon—the inquiry is whether "a police officer 'has probable cause to believe that a suspect poses a threat of serious physical harm, either to the officer or to others.' " *Franklin*, 64 F.4th at 531.

Whether there was a gun in Hill's hand or not, Layton gave six clear commands that Hill disobeyed, and Hill then made movements in direct violation of those commands.

[8] While there was a gun in *Elliot*, the plaintiffs in *Slattery* and *Anderson* were discovered to not have weapons.

Defendants could have reasonably perceived that Hill had a gun due to the "character of the situation [being] transformed" *See Knibbs*, 30 F.4th at 220. Our "focus . . . [is] on [Hill's] furtive movements *after* readily recognizable law enforcement officers ordered [him] to" put his hands out the window, stop moving, and drop a gun. *See Knibbs*, 30 F.4th at 221; *id.* at 222 (quoting *Anderson*, 247 F.3d at 131) ("[A]n officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action."); *see also Hensley ex rel. N. Carolina v. Price*, 876 F.3d 573, 585 (4th Cir. 2017) ("If an officer directs a suspect to stop . . . [and] show his hands . . . the suspect's continued movement likely will raise in the officer's mind objectively grave and serious suspicions about the suspect's intentions.").

Looking beyond the "furtive movement" cases, Plaintiff also asks the court to apply a line of cases where a firearm was present, but officers were found to have had no objectively reasonable belief that the suspects were dangerous. These cases do not help Plaintiff. In those cases, the suspects were holding the weapons in nonthreatening ways *and* did not make movements that could reasonably be perceived as dangerous. *See, e.g.*, *Cooper v. Sheehan*, 735 F.3d 153, 159–60 (4th Cir. 2013) (holding no qualified immunity where plaintiff heard sounds outside his home, stepped outside with a shotgun pointed at the ground, and officers immediately shot him); *Hensley*, 876 F.3d at 585 (holding no qualified immunity where plaintiff struck daughter with handgun and walked towards officers while holding handgun, and officers shot plaintiff without issuing any commands); *Aleman*, 80 F.4th at 292–93, 296 (holding no qualified immunity where body cameras established that plaintiff never pointed gun at officers and officers failed to have Spanish-

language interpreter present to issue clear commands); *Franklin*, 64 F.4th at 535 (holding no qualified immunity where officer shot plaintiff after issuing commands for him to drop his weapon and he was in the midst of complying).

In contrast, Layton gave clear commands to Hill. And Hill did not merely fail to comply but also made "furtive movements" in direct violation of those commands. Thus, *Graham* factor two weighs in favor of Defendants.

iii.

Graham factor three—resisting arrest or evading arrest by flight—clearly weighs in favor of Defendants. Tracking the analysis for *Graham* factor one, Hill sped away from Defendants the moment blue lights were activated and attempted a U-turn across highway traffic to evade Defendants. We cannot accept Plaintiff's contention that though "Hill initially tried to evade [Defendants,] . . . by the time [Defendants] exited their cruiser, 'he stopped.' " *See* Opening Br. at 28 (citation omitted). Defendants only exited their police vehicle after Hill's vehicle became moored in the highway embankment—so Hill did not stop so much as he was unable to continue to evade by driving.

* * *

All three *Graham* factors weigh in favor of Defendants. Therefore, we hold that Defendants are entitled to qualified immunity under the constitutional prong. We consider next the clearly established prong.

D.

i.

In assessing the clearly established prong, "[w]e . . . [are] not require[d] [to find] a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Mullenix*, 577 U.S. at 12 (quoting *Ashcroft v. al–Kidd*, 563 U.S. 731, 741 (2011)).

The Supreme Court has instructed "not to define clearly established law at too high a level of generality. . . . [T]he 'rule's contours must be so well defined that it is "clear to a reasonable officer that his conduct was unlawful in the situation he confronted." ' " *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021) (quoting *Wesby*, 583 U. S. at 63).

ii.

There is no Supreme Court or Fourth Circuit caselaw that would have put Defendants on notice that their conduct was unlawful.

As discussed in section C-ii of this opinion, the "furtive movement" cases hold that officers may deploy lethal force when, after issuing clear commands, they reasonably perceive a suspect to be an immediate danger because of movements in violation of those commands. *See, e.g.*, *Slattery*, 939 F.2d at 214–17; *Elliott*, 99 F.3d at 641–42; *Anderson*, 247 F.3d at 128, 130. Plaintiff attempts to distinguish these cases by noting Hill's age and arguing he simply "failed to . . . [follow commands] perfectly." Opening Br. at 31. But there are no cases that stand for the proposition that officers cannot objectively perceive an immediate danger where a suspect in the driver's seat of a vehicle fails to follow commands to show his hands and thereafter makes movements towards the center console and

obscured passenger side of his vehicle in defiance of those commands. The line of cases dealing with the actual presence of a firearm similarly do not help Plaintiff. In those cases, the plaintiffs held their weapons in nonthreatening ways and did not make movements that could reasonably be perceived as dangerous. *See, e.g.*, *Cooper*, 735 F.3d at 159–60; *Hensley*, 876 F.3d at 585; *Aleman*, 80 F.4th at 292–93, 296; *Franklin*, 64 F.4th at 535.

Therefore, we hold that Defendants are independently entitled to qualified immunity under the clearly established prong.[9]

IV.

The premature death of an 18-year-old is tragic. But the only question before this court is whether Defendants are entitled to qualified immunity under the precedent of the Supreme Court and this circuit. For the reasons outlined above, we hold they are. Therefore, the judgment of the district court is affirmed.

AFFIRMED

[9] Because Plaintiff's federal excessive force claim fails, the "parallel state law claim[s]" that rely on the same reasonableness inquiry must fail as well. *See Rowland v. Perry*, 41 F.3d 167, 174 (4th Cir. 1994); *see also Sigman v. Town of Chapel Hill*, 161 F.3d 782 (4th Cir. 1998)(concluding that an officer's actions were reasonable in conducting a qualified immunity analysis at summary judgment and therefore rejecting a state law wrongful death claim because those actions could not be negligent or wrongful as we required by the statute).

APPENDIX B — Opinion of the United States District Court for the Eastern District of Virginia

LATOYA K. BENTON, ADMINISTRATOR OF THE ESTATE OF XZAVIER D. HILL, DECEASED, PLAINTIFF, V. SETH W. LAYTON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS STATE TROOPER FOR THE VIRGINIA STATE POLICE, ET AL., DEFENDANTS.

Henry E. Hudson Senior United States District Judge

MEMORANDUM OPINION (GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT)

Henry E. Hudson Senior United States District Judge

This case arises from the tragic death of Xzavier D. Hill ("Hill" or the "Deceased"). On January 9,2021, Virginia State Troopers Seth W. Layton ("Layton") and Benjamin I. Bone ("Bone") (collectively, "Defendants" or the "Troopers"), tried to initiate a traffic stop on Hill's vehicle, which was traveling at 96 miles per hour, well over the posted speed limit. Hill did not stop and led the Troopers on a high-speed chase for several miles, ending with Hill wrecking his vehicle in the median. The Troopers approached the immobilized vehicle and provided Hill with several commands. Hill allegedly disregarded the Troopers' instructions and eventually reached for a handgun. In response, the Troopers fired shots killing Hill. Latoya K. Benton ("Plaintiff'), Hill's mother, brings this wrongful death and civil rights case as the Administrator of the Deceased's estate against Layton and Bone.

This matter is presently before the Court on Defendants' Motion for Summary Judgment (the "Motion," ECF No. 42), filed on February 6, 2023. Defendants seek to dismiss Plaintiffs Amended Complaint (ECF No. 10) on the basis that the Troopers' force was not excessive or unreasonable given the circumstances at hand and even if the Troopers violated Hill's constitutional rights, those rights were not clearly established under the facts at hand. (Defs.' Mem. in Supp. at 3, ECF No. 43.) Plaintiff contends that the Troopers created "exigent circumstances" through their tactics and actions in approaching Hill's immobilized vehicle and that the Troopers lied about seeing a gun, arguing that Hill never pointed the gun at either of the Troopers. (Pl.'s

Mem. in Opp'n at 2-3, ECF No. 46.) Both sides have submitted extensive memoranda supporting their respective positions, and oral argument was heard on March 29, 2023. For the following reasons, the Court will grant Defendants' Motion.

I. STANDARD OF REVIEW

Pursuant to Rule 56, summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). The relevant inquiry is "whether the evidence presents a sufficient disagreement to require submission to a [trier of fact] or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine factual dispute exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986).

"[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson*, 477 U.S. at 247-48 (emphasis in original). A material fact is one that might affect the outcome of a party's case. *Id.* at 248; *Hogan v. Beaumont*, 779 Fed.Appx. 164, 166 (4th Cir. 2019). A genuine issue concerning a material fact only arises when the evidence, viewed in the light most favorable to the nonmoving party, is sufficient to allow a reasonable trier of fact to return a verdict in the party's favor. *Anderson*, 477 U.S. at 248.

The existence of a mere scintilla of evidence in support of the nonmoving party as well as conclusory allegations or denials, without more, are insufficient to withstand a summary judgment motion. *Tom v. Hosp. Ventures LLC*, 980 F.3d 1027, 1037 (4th Cir. 2020). Accordingly, to deny a motion for summary judgment, "[t]he disputed facts must be material to an issue necessary for the proper resolution of the case, and the quality and quantity of the evidence offered to create a question of fact must be adequate." *Thompson Everett, Inc. v. Natl Cable Advert.*, 57 F.3d 1317, 1323 (4th Cir. 1995) (citing *Anderson*, 477 U.S.

at 252). "[T]here must be 'sufficient evidence' favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 213 (4th Cir. 2007) (citing *Anderson*, 477 U.S. at 249-50). When applying the summary judgment standard, courts must construe the facts in the light most favorable to the nonmoving party and may not make credibility determinations or weigh the evidence. *Holland*, 487 F.3d at 213.

II. BACKGROUND

In her Memorandum in Opposition, Plaintiff asserts that there are many material facts that are in dispute. (Pl.'s Mem. in Opp'n at 3-15.) However, as will be subsequently outlined further, these disputed facts do not create a material dispute sufficient to survive summary judgment. The Court will address these disputed facts and their materiality directly in assessing her excessive force claim. *See infra* Part III, section A.I.

Viewed in the light most favorable to Plaintiff and resolving any genuine issues of material fact in favor of the Plaintiff, the undisputed facts are as follows. In the early morning hours of January 9, 2021, the Troopers were in a marked state police vehiclepositioned in a crossover on Interstate 64 in Goochland County monitoring traffic. (SUMF ¶ 3.) While stationary, the Troopers initially clocked a silver Mercedes with only one illuminated headlight traveling approximately 92 miles per hour ("mph"), which then accelerated to approximately 96 mph. *(Id.* ¶ 6.) That vehicle was driven by Hill. *(Id.* ¶ 36.) The Troopers pulled out of the crossover and accelerated to meet Hill's speeding vehicle. *(Id.* ¶ 6.) Soon after, they observed Hill swerving lanes while maintaining a speed of approximately 96 mph. *(Id.* ¶¶ 8-9.) After Bone entered their location and Hill's vehicle license plate number into their Computer Aided Dispatch system, Layton activated his emergency lights to initiate a traffic stop on Hill's vehicle. *(Id.* ¶ 10.)

The Court notes that much of the undisputed facts in this case come from the Troopers' dash cam footage ("Dash Cam," ECF No. 43-1), which was viewed in its entirety by this Court. However, for clarity, the Court also cites to the Statement of Undisputed Material Facts ("SUMF") contained in Defendants' Memorandum of Support (ECF No. 43).

In addition to their marked car, the Troopers wore their standard issue blue uniforms displaying badges of authority and state police patches with fully equipped gun belts. (SUMF ¶ 3.) Layton also had a body-worn microphone. (*Id.*) Bone did not have a microphone. (*Id.*)

Seconds later, Hill's vehicle lights were turned off, and his vehicle accelerated to much higher speeds than their initial pursuit speed of 96 mph. (SUMF ¶ 12.) After traveling about four miles, Hill reduced his speed to a slower pace and began merging onto the right shoulder of the interstate. *(Id.* ¶ 13.) As he began to merge right, Hill quickly performed a sharp U-turn across oncoming lanes of traffic. *(Id.* ¶ 15.) During this abrupt U-turn, Hill lost control of his vehicle and slid down the grassy embankment on the left shoulder, eventually lodging and immobilizing his vehicle into the tree line. (*Id.*) Hill's vehicle stopped facing eastbound with the passenger side of the vehicle in contact with the tree line and the driver side parallel to the interstate. (*Id.*)

At this point, the Troopers parked their patrol vehicle across both lanes of traffic, with the nose of the patrol car pointed at Hill's vehicle, using the patrol car's headlights to illuminate the accident area. (SUMF ¶¶ 16-17.) The Troopers exited their vehicle with their guns drawn and approached Hill's vehicle in a "triangulating" manner. *(Id.* ¶ 19.) Bone approached Hill's vehicle from the rear angle on the driver side, and Layton approached from the front angle on the driver side. (*Id.*)

As the Troopers approached the vehicle, Bone gave three loud commands of "get out of the car now." (Dash Cam at 4:47-4:52.) Hill's driver-side window was down, and Hill can be viewed manipulating the steering wheel while his vehicle's tires spin. *(Id.* at 4:45-4:50.) Upon further approach, Layton began giving the primary verbal commands after Bone asked Layton "you got him?," which signaled to Layton that he should take responsibility for the primary commands, and Bone responded "I got you." (SUMF ¶23.)

The following verbal exchange can be heard on the dash cam video:

Layton: PUT YOUR HANDS UP!

(Dash Cam at 4:57.)

Layton: LET ME SEE YOUR HANDS!

(Dash Cam at 4:59.)

Bone: PUT YOUR HANDS UP!

(*Id.* at 5:00.)

Hill: My door doesn't open.

(*Id.* at 5:01.)

Bone: PUT YOUR HANDS UP!

(*Id.*)

Hill: My door doesn't open.

(*Id.* at 5:02.)

At this point, Hill's hands can be seen in front of his face, inside the vehicle. (Dash Cam at 5:02.) Layton then commands Hill to put his hands outside the vehicle. (*Id.*) The following exchange then occurred:

Layton: PUT YOUR HANDS OUT THE DOOR DO IT NOW!

(*Id.* at 5:04.)

Layton: PUT YOUR HANDS OUT THE DOOR!

(*Id.* at 5:06.)

At this time, Hill's left arm can then be seen extending outside the vehicle; Hill's right hand is not visible. (*Id.* at 5:06.)

Layton: HEY PUT YOUR HANDS OUT THE DOOR, STOP MOVING!

(*Id.* at 5:08.)

Layton: PUT YOUR HANDS OUT THE DOOR!

(*Id.* at 5:10.)

Layton: PUT YOUR HANDS OUT THE WINDOW!

(*Id.*)

Layton: PUT YOUR HANDS OUT THE WINDOW!

(*Id.* at 5:13.)

Layton: HEY HE'S REACHING, REACHING, REACHING!

(Id. at 5:15.)

Bone: STOP REACHING, HE'S GOT A GUN!

(Id. at 5:16.)

Layton: HE'S GOT A GUN!

(*Id.*)

At this point, Hill's left hand is no longer out of the window and both of his hands can be seen moving towards the center of the vehicle. *(Id.* at 5:15-5:16.)

Immediately, both Troopers nearly simultaneously shouted "GUN!" and discharged their firearms. *(Id.* at 5:16.) Based on the dash cam video, Bone initially fired his weapon twice in rapid succession. (*Id.*) Layton fired once, but then can be heard attempting to clear a jam in his firearm. (*Id.*) Bone says "GUN!" again, immediately followed by a third shot and Bone shouting "GUN!" once again. *(Id.* at 5:17-5:19.) The entire sequence involving the Troopers discharging their weapons occurred within a matter of seconds. *(Id.* at 5:16-5:19.) Bone can then be heard saying, "He's got a gun in his hands," followed by Layton saying, "Yeah, I got you. Hey, drop the gun!" *(Id.* at 5:22-5:24.)

Bone then called for EMS. (Dash Cam at 5:26-5:35.) The Troopers can be heard coordinating to secure the scene and separate Hill from the possible weapon. *(Id.* at 5:36-5:45.) Based on the exchange heard through Layton's body-worn microphone, the Troopers could no longer see the gun at that point. (*Id.*) Bone opened the driver's side door, but still could not see the gun, however, he could see that Hill's body was slumped over and not moving. (SUMF ¶ 31.) While both Troopers were monitoring Hill for movement, Bone then moved around the rear of Hill's vehicle to the passenger side and saw a handgun on the front passenger seat, beneath Hill's slumped-over body. (Dash Cam at 6:48; *see also* Ex. 6 to Defs.' Mem. in Supp. at 1-5, ECF No. 43-6.)

At this point, Bone told Layton to holster his weapon and help him remove Hill from the vehicle. (Dash Cam at 6:50-7:00.) Both Troopers worked to pull Hill out of the vehicle and placed him on the ground to check for vital signs. (SUMF ¶ 35.) They then placed Hill in a modified

recovery position and determined he had no pulse. (*Id.*) Bone then asked Layton, who had some medical experience as an EMT, if they should attempt cardiopulmonary resuscitation ("CPR") on Hill, and Layton responded that due to Hill's neck wound, CPR would only exacerbate his blood loss. (*Id.*) Both Troopers then waited for additional units to arrive. (*Id.*)

Forensic agents with the Virginia State Police eventually recovered a .40 caliber Smith & Wesson SD40 semi-automatic pistol from the front passenger seat of Hill's vehicle. (Ex. 6 to Defs.' Mem. in Supp. at 1-5.) Additionally, a loaded magazine was discovered in the floorboard of Hill's vehicle as well as multiple loose .40 caliber cartridges. (Ex. 6 to Defs.' Mem. in Supp at 1-4, ECF No. 43-7; *see also generally* Ex. 6 to Defs.' Mem. in Supp at 1-5, ECF No. 43-8.)

III. DISCUSSION

A. Qualified Immunity Standard

Plaintiff alleges that the Troopers used excessive and unreasonable deadly force against Hill in violation of his rights under the U.S. Constitution. (Pl.'s Mem. in Opp'n at 19.) The Troopers argue that the force used was not excessive or objectively unreasonable under the circumstances and that the Troopers are entitled to qualified immunity. (Defs.' Mem. in Supp. at 14.) Because the determination of whether the Troopers violated Hill's constitutional rights is a component of the qualified immunity analysis, the Court will analyze both arguments under the rubric of its qualified immunity analysis below.

"'Qualified immunity protects officers who commit constitutional violations but who, in light of clearly established law, could reasonably believe that their actions were lawful.'" *Est. of Armstrong ex rel. Armstrong v. Vill. of Pinehurst*, 810 F.3d 892, 898 (4th Cir. 2016) (quoting *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011) (en banc)). This protection "'balances two important interests-the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.'" *Yates v. Terry*, 817 F.3d 877, 884 (4th Cir. 2016) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). To determine whether an officer is entitled to qualified

immunity, courts engage in a two-step inquiry. "The first step is to determine whether the facts, taken in the light most favorable to the non-movant, establish that the officer violated a constitutional right. At the second step, courts determine whether that right was clearly established." *Id.* (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

As to the first step of the qualified immunity analysis in the present case, Plaintiff alleges that the Troopers violated Hill's Fourth Amendment right to be free from unreasonable seizures. *See* U.S. Const, amend IV. The Fourth Amendment prevents "police officers from using excessive force to effectuate a seizure." *Yates*, 817 F.3d at 884 (citing *Jones v. Buchanan*, 325 F.3d 520, 527 (4th Cir. 2003)); *see Graham v. Connor*, 490 U.S. 386, 395 (1989). A "claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other 'seizure' of [a] person" is "properly analyzed under the Fourth Amendment's 'objective reasonableness' standard." *Armstrong*, 810 F.3d at 899 (quoting *Graham*, 490 U.S. at 388). An officer may employ force during his or her duties, so long as the force is reasonable under the circumstances. *Tennessee v. Garner*, 471 U.S. 1,9(1985). Additionally, a reasonable officer may use deadly force "[w]here the officer has probable cause to believe that [a] suspect poses a threat of serious physical harm, either to the officer or to others." *Id.* at 11.

In determining the reasonableness of force, courts are required to carefully balance "'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396 (quoting *Garner*, 471 U.S. at 8). To accomplish such balancing, a court "focus[es] on the facts and circumstances of each case, taking into account '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.'" *Yates*, 817 F.3d at 885 (quoting *Graham*, 490 U.S. at 396); *see also Armstrong*, 810 F.3d at 899. Courts must consider the reasonableness of the force employed "'in full context, with an eye toward the proportionality of the force in light of all the circumstances.'" *Smith v. Ray*, 781 F.3d 95, 101 (4th Cir. 2015)

(quoting *Waterman v. Batton*, 393 F.3d 471,481 (4th Cir. 2005)). The United States Court of Appeals for the Fourth Circuit has recognized that "'police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-[and courts should] take care to consider the facts from the perspective of a reasonable officer on the scene, and avoid judging the officer's conduct with the 20/20 vision of hindsight.'" *Cooper v. Sheehan*, 735 F.3d 153, 158-59 (4th Cir. 2013) (quoting *Clem v. Corbeau*, 284 F.3d 543, 550 (4th Cir. 2002)). Ultimately, "the question of whether the officer's action were reasonable is a question of pure law." *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011).

Often referred to as the "clearly established" prong, the second step of the qualified immunity analysis is "a test that focuses on the objective legal reasonableness of an official's acts." *Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982). "A clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he [wa]s doing violates that right.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (quoting *Reichle v. Howards*, 556 U.S. 658, 663 (2012)). To determine whether a right is clearly established in this Circuit, the Court "'need not look beyond the decisions of the Supreme Court, [the Fourth Circuit] court of appeals, and the highest court of the state in which the case arose' to determine whether a reasonable officer would know that his conduct was unlawful in the situation he confronted." *Yates*, 817 F.3d at 887 (quoting *Wilson v. Kittoe*, 337 F.3d 392, 402-03 (4th Cir. 2003)). An official violates a clearly establish constitutional right when, "'in light of preexisting law[,] the unlawfulness' of the [official's] actions is apparent." *Iko v. Shreve*, 535 F.3d 225, 237-38 (4th Cir. 2008) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The "clearly established" inquiry "'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (quoting *Saucier*, 533 U.S. at 201). There need not be a case "directly on point" in order for an officer to know that his or her conduct violates a clearly established right, however, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (citing *Anderson*, 483 U.S. at 640; *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

The Troopers first argue that Plaintiffs excessive force claim fails "because the undisputed facts establish that the Troopers reasonably feared for their lives when Hill failed to comply with commands to show his hands, reached into the vehicle console, and pointed a gun at Trooper Layton." (Defs.' Mem. in Supp. at 14.) Second, the Troopers assert that even if it is accepted as true that Hill did not point a gun at the Troopers, the use of deadly force was still objectively reasonable under the circumstances. (*Id.*) Lastly, the Troopers contend that Plaintiff cannot point to any clearly established right that the Troopers violated. (*Id.*)

In response, Plaintiff asserts that the Troopers' use of deadly force was excessive and unreasonable because Hill was "not at risk of fleeing," "was not an imminent threat" to the Troopers' safety, and the Troopers had no indication Hill was armed. (Pl.'s Mem. in Opp'n at 19.) Additionally, Plaintiff argues that Hill did not have the gun in his hand at the time of the shooting and that it was the Troopers' actions of approaching Hill's vehicle with guns drawn that created the exigent circumstances which led to Hill's death. (*Id.* at 19-20.) Finally, Plaintiff contends that the Troopers removed Hill from his vehicle in an effort to "intentionally and in bad faith" destroy evidence which would have demonstrated Hill did not possess the handgun. (*Id.* at 28.) Accordingly, Plaintiff asserts that the Troopers are not entitled to qualified immunity because the Troopers' conduct was unlawful and violated Hill's clearly established rights. (*Id.* at 19.)

The Court will address each of the Troopers' and Plaintiffs responsive arguments in turn.

1. Excessive Use of Force

To determine whether an officer's actions are objectively reasonable, "[t]he focus, of course, is on what the police officer reasonably perceived at the time that he acted and whether a reasonable officer armed with the same information, would have had the same perception and have acted in like fashion." *Lee v. City of Richmond*, 100 F.Supp.3d 528, 541 (E.D. Va. 2015) (citing *Rowland v. Perry*, 41 F.3d 167, 173 (4th Cir. 1994)). As previously noted, in determining whether an officer acted reasonably, the court should consider, "'the severity of the

crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.'" *Yates*, 817 F.3d at 885 (quoting *Graham*, 490 U.S. at 396). Considering these factors, the Troopers' actions were objectively reasonable because other officers, armed with the same information the Troopers had, would have perceived Hill as a threat to the officer's safety.

a. Severity of the Crime at Issue

With respect to the first factor, "severity of the crime at issue" weighs in the Troopers' favor. Plaintiff argues that this factor does not weigh in the Troopers' favor because Hill was "not suspected of committing a violent crime" and could only be charged with traffic infractions when the Troopers attempted to initiate a traffic stop. (Pl.'s Mem. in Opp'n at 24-25.) The Court agrees with Plaintiff that Hill was initially only being investigated for reckless driving under Virginia Code § 46.2-852 and 862, as he was traveling well above the posted speed limit, which is not necessarily a violent offense. (SUMF ¶ 6.) However, alleging that Hill only committed traffic infractions does not fairly characterize Hill's actions. Seconds after the Troopers activated their emergency lights and siren to initiate a traffic stop, Hill turned off his vehicle's lights and accelerated to a significantly high rate of speed. He then led the Troopers on a dangerous, high-speed chase for approximately four miles, clearly giving the Troopers probable cause that Hill was committing felony eluding arrest under Virginia Code § 46.2-817(B). After the high-speed chase, Hill abruptly attempted a sharp U-turn across oncoming lanes of traffic before he crashed into the grassy embankment of the median. (SUMF ¶ 15; Dash Cam at 4:32-4:40.) Hill's actions were highly dangerous to himself, the public, and the Troopers. *(See* Ex. 17 to Defs.' Mem. in Supp., Dep. Tr. of Pl.'s Expert Kenneth Miller ECF No. 44-17 (Plaintiff's expert agreed that Hill's actions in evading the Troopers at excessively high speeds was dangerous and noncompliant).) The Court agrees that this factor alone is not enough to justify the Troopers' use of deadly force in this case, but in the totality of the circumstances analysis, this factor weighs in the Troopers' favor.

While it is not explicitly clear what speed Hill's vehicle ultimately reached, it is evident from the dash cam footage that Hill's vehicle was traveling at a much faster and dangerous speed than when the Troopers first began to follow Hill's vehicle.

Virginia Code § 46.5-817(B) states:

> Any person who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person is guilty of a Class 6 felony.

b. Immediate Threat to Safety

As to the second factor, immediate threat to the Troopers' safety, Plaintiff asserts two main contentions in response to the Troopers' Motion. First, Plaintiff alleges that the Troopers cannot show at this stage of the proceedings that Hill actually held the gun, and therefore, Hill could not have pointed the gun at the Troopers and posed a threat to their safety. (Pl.'s Mem. in Opp'n at 19.) Second, Plaintiff asserts that because Hill was immobilized and stuck in his wrecked vehicle, he posed no threat to the Troopers. *(Id.* at 20-22.) The Court disagrees with both of Plaintiff s contentions.

As to Plaintiffs first argument, even though a firearm was recovered from the passenger seat, the Court acknowledges that the fact of whether Hill actually held the gun is in dispute, precluding a definitive finding at this stage that Hill pointed the gun at either of the Troopers. However, the key inquiry is not simply whether Hill in fact pointed the gun at Layton, but rather, the inquiry is whether the Troopers reasonably perceived under the circumstances that Hill's actions constituted an immediate threat to the Troopers' or the public's safety. The Court concludes that the Troopers' perceptions that Hill posed an immediate threat to their safety at the time they employed deadly force were objectively reasonable under the circumstances.

The Troopers assert that *Elliott v. Leavitt,* 99 F.3d 640, 644 (4th Cir. 1996) and *Slattery v. Rizzo,* 939 F.2d 213 (4th Cir. 1991) establish that the Troopers' conduct was reasonable under the circumstances. In *Elliott,* a police officer named Jason Leavitt stopped a motorist, Archie Elliott, on suspicion of driving under the influence. 99 F.3d at

641. Elliott admitted to Leavitt that he had been drinking and also failed several field sobriety tests. *Id.* Leavitt called for backup, handcuffed Elliott, and advised Elliott that he was under arrest for driving under the influence. *Id.* Leavitt searched Elliott and did not find a weapon. *Id.* Once another officer arrived on scene with Leavitt, they placed Elliott in the front passenger seat of Leavitt's patrol car with the seatbelt fastened, the door closed, and the window rolled up. *Id.* The officers were talking by the passenger side of Leavitt's patrol car when "Leavitt noticed a movement and looked to find Elliott with his finger on the trigger of a small handgun pointed at the officers." *Id.* at 642. Leavitt yelled, "GUN!," and ordered Elliott to drop it. *Id.* After Elliott did not respond, Leavitt and the other officer discharged their weapons, killing Elliott. *Id.*

On appeal in that case, the appellees argued that Elliott did not pose a "real threat" to the officers, noting that his hands were handcuffed, he was placed in the front passenger seat with the seatbelt fastened and the window up, and the officers were outside of the patrol car at the time of the shooting. *Id.* The Fourth Circuit rejected Appellee's position and held that based on the "uncontroverted evidence that immediately before firing, Leavitt and Cheney confronted an intoxicated individual pointing a gun at them only a few feet away ...." *Id.* "The critical point... is precisely that Elliott was 'threatening,' threatening the lives of Leavitt and Cheney. The Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists." *Id.* at 643.

In *Hensley on behalf of North Carolina v. Price,* the Fourth Circuit explained the import of its holdings in *Slattery* and *Anderson'.*

> In both cases, once 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* will likely 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 in fact, as in *Anderson* and *Slattery,* the officer can reasonably expect the worst at the split-second when he acts.

876 F.3d 573, 585 (4th Cir. 2017) (citing *Slattery,* 939 F.2d 213; *Anderson v. Russell,* 247 F.3d 125 (4th Cir. 2001)) (emphasis

added). As pointed out again by the Fourth Circuit in *Knibbs v. Momphard,* both *Anderson* and *Slattery* involved "an officer's reasonable- but ultimately incorrect-belief that an individual possessed a firearm and was about to use it." 30 F.4th 200, 220 (4th Cir. 2022). "Most importantly, the suspects in those cases made furtive movements toward a perceived firearm while disobeying the officer's command not to do so. Such actions, [the Fourth Circuit] held, would rightfully cause a reasonable officer to fear that the suspect intended to cause imminent deadly harm." *Id.*

The Court finds these holdings instructive in determining that the Troopers reasonably perceived Hill posed an imminent threat to the Troopers' safety. Based on Fourth Circuit precedent, the Troopers do not need to definitively show that Hill was holding or pointing a gun at them to establish that they reasonably perceived Hill posed a threat to their safety. It is enough for the Troopers to show that Hill was actively disobeying their commands and reaching for what they perceived was a handgun.

Here, the Troopers exited their patrol car and approached Hill's vehicle with guns drawn immediately after Hill had led them on a high-speed chase. According to the dash cam footage, the Troopers can be clearly heard giving multiple commands for Hill to show his hands as they approached his vehicle. (Dash Cam at 4:54-5:01.) Although Hill briefly complied by placing his hands in front of his face, he did not comply with the Troopers' next commands to place his hands outside of his driver's side window. *(Id.* at 5:01-5:02.) Despite multiple commands by the Troopers to show his hands and stop reaching, Hill only placed his left hand out of the window and continued reaching with his right hand toward the center console and passenger seat of the vehicle. *(Id.* at 5:035:04.) Both Troopers can then be distinctly heard shouting "GUN!" and "HE'S GOT A GUN!" before discharging their weapons, killing Hill. *(Id.* at 5:16-5:19.) Based on the dash cam footage, Hill "made furtive movements toward a perceived firearm while disobeying the officer's command not to do so" and those actions would lead a reasonable officer to believe Hill posed an immediate threat. *Knibbs,* 30 F.4th at 220.

Further, this was not a situation where the officers perceived a firearm and were ultimately incorrect about its existence. A bloody handgun, a magazine, and loose ammo cartridges were recovered from both the center console and the passenger seat of Hill's vehicle. (SUMF ¶¶ 38-39.) Thus, not only did the Troopers both perceive Hill to be reaching for a handgun, but a handgun was in fact recovered from an area that was in the direction Hill was reaching. As the Fourth Circuit has made clear, "[t]he Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists." *Elliott*, 99 F.3d at 643.

Plaintiff argues that there was "a picture identified by Trooper Bone in his deposition" which shows the gun tucked between the upper and lower portions of the passenger seat. (Pl.'s Supp. Br. at 3, ECF No. 64.) Her counsel argues that this demonstrates that Hill had no intention of reaching for the gun. (*Id.*) The Court viewed all submitted picture evidence, including the specific picture identified by Plaintiff, and it is clear that the pictures show the handgun was not "tucked" into the passenger seat in any way. (*See* ECF Nos. 43-5, 43-6, 43-7, 43-8.) The picture exhibits, which consist of different angles of the same passenger seat location, show that the handgun was sitting on top of the lower portion of the passenger seat with the barrel facing the passenger seat door. (Ex. 6 to Defs.' Mem. in Supp. at 1-6, ECF No. 43-6.) There is no indication that the gun was "tucked" nor is there any allegation that the Troopers or Virginia State Police Investigators moved the gun in any way.

Plaintiff also asserts that because Hill was left-handed, there is no reason to believe that Hill would attempt to reach for and point a gun at the Troopers with his non-dominant hand. (Pl.'s Mem. in Opp'n at 22-23.) However, no evidence has been adduced by Plaintiff to put into dispute that Hill would ever reach for an item with his non-dominant hand. Regardless, "when the moving party has carried its burden ..., its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In sum, as to Plaintiffs first argument that Hill did not actually hold or point the handgun at the Troopers, the Court concludes that the

Troopers nonetheless reasonably perceived that Hill posed an immediate threat to their safety. Although it cannot be found definitively at this stage whether Hill was holding the firearm, Hill was still not complying with the Troopers' commands to show his hands and stop reaching. The Troopers also perceived that Hill was reaching for a handgun, as evidenced by both Troopers shouting "GUN!" simultaneously, and a handgun was actually recovered from the passenger seat of Hill's vehicle. Therefore, not only were the Troopers' perceptions that Hill was reaching for a gun reasonable based on Hill's conduct, but the Troopers proved to be correct about the gun's existence.

As to Plaintiffs second argument, that Hill did not pose a threat because he was immobilized in a wrecked vehicle, the Court also finds this argument unavailing. The simple fact that Hill was in an immobilized vehicle is not determinative of whether he posed a threat to the Troopers' safety or not. Just as in *Elliott,* the uncontroverted evidence is that moments before the Troopers discharged their weapons, Hill could reasonably be considered "threatening" by disobeying the Troopers' commands to show his hands and stop reaching towards the center of his vehicle. *See Elliott,* 99 F.3d at 64243 (finding that defendant being handcuffed, in the backseat of the patrol car, and the officers being outside was not dispositive of whether defendant was threatening). Additionally, the Troopers approached the vehicle moments after Hill had led them on a dangerous, four-mile high-speed chase. Even though Hill's vehicle was immobilized, Hill's non-compliance under those tense circumstances, coupled with the Troopers' perceptions that he was reaching for a gun, indicates that they reasonably believed Hill posed an immediate threat to their safety.

Therefore, under the circumstances of this case, the Troopers reasonably perceived Hill posed a serious threat to their safety and this *Graham* factor weighs in favor of the Troopers.

c. Actively Resisting or Evading

The last *Graham* factor, whether Hill was actively resisting or attempting to evade arrest, again favors the Troopers. The dash cam unequivocally shows that Hill did not reduce his speed once the

Troopers activated their emergency lights and siren. Instead, he led the Troopers on a high-speed chase with his vehicle's lights off and attempted a dangerous U-turn across oncoming lanes of traffic before wrecking his vehicle into the grassy embankment. (Dash Cam at 3:50-4:40.) Although Plaintiff argues that Hill was immobilized and could not flee when the Troopers began approaching his vehicle with guns drawn, there was no definitive indication to the Troopers that Hill was actually unable to flee until they reached his vehicle. As the Troopers approach, there were indications that Hill was still attempting to manipulate the steering wheel and his tires were spinning as he attempted to move his vehicle. Moreover, Hill was actively resisting the Troopers' commands as they approached his vehicle. It is clear that Hill was resisting the Troopers' attempts to detain him.

Based on the foregoing analysis of the *Graham* factors when measured against the Troopers' use of force against Hill, the Court concludes that the Troopers' use of force was objectively reasonable in light of the totality of the circumstances in this case. Courts have the benefit of reviewing by the coolness of the evening what officers do by the heat of the day. The Fourth Circuit has recognized that police officers are required to make split-second decisions in circumstances that are "tense, uncertain, and rapidly evolving," and courts should "'take care to consider the facts from the perspective of a reasonable officer on the scene and avoid judging the officer's conduct with the 20/20 vision of hindsight.'" *Cooper*, 735 F.3d at 158-59. The Court recognizes that any loss of life, regardless of the circumstances, is tragic. However, the Troopers reasonably believed that Hill posed a danger in disobeying the Troopers' commands and reaching towards what they perceived to be-and actually turned out to be-a handgun. Therefore, the Troopers did not employ excessive force against Hill in violation of his constitutional rights.

2. Clearly Established Law

Alternatively, even if the Troopers used excessive force, they would still be entitled to qualified immunity because they did not violate a clearly established constitutional right. As discussed previously, the "salient question" in determining whether a rule is clearly established "'is whether the state of the law' at the time of an incident provided 'fair

warning' to the defendants 'that their alleged [conduct] was unconstitutional.'" *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). At the time of the events in question, the state of the law did not provide the Troopers with "fair warning" that their conduct violated a constitutional rule.

Moreover, the United States Supreme Court has consistently reiterated that courts should "not define clearly established law at a high level of generality" and that "[s]pecificity is especially important in the Fourth Amendment context." *Kisela v. Hughes*, 138 S.Ct. 1148, 1153 (2018) (cleaned up). "To hold that a right is clearly established the Supreme Court has cautioned that we should do so only in obvious case[s] exhibiting violations of the core of the Fourth Amendment." *Wilson v. Prince George's Cnty.*, 893 F.3d 213, 222 (4th Cir. 2018) (internal quotations and citations omitted).

Here, Plaintiff has not demonstrated that a reasonable officer would have understood, based on the information and knowledge the Troopers possessed, that firing upon a non-compliant suspect who is reaching for what the Troopers believe is a firearm would constitute a violation of the Fourth Amendment. As the Court has already explained, construing all facts in the light most favorable to Plaintiff, it cannot be definitively established on the record at hand that Hill held or pointed the gun at the Troopers. However, even if Hill did not point the gun at the Troopers, no reasonable officer would have understood that firing upon a suspect who was evading arrest, actively disobeying commands, and reaching for what could be and was perceived as a weapon inside the vehicle would be unreasonable.

Plaintiff raises numerous arguments to suggest that the Troopers improvidently chose improper tactics by approaching Hill's vehicle with guns drawn and created the exigent circumstances which led to Hill's death in doing so. First, Plaintiff asserts that the Troopers did not follow Virginia Code § 19.2-83.5 or Virginia State Police policy when they approached Hill's vehicle with guns drawn. (Pl.'s Mem. in Opp'n at 20.) Second, Plaintiff contends that Bone should have been aware that continuing to shoot Hill even after he was no longer a possible threat was unreasonable. *(Id.* at 22.) Lastly, Plaintiff asserts that the Troopers

"destroyed evidence that would determine that [] Hill did not have a gun in his hand." *(Id.* at 27.)

As to Plaintiffs first argument, Virginia Code § 19.2-83.5, titled "Use of deadly force by a law-enforcement officer during an arrest or detention," states in pertinent part:

B. In determining if a law-enforcement officer's use of deadly force is proper, the following factors shall be considered:

1. The reasonableness of the law-enforcement officer's belief and actions from the perspective of a reasonable law-enforcement officer on the scene at the time of the incident; and

2. The totality of the circumstances, including (i) the amount of time available to the law-enforcement officer to make a decision; (ii) whether the subject of the use of deadly force (a) possessed or appeared to possess a deadly weapon and (b) refused to comply with the law-enforcement officer's lawful order to surrender an object believed to be a deadly weapon prior to the law-enforcement officer using deadly force; (iii) whether the law-enforcement officer engaged in de-escalation measures prior to the use of deadly force, including taking cover, waiting for backup, trying to calm the subject prior to the use of force, or using non-deadly force prior to the use of deadly force; (iv) whether any conduct by the law-enforcement officer prior

to the use of deadly force intentionally increased the risk of a confrontation resulting in deadly force being used; and (v) the seriousness of the suspected crime.

Based on the statute's language, Plaintiff and her expert, Kenneth Miller, contend that the Troopers should have been aware that their use of deadly force would be excessive under the circumstances. (Pl.'s Mem. in Opp'n at 25.) They argue that the Troopers should have additionally been aware of this standard because the Virginia State Police incorporated this standard into their deadly force training. (*Id.*)

As a threshold matter, the statute at issue did not take effect until March 1,2021, pursuant to Virginia Constitution Article IV, § 13. Thus, because the events in question took place nearly two months before the statute at issue took effect, the statute's language could not clearly establish that the Troopers' conduct was unreasonable on the day in question. Further, Plaintiffs expert opining that the Troopers simply chose inferior tactics or did not follow the Virginia State Police training does not

necessarily create a dispute of material fact. For the clearly established analysis, the question is not whether the Troopers' conduct was the "best" choice under the circumstances, but instead, the question is whether their conduct was constitutional.

Plaintiffs expert also opined that Virginia Code § 19.2-83.5 should have placed the Troopers on notice, however, as mentioned previously, that statute was not in effect at the time of the traffic stop. (Pl.'s Expert Report at 6, ECF No. 50-1.)

Plaintiffs main contention is that the Troopers' use of improper tactics created "exigent circumstances" which unnecessarily escalated the situation. (Pl.'s Mem. in Opp'n at 19-20.) However, the Supreme Court has not held that a reasonable use of force can be made unreasonable by virtue of an earlier Fourth Amendment violation or violation of any other law. *Cnty. of Los Angeles v. Mendez,* 581 U.S. 420, 426-27 (2017) (finding that the United States Court of Appeals for the Ninth Circuit's "provocation rule," which used another constitutional violation to manufacture an excessive force claim where one would otherwise not exist, had no basis in the Fourth Amendment); *see also City of Tahlequah v. Bond,* 142 S.Ct. 9, 11 (2021) (declining to decide whether "recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment"). The Fourth Circuit has held that "*Graham* requires [courts] to focus on the moment the force was used; conduct prior to that moment is not relevant in determining whether an officer used reasonable force." *Elliott,* 99 F.3d at 640 (citation omitted). Plaintiffs "suggestion that the officers might have responded differently is exactly the type of judicial second look that the case law prohibits." *Id.', see also Anderson,* 247 F.3d at 131 (finding appellant's argument that the officer should have taken cover was irrelevant); *Greenridge,* 927 F.2d at 791-92 (finding appellant's argument that the officer allegedly violated standard police procedure by not employing proper backup and not using a flashlight irrelevant).

In sum, Plaintiffs argument that the Troopers employed excessive force by virtue of using improper tactics that created exigent circumstances is without merit. Simply contending that the Troopers should have employed better tactics is the exact course of review that the Fourth Circuit has cautioned courts not to embark on. Therefore, the Court concludes that there was no clearly established law putting the

Troopers on notice that their decision to approach Hill's vehicle with guns drawn was unreasonable under the Fourth Amendment.

As to Plaintiffs second argument, that Bone shooting Hill multiple times after he was no longer a threat was clearly established as unreasonable, the Court concludes that the record does not support Plaintiffs claim. Plaintiff cites to *Brockington v. Boykins*, 637 F.3d 503, 507 (4th Cir. 2011) to assert that Bone's conduct of shooting one additional shot was clearly unreasonable. In *Brockington,* an officer confronted a suspect on the backyard steps of a vacant house. *Id.* at 505. The officer fired his handgun twice, striking the suspect in the hand and the abdomen. *Id.* The suspect then fell off the stairs on a cement landing below and was unable to get up or otherwise defend himself. *Id.* The officer walked over and then stood directly over the suspect and fired at least six shots at close range. *Id.* After the officer fired a total of nine shots, the suspect fled the scene. *Id.* At no point was the suspect armed. *Id.*

The facts in *Brockington* differ substantially from the case at hand. First, there were only four shots fired by the Troopers in this case and those shots came within mere seconds of each other. (Dash Cam at 5:16-5:19.) Bone's final third shot came less than two seconds from his first shots. (*Id.*) There was no clear break in the sequence of events where the suspect no longer posed a threat such as in *Brockington. Brockington*, 637 F.3d at 507 (finding that there was a "clear break" in the sequence of events that occurred between the first array of shots and the second array of shots, which occurred as the suspect had already been subdued). Additionally, Hill was in possession of a firearm and the Troopers perceived that he was reaching for his firearm and intended to use it, whereas the suspect in *Brockington* was unarmed. Thus, based on the record at hand, the Court finds that Bone's one additional shot was not unconstitutional excessive force.

Lastly, Plaintiff argues that the Troopers removed Hill from his vehicle "intentionally and in bad faith" to purposefully destroy any evidence that Hill was not holding the firearm. (Pl.'s Mem. in Opp'n at 27-28.) The Court concludes that this assertion is wholly unsupported by the record. Plaintiff asserts that this can be inferred because "[p]rimer residue samples were collected from Hill at the scene, however, the results

were not submitted to the lab for testing due to Bone and Layton both touching Hill when they removed him from the vehicle." (*Id.*) This conclusory allegation cannot i create a genuine dispute of material fact. According to the dash cam footage, there is no indication whatsoever that the Troopers removed Hill in an attempt to spoil or destroy evidence that could be used in a subsequent civil lawsuit. (Dash Cam at 6:30-7:50.) Plaintiff proffers no evidence to bring the Troopers' intentions in removing Hill from the vehicle into question. Simply stating conclusively that the Troopers removed Hill with bad intentions is not enough. Therefore, the Court finds that this argument has no merit.

Therefore, as an alternative holding to the Court's finding that the Troopers are entitled to qualified immunity because they did not use excessive force against Hill, the Troopers are also entitled to qualified immunity because they did not violate a clearly established constitutional right. As such, Defendants' Motion for Summary Judgment will be granted on both prongs of the qualified immunity analysis.

Plaintiffs Amended Complaint also contains counts for state law violations including gross negligence, assault and battery, and wrongful death. (Am. Compl. At ¶¶ 83-113.) Because the state-law tort claims will fail or proceed with the success of Plaintiff's federal excessive force claim, the Court's finding that the Troopers are entitled to qualified immunity precludes her state-law tort claims from moving forward. *See Thompson v. Commonwealth of Virginia*, 878 F.3d 89, 111 (4th Cir 2017). "State-law claims that arise from the officer's use of force, such as battery, are subsumed within the federal excessive force claim." *Rowland v. Perry*, 41 F.3d 167, 174 (4th Cir. 1994). Accordingly, because qualified immunity applies and the state-law claims cannot move forward, Plaintiffs Amended Complaint will be dismissed with prejudice.

IV. CONCLUSION

The events that took place on January 9, 2021, were devastating and tragic, and the Court recognizes the public's sensitivity to issues of law enforcement and the use of force. However, under the circumstances the Troopers faced, their conduct was not excessive as a matter of law,

and the state of the law regarding the issues presented is clear. Therefore, for the foregoing reasons, the Court will grant Defendants' Motion for Summary Judgment. An appropriate Order will accompany this Memorandum Opinion.

APPENDIX C — Order of the United States Court of Appeals Denying Rehearing and Rehearing En Banc

FILED: July 1, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1680
(3:22-cv-00225-HEH)

LATOYA K. BENTON, Administrator of the Estate of Xzavier D. Hill, Deceased

Plaintiff - Appellant

v.

SETH W. LAYTON, Individually and in his official capacity as a State Trooper for the Virginia State Police; BENJAMIN I. BONE, Individually and in his official capacity as a State Trooper for the Virginia State Police

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Thacker, Judge Quattlebaum, and Judge Benjamin.

For the Court

/s/ Nwamaka Anowi, Clerk