No. _____

In the Supreme Court of the United States

JOSEPH HEID,
Petitioner,

v.

MARK RUTKOSKI, ET AL.,
Respondent.

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

APPENDIX

Roderick Andrew Lee Ford
THE METHODIST LAW CENTRE
P.O. Box 357091
Gainesville, FL 32635
(813) 270-5012
methodistlawcenter@gmail.com

Attorney for Petitioner

Twenty-fourth day of December, MMXXV

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APPENDIX

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Appendix A
[Filed: July 10, 2025]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10068

JOSEPH HEID,

Plaintiff-Appellee,

versus

MARK RUTKOSKI,
FORREST BEST,

Defendants-Appellant,

JERRY L. DEMINGS, et al.

Defendants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:20-cv-00727-RBD-DCI

Before JILL, PRYOR, GRANT, and TJOFLAT, Circuit Judges.

TJOFLAT, Circuit Judge:

Orange County Sheriff's Deputies Mark Rutkoski and Forrest Best appeal the District Court's denial of qualified immunity in Joseph Heid's 42 U.S.C. § 1983 lawsuit. In his complaint, Heid alleges that Deputies Rutkoski and Best used unreasonable force in violation of the Fourth Amendment. Deputies Rutkoski and Best moved for summary judgment, asserting qualified immunity, but the District Court denied their motion. On appeal, they contend that the District Court erred in denying them qualified immunity because Heid failed to show they violated a constitutional right or that any such right was clearly established. After careful review, and with the benefit of oral argument, we reverse.

I.

The factual background of this appeal was the basis of a 2018 criminal trial in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida. The jury in that trial found Heid guilty of four counts: (1) Attempted Second Degree Murder of a Law Enforcement Officer, with a special finding that Heid actually discharged a firearm during the commission of the offense; (2) Aggravated Assault on a Law Enforcement Officer; (3) Resisting an Officer with Violence; and (4) Resisting an Officer without Violence. The jury instructions for the charge of Resisting an Officer without Violence specified that

Heid resisted Deputies Rutkoski and Best, whom Heid now sues.

* * *

On the evening of April 26, 2016, Heid, his wife, and their roommate were drinking alcohol at their home. Heid's daughter and stepson were also at the home. Around 9:00 PM, Heid and his wife got into an "ugly" verbal argument, causing him to leave and walk to a nearby park for about an hour "to try to cool things." He did not drive because he was not sure he could pass a breathalyzer test, and his wife said she would alert the police that he was driving under the influence.

Heid then returned to the house and resumed arguing with his wife. This argument resulted in a physical altercation—Heid's wife put her finger in his face and he put his wife in a self-described "submission hold" by mouthing her finger without biting down or inflicting pain. Heid's stepson observed this interaction and hit Heid in the back of the head. Heid then pinned his stepson on the floor with his body weight and threatened to hurt him if he ever did that again. Heid subsequently got off his stepson and left the house again for the nearby park.

While Heid was gone, the roommate called 911 and reported that Heid was physically fighting with his wife and tried to hurt his stepson. The roommate called back several minutes later to report there were about five guns in the house. Deputies Joseph Kramer and Johnerick Sanchez responded to the scene to investigate, arriving in separate cars. At the scene, the stepson relayed what had happened to him and his mother. Deputies Sanchez and Kramer

left the residence and were searching a nearby park for Heid when the stepson found them and reported that Heid had returned to the residence.

Now back at the residence, Deputies Kramer and Sanchez placed Heid's wife—who was intoxicated and belligerent—in Deputy Kramer's car to facilitate their investigation. Everyone except Heid had left the house. Deputy Kramer requested additional units to assist, and Deputies Patrick Lewis and Best separately arrived at the scene as backup. Deputies Lewis and Best were briefed on the situation when they arrived. While Deputy Best watched the front door of Heid's residence, Deputy Lewis interviewed Heid's wife. Heid's wife told Deputy Lewis about Heid being intoxicated, biting her finger, choking and threatening to "murder" his stepson, and having multiple guns—including an AK-47—in the house. Deputy Lewis could see the marks that Heid left on his wife's finger. Deputy Best, after being relieved from his position, interviewed the stepson. The stepson repeated to Deputy Best that Heid had acted violently and that there were guns in the house.

Deputy Rutkoski, who was the Acting Corporal that night, was the last officer to arrive at the scene. Deputy Kramer informed him that: (1) Heid had hit his wife and choked his stepson; (2) based on information from Heid's wife and stepson, there was probable cause to believe Heid had committed felony domestic battery by strangulation; (3) Heid had left the residence but went back inside; (4) Deputy Kramer called to Heid to exit the residence, but received no response; and (5) Heid had access to a gun safe in the house that contained five guns.

Deputy Rutkoski instructed Deputy Sanchez to go to the back of Heid's property to help establish a perimeter around the house. Deputy Sanchez determined the best vantage point was in the neighbor's backyard, so he stood on a stool looking over the neighbor's fence and into Heid's backyard. Deputy Best was stationed behind a patrol vehicle parked in the driveway in front of the garage attached to Heid's house. With these two officers in position, Deputy Rutkoski activated a patrol vehicle's public address system, identified himself as the Orange County Sheriff's Office, and ordered Heid to exit the house with his hands up.

Heid was not in the house, however. Allegedly oblivious to the ongoing police investigation, Heid was sitting in the backyard against a citrus tree, smoking cigarettes, and trying to calm himself down. He claims to have not heard Deputy Rutkoski's commands. Rather, he heard the rustling of leaves and saw Deputy Sanchez's flashlight on the other side of the fence. He thought the person with a flashlight was holding a gun and asked, "Are you going to shoot me?" Deputy Sanchez commanded Heid to keep his hands up and stop moving—which Heid also claims to have not heard—but Heid walked toward his back porch and entered his house. While inside, Heid armed himself with a Winchester .32 caliber lever action rifle.

While Heid was walking to the house, Deputy Sanchez announced over the radio, "He's in the back!" Deputy Best ran through the front door of the house on his way to the backyard to assist but heard Deputy Sanchez announce over the radio that Heid was entering the house. Deputy Best immediately

turned around and retreated back through the front door. Deputies Kramer and Lewis, however, ran to the backyard to check on Deputy Sanchez. They stationed themselves facing the backyard as Deputy Sanchez warned that there were guns inside the house.

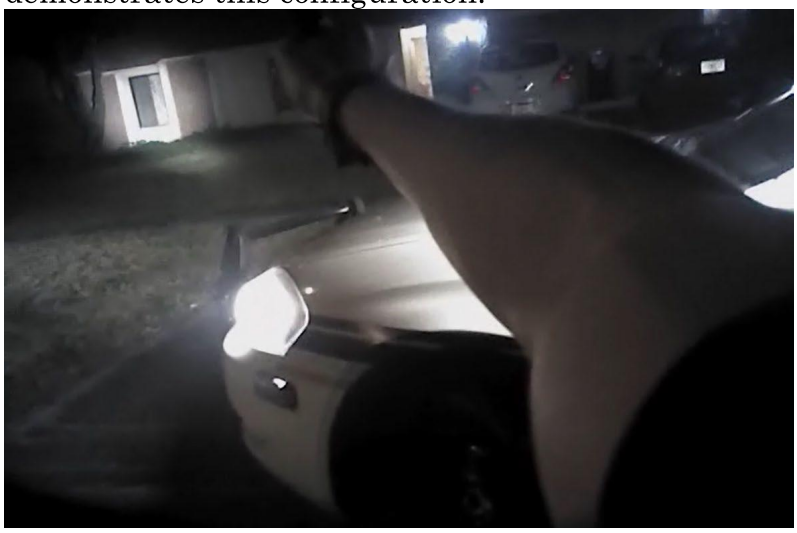
Moments later, Deputies Rutkoski and Best heard a loud gunshot from the backyard, likely from a rifle or shotgun. They then heard dozens of gunshots over the next several seconds, including several that sounded like the first loud gunshot. Heid had fired in the direction of Deputy Sanchez, causing a gunfight to ensue in the backyard between Heid and Deputies Sanchez, Lewis, and Kramer.

Deputy Rutkoski knew that Deputies Sanchez, Kramer, and Lewis were all carrying .45 caliber pistols and thus he believed the loud gunshots were from Heid discharging one of the rifles or shotguns he kept in the house. Deputy Best said he heard gunshots within seconds of exiting the home. He also heard gunshots from both handguns and a rifle or shotgun, causing him to believe that Heid was shooting at the deputies in the backyard. Deputies Rutkoski and Best took cover behind a patrol vehicle parked in the driveway. Once the gunshots stopped, Deputy Rutkoski asked over the radio whether the deputies were all right, and Deputy Sanchez said "10-4," indicating he was not injured. Deputies Kramer and Lewis did not respond, causing Deputy Rutkoski to fear they were shot and incapacitated.

Deputies Best and Rutkoski focused on the front entrance-way to Heid's house. Heid's front door is in an alcove set back approximately five feet from the front edge of the attached garage, which sits

immediately to the right of the door. Because the garage extends forward toward the street, it creates an L-shaped corner where its outer wall meets the entrance walkway and alcove. A driveway runs in front of the garage, and the patrol vehicle was parked askew across it, approximately ten yards from the garage. That layout—the recessed door, projecting garage, and angled vehicle—formed a visual barrier that obscured the front door from certain angles in the driveway. Deputy Best, taking cover near the vehicle's engine block, had a direct line of sight to the door. But Deputy Rutkoski, behind the vehicle's rear bumper, could not see past the corner.

A still image from Deputy Best's body camera demonstrates this configuration:



Approximately twenty seconds after taking cover, Deputy Best alerted Deputy Rutkoski that Heid was exiting through the front door. A moment later, Deputies Best and Rutkoski claim they saw an object thrown from the front door toward the patrol vehicle.

Heid disputes that anything was thrown, and no such object is visible on the video recorded by a neighbor's surveillance camera. Nevertheless, according to Heid, before he opened the front door he began screaming, "I'm unarmed. I'm coming out. I'm surrendering. I give up." And he claimed that as he opened the door, he reasserted he was surrendering and unarmed. Neither of the deputies heard him make these statements.

Although the parties dispute the exact manner in which Heid proceeded through the entrance and toward Deputies Best and Rutkoski, the neighbor's camera captured Heid exiting the front door area. That video shows Heid exiting at a fairly rapid pace toward the positions of Deputies Rutkoski and Best. And while it certainly does not show his hands up in a classic surrender position, it is not clear enough to indicate whether Heid's arms were in front of him, as Heid alleges, or swinging, as Deputies Rutkoski and Best claim.

Deputy Best observed Heid's approach and feared that Heid would continue the gunfight in the front yard. Deputy Rutkoski only saw Heid once he cleared the corner of the garage, claiming Heid "closed on [his] position" in a "charge" movement. He, too, feared that Heid intended to continue the gunfight. Consequently, Deputy Rutkoski discharged his firearm fourteen times in rapid succession after Heid closed to within three or four feet of him. Deputy Best simultaneously discharged his firearm five or six times. The audio on a neighbor's cell phone video and Deputy Best's body camera confirm that the deputies were shooting for three to four seconds. The shooting continued as Heid fell to the ground, and he was

struck six times. While on the ground, Heid briefly continued moving before ceasing and vocalizing his surrender.

II.

Heid, now serving his sentence in a Florida prison, sued under § 1983 the Orange County Sheriff's Department, the Orange County Sheriff in his official capacity, and Deputies Rutkoski and Best in their personal capacities. As relevant here, he claimed Deputies Rutkoski and Best violated his Fourth Amendment right to be free from unreasonable searches and seizures by shooting him while he was unarmed and surrendering. Deputies Rutkoski and Best eventually moved for summary judgment, asserting qualified immunity.

The District Court denied qualified immunity to Deputies Rutkoski and Best, stating, "Viewing the evidence in the light most favorable to [Heid] and drawing all reasonable inferences in his favor, the Court determines there is a genuine factual dispute as to whether Best and Rutkoski unconstitutionally subjected [Heid] to excessive force in violation of clearly established law." *Heid v. Rutko-ski*, No. 6:20-cv-727, 2023 WL 9190644, at *6 (M.D. Fla. Dec. 16, 2023). The Court cited Heid's facts as these: (1) Heid was unarmed as he exited the front door; (2) he came out of the door yelling, "I'm unarmed, don't shoot. I'm coming out. I surrender, I give up"; and (3) Heid was shot while on the ground. *Id.* The District Court found there was no indication, based on Heid's version of the facts, that he posed a risk to anyone when exiting the front door. *Id.*

The District Court also determined that clearly established law provided Deputies Rutkoski and Best sufficient warning that shooting Heid under these circumstances would constitute excessive force, citing *Robinson v. Sauls*, 46 F.4th 1332, 1345 (11th Cir. 2022). *Id.*

Deputies Rutkoski and Best timely appeal.

III.

"We review de novo a grant of summary judgment based on qualified immunity, construing the facts and drawing all inferences in the light most favorable to the nonmoving party." *Franklin v. Popovich*, 111 F.4th 1188, 1193 (11th Cir. 2024) (internal quotation marks omitted). However, "we cannot ignore uncontradicted evidence," such as a video recording, "simply because it is unfavorable to [the non-moving party]." *See Fennell v. Gilstrap*, 559 F.3d 1212, 1215 n.3 (11th Cir. 2009), *abrogated on other grounds as recognized by Crocker v. Beatty*, 995 F.3d 1232, 1248 (11th Cir. 2021). If the non-moving party's version of the facts is "blatantly contradicted by the record, so that no reasonable jury could believe it," we do not adopt that version of the facts. *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 1776 (2007).

"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." *Franklin*, 111 F.4th at 1193–94 (internal quotation marks omitted).

IV.

To obtain qualified immunity, the official asserting the immunity "must first prove that he was acting within his discretionary authority" when he performed the acts of which the plaintiff com-plains. *Bowen v. Warden, Baldwin State Prison*, 826 F.3d 1312, 1319 (11th Cir. 2016) (internal quotation marks omitted). There is no dispute that Deputies Rutkoski and Best were acting within the scope of their discretionary authority when the allegedly wrongful acts occurred. *See Robinson*, 46 F.4th at 1340.

The burden thus shifts to Heid to show: (1) the defendants violated a constitutional right; and (2) the right was clearly established at the time of the alleged violation. *See Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004). We conduct a two-part inquiry to assess whether Heid met this burden. First, we consider whether, taken in the light most favorable to Heid, the evidence shows that Deputies Rutkoski and Best violated a constitutional right—in this case, the Fourth Amendment right to be secure against unreasonable seizures. *See Graham v. Connor*, 490 U.S. 386, 394, 109 S. Ct. 1865, 1871 (1989); *Perez v. Suszczynski*, 809 F.3d 1213, 1218 (11th Cir. 2016). The touchstone of our analysis is therefore "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, 105 S. Ct. 1694, 1699 (1985)).

"Reasonableness is a fact-specific inquiry . . . ." *Id.* at 1279. We consider the reasonableness of the force

used to effect a seizure "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, 109 S. Ct. at 1872 (citing *Terry v. Ohio*, 392 U.S. 1, 20–22, 88 S. Ct. 1868, 1879–81 (1968)). And the inquiry turns on such factors as "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Id.* (citing *Garner*, 471 U.S. at 8–9, 105 S. Ct. at 1699–1700). As the Supreme Court recently confirmed, this analysis precludes "put[ting] on chronological blinders." *Barnes v. Felix*, 145 S. Ct. 1353, 1359 (2025). "The history of the interaction, as well as other past circumstances known to the officer, thus may inform the reasonableness of the use of force." *Id.* at 1358.

Heid does not meet his burden of showing the violation of a constitutional right. To begin, Heid had just engaged in a gunfight in the backyard with Deputies Sanchez, Lewis, and Kramer. Heid is collaterally estopped from relitigating whether he knowingly attempted to shoot Deputy Sanchez in his backyard because he was convicted in a Florida court of Attempted Second Degree Murder of a Law Enforcement Officer, with a special finding that he "did actually discharge a firearm during the commission of the offense." *See Quinn v. Monroe Cnty.*, 330 F.3d 1320, 1328 (11th Cir. 2003) ("Collateral estoppel, i.e., issue preclusion, refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided."). And though Heid claimed in his post-conviction civil deposition that he heard no police commands before

that gunfight began, he is also estopped from relitigating whether he knowingly resisted the five officers as they executed their duties because of his convictions of Resisting an Officer with Violence and Resisting an Officer without Violence.

It is also undisputed that Deputies Rutkoski and Best reasonably believed the following information. Heid was involved in a domestic dispute with his wife and stepson earlier in the evening—witnesses reported that Heid had bitten his wife, choked and threatened to harm his stepson, and had multiple guns in his home. Heid resisted the officers. Heid then engaged in a gunfight in the backyard with Deputies Sanchez, Lewis, and Kramer, during which he attempted to murder Deputy Sanchez. Deputies Rutkoski and Best heard the backyard gunfight from their location in the front yard. In that gunfight, the deputies heard distinctive gunshots indicating that Heid was shooting a rifle or shotgun. Heid went into the house after the backyard gunfight, where there were more guns. Heid then came out of the front door around twenty seconds later, at a fairly rapid rate of speed.

A reasonable officer in Deputies Rutkoski's and Best's positions could have believed, in the split seconds when Heid came out the door and only twenty-seven seconds after the backyard gun fight, that Heid was still armed or had gathered another weapon while inside the home. *See Franklin*, 111 F.4th at 1194 (holding that an officer may reasonably believe, based on the totality of the circumstances, that a suspect is armed and dangerous even if the suspect is ultimately determined to be unarmed). Deputies Rutkoski and Best simply "had no way of

knowing if [Heid] had another weapon before having searched him (which [they] had not yet done)." *Id.* at 1196. They were not required to risk their own lives to apprehend a suspect they reasonably believed to pose great danger and who "up to that point, had shown anything but an intention of surrendering." *Crenshaw v. Lister*, 556 F.3d 1283, 1293 (11th Cir. 2009) (footnote omitted).

And it makes no difference whether Heid's arms were out in front of him as he claims, or swinging by his side as Deputies Rutkoski and Best represent. Accepting Heid's version of the facts that he vocalized his surrender and had his arms out in front of him, his body movements caught on the neighbor's video camera are not consistent with the claim that he was obviously surrendering.[1] Importantly, Heid's arms were not over his head with palms open in a classic surrender position. The officers had no way of knowing whether Heid was telling the truth, and Heid's physical actions belied his alleged assertions. Although Heid was ultimately shown to be unarmed as he came out of the front door, there is no genuine issue of material fact as to whether Deputies Rutkoski and Best—based on the video evidence and the information they had at that point—knew that Heid did not possess any weapons. *See Franklin*, 111 F.4th at 1194. Further supporting the reasonable-ness of the officers' actions was the fact that Heid advanced close to the positions of Deputies Best and Rutkoski,

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[1] Deputy Best's body camera captures a few, indistinguishable words from Heid. We will not attempt to guess what Heid actually said (or whether Deputies Rutkoski and Best could understand these vocalizations), instead crediting his assertion that he made vocalizations of surrender.

appearing suddenly from behind a blind corner in the seconds immediately preceding the shooting.

Critically, all of these events happened in a short period of time. *See Graham*, 490 U.S. at 396–97, 109 S. Ct. at 1872 ("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."). "[I]n circumstances that are tense, uncertain, and rapidly evolving" we cannot dismiss the fact that Deputies Rutkoski and Best were "required to make split-second judgments" about the amount of necessary force. *See Singletary v. Vargas*, 804 F.3d 1174, 1181 (11th Cir. 2015) (internal quotation marks omitted). And Deputies Rutkoski and Best, twenty-seven seconds after Heid's gunfight with the other officers and his flight into a house containing multiple firearms, were not required "in a tense and dangerous situation to wait until the moment [Heid] use[d] a deadly weapon to act to stop [Heid]." *See Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007). Their use of force to effect Heid's seizure was reasonable.

Moreover, the use of force in the split-seconds after Heid fell to the ground was not excessive force. Deputies Rutkoski's and Best's use of force lasted only three to four seconds in total, until they were fully aware that Heid had fallen to the ground and ceased his movements. They were "not required to interrupt a volley of bullets until [they] knew that" Heid was not armed and no longer posed any danger. *See Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 822 (11th Cir. 2010). This is not a case where the

deputies believed Heid was unresponsive and no longer a threat, yet continued shooting him. *Cf. Robinson*, 46 F.4th at 1342–44 (determining officers used excessive force by shooting a suspect twenty seconds after a flash-bang revealed that the suspect was unconscious). Nor can Heid's prior violent conduct be chronologically severed from his exit of the house to limit the inquiry into the reasonableness of Deputies Rutkoski's and Best's actions. *See Barnes*, 145 S. Ct. at 1360 ("[A] court cannot thus 'narrow' the totality-of-the-circumstances inquiry, to focus on only a single moment. It must look too, in this and all excessive-force cases, at any relevant events coming before."). In these tense circumstances, it was not unreasonable for Deputies Rutkoski and Best to very briefly continue using force after Heid fell.

Consequently, Deputies Rutkoski's and Best's use of force against Heid was reasonable and did not violate the Fourth Amendment. Because we conclude that Deputies Rutkoski and Best did not violate any constitutional right, we do not reach the issue of whether such right was clearly established.

V.

Because Deputies Rutkoski and Best did not violate Heid's Fourth Amendment rights, they are entitled to qualified immunity. The judgment of the District Court is reversed.

REVERSED AND REMANDED.

Appendix B
[Filed: Aug. 26, 2025]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10068

JOSEPH HEID,

Plaintiff-Appellee,

versus

MARK RUTKOSKI,
FORREST BEST,

Defendants-Appellant,

JERRY L. DEMINGS, et al.

Defendants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:20-cv-00727-RBD-DCI

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before JILL PRYOR, GRANT, and TJOFLAT, Circuit 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 Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.

Appendix C
[Filed: Dec. 19, 2023]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOSEPH HEID,

Plaintiff,

v. Case No: 6:20-cv-727-RBD-DCI

MARK RUTKOSKI, et al.,

Defendants.
_____/

ORDER

This cause is before the Court on the Motion for Summary Judgment filed by Mark Rutkoski and Forrest Best (Doc. 136). Plaintiff filed a Response (Doc. 139) to the Motion for Summary Judgment. Defendants filed a Reply (Doc. 146) to the Response.

I. FACTUAL BACKGROUND

Plaintiff filed a Second Amended Complaint (Doc. 12). He alleges that, on April 26, 2016, he "was at his private residence located at 9549 Holbrook Drive, Orlando, Florida 32817, when the Orange County Sheriff's Department dispatched deputy sheriffs to his residence in order to apprehend or arrest

Plaintiff Heid." (Doc. 12 at 3.) He exited his home with his hands up, verbally informing the officers he was unarmed and surrendering. (*Id.* at 4.) Plaintiff states that Defendants Rutkoski and Best, who were both Orange County Deputy Sheriffs, shot him "when he exited his home with his hands up and away from his body." (*Id.* at 4.) Rutkoski fired twice into Plaintiff's left thigh without warning. (*Id.* at 5.) Plaintiff turned his back and was shot again, and he fell face down to the ground and was shot again. (*Id.*) Plaintiff then rolled onto his back and was shot again. (*Id.*) Collectively, Rutkoski and Best shot Plaintiff six times. (*Id.*) Plaintiff alleges that Rutkoski and Best should have known that he (Plaintiff) was surrendering and that he (Plaintiff) had no weapons. (*Id.* at 4.)

There was an underlying state criminal case in which Plaintiff was found guilty of one count of attempted first degree murder and three counts of aggravated assault with a weapon. (*Id.* at 2.) Plaintiff states he is currently serving a twenty-year sentence.[1] (*Id.*) Plaintiff states he had also been charged with two counts of resisting an officer with violence, but no action was taken on those counts. (*Id.*). He further states Rutkoski and Best were State witnesses at his trial. (*Id.* at 2-3.) However, there is no indication from the Second Amended Complaint as to who were the victims of the attempted murder and aggravated assault.

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[1] The Court notes that Plaintiff filed a copy of his sentence separately from the Second Amended Complaint, which reflects that he received a total sentence of life imprisonment. (Doc. 20-2.)

The Second Amended Complaint contains two counts. Count One involves Defendant "Orange County Sheriff's Office." John W. Mina in his official capacity as Sheriff of Orange County filed a Motion to Dismiss (Doc. 41), which the Court granted. (Doc. 74.)

Count Two involves Defendants Rutkoski and Best. Plaintiff states these Defendants knew or should have known that he was surrendering and unarmed and that he posed no threat to these Defendants. (*Id*. at 8.) He alleges these Defendants "can articulate no facts that show that Plaintiff Heid violated or refused to follow any of their commands, prior to their shooting him." (*Id*.) Plaintiff has asserted an excessive force claim against Rutkoski and Best (Count Two).

Best submitted an Affidavit (Doc. 136-4) stating that, on April 26, 2016, while on patrol, he received a radio communication at 10:45 p.m. "from Deputy Joseph Kramer requesting backup from two additional patrol units at 9549 Holbrook Drive in Orlando, Florida in response to a 911 call regarding a domestic battery." (*Id*. at 2.) Upon arrival, Deputies Kramer and Lewis advised him that a felony domestic battery had occurred and that Plaintiff was in the house alone. (*Id*.) Best was also advised that Plaintiff threatened to kill his stepson (who believed that Plaintiff would shoot him), that probable cause existed to arrest Plaintiff for the crime of felony domestic battery by strangulation, and that there were multiple guns in the residence including military style rifles and shotguns. (*Id*. at 2-3.)

Deputy Rutkoski assigned Best to watch the front door, and Best took a position behind Rutkoski's

patrol vehicle. (*Id.* at 3.) Best heard Deputy Johnerick Sanchez "yell commands at Plaintiff" and then heard Johnerick on the radio announce "He's in the back! He's in the back!" (*Id.*) Best ran through the front door of the house to assist Sanchez, and, when he reached the kitchen, he heard Sanchez announce over the radio that Plaintiff was entering the house. (*Id.*) Best knew there were guns in the house, and he immediately turned around and exited the house. (*Id.* at 4.) Best and Rutkoski took cover behind a patrol vehicle. (*Id.*) Best heard gunfire from the rear of the house and believed that Plaintiff was shooting at the deputies. (*Id.*)

Shortly after the gunfire stopped, Plaintiff exited the home through the front door in a threatening manner and threw an unknown object in Best's direction; Best thought the object was a grenade or a distraction. (*Id.*) Plaintiff continued to close in on Best's position and brought both hands back towards his waist, which caused Best to believe that Plaintiff was reaching for a weapon. (*Id.* at 4-5.) Best believed that Plaintiff, who had already engaged in a gunfight with deputies in the back yard, was intending to continue the gunfight in the front yard. (*Id.* at 5.) Within two to three seconds of Plaintiff advancing toward Best's position, Best discharged his firearm, firing between five or six rounds. (*Id.*)

Rutkoski submitted an Affidavit (Doc. 136-5) stating that, on April 26, 2016, while on patrol, he received a telephone call at approximately 11:00 p.m. from Deputy Joseph Kramer requesting his presence at 9549 Holbrook Drive in Orlando, Florida in response to a 911 call regarding domestic battery. (*Id.* at 2.) Kramer had developed probable cause to

believe that Plaintiff had committed felony domestic battery by strangulation. (*Id.*) Upon arrival, Rutkoski was informed that Plaintiff threatened to kill his stepson and that Plaintiff had an AK-47, four or five rifles, an SKS, three shotguns, and a couple of handguns. (*Id.* at 3.) Rutkoski instructed Sanchez to go to the back of the property. (*Id.*)

Using the patrol vehicles' public address system, Rutkoski identified himself and ordered Plaintiff to exit the house with his hands up. (*Id.*) Rutkoski then heard Sanchez announce over the radio, "He's going back in the house.!" (*Id.*) Kramer and Deputy Patrick Lewis then ran to the backyard to check on Sanchez. (*Id.*) Rutkoski then heard a loud gunshot from the backyard, which Rutkoski believed came from a shotgun. (*Id.* at 4.) Rutkoski heard dozens of gunshots over the next several seconds, which Rutkoski believed were from Plaintiff discharging one of the rifles or shotguns that Plaintiff kept in his house. (*Id.*)

Rutkoski and Best took cover behind a patrol vehicle, and Rutkoski heard Sanchez over the radio say he was uninjured. (*Id.*) Kramer and Lewis did not respond, and Rutkoski feared they had been shot. (*Id.*) Rutkoski saw an object being thrown from the house, which he thought was an explosive device or a diversion. (*Id.*) The object was later determined to be a beer can and landed within several feet of the vehicle. (*Id.*) Plaintiff then charged towards Rutkoski, causing Rutkoski "to fear that [Plaintiff] intended to continue the gunfight with law enforcement; therefore, [Rutkoski] discharged [his] firearm." (*Id.*) Rutkoski believed Plaintiff was still in possession of a firearm or weapon at the moment he discharged

his firearm. (*Id*.) Rutkoski discharged 14 rounds in rapid succession within approximately two to three seconds. (*Id*.)

Plaintiff testified at his deposition that, on the day of the shooting, he had been drinking Four Lokos, an alcoholic beverage, throughout the day. (Doc. 136-1 at 119.) His wife had also consumed alcohol on that day, and she became inebriated. (*Id*. at 123-25.) His wife "became belligerent . . . and very verbally abusive." (*Id*. at 127.) Another woman staying at their home, Catherine, was also drunk on the evening of the shooting. (*Id*. at 133.) Plaintiff and his wife had a verbal argument, which "got really ugly." (*Id*. at 136.)

Plaintiff left the home at about 9:00 p.m. "to try to cool things." (*Id*.) Plaintiff left the house on two occasions that evening. (*Id*. at 138.) When he left the first time, "it just got loud, cussing and cursing, and it wasn't—nothing was being solved. It just kept getting worse and worse." (*Id*. at 139.) The argument was between Plaintiff and his wife. (*Id*.) Plaintiff was going to drive away, but his wife stated she would "call the police for a DUI if [he] left." (*Id*. at 140.) Plaintiff was gone from the home for "[a]bout an hour." (*Id*. at 141.) Plaintiff "walked [by himself] to the park," which was "three or four blocks away." (*Id*.)

When Plaintiff returned home, he and his wife argued again and it "became a physical altercation." (*Id*. at 143.) He put his wife in a submissive hold. (*Id*. at 143- 45.) Plaintiff's stepson became concerned for his mother's well-being and hit Plaintiff in the back of the head. (*Id*. at 145.) Plaintiff "pinned" his stepson and then left the house a second time to cool

off. (*Id*. at 147-50.) Plaintiff again went by himself to the park. (*Id*. at 149.)

Plaintiff left for about an hour and returned to the backyard of his house. (*Id*. at 151.) He did not "go through the house, . . . [he] just went straight to the backyard." (*Id*.) Plaintiff sat against a grapefruit tree in his backyard and was smoking cigarettes to calm himself down. (*Id*. at 153.) Plaintiff then heard "the rustling of the leaves" and saw a flashlight. (*Id*. at 154.) The person holding the flashlight was not in Plaintiff's yard; rather, he was on the other side of the fence. (*Id*. at 156.) Plaintiff heard the rustling of leaves behind him and in his backyard. (*Id*.) Plaintiff noticed two individuals in his yard along with the individual on the other side of the fence. (*Id*. at 158.) Plaintiff did not know who they were. (*Id*.)

Plaintiff asked the individual with the flashlight "are you going to shoot me." (*Id*. at 159.) The individual did not reply. (*Id*. at 162.) Plaintiff walked up to the person with the flashlight and noticed that the flashlight was on the bottom of a handgun barrel. (*Id*. at 166.) There were two individuals in his backyard and another individual on the other side of the fence. (*Id*. at 198, 200.) Plaintiff did not know that they were law enforcement. (*Id*. at 200.) He believed that they were friends of his stepson. (*Id*.)

After the individual failed to reply, Plaintiff went to his back porch. (*Id*. at 182.) As he walked toward the porch, Plaintiff saw another person in the bushes. (*Id*. at 185.) Plaintiff asked the person in the bushes, "you got anything to say," and the person did not reply. (*Id*.) Plaintiff heard no commands from the individuals. (*Id*. at 198.)

Plaintiff next went to his back porch and smoked a cigarette. (*Id*. at 195.) He then heard shots being fired in his direction. (*Id*. at 196-97.) Plaintiff denied having any weapons in his possession at any point that evening. (*Id*. at 197, 202.) Plaintiff fell into the bathroom in his home, slipped, and landed in the shower. (*Id*. at 203-04.) Plaintiff was unaware that the individuals shooting at him were law enforcement. (*Id*. at 200.) Plaintiff believed the individuals were friends of his stepson. (*Id*. at 187, 200-01, 217-18.)

Plaintiff left the bathroom and proceeded rapidly to the front door. (*Id*. at 205, 210.) Plaintiff wanted the individuals to follow him through the front door and lead them out of the house, in order to protect his family. (*Id*. at 205-06, 210.) Plaintiff was not carrying any items. (*Id*. at 207.) Shots were being fired as he proceeded to the front door. (*Id*. at 207-11.) Plaintiff opened the front door and was screaming, "I'm coming out. I'm unarmed, don't shoot. I'm coming out. I surrender, I give up." (*Id*. at 213-14, 217, 224.) Plaintiff proceeded "very slowly," and his hands were "up and away from [his] person, not fully extended, but . . . up and away from [his] person." (*Id*. at 216.) Plaintiff was not handling any items as he stepped from the front door. (*Id*. at 207.)

Plaintiff went down a walkway and noticed law enforcement. (*Id*. at 218- 19.) Plaintiff heard no law enforcement commands. (*Id*. at 219.) Plaintiff then noticed "two sheriffs right there. I can see them." (*Id*.) At that moment, "Rutkoski, from right there to there, pop-pop. He shoots me in my leg . . . . So I turned my back to him, and he shoots me again." (*Id*. at 219.). Plaintiff then "got on the ground." (*Id*.). Plaintiff saw

Rutkoski fire a gun, but he did not see Best do so. (*Id*. at 220.) Neither Rutkoski nor Best said anything before firing shots. (*Id*. at 222.) Plaintiff was struck six times, and he was struck after he went to the ground. (*Id*. at 224-26.)

Before Plaintiff exited the front door, he had no knowledge that law enforcement had been summoned to his home. (*Id*. at 137.) Plaintiff was unaware that a family member called 911, and Plaintiff first learned of the presence of law enforcement when he saw them in his front yard after he exited the front door. (*Id*. at 137.)

Plaintiff admitted owning many guns but denied using or handling any guns on the night of the shooting. (*Id*. at 168, 172-74, 181, 197-98, 202.) Plaintiff did not know how his gun ended up on his back porch on the night of the incident or how forensics crime scene investigators recovered six shell casings of a .32 caliber on his bathroom floor. (*Id*. at 175-76, 180.)

II. PLAINTIFF'S CRIMINAL PROCEEDINGS

As a result of Plaintiff's conduct on April 26, 2016, he was charged by amended information on February 2, 2018, with attempted first degree murder of a law enforcement officer (Sanchez) (Count One), aggravated assault with a deadly weapon of a law enforcement officer (Sanchez) (Count Two), resisting an officer with violence (Sanchez, Lewis, Kramer) (Count Three), and resisting an officer without violence (Rutkoski, Best, Sanchez, Lewis, Kramer) (Count Four). (Doc. 136-14.) A jury found Plaintiff guilty as to the lesser-included offense of attempted

second degree murder of a law enforcement officer in Count One and guilty as to Counts Two, Three, and Four.[2] (Doc. 136-18 at 1-3.) (*Id*. at 2.) The trial court adjudicated Plaintiff guilty of the crimes and sentenced him to "[l]ife, plus fifteen." (Doc. Nos. 136-1 at 248, 136-19.)

"Under Florida law, a defendant in a civil proceeding may use collateral estoppel to prevent a plaintiff who previously was convicted by plea in a criminal case from relitigating an issue disposed of in his criminal proceedings, even though the civil defendant was not a party to the criminal case." *Cortes v. Broward Cnty., Fla*., 758 F. App'x 759, 765 (11th Cir. 2018). Defendants argue that the collateral estoppel doctrine applies to these facts: "Plaintiff knew that Deputy Sanchez was a law enforcement officer; Plaintiff intentionally disobeyed lawful orders by Deputy Sanchez to stop and get his hands up; [and] Plaintiff attempted to murder Deputy Sanchez by shooting at him with his Winchester rifle." (Doc. 136 at 14.)

III. LEGAL STANDARD

Summary judgment is appropriate only if it is shown "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 Supreme Court has explained the summary judgment standard:

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[2] The jury found that Plaintiff discharged a firearm during the commission of the offense in Count One. (Doc. 136-18 at 2.)

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986).

The movant may meet this burden by presenting evidence which would be admissible at trial indicating there is no dispute of material fact or by showing that the nonmoving party has failed to present evidence in support of some elements of its case on which it bears the ultimate burden of proof. *Celotex*, 477 U.S. at 322–324. If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party, to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence. *Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir. 1992).

Thus, once the moving party has discharged its burden, the nonmoving party must "go beyond the

pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S. at 324 (quotation omitted). The nonmoving party may not rely solely on "conclusory allegations without specific supporting facts." *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). Nevertheless, "[i]f there is a conflict between the parties' allegations or evidence, the [nonmoving] party's evidence is presumed to be true and all reasonable inferences must be drawn in the [nonmoving] party's favor." *Allen v. Bd. Of Pub. Educ.*, 495 F.3d 1306, 1314 (11th Cir. 2007).

IV. ANALYSIS

Plaintiff alleges that Defendants Best and Rutkoski

> knew, or should have known, that Plaintiff Heid was surrendering and that he was unarmed, while he was slowly exiting his personal residence, that he posed no threat the Defendants. But even if the Defendants were unsure, they had a duty to verbally forewarn the Plaintiff that he could be shot, unless he followed their verbal instructions and commands—but the Defendants directed no verbal forewarnings to the Plaintiff Heid, before they shot him.

(Doc. 12 at 8.) According to Plaintiff, Defendants Best and Rutkoski "shot Plaintiff Heid for no reason; and, by doing so, they abused their legal authority 'under color of law,' in violation of Plaintiff Heid's Fourth Amendment Right to be free from unreasonable searches and seizures." (Doc. 12 at 9.)

Defendants allege that they are entitled to qualified immunity. "Qualified immunity protects a government official from being sued for damages under § 1983 unless preexisting law clearly establishes the unlawfulness of his actions, such that any reasonable official in his position would be on notice that his conduct was unlawful." *Hunter v. City of Leeds*, 941 F.3d 1265, 1278 (11th Cir. 2019). To obtain qualified immunity, "an official must first establish that he was acting within his discretionary authority when he engaged in the allegedly unlawful conduct." *Id.* Once the official establishes that he was acting within his discretionary authority, the burden shifts to the plaintiff "to show that the officers violated his constitutional rights, and that those rights were clearly established at the time of the alleged misconduct." *Id.*; *see also Montero v. Nandlal*, 597 F. App'x 1021, 1024 (11th Cir. 2014) (the plaintiff must satisfy a two-part test to meet this burden: (1) he must show that the officer's conduct violated a constitutional right, and (2) if so, the plaintiff must also show that the right was clearly established at the time of the incident). "For a right to be clearly established, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019) (citation and quotation omitted).

Here, Best and Rutkoski were performing discretionary functions when responding to a 911 call and assisting efforts to arrest Plaintiff. *See Hunter*, 941 F.3d at 1278 n.16 ("[t]he pursuit and apprehension of suspected criminals is a core discretionary function of the police."). Thus, the burden shifts to Plaintiff to show that Best and Rutkoski "violated his constitutional rights and that those rights were clearly established at the time of the allege misconduct." *Id.* Plaintiff alleges that Best and Rutkoski violated his clearly established Fourth Amendment right not to be subjected to excessive force. Viewing the evidence in the light most favorable to Plaintiff and drawing all reasonable inferences in his favor, the Court determines there is a genuine factual dispute as to whether Best and Rutkoski unconstitutionally subjected Plaintiff to excessive force in violation of clearly established law.

"The use of deadly force by the police is a seizure subject to the Fourth Amendment's requirement of reasonableness." *Id.* at 1278. Determining reasonableness is "a fact-specific inquiry that turns on such factors as 'the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.'" *Id.* at 1279 (citation and quotation omitted). Reasonableness should be "determined from the perspective of the officer, and not with the 20/20 vision of hindsight." *Id.* (citation and quotation omitted). An officer may constitutionally use deadly force when he or she

> (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.

Montero v. Nandlal, 597 F. App'x 1021, 1026 (11th Cir. 2014) (citations and quotation omitted.)

Accepting Plaintiff's account of the events leading to the shooting, the Court concludes that Best and Rutkoski violated his Fourth Amendment right to be free from the use of excessive force. Taking the facts in the light most favorable to Plaintiff, Plaintiff was unarmed as he exited the front door,[3] and he came

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[3] "Under Florida law, collateral estoppel will preclude relitigation of an issue when (1) an identical issue, (2) has been fully litigated, (3) by the same parties or their privies, and (4) a final decision has been rendered by a court of competent jurisdiction." *Wingard v. Emerald Venture Florida LLC*, 438 F.3d 1288, 1293 (11th Cir. 2006) (citation and quotation omitted). Here, Plaintiff was convicted of attempted second-degree murder of a law enforcement officer (Officer Johnerick Sanchez), with a special finding that he discharged a firearm during the commission of the offense. The parties here are in privity with the State for purposes of this suit. Thus, Plaintiff would be estopped from claiming he did not use a firearm during the incident; however, collateral estoppel would not go so far as to prevent him from denying that he had a gun in his possession while he exited the front door.

out of the front door yelling, "I'm unarmed, don't shoot. I'm coming out. I surrender, I give up." Moreover, Plaintiff was shot while on the ground. *Hunter v. Leeds*, 941 F.3d 1265, 1280 (11th Cir. 2019) ("using deadly force without warning on an unarmed, non-resisting suspect who poses no danger is excessive."). There is no indication, based on Plaintiff's version of the facts, that that he posed a risk to anyone when he exited the front door.

Best and Rutkoski are nonetheless entitled to qualified immunity unless Plaintiff can show that his Fourth Amendment rights were "clearly established" at the time of the shooting. Assuming Plaintiff's version of the facts to be correct, as the Court must do in reviewing a defendant's motion for summary judgment, existing case law provided sufficient warning to alert Best and Rutkoski to the fact that shooting Plaintiff, under these circumstances, would constitute excessive force in violation of the latter's Fourth Amendment rights. *Robinson v. Sauls*, 46 F.4th 1332, 1345 (11th Cir. 2022) ("using deadly force on a suspect who had been but was no longer a threat was unconstitutionally excessive."). At this juncture, viewing the evidence in the light most favorable to Plaintiff and drawing all reasonable inferences in his favor, the Court finds there is a genuine factual dispute as to whether Best and Rutkoski unconstitutionally subjected Plaintiff to excessive force in violation of clearly established law. Ultimately a jury must resolve this fact question. Accordingly, qualified immunity for Best and Rutkoski is not warranted on these facts.

IV. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** that the Motion for Summary Judgment filed by Mark Rutkoski and Forrest Best (Doc. 136) is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on December 16, 2023.

[Seal]
United States District Court
Middle District of Florida

/s/ ROY B. DALTON, JR.
ROY B. DALTON, JR.
United States District Judge

Copies furnished to:
Counsel of Record