

No. _____

IN THE
Supreme Court of the United States

KIMBERLEY DIANE SETTLE,
AS PERSONAL REPRESENTATIVE FOR THE
ESTATE OF JACOB JOSEPH SETTLE SR.,

Petitioner,

v.

DAVID COLLIER,

Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

APPENDIX A

**OPINION OF THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT NO. 24-12436
Entered on December 9, 2025**

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12436

KIMBERLEY DIANE SETTLE,

A Personal Representative for the Estate of Jacob
Joseph Settle Sr,

Plaintiff-Appellee,

versus

DAVID COLLIER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:22-cv-22688-TKW-HTC

Before WILLIAM PRYOR, Chief Judge, and BRANCH and ABUDU, Circuit Judges.

WILLIAM PRYOR, CHIEF JUDGE:

This appeal requires us to decide whether Officer David Collier is entitled to immunity from a suit involving the death of Jacob

Settle. On the evening of November 14, 2020, Collier and his partner officer went to Settle's house to execute arrest warrants for him and his wife. Settle was in his truck when Collier arrived and refused to leave the truck when Collier demanded that he do so. Within seconds, the situation escalated as Collier threatened to break open the windows, and Settle then started the engine of the truck and placed the transmission into a gear. Collier was in a tight space in between the truck and the house and feared the truck would hit him and his partner, so he fired his gun into the truck. Settle died on the scene. His estate's representative sued Collier for excessive force in violation of the Fourth Amendment and for battery under Florida law. After Collier invoked qualified immunity and state immunity, the district court denied Collier's motion for summary judgment. We reverse and remand with instructions to grant summary judgment in favor of Collier.

I. BACKGROUND

In this appeal of a denial of summary judgment based on qualified immunity, we recount the events viewing the evidence in the light most favorable to the estate as nonmovant. *See Baxter v. Santiago-Miranda*, 121 F.4th 873, 878 (11th Cir. 2024).

On the evening of November 14, 2020, Escambia County officers David Collier and Raymond Hart arrived at 2242 Handy Road to execute arrest warrants for Jacob Settle and his wife, Sophronia Whitehead. Settle had active arrest warrants for driving while his license was suspended, and Whitehead had active arrest warrants for failure to appear, destroying evidence, parole

violations, and driving while her license was suspended. Officers Hart and Collier had never encountered Settle before that night. Although Collier stated that he was aware that Settle had a “narcotics violation history,” he had no way of knowing if Settle was under the influence of narcotics at the time.

Whitehead and Settle had visited a friend until the early morning hours of November 14, so they slept until around 8:30 p.m. When they awakened, they decided to drive to another friend’s house in Settle’s truck. Because the front door was boarded up, Settle left through the back door, which Whitehead then locked, and she exited through the bedroom window.

After arriving, the officers made their way to the backyard where the truck was parked. Collier saw the truck parked “parallel” with the porch, the driver’s side facing it. The front end of the truck faced the house and was parked “almost up against” it. There was also an air conditioning unit “sitting right up against” the porch, roughly perpendicular to the truck’s back wheel. The backyard was “pitch black” that night because there were no working porch or backyard lights. The officers’ flashlights were “the only light[s]” in the backyard. The backyard was also filled with “debris and trash in the yard stacked up against the porch.”

As the officers approached the truck, Whitehead and Settle saw their flashlights “come around the side of the house.” Whitehead entered the passenger’s seat and Settle entered the driver’s seat. Whitehead and Settle “duck[ed] down in the truck.” Whitehead said that they did not know the officers were police “until they

c[a]me around” to the truck. Collier “got right up on the driver’s side” with his flashlight and saw both “slumped over” inside. Hart went up to the passenger’s side. Neither Whitehead nor Settle exited the truck even after realizing the presence of police officers. But Whitehead sat up when she realized it.

Worried that Settle might be unconscious, Collier “attempted to open up the door,” but it was locked. Settle then sat up straight and looked alert. Collier and Hart announced that they were from the sheriff’s office and asked Settle, by name, to exit the vehicle. After Settle did not exit the vehicle, Collier announced he was there to serve an arrest warrant and yelled, “Open your doors. Unlock your doors or we’re going to bust your windows out.” Settle attempted to deceive the officers by telling them that they were trying to arrest the wrong person. His flashlight still shining into the car, Collier then saw Settle “dig and reach around with his hands in the center console” and heard what he thought was the jingle of keys. So he “tried beating on the driver’s side window, trying to break the glass and enter the vehicle to get him out.”

Settle started the truck’s engine. Whitehead, Hart, and Collier all saw Settle then put the transmission into gear. Collier dropped his flashlight and pushed himself away from the truck. Whitehead testified that the “truck never moved an inch” after Settle put it into gear, speculating that he must have only put it in neutral.

Within a few seconds of Settle putting the truck into gear, Collier fired his gun. At the time of firing, Collier was “eight to

[ten] feet” away from the truck. Both bullets went through the driver’s side door window, not through the front window. Whitehead stated that she “heard two somethings” after Settle put the transmission in gear when she was interviewed in December 2022 by criminal investigators. But at her July 2023 deposition, Whitehead said that she “didn’t hear no gunshots,” because “the truck has got pipes on it.” Instead, she testified that she became aware of the gunshots because her “leg was burning down the side . . . from gunpowder.” According to Whitehead, the gunshots and the starting of the engine must have been nearly simultaneous.

The two shots struck Settle. Collier opened the truck door and started rendering aid to Settle by applying pressure to his two wounds—both in his arm/shoulder area. Settle stopped breathing, so Collier tried to resuscitate him. But Settle died. Settle’s toxicology report showed both methamphetamine and THC carboxy in his blood at the time of death.

On November 9, 2022, the personal representative of Settle’s estate filed this suit in the district court against Collier, Hart, and the sheriff. The district court dismissed the claims against Hart and the sheriff, which left two claims against Collier: one claim for excessive force in violation of the Fourth Amendment, 42 U.S.C. § 1983, and a claim of battery under Florida law.

During discovery, the estate produced one expert, Kelly Timms, a forensic services technician. In her deposition, Timms disputed that Collier was at risk of being struck by the truck when he fired the shots that killed Settle. She opined that Collier was not

standing directly in front of the truck when he fired the deadly shots, but was instead standing in line with the metal part of the truck between the front windshield and the front side doors—otherwise known as the “A-pillar.”

After Collier moved for summary judgment based on qualified immunity and state-agent immunity, the district court denied his motion. The district court ruled that a “reasonable jury could find that [Collier] violated Mr. Settle’s constitutional right to be free from excessive force when he shot into a non-moving truck that did not pose a risk to [Collier] or others.” It denied qualified immunity because it was “clearly established since at least 2013 that when a driver does not use or does not threaten to use his car as a weapon, an officer may not use deadly force against him.” And it ruled that Collier was not entitled to state immunity from the battery claim because a “reasonable jury could find that [Collier] acted with wanton and willful disregard” for Settle’s safety and that Collier “did not reasonably believe that it was necessary to use deadly force because Mr. Settle did not use the truck against [Collier] in a threatening way.”

II. STANDARDS OF REVIEW

We “review a denial of qualified immunity *de novo* and, on a motion for summary judgment, view the evidence in the light most favorable to the nonmoving party.” *Nelson v. Tompkins*, 89 F.4th 1289, 1295 (11th Cir. 2024). We review *de novo* whether an officer is entitled to summary judgment based on state law immunity. *English v. City of Gainesville*, 75 F.4th 1151, 1155 (11th Cir. 2023).

III. DISCUSSION

We divide our discussion into two parts. First, we explain that Collier is entitled to qualified immunity because he did not use excessive force. Second, we explain that Collier is entitled to state-agent immunity from the claim of battery.

A. Collier Did Not Use Excessive Force in Violation of the Fourth Amendment.

When officers raise the defense of qualified immunity, they have “the burden to establish that they were acting within their discretionary authority.” *Ingram v. Kubik*, 30 F.4th 1241, 1250 (11th Cir. 2022). “If the officers satisfy that burden, the burden then shifts to the plaintiff to establish that the officers violated a constitutional right that was clearly established at the time of the alleged violation.” *Id.* We may review whether there was a violation or whether the violation was clearly established in either order. *Id.* In this appeal, we start and end with whether Collier violated Settle’s constitutional rights by using excessive force. The estate does not dispute that Collier was acting “pursuant to his discretionary authority” during the incident. So the burden shifted to the estate to prove that Collier violated Settle’s clearly established constitutional rights.

An “excessive force claim [that] arises in the context of an arrest . . . is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right ‘to be secure in their persons . . . against unreasonable . . . seizures.’” *Graham v. Connor*, 490 U.S. 386, 394 (1989) (quoting U.S.

CONST. amend. IV). As the text of the Fourth Amendment suggests, excessive force claims are governed by an “‘objective reasonableness’ standard.” *Id.* at 388. In reviewing the reasonableness of an officer’s use of force, “we look at the fact pattern from the perspective of a reasonable officer on the scene with knowledge of the attendant circumstances and facts, and balance the risk of bodily harm to the suspect against the gravity of the threat the officer sought to eliminate.” *McCullough v. Antolini*, 559 F.3d 1201, 1206 (11th Cir. 2009). “Our inquiry does not employ the 20/20 vision of hindsight.” *Baxter*, 121 F.4th at 888 (citation and internal quotation marks omitted).

The use of *deadly* force is reasonable when an “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). So “if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Id.* at 11–12. “This rule covers situations in which (1) an officer believed his life was in danger because a suspect used a vehicle as a weapon against the officer or (2) the suspect’s use of the vehicle otherwise presented an immediate threat of serious physical harm.” *Baxter*, 121 F.4th at 888. This Court has “[c]onsistently . . . upheld an officer’s use of deadly force” under this framework. *Id.* And the Fourth Amendment does not “require officers in a tense and dangerous situation to wait until the moment a suspect uses a

deadly weapon to act to stop the suspect.” *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007).

The parties dispute whether Collier could have reasonably believed that Settle’s vehicle presented an immediate threat of physical harm warranting the use of deadly force. Collier argues that even under the estate’s version of events, the circumstances were “tense, rapidly evolving, and not within [his] complete control” such that he had an objectively reasonable belief that deadly force was necessary to protect his and Hart’s lives. Settle’s estate argues that “the truck never moved,” so the truck could not have been “used or threatened to be used in a way that indicated it had become a deadly weapon.” We agree with Collier.

The estate’s argument ignores that, under the circumstances, Settle needed not move the car for his actions to be reasonably perceived as threatening. The estate admits that Settle “started the truck and moved the gear shift.” Collier saw Settle put the truck into gear. And Whitehead said that Settle put the car into gear before Collier fired. So, even viewing the evidence in the light most favorable to the estate, there was some amount of time between Settle starting the truck and Collier firing the shots. In that short time, Collier recognized Settle’s intent to drive the truck and so convert it into a deadly weapon.

Two of our decisions are instructive. First, *Long v. Slaton* involved a mentally unstable man who stole a police vehicle and tried to back it out of a driveway. 508 F.3d at 578–79. The officer at the scene knew of the man’s condition, pointed his pistol at the man,

and warned him to comply or else he would shoot. *Id.* The man put the car in reverse and backed down the driveway; the officer stepped in the middle of the driveway (facing the front of the car) and fired three shots that killed the man. *Id.* While the car had not yet become a “deadly weapon” at the time of the shooting, the plaintiff’s “unstable frame of mind, energetic evasion of the deputy’s physical control, . . . criminal act of stealing a police cruiser, and [his] starting to drive . . . gave the deputy reason to believe that [he] was dangerous.” *Id.* at 581–82. (footnote omitted). And in *Pace v. Capobianco*, this Court held that an officer who shot a man *after* a high-speed chase did not violate the Fourth Amendment “[e]ven when” the man’s “car was stopped,” he “did not try to run over the deputies[,] . . . [and] did not aim the car at the deputies.” 283 F.3d 1275, 1277, 1282 (11th Cir. 2002). The Court reached that conclusion because “[b]y the time of the shooting, [the man] had used the automobile in a manner to give reasonable policemen probable cause to believe that it had become a deadly weapon.” *Id.* at 1282. And the man never “left his automobile or even turned the engine off,” establishing that he was still “armed.” *Id.* at 1281–82.

Even if the truck never moved, Collier could reasonably perceive that Settle’s vehicle was a deadly weapon. He reasonably interpreted Settle’s starting the engine and putting it into gear as escalatory. Common sense would suggest that Settle’s next step would be to drive—not to remain stationary. Settle had already resisted arrest; by starting the truck engine and putting it into gear, Collier reasonably believed that Settle intended to escape in reckless disregard of the officers’ safety or to evade arrest by injuring

them. By starting the engine and putting the transmission into gear, Settle converted his truck into a “deadly weapon with which [he] was armed.” *Id.* at 1282. And because Collier had probable cause to believe Settle intended to drive the truck dangerously, he was not “require[d] . . . to wait [to fire] until the moment” that Settle drove it. *Long*, 508 F.3d at 581.

We reject the estate’s attempt to create a categorical rule that officers cannot reasonably perceive that a vehicle has been converted into a deadly weapon either until the vehicle moves or unless the suspect’s behavior before the incident established that he was dangerous. The estate admits that “this Court has [held] that even if a vehicle did not move and an officer was not in its path, the use of deadly force could be reasonable.” Yet it argues that this “principle . . . extends only to situations where the suspect’s prior behavior or use of the vehicle gave an officer reason to believe that the vehicle had become a deadly weapon.” But our precedents establish no bright-line rule. After all, “[t]he constitutional test for excessive force is necessarily fact specific,” *McCullough*, 559 F.3d at 1206, and “not capable of precise definition or mechanical application,” *Long*, 508 F.3d at 580 (citation and internal quotation marks omitted).

The estate makes much of one surface-level similarity between this appeal and *Morton v. Kirkwood*, a decision where we discerned a constitutional violation. 707 F.3d 1276 (11th Cir. 2013). In *Morton* too the vehicle was “stationary” when the officer fired at its driver. *Id.* at 1279–80, 1282. The plaintiff was sitting in his car at a

park when he saw a police officer walk into the park. *Id.* at 1279. He then attempted to “coast” out of the park, never seeing anyone in front of his car. *Id.* At that point, the plaintiff heard an officer shout, so he “shifted his car to park and raised his hands.” *Id.* at 1279–80. The officer “nonetheless shot at the car.” *Id.* at 1280. We held that, based on those facts, an officer could not reasonably perceive an immediate threat to his safety. *Id.* at 1281–82. The fact that the vehicle in *Morton* was stationary is of little importance. In *Morton*, the vehicle was stationary because the driver complied with the officer’s request to stop the vehicle. *Id.* at 1279–80. In this appeal, the truck was stationary from the start of the encounter; Settle did not make it stationary at the command of the officer. Indeed, Settle refused to comply with Collier’s lawful order to exit the vehicle, unlike the plaintiff in *Morton*, who alleged that he promptly complied with the officer’s orders. *Id.* The plaintiff in *Morton* *deescalated*, unlike Settle who escalated the situation by starting the truck and putting the transmission into gear.

The estate insists that Collier was unreasonable in firing because he “was not in the path of the truck” and was about eight feet away when he fired. This argument answers the wrong question. Reasonableness hinges on the perspective of the officer, so the more apt question is whether Collier could have *reasonably perceived* that he was in the path of the vehicle and that his safety was in danger. See *Tillis v. Brown*, 12 F.4th 1291, 1299 (11th Cir. 2021). And we do not impose on officers “the benefit of hindsight.” *Baxter*, 121 F.4th at 890. When officers must make split-second judgments, we accept that they “d[o] not have time to calculate angles and

trajectories to determine whether [they are] a few feet outside of harm's way." *Tillis*, 12 F.4th at 1299.

Two precedents are instructive. In *Robinson v. Arrugueta*, we declined to hold an officer to the benefit of hindsight that he "perhaps could have escaped unharmed." 415 F.3d 1252, 1256 (11th Cir. 2005). There, the decedent accelerated to just one to two miles per hour toward the officer, but the officer was standing four feet away from the front of the vehicle and was sandwiched between the decedent's vehicle and another. *Id.* at 1254, 1256. And *Tillis* involved a high-speed chase that ended with a crash into some bushes. 12 F.4th at 1295. The officer pulled behind the vehicle and stepped out of his car to make the arrest. *Id.* As he stepped out, the vehicle's "reverse lights turned on" and the officer shot into the vehicle as it drove past him. *Id.* We held that the officer "had no way of knowing whether [the vehicle] would continue in a straight line or swerve toward him," and he did not have time to calculate whether he was in harm's way. *Id.* at 1299. "[O]n foot next to [the] vehicle," the officer was "exposed to danger" which justified firing at the suspect. *Id.*

Collier feared for his life when Settle put the truck into gear. Collier could reasonably fear that Settle's next move was to drive it. Like the officer in *Robinson*, Collier was in a "narrow space" between the car and the porch—even if more than four feet away. 415 F.4th at 1256. Had Collier tried to escape by rushing directly away from the house toward the back of the truck, the air conditioning unit and debris would have obstructed his path. And he

reasonably could have feared being struck if the vehicle went in reverse. Moving the other way would have required him to step in front of the vehicle which had been put into gear. Like the officer in *Tillis*, he also “had no waying of knowing” what Settle would do next, especially considering that Settle was actively resisting arrest. *See* 12 F.4th at 1299. And he was standing “on foot next to” Settle’s truck, exposing him to danger from the truck’s movements. *See id.* Collier had little-to-no visibility in the “pitch black” backyard. And Collier no longer had his flashlight in hand. So even if there were a clear path of escape, Collier would not have been able to see it. We cannot hold Collier to the benefit of hindsight by requiring him to have “calculate[d] angles and trajectories” of the truck’s potential paths or for an escape attempt. *Id.*

Settle’s estate suggests that Collier was not justified in firing because he had no reason to believe that Settle was violent or dangerous before the encounter. True, “the severity of the crime prompting [the encounter] can carry weight” in the reasonableness analysis. *Barnes v. Felix*, 145 S. Ct. 1353, 1358 (2025) (citation and internal quotation marks omitted). But in “circumstances that are tense, uncertain, and rapidly evolving,” we must make “allowance for the fact that police officers are often forced to make split-second judgments.” *Graham*, 490 U.S. at 396–97. Sometimes, an officer does not have time to reflect and consider why the encounter was initiated—whether it was a routine *Terry* stop or a high-speed chase.

We have held that an officer acted reasonably in using deadly force by shooting into a vehicle during a tense situation even when the officer did not have reason to think the driver had committed violent crimes. For example, in *Baxter*, this Court held that an officer did not violate the Fourth Amendment when he fired shots into a vehicle being driven by a person suspected of simple car theft. 121 F.4th at 878–91. And in *Robinson*, this Court held that an officer did not violate the Fourth Amendment when he fired shots into a vehicle being driven by a person suspected of dealing heroin. 415 F.3d at 1253, 1256.

The estate faults Collier for neither giving a warning that he was about to fire nor “display[ing] his weapon” before firing the shots. “Officers are required to give a warning before using deadly force if a warning is feasible. The critical inquiry is feasibility.” *Davis v. Waller*, 44 F.4th 1305, 1315 (11th Cir. 2022). The feasibility requirement is not an “inflexible rule that, in order to avoid civil liability, an officer must always warn his suspect before firing—particularly where . . . such a warning might easily have cost the officer his life.” *Id.* (citation and internal quotation marks omitted). Settle’s rapid escalation and Collier’s proximity to the truck put Collier in immediate danger, so he was not required to issue a warning before firing.

The estate’s reliance on *Vaughan v. Cox* is unavailing. 343 F.3d 1323 (11th Cir. 2003). In *Vaughan*, an officer “traveled alongside” a fleeing stolen vehicle, which had struck a police cruiser, on an interstate highway for 30 to 45 seconds before firing into the

vehicle. *Id.* at 1326–27, 1331. We considered that ample “time and opportunity to warn” the vehicle’s driver before firing. *Id.* at 1331. Here, in contrast, the encounter escalated in the seconds it took Settle to turn on the truck and put it into gear, giving Collier little time or opportunity to issue a warning.

The district court relied on *Underwood v. City of Bessemer*, 11 F.4th 1317 (11th Cir. 2021), to hold that Collier could have warned Settle before firing. In *Underwood*, an officer walked in front of a vehicle as it “coast[ed]” slowly toward the officer “as if to stop,” and the officer began shooting when the vehicle was roughly eight feet away. 11 F.4th at 1322, 1331. True, in *Underwood* and here, the officer was eight feet away at the time he fired—and at that distance, a warning is in fact more feasible. But the driver in *Underwood* was slowing down “as if to stop,” unlike Settle who put the truck in gear as if to drive. In the light of the proximity of the truck to Collier, Collier’s lack of visibility, and Settle’s escalatory actions, Collier could forego a warning. A delay could have put his or Hart’s life in danger. *See Waller*, 44 F.4th at 1315.

B. Collier is Entitled to State Statutory Immunity from the Estate’s Battery Claim.

Florida’s self-defense immunity statute provides that a “person who uses or threatens to use force as permitted in [section] 776.012 . . . is justified in such conduct and is immune from . . . civil action for the use or threatened use of such force.” FLA. STAT. § 776.032(1). Section 776.012 also provides that a person who “reasonably believes that using or threatening to use such force is

necessary to prevent imminent death or great bodily harm to himself . . . or another” may use deadly force, and that there is no “duty to retreat” before using or threatening to use such force. *Id.* § 776.012(2). We have ruled that section 776.012 is at least co-extensive with the Fourth Amendment standard for the use of deadly force. *See Penley v. Eslinger*, 605 F.3d 843, 855–56 (11th Cir. 2010). Because Collier’s use of deadly force was not excessive in violation of the Fourth Amendment, Collier was also entitled to immunity from the estate’s claim of battery.

IV. CONCLUSION

We **REVERSE** and **REMAND** with instructions to enter judgment for Collier.

ABUDU, Circuit Judge, Dissenting:

The record in this case presents conflicting evidence regarding the material fact of whether Deputy Sheriff David Collier was near or in the path of Jacob Settle, Sr.'s truck, as well as if and how Settle's truck was moving to justify Collier shooting into it and killing Settle. The district court correctly concluded that these factual disputes, when taken in the light most favorable to Settle's estate (the "Plaintiff"), could allow a reasonable jury to find that Settle's vehicle did not present an immediate threat of physical harm, thereby making Collier's use of deadly force unreasonable.

We review a district court's grant of summary judgment *de novo*, *Christmas v. Harris County*, 51 F.4th 1348, 1353 (11th Cir. 2022), viewing the facts and drawing all reasonable inferences in the light most favorable to the non-moving party, *Sconiers v. Lockhart*, 946 F.3d 1256, 1262 (11th Cir. 2020). Summary judgment is appropriate when the record contains no genuine issues of material fact such that the court may grant judgment as a matter of law in favor of the moving party. *Marbury v. Warden*, 936 F.3d 1227, 1232 (11th Cir. 2019). The issue is only material if it could ultimately change the outcome of litigation. *Terrell v. Sec'y Dep't of Veterans Affs*, 98 F.4th 1343, 1351 (11th Cir. 2024). It is only genuine if it could lead the reasonable factfinder to rule in favor of the nonmovant. *James River Ins. Co. v. Ultratec Special Effects Inc.*, 22 F.4th 1246, 1251 (11th Cir. 2022). On *de novo* review, the district court was correct in concluding that Collier did not meet his burden.

A. There Exist Genuine Issues of Material Fact

On the night of November 14, 2020, Deputies David Collier and Raymond Hart went to the home of Raymond Settle and Sophronia Whitehead to execute arrest warrants for nonviolent crimes. Both deputies explained that they approached the front door to no avail, so they proceeded to the backyard to continue their search. Settle's truck was parked in the backyard near the porch and facing his house. Whitehead and Settle had gotten into the truck just as the deputies entered the backyard to continue their search. The parties dispute what happened next.

In Collier's version of events, the backyard was "very dark," so he and Hart conducted their search using flashlights to illuminate their path and avoid being seen by Whitehead and Settle. Collier suspected that they were both concerned about being arrested because they had outstanding warrants and feared going to jail. He, therefore, initially thought that the two were hiding from the officers.

Collier then explained that he approached the truck to ask Settle and Whitehead to get out of it, but the two refused. He then tried to break through the truck's driver's side window to remove Whitehead and Settle from the vehicle. As he did so, Settle reportedly started the truck and put it in reverse, which scared Collier and caused him to step back from the truck. When Collier stepped back from the truck, he tripped over something in the yard, which caused him to fall on the ground. He said that he then regained his

footing and drew his weapon before firing two shots into the driver's side window, which ultimately killed Settle.

In the days following the shooting, Collier recounted that the truck was "coming at [him]" as if it were approaching him head on. He explained that he was "in [a] corner" and performing evasive maneuvers to avoid contact because the truck was "coming at [him]," again, as if it were aimed directly at him.

Whitehead's account differs significantly. She explained that she and Settle did not immediately recognize Hart and Collier as officers when they entered the backyard. She explained that they could not see the officers' uniforms through the darkness, only their flashlights. Further, she contends the officers did not verbally identify themselves as law enforcement when they approached the truck and attempted to open its doors. It was not until the officers got closer that Settle and Whitehead could make out the deputies' uniforms. Upon learning that the two unidentified men were officers and being told to unlock the door, Whitehead complied with the officers' commands. However, instead of opening the doors, Collier attempted to break the window with his baton.

Whitehead stated that Settle started the truck after Collier threatened to break the driver's side window. However, she testified that the truck "never moved an inch" after Settle started it. In fact, she maintained that the deputies shot Settle at "almost the exact time" that he started the truck. She said that she knows this because she did not hear the gunshots over the truck's loud ignition. She noted that it was only clear that Collier had fired his

weapon because her leg was burning from the gunpowder and she heard Settle screaming, “Oh my God. Oh, my God.”

No one disputes that Collier opened the driver’s side door and rendered aid to Settle while Hart removed Whitehead and placed her in the back of his patrol car.

In the aftermath of the shooting, the Plaintiff presented expert testimony from Kelly Timms, a forensics services expert, that Collier was not directly in front of the truck at the time of the shooting. Instead, according to Timms, Collier was in front of the truck’s A-line, meaning the “area that most people think of as the [sic] edge of their door. . . [or] the supportive pillar that holds [the] windshield in place.” In sum, the parties could not agree on: (1) whether the officers identified themselves; (2) whether Settle started the truck and started to drive it; and (3) whether Collier was in front of the truck and, thus, in danger of being struck.

B. Material Factual Disputes Regarding Need for Excessive Force Foreclose Summary Judgment

The district court determined that “a reasonable jury could find that [Collier] did not have probable cause to believe that Mr. Settle posed a threat of serious physical harm,” and denied Collier qualified immunity. In making that determination, the court pointed to two significant factual disputes: (1) Collier’s physical position at the time of the shooting; and (2) the truck’s alleged movement. Our jurisprudence, and the longstanding understanding regarding the important role of juries, requires this Court to affirm

the district court's decision and remand the case for further proceedings.

Of course, many appeals of summary judgment orders raise questions of both law and fact. They do so because the district court must conduct a two-step factual and legal inquiry. *See Koch v. Rugg*, 221 F.3d 1283, 1295 (11th Cir. 2000). The first step defines the movant's conduct based on the record, taking all inferences in favor of the nonmovant. *Id.* The second step analyzes whether a reasonable official would or should have known that the movant's actions violated clearly established laws. *Id.* at 1294-95.

Here, the only true issues on appeal are factual disputes, which are defined at the first step. At the district court, Collier argued that his use of deadly force was reasonable at the time that he discharged his weapon because Settle refused to exit his truck, put his keys in the ignition, and placed his hand on the gear. He explained that "whether the vehicle was moving or not [did] not create a disputed issue of material fact." The district court disagreed. It explained that the inconsistencies regarding if and how the truck moved were a credibility issue that was improper for summary judgment. In other words, the district court explained that the truck's movement, whether forward, backward, or not at all, was a factual dispute, not a legal dispute.

Collier also argued that his use of force was reasonable because he was trapped. Again, the district court found this was a material factual dispute. It explained that a juror could rely on Settle's expert to find that Collier was standing "closer to the end of

the porch” rather than entrapped between the house and truck. Accordingly, the court explained that “a reasonable jury could find that the truck did not pose a [reasonable] risk to the defendant” at the time of the shooting. While Collier says that he reasonably feared for his life because he was trapped, his alleged entrapment and subsequent fear are open to a jury’s ultimate determination. In short, the court recognized that a reasonable jury could interpret the events on the night of the shooting differently. More importantly, this discrepancy about what the evidence could prove at trial was the basis on which the district court made its decision.

The determination of these factual disputes ultimately factors into our analysis of the legal dispute in this case—whether Collier’s use of deadly force was reasonable because he reasonably believed that Settle was using or threatened to use his vehicle as a deadly weapon. *See Singletary v. Vargas*, 804 F.3d 1174, 1181-82 (11th Cir. 2015). Indeed, to reach a legal determination, courts must “slosh [their] way through the fact bound morass of reasonableness.” *Morton v. Kirkwood*, 707 F.3d 1276, 1281 (11th Cir. 2023) (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)). Our precedent is instructive regarding what constitutes an immediate threat to law enforcement, and what level of force is reasonable.

In *Underwood v. City of Bessemer*, we held that officers did not have probable cause to think a suspect would use his car as a weapon. 11 F.4th 1317, 1329-31 (11th Cir. 2021). There, the suspect was not driving aggressively as if he would harm the officer. *Id.* at 1330. To the contrary, he was inching forward “so slowly

that it looked like he would stop.” *Id.* Just like this case, the car was reportedly about eight feet away from the officer. *Id.* The Court ultimately concluded that, accepting those facts as true, a reasonable jury could find that Underwood did not pose a threat to the officer’s safety.¹ *Id.* at 1330-31.

Similarly, in *Morton v. Kirkwood*, we held that an officer lacked probable cause to believe that a suspect posed an immediate threat of harm when the suspect was “an unarmed man in a stationary vehicle.” 707 F.3d 1276, 1282 (11th Cir. 2013). There, officers approached an unarmed man who was sitting in his car at a local park. *Id.* at 1279. As the officers approached the man, he began to slowly drive away from them, coasting at a speed of one mile per hour. *Id.* At that point, a previously unseen officer stepped in front of the suspect’s car and told him to stop the vehicle. *Id.* at 1279-80. The suspect then placed his hand on the gear to shift it into park and immediately threw his hands in the air before another officer shot the suspect several times and left him paralyzed. *Id.* Ultimately, we concluded that a reasonable officer would have no reason to believe that the suspect’s driving put anyone’s safety in danger. *Id.* at 1281-82.

Both *Underwood* and *Morton* underscore the presence and need to resolve factual disputes in the instant case. In *Underwood*

¹ In *Underwood v. City of Bessemer*, we ultimately affirmed the lower court’s grant of summary judgment because the officer’s alleged violation was not clearly established at the time of the shooting. 11 F.4th 1317, 1332 (11th Cir. 2021).

and *Morton*, we highlighted the suspect's driving in our evaluation of whether an officer reasonably feared for his life at the time of the shooting. Similarly, here, there is a factual dispute about how dangerous Settle's driving was at the time of the shooting. As highlighted above, Whitehead claimed that the truck never moved, while Collier claimed that the truck moved backwards and then possibly forward. Each varying factual account carries a different inference that weighs into the reasonableness of Collier's actions. Because these factual disputes exist about the direction of the truck's movement, or if the truck moved at all, then this case is appropriate for a jury, not a panel of judges.

Ultimately, this appeal does not present questions of law that are applied to undisputed facts. Even Collier concedes that he could not have reasonably used deadly force had Settle been retreating from the scene. So, this dispute comes down to Collier's position at the time of the shooting as well as how and if the truck moved. As the district court explained, these are both factual disputes appropriate for a jury.

C. Collier is not Entitled to Summary Judgment under Florida's "Self-Defense" Immunity Provision

Florida law allows officers to assert immunity if their actions constitute "self-defense" against a person who uses or threatens to use force, thus endangering the officer's safety. Fla. Stat. § 776.032(1). In short, an individual may use deadly force when he or she believes it is necessary to prevent death or substantial harm to that person or another. *Id.* As the majority notes, we have

previously mirrored our analysis of both Florida's immunity statute and excessive force claims. *See Penley v. Eslinger*, 605 F.3d 843, 855-56 (11th Cir. 2010). Therefore, the factual disputes regarding Collier's use of excessive deadly force also prevent his entitlement to immunity under Section 776.032(1).

D. Conclusion

For the reasons stated, the district court's denial of Collier's motion for summary judgment should be affirmed. I respectfully dissent.

APPENDIX B

**ORDER OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA, PENSACOLA DIVISION,
NO. 3-22-CV-22688-TKW-HTC
Entered on July 1, 2024**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

KIMBERLEY DIANE SETTLE, as
Personal Representative for the Estate
of Jacob Joseph Settle, Sr.,

Plaintiff,

v.

Case No. 3:22cv22688-TKW-HTC

DAVID COLLIER,

Defendant.

_____ /

ORDER DENYING SUMMARY JUDGMENT

This case is before the Court based on Defendant's motion for summary judgment (Doc. 46). Upon due consideration of the motion, Plaintiff's response in opposition (Doc. 54), Defendant's reply (Doc. 56), the 1,100+ pages of evidence submitted by the parties (Docs. 45-1 through 45-50, 53-1 through 53-5), and the supplemental authority submitted by Defendant (Doc. 57-1), the Court finds that the motion is due to be denied.

Facts

On the night of November 14, 2020, two Escambia County Deputy Sheriffs, David Collier (Defendant) and Raymond Hart, were dispatched to serve felony arrest

warrants on Jacob Settle and Sophronia Whitehead at their residence.¹

The deputies knocked on the front door, but they received no response. The deputies then went around to the side of the house.

A fence separated the front yard from the back yard, but Defendant could see a black pickup truck parked behind the house. The deputies entered the back yard through an opening in the fence to check whether Mr. Settle and Ms. Whitehead were in the truck. The deputies used flashlights because the back yard was “pitch black.”

The truck was parked facing the house and its front end was close to the house’s exterior wall. The driver’s side was adjacent to a porch that extended out from the house. The area around the porch was littered with items such as tires, an air-conditioning unit, a couch, a chair, and a sink.

The deputies approached the truck from the rear, with Defendant approaching the driver’s side and Deputy Hart approaching the passenger’s side. They shined their flashlights into the truck and saw Mr. Settle sitting in the driver’s seat and Ms. Whitehead sitting in the passenger’s seat. Mr. Settle and Ms. Whitehead were both “slumped over” and trying not to be seen.

¹ Ms. Whitehead’s warrants were for destroying evidence, failure to appear, and violation of probation. Mr. Settle’s warrant was for driving on a suspended license.

Defendant attempted to open the driver's side door, but it was locked. The deputies identified themselves and told Mr. Settle and Ms. Whitehead to exit the truck. Ms. Whitehead attempted to exit the truck, but she was not able to do so because Deputy Hart was leaning against the passenger's side door. Mr. Settle refused to exit the truck, so Defendant tried to break the driver's side window with his baton.

Mr. Settle reached for his keys about the same time that Defendant was attempting to break the driver's side window. Then, Mr. Settle put the key in the ignition, started the truck, and pulled the column shifter down to take the truck out of park.

The parties dispute what happened next. Defendant testified that he felt the truck start moving in reverse after Mr. Settle pulled down the shifter, but Ms. Whitehead testified that Mr. Settle must have put the truck in neutral because the truck never moved.

Then, according to Defendant, when the truck started to move, he pushed himself away from the truck to avoid being run over. As he did so, he tripped over an object in the yard and fell to the ground injuring his left knee. When he got to his feet, he moved towards the area where the house met the porch and pulled out his service weapon. At that point, Defendant saw the truck was moving forward toward

him, so he fired two shots through the driver's side window. The shots struck and killed Mr. Settle.

There is conflicting evidence as to whether Defendant was in or near the path of the truck when he shot into the truck, but it is undisputed that he was not standing directly in front of the truck's front bumper or windshield when he shot. Defendant estimated that he was about eight feet from the truck when he shot, and based on where one of the spent bullet cartridges was found and a bullet trajectory analysis, Plaintiff's forensic services expert, Kelly Timms, opined that Defendant was alongside the truck, not in its path or trapped in the corner of the house and porch when he shot.

Procedural History

In November 2022, the personal representative of Mr. Settle's estate (Plaintiff) filed suit against Defendant, Deputy Hart, and the Escambia County Sheriff in this Court, asserting claims under 42 U.S.C. §1983 and state law. The claims against Deputy Hart and the Sheriff were dismissed, *see* Docs. 32, 44, leaving only the §1983 excessive use of force claim (Count I) and a state law battery claim (Count III) against Defendant.

The parties engaged in an extended period of discovery, after which Defendant filed a motion for summary judgment on both of the claims asserted

against him.² The motion is fully briefed and is ripe for ruling. No hearing is needed to rule on the motion.

Standard of Review

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). An issue of fact is “material” if it would change the outcome of the litigation, and a dispute about a material fact is “genuine” if the evidence as a whole could lead a reasonable factfinder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party meets that burden, the non-movant must go beyond the pleadings and identify evidence of record showing a genuine factual dispute for trial. *Id.* at 324.

When reviewing a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party. *Pennington v. City of Huntsville*, 261 F.3d 1262, 1265 (11th Cir. 2001). However, where objective evidence such as a video blatantly contradicts a witness’s testimony, the Court can

² Defendant also filed a *Daubert* motion to exclude several of Ms. Timms’ opinions. That motion was denied. See Doc. 58.

view the evidence as it is reflected in the video. *Scott v. Harris*, 550 U.S. 372, 380 (2007) (“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”); *Brooks v. Miller*, 78 F. 4th 1267, 1279 (11th Cir. 2023) (relying on the version of events reflected in a video recording rather than the plaintiff’s testimony because the recording “so utterly discredits [the plaintiff’s] version of this part of the story that no reasonable jury could believe him”) (cleaned up).

The Court’s role at the summary judgment stage is not to weigh the evidence, but rather to “conclude whether [the evidence] is so one-sided that the result of any trial is inevitable.” *Turner v. Phillips*, 2022 WL 458238, at *4 (11th Cir. Feb. 15, 2022). Thus, when ruling on a motion for summary judgment, “the judge must ask himself ... whether a fair-minded jury could return a verdict for the [non-moving party] on the evidence presented.” *Anderson*, 477 U.S. at 252.

Analysis

Each claim asserted against Defendant will be addressed in turn, starting with the excessive use of force claim under §1983.

Excessive Use of Force (Count I)

“Qualified immunity protects police officers from suit in their individual capacities for discretionary actions performed in the course of their duties.” *Carter*

v. Butts Cnty., Ga., 821 F.3d 1310, 1318 (11th Cir. 2016). Where, as here, it is undisputed that the defendant was acting pursuant to his discretionary authority, the plaintiff has the burden to overcome the defendant’s qualified immunity by showing that (1) the defendant violated the plaintiff’s constitutional right and (2) the right was “clearly established” at the time. *See Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002) (explaining that “[q]ualified immunity offers complete protection for government officials sued in their individual capacities if their conduct ‘does not violate clearly established statutory or constitutional rights of which a reasonable person would have known’” (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982))); *see also Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019) (“To overcome a qualified immunity defense, the plaintiff must make two showings. First, she must establish that the defendant violated a constitutional right. Second, she must show the violated right was clearly established.” (internal citations and quotations omitted)).

Here, Defendant contends that Plaintiff has not met that burden with respect to either element. The Court disagrees for the reasons that follow.

Constitutional Violation

Defendant argues that he did not violate Mr. Settle’s constitutional rights when he used deadly force because, under the totality of the circumstances, he had probable cause to believe that Mr. Settle posed a threat of serious physical harm to

him or others. Plaintiff responds that under Ms. Whitehead's version of the facts, Defendant's use of deadly force was unreasonable because (1) Defendant did not have probable cause to believe that Mr. Settle posed a threat of serious physical harm to Defendant or others because the truck never moved and Defendant was not in its path; and (2) Defendant did not warn Mr. Settle of his intent to use deadly force. Defendant replies that (1) it is immaterial whether the truck moved or whether Defendant was in its path because Defendant did not have to wait until Mr. Settle used the truck against him as a weapon before he used deadly force; and (2) Defendant did not have to warn Mr. Settle of his intent to use deadly force because it was not feasible to do so. The Court agrees with Plaintiff.

“The use of deadly force by the police is a seizure subject to the Fourth Amendment's requirement of reasonableness.” *Hunter v. City of Leeds*, 941 F.3d 1265, 1278 (11th Cir. 2019) (citing *Tennessee v. Garner*, 471 U.S. 1, 7 (1985)). In examining the reasonableness of force, the Court must view the facts “from the perspective of a reasonable officer on the scene with knowledge of the attendant circumstances and facts, and balance the risk of bodily harm to the suspect against the gravity of the threat the officer sought to eliminate.” *McCullough v. Antolini*, 559 F.3d 1201, 1206 (11th Cir. 2009) (citing *Scott*, 550 U.S. at 372). The officer's conduct “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight” because “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.” *Graham v. Connor*, 490 U.S. 386, 396–97 (1989).

“In the deadly force context, ... a police officer may constitutionally use deadly force when the officer (1) ‘has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others’ or ‘that he has committed a crime involving the infliction or threatened infliction of serious physical harm’; (2) reasonably believes that the use of deadly force was necessary to prevent escape; *and* (3) has given some warning about the possible use of deadly force, if feasible.” *Morton v. Kirkwood*, 707 F.3d 1276, 1281 (11th Cir. 2013) (quoting *McCullough*, 559 F.3d at 1206) (emphasis in original). “Although these factors are useful, [the Court] cannot apply them mechanically, and [the Court] must still slosh [its] way through the factbound morass of reasonableness.” *Id.* (citation and internal quotations omitted).

The Eleventh Circuit has “consistently upheld an officer’s use of deadly force in cases where the officer reasonably believed his life was endangered by a suspect who used or threatened to use his car as a weapon.” *Singletary v. Vargas*, 804 F.3d 1174, 1181–82 (11th Cir. 2015) (quoting *McCullough*, 559 F.3d at 1207) (internal quotation marks omitted). However, “where the plaintiff did not use or did not threaten to use his car as a weapon,” the Eleventh Circuit “ha[s] rejected an officer’s

use of deadly force.” *Morton*, 707 F.3d at 1283; *see also Underwood v. City of Bessemer*, 11 F.4th 1317, 1329–31 (11th Cir. 2021); *Vaughan v. Cox*, 343 F.3d 1323, 1329–31 (11th Cir. 2003).

Here, the evidence (in the light most favorable to Plaintiff) establishes that after Mr. Settle refused to exit the truck and Defendant attempted to break the driver’s side window, Mr. Settle started the truck and moved the gear shifter, but the truck never moved.³ Under this version of the facts, a reasonable jury could find that Defendant did not have probable cause to believe that Mr. Settle posed a threat of serious physical harm because he did not use or threaten to use the truck in a way that indicated it had become a deadly weapon.

Moreover, a reasonable jury could also find that the truck did not pose a risk to Defendant because the evidence establishes that Defendant was not in the path of

³ The Court did not overlook Defendant’s argument that Ms. Whitehead’s testimony that the truck never moved is contradicted by the video of her in the back of the deputies’ car stating “why did he drive? He shouldn’t have done that.” *See* Doc. 45-36. The video is the best evidence of what Ms. Whitehead said and it blatantly contradicts her deposition testimony that she said, “why did he try” rather than “why did he drive,” Doc. 45-11 at 146-48, but it does not so utterly discredit her deposition testimony that the truck did not move that no reasonable jury could believe her. Rather, the inconsistency between Ms. Whitehead’s statement in the back of the deputies’ car and her sworn deposition testimony that the truck never moved is a credibility issue that the Court cannot decide at the summary judgment stage. *See Sexton v. Mangiaracina*, 657 F. App’x 928, 931 (11th Cir. 2016) (holding that although the witness’s affidavit was inconsistent with and contradicted earlier statements, “those inconsistencies present[ed] a credibility issue, which is something that [the court] [could not] decide at the summary judgment stage”); *Reeder v. Chitwood*, 595 F. App’x 890, 895 (11th Cir. 2014) (holding that where the witness’s “deposition testimony was inconsistent in many respects with his videotaped statement,” it was improper for the district court to “discount the deposition testimony on that basis”). Accordingly, the Court credits Plaintiff’s version of the events that the truck did not move after Mr. Settle put it in gear.

the truck when he shot Mr. Settle. On that issue, Defendant estimated that he was about eight feet away from the truck when he shot, and according to Plaintiff's expert (Ms. Timms), Defendant was standing in line with the A-pillar⁴ on the driver's side of the truck closer to the end of the porch (not trapped between the corner of the house and the porch or in the potential path of the truck) when he shot.

These circumstances are more like cases in which the Eleventh Circuit found that officers' use of deadly force was unreasonable because the suspect's non-aggressive, and non-threatening use of the vehicle did not pose a threat of serious physical harm to the officers or others. For example, in *Underwood*, the court held that police officers lacked probable cause to believe a suspect posed a threat of serious physical harm because, at the time of the shooting, the officer "was still eight feet away" from the car and it "was not accelerating or driving aggressively but inching forward so slowly that it looked like he would stop." 11 F.4th at 1330. Similarly, in *Morton*, the court held that a police officer lacked probable cause to believe the suspect posed a threat of serious physical harm because "no one [was] in front of his car, he never accelerated his car," the car was "coast[ing] at about one mile per hour," and "he shifted his car to park before [the officer] shot him." 707 F.3d at 1282. And, in *Vaughan*, the court held that a police officer lacked probable

⁴ The A-pillar is the metal part of the truck between the front windshield and the front side doors.

cause to believe a suspect posed a threat of serious physical harm even though the plaintiff was speeding, fleeing, and had accidentally hit the rear of a police car because, at the time of the shooting, the suspect was in a lane “clear of traffic” and had “made no aggressive moves to change lanes before [the officer] fired” into the truck without warning. 343 F.3d at 1330. Indeed, Mr. Settle’s actions in this case (i.e., simply starting the truck and adjusting the gear shift) were far less threatening than the actions of the suspects in those cases. Accordingly, when the evidence is viewed in the light most favorable to Plaintiff, a reasonable jury could find that Mr. Settle did not pose a risk of serious physical harm to Defendant or others based on the fact that the truck did not move and Defendant’s position and distance from the truck when he shot.

The Court did not overlook the cases cited by Defendant, but those cases are distinguishable because the officers in those cases were in the path of a moving vehicle and that gave them probable cause to believe that the suspects posed a threat of serious physical harm. For example, in *Singletary*, the court held that the use of deadly force was reasonable where the officer “was in the path of [the suspect]’s car when the latter accelerated toward him.” 804 F.3d at 1183. Similarly, in *Terrell v. Smith*, 668 F.3d 1244, 1254 (11th Cir. 2012), the court held that the use of deadly force was reasonable because the suspect had refused to stop the vehicle and “attempted to turn the car in a manner that caused it to strike the officer.” *Accord*

McCullough, 559 F.3d at 1208 (use of deadly force was reasonable where the suspect “drove his truck toward [a] deputy standing nearby in a parking lot”); *Troupe v. Sarasota Cnty.*, 419 F.3d 1160, 1168 (11th Cir. 2005) (use of deadly force was reasonable where the shooting officer was “directly in [the suspect’s] path as the [car] accelerated toward [the officer]”); *Robinson v. Arrugeta*, 415 F.3d 1252, 1256 (11th Cir. 2005) (use of deadly force was reasonable where the suspect drove a car toward the officer who was standing between the suspect’s car and a parked car). Moreover, although the officer in *Tillis v. Brown* was not in the immediate path of the car as it reversed toward him, the court held that the officer’s use of deadly force was reasonable because the officer was on foot and “[i]n close proximity to a moving vehicle,” that could have “swerve[d] toward the officer.” 12 F.4th 1291, 1299 (11th Cir. 2021).

The Court also did not overlook Defendant’s argument that even if the truck did not move and he was not in its path, his use of deadly force was reasonable because “the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.” *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007) (citing *Pace v. Capobianco*, 283 F.3d 1275, 1282 (11th Cir. 2002)). However, in the context of a suspect using a vehicle, it appears that this principle extends only to situations where the suspect’s prior

behavior or use of the vehicle gave an officer reason to believe that the vehicle had become a deadly weapon.

For example, in *Long*, even though the plaintiff “had not yet used the [stolen] police cruiser as a deadly weapon” the Eleventh Circuit held that the officer’s use of deadly force was reasonable because the plaintiff’s “unstable frame of mind, energetic evasion of the deputy’s physical control, [the plaintiff]’s criminal act of stealing a police cruiser, and [his] starting to drive ... gave the deputy reason to believe that [he] was dangerous.” *Id.* at 581–82 (footnote omitted). Similarly, in *Pace*, the Eleventh Circuit held that the officer’s use of deadly force against the plaintiff was reasonable because he had led the officers on a 15-minute high-speed, reckless car chase and a reasonable officer could have believed that the “chase was not over” when they fired on the plaintiff even though the car was stopped and he was not trying to run the officers over when the shooting occurred. *See* 283 F.3d at 1282 (“By the time of the shooting, [the plaintiff] had used the automobile in a manner to give reasonable policemen probable cause to believe that it had become a deadly weapon with which [the plaintiff] was armed.”).

With respect to whether it was feasible for Defendant to warn Mr. Settle of his intent to use deadly force before firing, a reasonable jury could find that it was because the evidence, in the light most favorable to Plaintiff, establishes that Defendant was standing around eight feet from a nonmoving truck when he shot.

See Underwood, 11 F.4th at 1331 (holding that it was feasible for a police officer to warn a fleeing suspect of his intent to use deadly force because at the time of the shooting, the officer “was still eight feet away from the car, which was still slowing as if to stop”). The Court did not overlook Defendant’s argument that it was not feasible for him to warn Mr. Settle of his intent to use deadly force because the truck’s engine was loud. However, that argument is undercut by Defendant’s testimony that he still “could hear Deputy Hart yelling” after he claimed that the truck started moving and he fell to the ground. *See* Doc. 45-5 at 48.

In sum, when the evidence is viewed in the light most favorable to Plaintiff, a reasonable jury could find that Defendant violated Mr. Settle’s constitutional right to be free from excessive force when he shot into a non-moving truck that did not pose a risk to Defendant or others.

Clearly Established

Defendant argues that Plaintiff has not identified a materially similar case that clearly established that his use of deadly force against Mr. Settle was unconstitutional. Plaintiff responds that at the time of this incident, the law was clearly established that deadly force cannot be used if the officer does not have a reasonable belief that the suspect posed a threat to the officer or others. The Court agrees with Plaintiff.

“To determine whether a right was clearly established at the time an officer acted, [the Court] ask[s] ‘whether the contours of the right were sufficiently clear that every reasonable officer would have understood that what he was doing violates that right.’” *Acosta v. Miami-Dade Cnty.*, 97 F.4th 1233, 1241 (11th Cir. 2024) (quoting *Prosper v. Martin*, 989 F.3d 1242, 1251 (11th Cir. 2021)). “A plaintiff may show that a right was ‘clearly established’ through: ‘(1) case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law.’” *Prosper*, 989 F.3d at 1251 (quoting *Perez v. Suszczyński*, 809 F.3d 1213, 1222 (11th Cir. 2016)).

Here, to the extent that Plaintiff relies on *Underwood* to show that it was clearly established that Defendant’s actions were unconstitutional, that reliance is misplaced because *Underwood* was decided in 2021 and the incident giving rise to this case occurred in 2020. See *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (“Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct.” (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004))).

However, in the context of a suspect fleeing in a vehicle, it has been clearly established since at least 2013 that when a driver “d[oes] not use or d[oes] not

threaten to use his car as a weapon,” an officer may not use deadly force against him. *Morton*, 707 F.3d at 1283; *see also Gaillard v. Commins*, 562 F. App’x 870, 876 (11th Cir. 2014) (citing *Garner*, *Morton*, and *Vaughan* for the proposition that it is clearly established that an officer cannot use deadly force when a suspect did not use or did not threaten to use his car as a weapon). Thus, at the time of the incident giving rise to this case, the law was clearly established that Defendant’s use of deadly force was unconstitutional because there is evidence from which a reasonable jury could find that Mr. Settle had not used or threatened to use his truck as a weapon when Defendant shot him.

* * *

Accordingly, for the reasons stated above, the Court finds that Defendant is not entitled to summary judgment on Count I.

State Law Battery (Count III)

Defendant argues that he is entitled to summary judgment on the state law battery claim because (1) his use of deadly force was reasonable; (2) he has immunity under §768.28(9)(a), Fla. Stat., because there is no evidence that his actions were done in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights or safety; and (3) he has immunity under §776.032(1), Fla. Stat., because he reasonably believed deadly force was necessary to prevent death or great bodily harm. Plaintiff responds that (1)

Defendant's use of deadly force was unreasonable; (2) §768.28(9)(a) does not apply because a reasonable officer in Defendant's position would not have shot Mr. Settle; and (3) §776.032(1) does not apply because there is a genuine issue of material fact as to the reasonableness of Defendant's belief that deadly force was necessary. The Court agrees with Plaintiff.

With respect to the first argument, "police officers are entitled to a presumption of good faith in regard to the use of force applied during a lawful arrest, and officers are only liable for damage where the force used is 'clearly excessive.'" *Davis v. Williams*, 451 F.3d 759, 768 (11th Cir. 2006) (quoting *City of Miami v. Sanders*, 672 So. 2d 46, 47 (Fla. 3d DCA 1996)). However, "[i]f an officer uses excessive force, the 'ordinarily protected use of force ... is transformed into a battery.'" *Id.* (quoting *Sanders*, 672 So. 2d at 47).

Here, based on the conclusion above that Defendant's use of force was excessive when the evidence is viewed in the light most favorable to Plaintiff, it follows that the use of force was unreasonable. *See Davis*, 451 F.3d at 768 (holding that because a triable issue of fact existed for the §1983 claim, summary judgment was also due to be denied as to the Florida battery claim).

With respect to the second argument, §768.28(9)(a) "shields officers from personal tort liability while acting in their scope of employment unless the officer 'acted in bad faith or with malicious purpose or in a manner exhibiting wanton and

willful disregard of human rights, safety, or property.’” *Gregory v. Miami-Dade Cnty.*, 719 F. App’x 859, 870 (11th Cir. 2017) (quoting §768.28(9)(a)). A “wanton and willful disregard of human rights or safety,” is “conduct that is worse than gross negligence.” *Coleman v. Hillsborough Cnty.*, 41 F.4th 1319, 1325 (11th Cir. 2022) (quoting *Peterson v. Pollack*, 290 So. 3d 102, 109 (Fla. 4th DCA 2020)).

Here, when the evidence is viewed in the light most favorable to Plaintiff, a reasonable jury could find that Defendant acted with wanton and willful disregard for Mr. Settle’s safety by intentionally using deadly force against him even though he did not act in a threatening manner or pose a threat of serious physical harm to Defendant or others. *See Gregory*, 719 F. App’x at 870 (holding that a police officer acted with wanton and willful disregard because “no objectively reasonable officer would have used excessive force” under the circumstances); *Cooks v. Kremler*, 2023 WL 2454490, at *10 (M.D. Fla. Jan. 30, 2023) (same).

With respect to the third argument, §776.032(1) “provides for self-defense immunity to civil claims based on the use of force.” *Gregory*, 719 F. App’x at 869 (citing §776.032(1)). The statute “limits the justifiable use of deadly force to situations where the person ‘reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.’” *Id.* at 870 (quoting §776.012(2), Fla. Stat.). “The analysis for Florida self-defense

immunity tracks the analysis under §1983.” *Id.* (citing *Penley v. Eslinger*, 605 F.3d 843, 855 (11th Cir. 2010)).

Here, when the evidence is viewed in the light most favorable to Plaintiff, a reasonable jury could find that Defendant did not reasonably believe that it was necessary to use deadly force because Mr. Settle did not use the truck against Defendant in a threatening way. *See id.* at 870 (holding that a police officer was not entitled to self-defense immunity under §776.032(2) “because there remain[ed] a jury issue as to whether [the plaintiff] made a threatening move and as to whether [the officer] reasonably believed the use of deadly force was necessary”).

Accordingly, for the reasons stated above, the Court finds that Defendant is not entitled to summary judgment on Count III.

Conclusion

In sum, for the reasons stated above, it is **ORDERED** that:

1. Defendant’s motion for summary judgment (Doc. 46) is **DENIED**.
2. The parties shall mediate this case as previously ordered, *see* Doc. 19 at ¶10, and if the case does not settle at mediation, the parties shall file a status report within 7 days after the mediation identifying several mutually agreeable dates and times during the following two weeks for a telephonic case management conference to schedule this case for trial.

DONE and ORDERED this 1st day of July, 2024.

A handwritten signature in blue ink, appearing to read "T. Kent Wetherell, II", with a stylized flourish at the end.

T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE

APPENDIX C

**ORDER DENYING HEARING IN THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT NO. 24-12436**

Entered on February 3, 2026

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12436

KIMBERLEY DIANE SETTLE,

A Personal Representative for the Estate of Jacob
Joseph Settle Sr,

Plaintiff-Appellee,

versus

SHERIFF CHIP SIMMONS, et al.,

Defendants,

DAVID COLLIER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:22-cv-22688-TKW-HTC

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before WILLIAM PRYOR, CHIEF JUDGE, and BRANCH and ABUDU, Cir-
cuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.