No. _____

In the Supreme Court of the United States

CHELESY EASTEP,
Petitioner,
v.
STEVE CARRICK, ET AL.,
Respondent.

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

APPENDIX

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APPENDIX

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Appendix A
[Filed: Oct. 17, 2025]

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United States Court of Appeals for the Sixth Circuit

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Nos. 24-5319, 24-5320, 24-5341

———♦———

CHELESY EASTEP, as surviving spouse and next of kin of LANDON DWAYNE EASTEP,

Plaintiff-Appellee,

v.

CITY OF NASHVILLE, TENNESSEE,

Defendant,

BRIAN MURPHY, STEVEN CARRICK, EDIN PLANCIC, SEAN WILLIAMS, JUSTIN PINKELTON, and JAMES KIDD, in their individual and official capacities as officers of the Metropolitan Nashville Police Department (24-5319); FABJAN LLUKAJ, in his individual and official capacity as an officer of the Mt. Juliet Police Department (24-5320); REGGIE EDGE, JR. and CHARLES ACHINGER, in their individual and official capacities as officers of the Tennessee Highway Patrol (24-5341),

Defendants-Appellants.

———♦———

Appeal from the United States District Court for the Middle District of Tennessee at Nashville.

No. 3:22-cv-00721

———♦———

Before: MURPHY, DAVIS, and BLOOMEKATZ, Circuit Judges.

(Filed: October 17, 2025)

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OPINION

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DAVIS, CIRCUIT JUDGE.

A thirty-five-minute standoff on a Nashville highway ended when nine police officers fired roughly thirty-three shots at Landon Eastep. Twelve shots struck and killed him. Mr. Eastep's wife, Chelesy Eastep, sued the City of Nashville, the City of Mt. Juliet, and nine officers in these consolidated cases on behalf of her husband's estate. She seeks relief under 42 U.S.C. § 1983 for violations of her husband's Fourth Amendment right to be free from excessive force. The officer Defendants moved to dismiss, claiming qualified immunity. The district court denied their motion, and Defendants appeal. For the following reasons, we AFFIRM in part and REVERSE in part.

I. Background

A. Facts[1]

On January 27, 2022, at approximately 2 p.m., Mr. Eastep walked along the shoulder of Nashville Interstate 65 when he was met by Tennessee State Trooper, Reggie Edge, Jr. After using Mr. Eastep's driver's license to confirm his identity, Edge advised that he would pat down Mr. Eastep and give him a ride off the interstate. Prior to conducting the pat down, Edge asked if Mr. Eastep had anything that would "poke" or "harm" him. (Second Amended Complaint ("SAC"), R. 72, PagelD 413); (Edge Dashcam, R. 53-1 at 0:03:54-:56). Before Edge completed the pat down, Mr. Eastep took a box cutter out of his pocket, briefly held it up, and began to trot away only to double back to the area where Edge first encountered him. Edge ordered Mr. Eastep to drop "the weapon" and get down on the ground. (Edge Dashcam, R. 53-1 at 0:04:32:33). So began a cycle of Edge yelling commands at Mr. Eastep, and Mr. Eastep failing to acknowledge or obey them.

An off-duty officer, Fabjan Llukaj of the Mt. Juliet Police Department, happened to be driving by and noticed the commotion. Llukaj stopped his truck and crossed the highway on foot to assist Edge. He joined Edge in imploring Mr. Eastep to drop (what was

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[1] We recite the facts as set forth in Mrs. Eastep's SAC and the video footage provided by the parties. We accept all well-pleaded facts as true to the extent they are not "blatantly contradicted" by video evidence. *Scott v. Harris*, 550 U.S. 372, 380 (2007). So, we use the video in place of—or as a supplement to—the complaint, only where appropriate. *See Bell v. City of Southfield*, 37 F.4th 362, 364 (6th Cir. 2022).

perceived to be) "the knife" and to let the officers help him. (*See id*. at 0:07:18-:28). Meanwhile, Edge called for backup. Over the next thirty or so minutes, officers arrived from the Tennessee Highway Patrol and the Metropolitan Nashville Police Department ("Metro"). The standoff that began with Mr. Eastep and Edge grew to a scene with Mr. Eastep facing as many as ten officers with guns drawn.

Several officers asked Mr. Eastep to drop his weapon. Edge flagged to the other officers that he knew Mr. Eastep had a knife, but he never finished the pat down and so Mr. Eastep could have more weapons on him. He also advised that Mr. Eastep appeared to have something in his pocket. Mr. Eastep never answered the officers' inquiries about whether he had another weapon in his pocket or why he was reaching for it. As the officers attempted to reason with him, Mr. Eastep paced around the shoulder of the highway, never responding to their commands to drop his weapon.

Eventually, Mr. Eastep took two quick steps toward the officers. At the same time, he pulled an object from his jacket pocket and pointed it at the officers, leveling it at shoulder height as one would a firearm. Multiple officers opened fire. Within a second, Mr. Eastep fell to the ground. In the five seconds after Mr. Eastep raised the object, the officers fired approximately thirty-three shots at him.

Approximately two seconds after Mr. Eastep fell to the ground, an unidentified officer twice called for a ceasefire. Another officer called for a ceasefire at least once, after shots continued to ring out following the first two calls for ceasefire. After Mr. Eastep already

had been shot multiple times, had fallen to the ground, and other officers had ceased fire, Metro Officer Brian Murphy shot at Mr. Eastep for the first time. He fired two shots.

According to the Tennessee Bureau of Investigations ("TBI") report, of the thirty-three shots, Edge fired his weapon approximately seven or eight times; Metro Officer Sean Williams fired five times; Metro Officer James Kidd fired four times; Metro Officer Justin Pinkelton fired three times; Tennessee Highway Patrolman Charles Achinger and Metro Officer Steven Carrick each fired twice; Llukaj fired once; Metro Officer Edin Plancic fired a personal BCM AR15 six times; and Murphy fired his personal Colt rifle twice. Other than Murphy's two shots after Mr. Eastep was on the ground, it is unclear which officer shot when or when each stopped shooting.

An autopsy report revealed that Mr. Eastep's bullet wounds ranged from his shoulders down to his left leg. Twelve of the shots hit and mortally wounded him. Five bullets entered through Mr. Eastep's back, indicating those bullets potentially struck him after he had already fallen to the ground.

B. Procedural History

Mrs. Eastep filed suit against the City of Nashville, the City of Mt. Juliet, Murphy, Carrick, Plancic, Williams, Pinkelton, Kidd, Llukaj, Edge, and Achinger for their actions leading to Mr. Eastep's death. Her SAC governs this appeal. The SAC asserts that the officers used excessive force in violation of Mr. Eastep's Fourth Amendment rights. It also alleges that "every" officer opened fire on Mr. Eastep when he did not pose

a threat, ultimately killing him. (SAC, R. 72, PageID 413-15, 421).

All officers moved to dismiss the complaint based on qualified immunity. But the district court denied the motions because it determined that the complaint's allegations, taken as true, establish a plausible Fourth Amendment claim for excessive force and that Mr. Eastep's constitutional right to be free from such force was clearly established. The officer Defendants appeal. In addition to contesting the merits of Defendants' appeal, Mrs. Eastep has moved to dismiss the appeal for lack of jurisdiction and seeks sanctions.

II. Jurisdiction

On the question of jurisdiction, Mrs. Eastep contends that the district court's denial of Defendants' motion to dismiss "is not a final decision under 28 U.S.C. § 1291 because the district court's decision does not turn on legal questions." (ECF 28, Appellee's Mot. to Dismiss for Lack of Jurisdiction at 1).

Our jurisdiction extends to appeals from "final decisions." 28 U.S.C. § 1291. Typically, the denial of a motion to dismiss is not a final decision. *Courtright v. City of Battle Creek*, 839 F.3d 513, 517 (6th Cir. 2016). However, "a district court's order rejecting qualified immunity at the motion-to-dismiss stage of a proceeding is a 'final decision' within the meaning of § 1291." *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009) (citation omitted). Still, "[w]e have jurisdiction only to the extent that the defendant[s] 'limit[] [their] argument to questions of law premised on facts taken in the light most favorable to the plaintiff.'" *Adams v. Blount County*, 946 F.3d 940, 948 (6th Cir. 2020) (quoting

Phillips v. Roane County, 534 F.3d 531, 538 (6th Cir. 2008)). Here, Defendants have adopted Mrs. Eastep's version of facts, except where blatantly contradicted by video evidence. Therefore, we have jurisdiction to consider whether, taking the complaint's allegations as true, qualified immunity applies.[2]

III. Standard of Review

We review the district court's decision to dismiss for qualified immunity de novo. *Sterling Hotels, LLC v. McKay*, 71 F.4th 463, 466 (6th Cir. 2023). To survive a motion to dismiss, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl.* Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "[W]e construe the complaint in the light most favorable to the plaintiff, accept all well-pleaded factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff." *Courtright*, 839 F.3d at 518. While our inquiry ordinarily concerns only the four corners of the complaint, we may consider "uncontroverted video evidence" in qualified-immunity cases. *Bell v. City of Southfield*, 37 F.4th 362, 364 (6th Cir. 2022). So where, as here, the parties have submitted video recordings to aid in our consideration of the motion to dismiss, we can rely on the videos over the complaint if and where "the videos are clear and 'blatantly contradict[]' or 'utterly discredit[]' the plaintiff's version of events." *Id.* (alterations in original) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)); *see also Heeter v.*

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[2] We deny Mrs. Eastep's motion to dismiss for lack of jurisdiction in a separate order.

Bowers, 99 F.4th 900, 910 (6th Cir. 2024) (recognizing that we may utilize video footage that "accurately depicts most of the relevant events" to "ensure [that] the district court properly constructed the factual record" and resolved the legal questions based on that record). And where the video footage contains any "gaps or uncertainties," we must view those in Mrs. Eastep's favor as well. *Latits v. Phillips*, 878 F.3d 541, 544 (6th Cir. 2017).

To overcome Defendants' qualified-immunity defense, Mrs. Eastep "must allege facts that 'plausibly mak[e] out a claim that the defendant's conduct violated a constitutional right that was clearly established law at the time, such that a reasonable officer would have known that his conduct violated that right.'" *Courtright*, 839 F.3d at 518 (alteration in original) (quoting *Johnson v. Moseley*, 790 F.3d 649, 653 (6th Cir. 2015)).

IV. Discussion

Defendants first contend that the district court improperly deferred ruling on qualified immunity until after discovery. Second, they argue that no officer violated Mr. Eastep's clearly established Fourth Amendment right by using deadly force. And third, Defendants claim that even if any officer fired a gratuitous shot, the complaint does not identify which officer fired those excessive shots. So, Mrs. Eastep cannot "justify discovery" against each defendant. (ECF 25, Appellants' Br. at 50).

A. The District Court's Ruling

According to Defendants, the district court avoided ruling on qualified immunity, instead allowing litigation to proceed to gain more clarity on the complaint's allegations. And because the district court could only "guess" as to critical facts, like which officers shot after Mr. Eastep fell to the ground, the court should have concluded that the complaint lacked sufficient detail to support its claims. (*Id.* at 34).

By our reading, however, the district court did not eschew ruling on the issue. Instead, at least provisionally, it determined that the SAC alleged facts sufficient to establish that (1) the officers violated Mr. Eastep's constitutional rights and (2) the violation was of a clearly established right. In particular, the court compared the SAC's allegations to available video footage to consider whether any allegations were blatantly contradicted. The court determined that, affording all reasonable inferences to Mrs. Eastep, it was "plausible" that some or all officers discharged their weapons after the threat justifying deadly force was neutralized. *Eastep v. Metro. Gov't. of Nashville*, No. 22-cv-00721, 2024 WL 1349025, at *5 (M.D. Tenn. Apr. 1, 2024). The court found that video footage did not blatantly contradict the SAC's allegation that "every" officer opened fire on Mr. Eastep, killing him when "he posed no actual threat to" them. *Id.*; (SAC, R. 72, PagelD 413-15, 421). It then concluded that shooting Mr. Eastep "when he did not pose a safety threat is unconstitutional." *Eastep*, 2024 WL 1349025, at *5. The district court also determined that that the legal precedent forbidding the use of deadly force against persons who pose no immediate threat is

clearly established. *Id.* In doing so, it denied qualified immunity at this stage. *Id.*

We have observed that when a district court determines that a defendant is not entitled to qualified immunity at the pleadings stage, that denial is only "provisional, since the court may revisit the issue on summary judgment-where the court will take as true only the facts as to which the plaintiff has created a 'genuine issue.'" *Sterling Hotels*, 71 F.4th at 467 (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). So, in context, we understand the district court's reference to reserving judgment on qualified immunity to be in accordance with *Sterling Hotels*'s guidance to rule provisionally on the question. There is thus no reason to vacate on this basis.

B. Qualified Immunity

We employ a two-part test to determine whether an officer is entitled to qualified immunity, asking "(1) whether the facts, when taken in the light most favorable to the party asserting the injury, show the officer's conduct violated a constitutional right; and (2) whether the right violated was clearly established such 'that a reasonable official would understand that what he is doing violates that right.'" *Mullins v. Cyranek*, 805 F.3d 760, 765 (6th Cir. 2015) (quoting *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001)).

Defendants contend they did not violate Mr. Eastep's clearly established right to be free from excessive force because Mr. Eastep's actions leading up to the shooting justified their use of deadly force. At the very least, Defendants argue that they did not violate any clearly established right against the use of

deadly force under the circumstances of this case. Mrs. Eastep argues that deadly force was not justified because "holding a vape in a gun stance is not a threat of serious harm when the officers saw that [Mr. Eastep held] a vape." (ECF 29, Appellee's Br. at 42). And even assuming the officers did not know Mr. Eastep had a vape, shooting him thirty-three times was unreasonable. Mrs. Eastep contends that the district court properly concluded that the SAC plausibly alleges a violation of Mr. Eastep's clearly established rights by pleading that the officers continued to shoot after Mr. Eastep fell to the ground, incapacitated.

Reading the SAC with the video footage as useful context, we analyze Defendants' motion to dismiss much like the district court did. For instance, we agree with the district court that the video evidence "unequivocally shows Eastep withdrawing an object from his pocket, raising it in front of him to about shoulder height, and pointing it towards law enforcement." *Eastep*, 2024 WL 1349025, at *4. And "[o]nly then was Eastep met with a hail of bullets." *Id.* This footage therefore blatantly contradicts the allegation that officers opened fire only because Mr. Eastep reached for his vape.

But the video footage does not blatantly contradict all allegations contained in and reasonable inferences taken from the complaint. Relevant here, the video shows that Murphy, who was the farthest away from the encounter, began shooting *after* other officers made multiple calls for a ceasefire, Mr. Eastep had fallen to the ground, and every other officer had stopped shooting. The video does not reveal which of the eight remaining officers continued shooting after

the ceasefire was called-it only shows that as many as ten shots were fired after Mr. Eastep fell and dropped what he had been holding. It is with this understanding of the facts that we assess Mrs. Eastep's excessive-force claim.

1. Constitutional Violation

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "[A]pprehension by the use of deadly force is a seizure." *Tennessee v. Garner*, 471 U.S. 1, 7 (1985).

We examine whether such a seizure was excessive during "an arrest, investigatory stop, or other 'seizure'" using "the Fourth Amendment's 'objective reasonableness' standard." *Baker v. City of Hamilton*, 471 F.3d 601, 606 (6th Cir. 2006) (quoting *Graham v. Connor*, 490 U.S. 386, 388 (1989)). Doing so "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396 (internal quotation marks omitted) (quoting *Garner*, 471 U.S. at 8). Three factors guide our consideration of the force's reasonableness: "(1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the police officers or others; and (3) whether the suspect actively resisted arrest or attempted to evade arrest by flight." *Baker*, 471 F.3d at 606 (citing *Graham*, 480 U.S. at 396). "[D]eciding whether a use of force was objectively reasonable demands 'careful attention to the facts and circumstances' relating to the incident, as then known to the

officer." *Barnes v. Felix*, 605 U.S. 73, 80 (2025) (quoting *Graham*, 490 U.S. at 396). So, these factors do not displace the ultimate inquiry, which is whether the totality of the circumstances justifies the amount of force used. *Id.*

We have "made the threat factor from *Graham* a minimum requirement for the use of deadly force." *Untalan v. City of Lorain*, 430 F.3d 312, 314 (6th Cir. 2005). We judge the reasonableness of the use of force "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. We keep in mind the "split-second judgments" police officers are often forced to make in "tense, uncertain, and rapidly evolving" circumstances. *Id.* at 397; *Mullins*, 805 F.3d at 765-66. "[T]he situation at the precise time of the shooting will often be what matters most," but we recognize that "earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones." *Hodges v. City of Grand Rapids*, 139 F.4th 495, 517 (6th Cir. 2025) (quoting *Barnes*, 605 U.S. at 80).

The Initial Eight Officers. Defendants are not all in the same position here. The facts do not suggest that eight of the nine officers-Carrick, Plancic, Williams, Pinkelton, Kidd, Llukaj, Edge, and Achinger-fired their first shots after Mr. Eastep was incapacitated. Instead, the video shows that all eight officers began shooting after Mr. Eastep adopted a shooting stance while pointing an object in their direction and that ten shots rang out after he fell to the ground. The district court employed a "segment-specific inquiry" to determine that the officers' initial shots were objectively

reasonable but that the shots fired after Mr. Eastep was incapacitated were not. *Eastep*, 2024 WL 1349025, at *5. Mrs. Eastep similarly relies on cases analyzing officers' actions in discrete intervals to conclude that the Defendants acted unreasonably. *See, e.g.*, *Dickerson v McClellan,* 101 F.3d 1151, 1161-63 (6th Cir. 1996) (analyzing officers' failure to knock and announce and use of deadly force in "segments"); *Russo v. City of Cincinnati*, 953 F.2d 1036, 1044-45 (6th Cir. 1992) (analyzing officers' initial and subsequent use of a taser followed by deadly force as three separate claims).

We can dispose of the first factor in the *Graham* analysis quickly. It is the only factor that does not lean in favor of the officers' use of deadly force. The severity of the crime at issue was low; Edge stopped Mr. Eastep for walking on the shoulder of Interstate 65. Tennessee criminalizes doing so, but only as a Class C misdemeanor-the least serious type of misdemeanor offense in Tennessee. *See* Tenn. Code Ann. § 55-8-127. Such a minor offense would not reasonably justify deadly force.

Turning to the second factor, it was objectively reasonable for the officers to perceive Mr. Eastep's actions as an immediate threat. Contrary to the complaint's allegations, the video footage shows that Mr. Eastep: (1) consistently and repeatedly disobeyed Defendants' commands to drop his weapon; (2) took two steps towards them; (3) quickly removed an object from his jacket pocket; and (4) using both hands, from a shoulder-level position, pointed the object at officers. Taken together, these actions evince a reasonable perception of an immediate threat. *See Simmonds v.*

Genesee County, 682 F.3d 438, 441-42, 445 (6th Cir. 2012) (initiating deadly force after the decedent yelled that he had a gun and pointed a metal object threateningly at the officers); *Pollard v. City of Columbus*, 780 F.3d 395, 400, 403 (6th Cir. 2015) (initiating lethal force when the decedent reached down into his car and then clasped his hands in a shooting position).

In *Barnes*, the Court rejected the "moment-of-threat rule" for assessing reasonableness- which focuses solely on the facts presented at the moment of the threat-because that rule limited courts' view to a specific timeframe and thus accepted a framework in tension with the totality of the circumstances. 605 U.S. at 79-81. Following *Barnes*, some have suggested that the demise of the moment-of-threat rule was likewise a death knell to more narrow applications of the "segmented approach" on which Mrs. Eastep may partially rely. *See, e.g.*, *Hodges*, 139 F.4th at 517; *Feagin v. Mansfield Police Dept.*, __F.4th__, 2025 WL 2621665, at *9-10 (6th Cir. Sept. 11, 2025) (collecting cases). But we need not weigh in on that question because considering Mr. Eastep's threat within the totality of the circumstances, all but the last shots fired by Murphy-discussed more fully below-were objectively reasonable.

Recognizing the "split-second judgments" that the eight officers had to make under the circumstances here, Mrs. Eastep has not sufficiently alleged a constitutional violation for these officers. *See Graham*, 490 U.S. at 397. The video shows that the eight officers began to fire only after Mr. Eastep took threatening steps toward them, removed an object from his pocket, and pointed it at the officers from a shoulder-level

position. The officers continued to shoot for about five seconds as Mr. Eastep fell to the ground and eventually stopped moving. But because it was objectively reasonable to use deadly force at the time the officers initiated their fire, and the officers quickly registered and heeded the call for a ceasefire once Mr. Eastep was subdued, we need not parse the few ticks of the clock that spanned the continuous shooting to determine the reasonableness of the officers' actions here. The encounter with Mr. Eastep was "tense, uncertain, and rapidly evolving," thereby rendering the officers' conduct objectively reasonable. *See id.*

Finally, Mr. Eastep's attempts to actively resist or evade arrest weigh in favor of the use of deadly force. Active resistance occurs where "some outward manifestation-either verbal or physical . . . suggest[s] volitional and conscious defiance." *Kapuscinski v. City of Gibraltar*, 821 Fed.Appx. 604, 612 (6th Cir. 2020) (quoting *Eldridge v. City of Warren*, 533 Fed.Appx. 529, 534 (6th Cir. 2013)). Virtually from the outset of the encounter, Mr. Eastep refused to comply with the officers' requests for him to drop his weapon and rejected their efforts to get him off the freeway. He had already tried to evade Edge by pulling away from him, nearly stepping into a traffic lane, and jogging further up the freeway shoulder. As additional officers arrived and repeatedly asked Mr. Eastep to drop his weapon, he refused to do so and continued to walk along the shoulder instead. This lack of cooperation alone would not justify the use of deadly force. *See Eldridge*, 533 Fed.Appx. at 535 ("[N]oncompliance alone does not indicate active resistance; there must be something more."); *Sevenski v. Artfitch*, Nos. 21-1391/1402, 2022

WL 2826818, at *4 (6th Cir. July 20, 2022) (concluding that disobeying officers' orders by walking towards them "is not the same as active resistance"). But the video footage shows that Mr. Eastep's actions went beyond mere non-compliance when he moved towards the officers, drew an object from his pocket, and mimicked a shooting stance as he pointed the object at the officers. *See Kapuscinski*, 821 Fed.Appx. at 612 (holding that Kapuscinski's actions constituted a "deliberate act of defiance using one's own body" where he refused to roll over and attempted to stand up (quoting *Eldridge*, 533 Fed.Appx. at 535)); *Puskas v. Delaware County*, 56 F.4th 1088, 1096 (6th Cir. 2023) (finding that Puskas resisted arrest by "repeatedly disobey[ing] the officers' orders to come to them and to leave everything on the ground" and then attempting to flee).

Because the SAC did not sufficiently allege that the eight officers acted unreasonably, we need not determine whether the law was clearly established with respect to the eight officers' actions.

Officer Murphy. Our analysis of the second and third *Graham* factors differs for Murphy-whose *initial* shots came after Mr. Eastep was incapacitated and every other officer had stopped shooting. With this added circumstance in mind, Mrs. Eastep has alleged facts sufficient to support a plausible claim that Murphy's use of deadly force was objectively unreasonable.

"[T]he use of force after a suspect has been incapacitated or neutralized is excessive as a matter of law." *Baker*, 471 F.3d at 607 (collecting cases). At that point, the suspect no longer poses "an immediate threat to the safety of the police officers or others." *Id.* at 606.

And "the legitimate government interest in the application of significant force dissipates." *Morrison v. Bd. of Trustees of Green Twp.,* 583 F.3d 394, 404-05 (6th Cir. 2009); *see also Gambrel v. Knox County*, 25 F.4th 391, 402 (6th Cir. 2022) (concluding that if the jury credited testimony that officers tased the suspect many times and repeatedly hit him in the face with a flashlight and baton, "it would show the type of 'gratuitous' violence that runs afoul of the Fourth Amendment" (citation omitted)).

In *Baker*, we considered the same officer's conduct towards two suspects, Troy Baker and Jesse Snader, on different occasions. After Baker held his hands up in the "surrender position," the officer struck Baker in the head with his asp and knocked him to the ground. 471 F.3d at 607. The officer then struck Baker again in the knee and told him "[t]hat's for running from me." *Id.* (alteration in original). We concluded that, because the officer had neutralized any threat that Baker posed to him, the officer's strike to Baker's knee was "unjustified and gratuitous." *Id.* Similarly, after the officer told Snader that he would shoot him if he did not stop, Snader told him that he was slowing down. *Id.* at 608. The officer then struck Snader in the head with his asp, tackled him, and sat on his back with a chokehold. *Id.* We determined that the officer's blow to Snader's head was "gratuitous" because the jury could find that Snader was surrendering. *Id.* at 609; *see also Russo*, 953 F.2d at 1045 (holding that genuine disputes of fact existed over whether the "second and third round of discharges" were excessive because the suspect "posed no serious threat of physical harm" by that point).

Here, we similarly have the use of gratuitous force, indeed lethal force, initiated after the threat was neutralized, and the individual was incapacitated. True, Murphy shot Mr. Eastep only three seconds after he no longer posed a threat. But determining an officer's reasonableness in deploying deadly force is highly fact dependent. *See Graham*, 490 U.S. at 396; *Barnes*, 605 U.S. at 80. The complaint plausibly alleges that Murphy did not start shooting Mr. Eastep until after he already had been incapacitated. The video depicts Eastep unmoving, on the ground, and no longer holding an object when the last two shots are fired. Considering the second *Graham* factor in light of the complaint's allegations and the video, the surrounding officers, including Murphy, faced no immediate threat. Therefore, the facts plausibly support Mrs. Eastep's claim that it was not objectively reasonable for Murphy to use deadly force against Mr. Eastep.

Citing *Mullins* and *Untalan*, Defendants contend there is a five-second rule permitting officers to use deadly force in response to a reasonably perceived threat of an immediate harm without any need to reassess the danger. But we have not articulated-and do not intend to articulate today-such a bright-line rule. In both of those cases, we found that the reasonable perception of a continued presence of a threat justified a subsequent volley of shots after the suspect was apparently incapacitated.

In *Mullins*, for example, an officer and a suspect engaged in a physical struggle, and the suspect pulled his gun. 805 F.3d at 763. After tussling with the officer for a period, the suspect drew his gun and had his finger on the trigger and then threw the gun over the

officer's shoulder, seemingly surrendering it. *Id.* at 763-64. But the officer, who was without backup, fired two shots at the suspect within five seconds, striking him once and killing him. *Id.* at 764. The quick succession of events did not justify the use of force, alone. Instead, we considered that the altercation had already been physical, *id.* at 766, the suspect's finger was on the trigger, *id.* at 767, the altercation happened in the early evening hours-suggesting non-ideal lighting, *id.*, and the incident transpired in a busy location-suggesting the officer was in an uncontrolled environment, *id.* We also repeatedly emphasized that the officer's "second shot came within the time frame in which a reasonable officer could have acted under the perception that Mullins was still armed." *Id.* at 768. The totality of the circumstances, not a bright-line timing rule, justified the officers' use of force.

Similarly, in *Untalan*, an officer fatally shot the suspect as he attacked the officer's partner with a butcher's knife. 430 F.3d at 313-14. Just after the officer's partner wrestled away the knife, the officer fired a single shot that struck Untalan in the upper chest. *Id.* The entire altercation lasted "a few seconds," but witnesses characterized only a "split second" between the suspect dropping a knife and the officer's single shot. *Id.* at 315. So, while we did determine that, in that case, the officer's split-second decision to shoot the suspect was reasonable, we established no five-second rule for law enforcement to continue using deadly force without determining whether the target still poses a threat. Indeed, not even five seconds passed between the suspect dropping the knife and the officer shooting.

Contrary to Defendants' assertions, these cases reiterate that the totality of the circumstances is what matters. *See Mullins*, 805 F.3d at 765; *Untalan*, 430 F.3d at 317. And that inquiry "has no time limit." *Barnes*, 605 U.S. at 80. Nothing in our case law gives an officer free range to shoot, carte blanche, after other officers have neutralized the threat. We have stated quite the opposite: "[T]he Fourth Amendment prohibits officers from using 'gratuitous' force that is unnecessary to effectuate the arrest of a person who has ceased resisting." *Gambrel*, 25 F.4th at 402 (quoting *Shreve v. Jessamine Cnty.* Fiscal Ct., 453 F.3d 681, 688 (6th Cir. 2006)). And the complaint plausibly alleges that Murphy fired two shots after Defendants eliminated any earlier threat Mr. Eastep posed.

The lack of a continuing threat is bolstered by the fact that two officers had called for a ceasefire and therefore expressly announced the resolution of any threat before Murphy fired his shots. Murphy had not even shouldered his weapon until after Mr. Eastep collapsed. Yet Murphy counters that his use of force was justified because Kidd's bodycam footage shows that Mr. Eastep raised his arm just before Murphy twice fired his rifle. Murphy insists that a reasonable officer would have perceived a continuing threat based on this movement, citing *Boyd v. Baeppler*, 215 F.3d 594 (6th Cir. 2000), for support. But *Boyd* does not permit officers to use deadly force simply because their target is moving. In that case, "Boyd remained on the loose, apparently still armed, and potentially dangerous." *Id.* at 602. After having already been shot at and on the ground, Boyd lifted his torso and aimed a gun at officers. *Id.* at 603. The officers fired at least

seven more times until Boyd dropped his weapon, killing him. *Id.*

Mr. Eastep had been on the ground, unmoving, for three seconds when Murphy shot him. The complaint alleges that Mr. Eastep was "clearly incapacitated." (SAC, R. 72, PageID 417). True, Mr. Eastep's arm moved slightly after Murphy fired his first shot. But it is difficult to interpret the motion as threatening. His torso remained flat on the ground, and his movement appears involuntary because of the gunfire. Mr. Eastep at that point had no weapon in his hand, let alone a weapon pointed at the officers. *Cf. Boyd*, 215 F.3d at 603. In any event, Mr. Eastep's movements on the ground were too ambiguous from the video footage to blatantly contradict Mrs. Eastep's version of events. So, we accept the complaint's allegation that Mr. Eastep was incapacitated and from that infer that any movements were involuntary. After all, on a motion to dismiss, "the factual allegations in the complaint are not in dispute-the legal sufficiency of the complaint is." *Hodges*, 139 F.4th at 511.

Viewing the pleaded facts and every reasonable inference in the light most favorable to Mrs. Eastep, it remains plausible that Murphy fired at Mr. Eastep after he fell to the ground and posed no apparent threat. The pleaded allegations, if true, call into question whether a reasonable officer would have perceived Mr. Eastep as an ongoing threat after he fell and lay on the ground barely moving. It may be that Mrs. Eastep is unable to substantiate the allegations.

Discovery may show that the events escalated too quickly, and that Murphy did not have a moment to reassess whether Mr. Eastep posed an ongoing threat.

But we have not established a bright-line rule determining how much time must pass before we expect officers to reassess the situation after the threat has been neutralized. Because Mrs. Eastep has plausibly alleged that Murphy should have registered that the threat abated when Mr. Eastep fell, she has met the first portion of her burden for surviving Murphy's qualified-immunity defense.

2. Clearly Established Law

To survive Murphy's motion to dismiss, Mrs. Eastep still must establish that Murphy's plausible violation of Mr. Eastep's Fourth Amendment rights was clearly established. "A Government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear' that every 'reasonable official would [have understood] that what he is doing violates that right.'" *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (alterations in original) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). "Though a plaintiff need not point to a case on all fours with the instant fact pattern to form the basis of a clearly established right, there must be a sufficiently analogous case (or cases) from which a reasonable official would understand that what he is doing violates that right." *Pleasant View Baptist Church v. Beshear*, 78 F.4th 286, 295 (6th Cir. 2023) (citation modified). The idea is to ensure officers have a "fair and clear warning" that certain conduct violates the law. *Heeter*, 99 F.4th at 915 (quoting *Kisela v. Hughes*, 584 U.S. 100, 105 (2018) (per curiam)). And, in the spirit of giving fair notice of conduct deemed to violate a constitutional right, unpublished decisions will not suffice to show

that a right is clearly established. *Bell v. Johnson*, 308 F.3d 594, 611 (6th Cir. 2002).

As a general matter, "the right to be free from excessive force is a clearly established Fourth Amendment right." *Neague v. Cynkar*, 258 F.3d 504, 507 (6th Cir. 2001). And narrowing in on the conduct at issue in this case, this court has held that "an unarmed and nondangerous suspect has a constitutional right not to be shot by police officers." *Gambrel*, 25 F.4th at 406 (quoting *Floyd v. City of Detroit*, 518 F.3d 398, 407 (6th Cir. 2008)). Moreover, "[w]e have held repeatedly that the use of force after a suspect has been incapacitated or neutralized is excessive as a matter of law." *Baker*, 471 F.3d at 607 (citing *Shreve*, 453 F.3d at 687); *Champion v. Outlook Nashville, Inc.,* 380 F.3d 893, 902 (6th Cir. 2004); *Gambrel*, 25 F.4th at 402-03 (collecting cases). Here, Mrs. Eastep alleges that each shot fired by the officers is excessive as a matter of law. While the video shows that eight of the officers' shots were justified by Mr. Eastep's threat of force and resistance, Murphy's shots after he collapsed were plausibly gratuitous under our case law. Whether Murphy had sufficient time to perceive that Mr. Eastep's threat of force dissipated after he had been on the ground for three seconds is a question of fact. But we take the complaint's allegations as true at the pleading stage. *Hodges*, 139 F.4th at 504. Those allegations say three seconds was sufficient time for Murphy to realize that Mr. Eastep no longer posed a threat, and his failure to do so violated Mr. Eastep's clearly established rights. *See Baker*, 471 F.3d at 607, 609; *Russo*, 953 F.2d at 1045.

Combatting this conclusion, Defendants point to cases they contend undermine the existence of any clearly established right under these circumstances. But those cases do not help Defendants. Start with *Simmonds*. There, officers confronted a mentally unstable suspect who they knew was potentially armed, would not show his hands and exit his truck when asked by the officers, attempted to flee, threatened the officers, and brandished a silver object. *Simmonds*, 682 F.3d at 445. The suspect pointed that object at the officers as if it were a weapon, and one officer immediately fired several shots at him. *Id.* at 442. We found the officer's use of force reasonable because "all of the information available to the officers *at the time they used force* constituted probable cause that [the suspect] 'pose[d] a threat of serious physical harm.'" *Id.* at 445 (second alteration in original) (emphasis in original) (quoting *Garner*, 471 U.S. at 11). Thus, *Simmonds* does not unsettle our precedent establishing that the "use of force *after* a suspect has been incapacitated or neutralized is excessive as a matter of law." *Baker*, 471 F.3d at 607 (emphasis added).

Next, consider *Pollard*. There, the suspect led officers on a police chase, ending in the suspect colliding with a semitrailer. *Pollard*, 780 F.3d at 399. After reaching down and searching for something on the car's floorboards, the suspect "extended his arms and clasped his hands into a shooting posture, pointed at the officers." *Id.* at 400 (footnote omitted). The suspect did this again, and roughly eight seconds after the suspect's initial shooting-posture movement, two officers shot at him for about three seconds. *Id.* Officers then raced toward the car. During that time, the

suspect repeated the same reach-down-and-point sequence; five officers shot this time, fifteen seconds after the initial shots. *Id.* We found both volleys of shots justified because "the totality of the circumstances clearly gave the officers probable cause to believe" that the suspect "threatened their safety." *Id.* at 403. Indeed, even after the initial round of shots, the suspect's "sudden movement" forced them to "quickly assess the threat [he] posed and to quickly conclude that [he] posed a threat even in his injured, immobilized state." *Id.* at 403-04. That, again, does not undermine the clearly established right.

Defendants lastly offer an unpublished case, *Lemmon v. City of Akron*, 768 Fed.Appx. 410 (6th Cir. 2019). In *Lemmon*, officers responded to a reported aggravated robbery and followed the suspect on his bicycle. *Id.* at 412. The officers noticed that the suspect appeared to be concealing something under his coat. *Id.* After the officers pulled the suspect over, the suspect refused to show his hands and threatened the officers. *Id.* at 412-13. The suspect made a quick movement toward an officer who shot him "four times in rapid succession." *Id.* at 413. We found the use of force justified because, "*at the moment of the standoff*," the suspect posed an immediate threat of safety to the officers. *Id.* at 415 (emphasis in original).

The only relevant point *Simmonds*, *Pollard*, and *Lemmon* have in common is that they allow officers to respond to an imminent threat of serious bodily harm with deadly force. These cases say nothing about whether an officer is justified in shooting at a suspect when he no longer poses such a threat. But *Baker* does. Although *Baker* involved blows to the knee and

head rather than gunshots, its holding remains true. Baker and Snader had surrendered when the officer struck them with his asp, which could lead a reasonable jury to conclude that the officer's conduct was "unjustified and gratuitous." 471 F.3d at 607, 609. Here, Murphy twice shot Mr. Eastep after he was incapacitated, and every other officer had stopped shooting. Thus, Mrs. Eastep has sufficiently alleged that Murphy's conduct was gratuitous. If *Baker* puts a reasonable officer on notice that he cannot strike a suspect with an asp after the suspect no longer poses a threat, a reasonable officer should understand that it is a constitutional violation to begin *shooting* the suspect after he no longer poses a threat.

At the motion to dismiss stage, the complaint has plausibly alleged that Murphy fired at Mr. Eastep after any safety threat dissipated entirely. And, as discussed above, our case law clearly establishes that Murphy is *not* justified in using deadly force "after a suspect has been incapacitated or neutralized." *Baker*, 471 F.3d at 607; *cf. Margeson v. White County*, 579 Fed.Appx. 466, 472 (6th Cir. 2014) ("[A] jury could certainly conclude that shooting a man 43 times, including at least 12 shots after he had fallen to the ground, amounts to an unreasonable and excessive use of force."). By plausibly alleging that Murphy's two shots after Mr. Eastep fell to the ground were excessive, the complaint states a claim for a violation of Mr. Eastep's clearly established constitutional rights.

C. Individual Liability

Given our conclusion that all Defendants except for Murphy are entitled to qualified immunity, we consider Defendants' argument that the complaint fails

to allege facts that each individual officer "actively participated in the use of excessive force" only as to Murphy. *Pollard*, 780 F.3d at 402 (citation omitted). Defendants correctly point out that "[w]e must analyze separately whether [Mrs. Eastep] has stated a plausible constitutional violation by each individual defendant, and we cannot ascribe the acts of all Individual Defendants to each individual defendant." *Heyne v. Metro. Nashville Pub. Schs.*, 655 F.3d 556, 564 (6th Cir. 2011). But we have determined that the SAC does not plausibly allege that the use of force by eight of the nine officers was objectively unreasonable. To the extent Defendants suggest that Mrs. Eastep has not sufficiently alleged facts against Murphy, we agree with the district court that Mrs. Eastep adequately alleged that Murphy did not begin shooting until after Mr. Eastep was incapacitated. Therefore, the SAC plausibly alleges individual liability as to Murphy.

V. Conclusion

We AFFIRM in part and REVERSE in part.

Appendix B
[Filed: Apr. 1, 2024]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHELSEY EASTEP, as surviving spouse and kind of LANDON DWAYNE EASTEP,	)	
Plaintiff,	)	
v.	)	**No. 3:22-cv-00721**
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION

Pending before the Court are five Motions to Dismiss Plaintiff's Second Amended Complaint (Doc. No. 72). The first (Doc. No. 103) was filed by Metropolitan Nashville Police Department Officers Steven Carrick, Sean Williams, Brian Murphy, Edin Plancic, Justin Pinkelton, and James Kidd (collectively "Metro Officers"). The second (Doc. No. 105) was filed by the Metropolitan Government of Nashville and Davidson County ("Metro"). The third (Doc. No. 107) was filed by Tennessee Highway Patrol Troopers Reggie Edge,

Jr. and Charles Achinger (collectively, "THP Officers"). The fourth (Doc. No. 109) was filed by the City of Mt. Juliet, Tennessee ("Mt. Juliet"). The fifth (Doc. No. 111) was filed by Mt. Juliet Police Department Officer Fabjan Llukaj. All five Motions have been fully briefed, (Doc. Nos. 104, 106, 108, 110, 112, 121-30, 141-146), and are now ripe for review. For the following reasons, the Court will grant Metro and Mt. Juliet's Motions to Dismiss (Doc. Nos. 105, 109) and grant in part and deny in part Metro Officers', THP Officers', and Llukaj's Motions to Dismiss (Doc. Nos. 103, 107, 111).

ALLEGED FACTS AND BACKGROUND

The Court relies on the relevant factual allegations from the Second Amended Complaint (Doc. No. 72) and assumes they are true for purposes of ruling on the instant motions. *See Erickson v. Pardus,* 551 U.S. 89, 94 (2007).

At about 2:00 p.m. on January 27, 2022, Landon Eastep sat on the right shoulder of Interstate 65 Northbound near mile marker 76. (Doc. No. 72 ¶ 21). Tennessee Highway Patrol officer Reggie Edge, Jr. approached Eastep and began speaking to him. (*Id.* ¶ 22). Eastep answered Edge's questions and, when requested, handed Edge his driver's license. (*Id.*). Edge returned to his vehicle with Eastep's license and remained there for several minutes. (*Id.*). During this time, Eastep took out an electronic cigarette and took several draws, exhaling large clouds of white smoke. (*Id.*). When Edge reapproached him, Eastep placed the electronic cigarette back into his jacket pocket. (*Id.*). At that point, Edge told Eastep he "had to come with him," (*id.* ¶ 23), and asked Eastep if he had

anything that could poke or harm him, and, if so, to turn it over. (*Id.*). Complying, Eastep produced a box cutter knife. Upon seeing the knife, Edge "panicked, pulled his service weapon and pointed it at Landon Eastep." (*Id.*). As alleged in the Second Amended Complaint, "[t]his overreaction on the part of Trooper Edge set forth a calamitous chain of events." (*Id.*).

Fabjan Llukaj, an off-duty Mt. Juliet Police Department officer, stopped to assist Edge. (*Id.* ¶ 24). Llukaj, while wearing civilian clothes and approaching Eastep from behind, pointed his pistol at Eastep and began issuing a series of profanity-laden commands. (*Id.*). Shortly thereafter, Metropolitan Nashville Police officers Brian Murphy, Steven Carrick, Edin Plancic, Sean Williams, Justin Pinkelton, and James Kidd, as well as Tennessee Highway Patrol officer Charles Achinger arrived to provide backup support. (*Id.*).

Over the course of the next 30 to 35 minutes, these named officers ("Individual Defendants") and others worked to convince Eastep to surrender and continued to call additional backup officers to the scene. (*Id.* ¶¶ 25-26). "[T]hree additional, heavily armed military-styled officers carrying long guns joined." (*Id.* ¶ 26). Eastep, facing a wall of officers, reached for his vape in his jacket pocket. (*Id.*). The Second Amended Complaint alleges that, at this moment, "every police officer and state trooper on the scene simultaneously opened fire on Mr. Eastep, killing him." (*Id.*).

According to the Tennessee Bureau of Investigation's report, 25 nine-millimeter cartridges and eight rifle cartridges were recovered at the scene. (*Id.* ¶ 27). Edge fired his service weapon approximately seven or

eight times. (*Id.* ¶ 28). Williams fired his service weapon five times. (*Id.* ¶ 33). Kidd fired his service weapon four times. (*Id.* ¶ 34). Pinkelton fired his service weapon three times. (*Id.* ¶ 31). Achinger and Carrick each fired their service weapon twice. (*Id.* ¶¶ 29, 32). Llukaj fired his service weapon once. (*Id.* ¶ 30). Plancic fired his personal BCM AR15 rifle six times, (*Id.* ¶ 35), and Murphy fired his personal Colt rifle twice. (*Id.* ¶ 36). Murphy fired his two shots after Eastep had both been struck multiple times and fallen to the ground. (*Id.* ¶ 27). Prior to Murphy pulling the trigger of his personally-owned rifle, another officer had clearly yelled, "Cease fire." (*Id.*).

An autopsy report revealed that Eastep suffered twelve bullet wounds from his shoulders down to his left leg. (*Id.* ¶ 38). The bullets fractured numerous bones and two vertebrae, and struck his lungs, heart, and aorta. (*Id.*). Notably, only four bullets entered the front of his body, while five bullets entered through his back-meaning that they struck him after he had fallen to the ground. (*Id.*).

On September 15, 2022, Plaintiff filed this suit. (Doc. No. 1). In the operative Second Amended Complaint, Plaintiff alleges two claims against the Individual Defendants actionable under 42 U.S.C. § 1983 ("§ 1983"). (Doc. No. 72 ¶¶ 49-65). The first alleges that by shooting Eastep, the Individual Defendants violated the Fourth Amendment's bar against excessive force, (*id.* ¶ 51), and the second alleges that the Individual Defendants are liable for the excessive force of others on the scene because they failed to intervene and protect Eastep (id. ¶¶ 58-65). The Second Amended Complaint also brings claims under § 1983

against Metro and a Tennessee state law negligence claim against both Metro and Mt. Juliet. (Doc. No. 72 ¶¶ 66-91).

With respect to the § 1983 claims, the Individual Defendants contend that they are entitled to qualified immunity, (Doc. Nos. 104 at 8-16; 108 at 8-14; 112 at 7-15), while Metro argues that Plaintiff has failed to plead essential elements of each claim. (Doc. No. 106 at 5-16). Metro and Mt. Juliet assert Tennessee's state sovereign immunity bars Plaintiff's state law negligence claim. (Doc. Nos. 106 at 16-19; 110 at 5-9). Separately, the Metro Officers request this Court dismiss all claims against Carrick and Williams pursuant to Federal Rules of Civil Procedure 12(b)(5) and 4(m). (Doc. No. 104 at 17-19).

LEGAL STANDARDS

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "the complaint must include a 'short and plain statement of the claim showing that the pleader is entitled to relief.'" *Ryan v. Blackwell,* 979 F.3d 519, 524 (6th Cir. 2020). In determining whether a complaint meets this standard, the Court must accept all the factual allegations as true, draw all reasonable inferences in the plaintiffs' favor, and "take all of those facts and inferences and determine whether they plausibly give rise to an entitlement to relief." *Doe v. Baum,* 903 F.3d 575, 581 (6th Cir. 2018). Accordingly, the complaint must "contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal theory." *Eidson v. Tenn. Dep't of Child.'s Servs.,* 510 F.3d 631, 634 (6th Cir. 2007) (citing *Mezibov v. Allen,* 411 F.3d 712, 716 (6th Cir. 2005)). The

Court will not accept a legal conclusion masked as a factual allegation, nor an "unwarranted factual inference," as true. *Directv, Inc. v. Treesh,* 487 F.3d 471, 476 (6th Cir. 2007).

Federal Rule of Civil Procedure 12(b)(5) authorizes courts to dismiss a complaint for insufficient service of process, including for failure to comply with the service requirements of Federal Rule of Civil Procedure 4. Fed.R.Civ.P. 12(b)(5). Federal Rule of Civil Procedure 4(m) provides that "[i]f a defendant is not served within 90 days after the complaint is filed, the Court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against the defendant or order that service be made within a specified time." Fed.R.Civ.P. 4(m). The Court must extend the time for service upon a showing of good cause, and the Court may exercise its discretion to permit late service even where a plaintiff has not shown good cause. *United States v. Oakland Physicians' Med. Ctr., LLC,* 44 F.4th 565, 568 (6th Cir. 2022) (first citing Fed.R.Civ.P. 4(m); and then citing *Henderson v. United States,* 517 U.S. 654, 662 (1996)). Otherwise, the language of Rule 4(m) mandates dismissal, either on motion or sua sponte. Fed.R.Civ.P. 4(m); *see also Byrd v. Stone,* 94 F.3d 217, 219 (6th Cir. 1996).

ANALYSIS

I. Claims against the Individual Defendants

Qualified immunity protects governmental officials from suit as long "as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). A two-

step inquiry applies. The first question is "whether the facts, when taken in the light most favorable to the party asserting the injury, show the officer's conduct violated a constitutional right[.]" *Mullings v. Cyranek,* 805 F.3d 760, 765 (6th Cir. 2015). The Court then asks whether the right was "clearly established" such "that a reasonable official would understand that what he is doing violates that right." *Saucier v. Katz,* 533 U.S. 194, 201-02 (2001) (quoting *Anderson v. Creighton,* 483 U.S. 635, 640 (1987)). District courts are "permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan,* 555 U.S. 223, 236 (2009).

Although a defendant's "entitle[ment] to qualified immunity is a threshold question to be resolved at the earliest possible point, that point is usually summary judgement and not dismissal under Rule 12." *Wesley v. Campbell,* 779 F.3d 421, 433-34 (6th Cir. 2015) (alteration in original) (quotation marks and citations omitted). "The reasoning for [this] preference is straightforward: 'Absent any factual development beyond the allegations in a complaint, a court cannot fairly tell whether a case is 'obvious' or 'squarely governed' by precedent, which prevents us from determining whether the facts of this case parallel a prior decision or not' for purposes of determining whether a right is clearly established." *Guertin v. State,* 912 F.3d 907, 917 (6th Cir. 2019) (citation omitted). Therefore, it is generally inappropriate for a district court to grant a 12(c) motion based on qualified immunity. *Wesley,* 779 F.3d at 443.

However, at the motion to dismiss in a qualified immunity case, the Court may consider clear video footage which "'blatantly contradicts' or 'utterly discredits'" the plaintiff's version of events because such evidence renders the allegations of the complaint implausible and unable to be taken as true. *Bell v. City of Southfield, Mich.,* 37 F.4th 362, 364 (6th Cir. 2022) (quoting *Scott v. Harris,* 550 U.S. 372, 380 (2007)); *see also Bailey v. City of Ann Arbor,* 860 F.3d 382, 387 (6th Cir. 2017) ("The video "utterly discredits]" Bailey's version of events and allows us to ignore the "visible fiction" in his complaint. If Bailey's pleadings internally contradict verifiable facts central to his claims, that makes his allegations implausible. That's why our sister courts have considered videos when granting motions to dismiss. And that's why we do so here."). Plaintiff and Defendants have submitted video evidence to either to support or discredit the allegations in the Second Amended Complaint (Plaintiff's Manually Filed Ex. 1; Defendants' Manually Filed Ex. 1; Defendants' Manually Filed Ex. 2; Defendants' Manually Filed Ex. 3; Defendants' Manually Filed Ex. 4). The Court has reviewed these videos and finds that they blatantly contradict Plaintiff's allegation about the moments before the Individual Defendants opened fire on Eastep. *Bailey,* 860 F.3d at 386. They also provide context absent from the Second Amended Complaint that is dispositive of Plaintiff's failure to protect claim.

Specifically, the video evidence unequivocally shows Eastep withdrawing an object from his pocket, raising it in front of him to about shoulder height, and pointing it towards law enforcement. (Plaintiff's Manually

Filed Ex. 1 at 00:58-00:59; Defendants' Manually Filed Ex. 1 at 42:48-42:49; Defendants' Manually Filed Ex. 2 at 27:49-27:50; Defendants' Manually Filed Ex. 3 at 27:12-13). Only then was Eastep met with a hail of bullets by police officers. (Plaintiff's Manually Filed Ex. 1 at 00:59-01:04; Defendants' Manually Filed Ex. 1 at 42:49-42:54; Defendants' Manually Filed Ex. 2 at 27:50-27:55; Defendants' Manually Filed Ex. 3 at 27:1318). In total, the gunfire lasted roughly five seconds. (*Id.*; *see also* Defendants' Manually Filed Ex. 4 at 00:54-00:59). However, before it ceased, Eastep was clearly struck and had fallen to the ground. (*Id.*).

With these additional facts in mind, the Court will consider the Individual Defendants' qualified immunity defense.

A. Excessive Force

"[T]here can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Tennessee v. Garner,* 471 U.S. 1, 11 (1985). The use of deadly force is excessive and unreasonable unless there is probable cause to believe that the suspect poses an immediate threat to the officer or to others. *Kilnapp v. City of Cleveland,* 2023 WL 4678994, at *4 (6th Cir. July 21, 2023) (citing *Garner,* 471 U.S. at 11; *Graham v. Connor,* 490 U.S. 386, 396 (1989)). The officers' use of deadly force is also examined for objective reasonableness, using the *Graham* factors. *Graham,* 490 U.S. at 396. "However, the threat of immediate harm is a 'minimum requirement for the use of deadly force.'" *Puskas v. Delaware Cnty., Ohio,* 56 F.4th 1088, 1096 (6th Cir. 2023) (citation omitted). At the same

time, the Sixth Circuit has "held repeatedly that the use of force after a suspect has been incapacitated or neutralized is excessive as a matter of law." *Hood v. City of Columbus, Ohio,* 827 Fed. App'x 464, 470 (6th Cir. 2020) (citing *Baker v. City of Hamilton,* 471 F.3d 601, 607 (2006)).

The Individual Defendants contend the video evidence, which clearly shows Eastep raising his arm towards some of the officers with an object his in hand, demonstrates that they were entitled to use deadly force. (Doc. Nos. 104 at 8-13; 108 at 8-12; 112 at 7-10). Plaintiff responds that "[s]hooting at Landon Eastep 33 times with 12 bullets hitting him, with at least 5 of the bullets entering his back, including Officer Murphy's final 2 shots fired after he hit the ground, amounts to an unreasonable and excessive use of force." (Doc. No. 122 at 16; 126 at 23; 130 at 16). As alleged and as the video evidence confirms, certain Individual Defendants continued to shoot during and after he fell to the ground. (*See e.g.,* Doc. No. 72 ¶ 36 ("The final two (2) shots were fired by Defendant Murphy as Mr. Eastep had been shot multiple times and had fallen to the ground, was clearly incapacitated and subdued."); *see also id.* ¶ 38 ("Four (4) of the bullets that struck him traveled front to back, while five (5) entered through his back. When he was initially struck by gunfire, Mr. Eastep fell to the ground, landing on his side with his back towards some of the officers.")).

The Sixth Circuit has explained, "[e]ven if it was reasonable for the Officers to open fire . . . that does not automatically clear the entire encounter of the Constitution's prohibition against excessive use of force."

Hood, 827 Fed. App'x at 469. And "[w]hen more than one officer is involved, the court must consider each officer's entitlement to qualified immunity separately." *Smith v. City of Troy,* 874 F.3d 938, 944 (6th Cir. 2017). Thus, the Court must assess, for each of the nine Individual Defendants, his initial decision to shoot and any subsequent decisions to keep shooting. *Id.* at 470 (quoting *Dickerson v. McClellan,* 101 F.3d 1151, 1162 n.9 (6th Cir. 1996)).

Even with the benefit of the record video evidence, the Court cannot discern exactly when each Individual Defendant, with the exception of Murphy, discharged his weapon. The Court has not been provided with body camera footage from each Individual Defendant. As such, it can only guess which gun shots belonged to each Individual Defendant. And, even with respect to the Individual Defendants whose body camera footage is in the record, with the exception of Murphy, it is impossible to determine conclusively which sounds and movements are attributable to that officer's weapon and which are attributable to the gunfire of others. (Defendants' Manually Filed Ex. 2 at 27:50-27:55; Defendants' Manually Filed Ex. 3 at 27:13-18; Defendants' Manually Filed Ex. 4 at 00:58-00:59). It may very well be that one or all of the Individual Defendant fired an opening salvo, had a moment to reassess the situation, and fired again when Eastep was incapacitated. Likewise, it is plausible that an Individual Defendant did not discharge his weapon until after the conclusion of any threat

warranting deadly force.[1] Without additional factual information or evidence, the Court cannot identify the subset, if one exists, of the Individual Defendants who, as a matter of law, exercised the required restraint. At a minimum, at this early stage in litigation, the Second Amended Complaint's allegations "plausibly give rise to an entitlement to relief." *Baum,* 903 F.3d at 581.

Moving to step two of the qualified immunity analysis, "a legal principle must have a sufficiently clear foundation in then-existing precedent," to be clearly established. *District of Columbia v. Wesby,* 538 U.S. 48, 63 (2018). There does not need to be "a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. Al-Kidd,* 563 U.S. 731, 741 (2011). To this end, Plaintiff invokes *Russo v. City of Cincinnati,* 953 F.2d 1045 (6th Cir. 1992). (Doc. Nos. 122 at 14; 126 at 22; 130 at 14). There, the Sixth Circuit held "that a reasonable jury could find that the officers violated the suspect's constitutional rights with the use of deadly force when they repeatedly shot at the suspect, even after he dropped his weapon and posed no serious threat of harm." *Hood,* 847 Fed. App'x at 470 (describing the holding in *Russo*). Although, as the Individual Defendants point out, the time between the officers' uses of deadly force in *Russo* were far longer than possible in this case, the Sixth Circuit in *Hood* applied *Russo* to circumstances nearly identical to those before the Court now, where police shot a

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[1] Indeed, the video evidence clearly establishes Murphy did not load his rifle onto his shoulder until Eastep had fallen. (See e.g., Defendants' Manually Filed Ex. 1 at 42:48–42:50).

suspect who possessed a firearm as he was "down on the ground or in the process of going down," and held that the officers were not entitled to qualified immunity at summary judgment. *See Hood,* 827 Fed. App'x at 471-72. Granting every reasonable inference in Plaintiff's favor, this Court cannot say that the Individual Defendants lacked "fair warning" that shooting Eastep when he did not pose a safety threat is unconstitutional. *Id.* at 472.

Rather than allow discovery to proceed and address their qualified immunity defense at summary judgment, the Individual Defendants ask for the Court to collapse the officer- and segment-specific inquiry and apply a blanket-version of qualified immunity. That is not the law. The Second Amended Complaint has alleged the plausible use of excessive force, and the video evidence is not dispositive on this issue. Affording Plaintiff every reasonable inference, qualified immunity does not attach. As such, further factual development is necessary to properly consider the Individual Defendants' qualified immunity defense, *Wesley,* 779 F.3d at 433-34, and the Court will reserve its decision on the matter until that time.

B. Failure to Protect

"Generally speaking, a police officer who fails to act to prevent the use of excessive force may be held liable when (1) the officer observed or had reason to know that excessive force would be or was being used, and (2) the officer had both the opportunity and the means to prevent the harm from occurring." *Turner v. Scott,* 119 F.3d 425, 429 (6th Cir. 1997) (citation omitted). Even assuming *arguendo* that at least one of the Individual Defendants used excessive force against

Eastep, the Court cannot allow this claim to proceed. The Second Amended Complaint's failure to plausibly allege the second element in the face of uncontroverted video evidence is fatal to this claim.

The Sixth Circuit has repeatedly made clear that in instances where excessive force lasts only a matter of seconds, officers have no realistic opportunity to intercede and therefore cannot be held liable for failing to prevent another officer's unconstitutional use of excessive force. For instance, in *Amerson v. Waterford Township,* the Sixth Circuit held that an officer did not have a duty or means to intervene "given that the alleged events took place quickly and without any forewarning," and when the time to intervene "could not have been more than a few seconds." 562 Fed. App'x 484, 490 (6th Cir. 2014). Likewise, in *Burgess v. Fischer,* the panel affirmed the lower court's decision to dismiss a failure to protect claim because the plaintiff-appellees did not suggest that the defendants had reason to anticipate the use of force or that that force lasted any more than ten seconds. 735 F.3d 462, 476 (6th Cir. 2013).

The Second Amended Complaint alleges that "[t]here was sufficient time during the incident described to stop the other [I]ndividual Defendants from the continued use of excessive force." (Doc. No. 72 ¶ 60). The incontrovertible video evidence, however, proves this flatly wrong. Between the time Eastep begins to raise his arm and when the last shot is fired, only six seconds elapse. (Plaintiff's Manually Filed Ex. 1 at 00:58-1:04; Defendants' Manually Filed Ex. 1 at 42:48-42:54; Defendants' Manually Filed Ex. 2 at 27:50-27:55; Defendants' Manually Filed Ex. 3 at

27:12-18). In that time, the Individual Defendants would have had to recognize that other Individual Defendants intended to apply excessive force by shooting Eastep, realize he did not present a threat warranting deadly force, and step in to thwart their efforts. The Second Amended Complaint alleges no facts suggesting that any Individual Defendants could accomplish this seemingly impossible feat. (*See generally* Doc. No. 72).

Perhaps for that reason, Plaintiff argues that Edge and Llukaj's failure to protect Eastep occurred in the thirty or more minutes before Eastep raised his arm. (*See* Doc. No. 126 at 25 ("Trooper Edge had a duty [to] protect Mr. Eastep from not only his actions but the actions of other responding officers.... Once other officers arrived and provided sufficient coverage of Mr. Eastep, Trooper Edge had a duty to withdraw from the firing line and report his knowledge of the initial encounter to other officers."); *see* Doc. No. 130 at 17-18 ("Llukaj knew, or should have known through reasonable communication with Trooper Edge during the [35] minute encounter, that Landon Eastep did not have a firearm, had a vape in his pocket, was clearly scared, perhaps mentally ill, or any other possible scenario which would obviate the need for the continued increase of more officers with tactical weaponry approaching and encircling Mr. Eastep. Finally, Fabjan Llukaj should have been properly equipped with less lethal devices and should have only inserted himself into the situation if he was properly trained. Additionally, Fabjan Llukaj should not have subverted other officers, who were more appropriately trained and equipped, from assuming direct contact with

Eastep.")). Setting aside that there is no allegation in the Second Amended Complaint that Edge knew Eastep did not have a gun, (*see generally* Doc. No. 72), Plaintiff's argument fails to connect these supposed missteps to the essential elements of her failure to protect claim. At bottom, Plaintiff offers no plausible allegation or explanation that either Edge or Llukaj observed or had reason to know that excessive force would be used at any point during their ongoing negotiations with him.

Precedent and the circumstances of this case show that the Individual Defendants did not have a duty or means to intervene in others' alleged use of excessive force. Accordingly, no plausible constitutional violation occurred, and the Individual Defendants are entitled to qualified immunity as to this claim.

II. Claims Against Metro and Mt. Juliet

The Court will address the claims specific to Metro first and then turn to the claim brought against both municipalities.

A. Section 1983 Claims Against Metro

A municipality cannot claim qualified immunity. *Meals v. City of Memphis, Tenn.,* 493 F.3d 720, 727 (6th Cir. 2007) (citing *Owen v. City of Independence,* 445 U.S. 622, 650 (1980)); *Ruby v. Horner,* Fed.Appx. 284, 285 (6th Cir. 2002). At the same time, "a municipality cannot be held liable solely because it employs a tortfeasor[.]" *Monell v. Dep't of Social Servs. of N.Y.,* 436 U.S. 658, 691 (1978). Thus, "under [Section] 1983, local governments are responsible only for 'their own illegal acts.' . . . They are not vicariously liable under [Section] 1983 for their employees' actions." *Connick*

v. Thompson, 563 U.S. 51, 60 (2011) (quoting *Pembaur v. Cincinnati,* 475 U.S. 469, 479 (1986)). Therefore, a municipality may be held liable under Section 1983 if the challenged conduct occurs pursuant to "a municipality's 'official policy,' such that the municipality's promulgation or adoption of the policy can be said to have 'caused[d]' one of its employees to violate that plaintiff's constitutional rights." *D'ambrosio v. Marino,* 747 F.3d 378, 386 (6th Cir. 2014) (quoting *Monell,* 436 U.S. at 692). "Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law." *Connick,* 563 U.S. at 61.

To state a municipal liability claim, a plaintiff must adequately allege either: "(1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision-making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance of or acquiescence to federal rights violations." *Brugess v. Fischer,* 735 F.3d 462, 478 (6th Cir. 2013); *accord Boulton v. Swanson,* 795 F.3d 526, 531 (6th Cir. 2019). Plaintiff attempts to establish municipal liability under the first, third, and fourth methods. (Doc. No. 72 ¶¶ 66-87). Because the Second Amended Complaint alleges that Metro's liability is born from its deliberate indifference to the potential of unconstitutional conduct on the part of its officers, (*see id.* ¶¶ 68-70, 72-73, 82), Court will address these claims together.

To successfully allege a theory of municipal liability based on deliberate indifference to an

unconstitutional policy or custom, a plaintiff bears the burden of showing (1) "that an unconstitutional policy or custom existed, [(2)] that the policy or custom was connected to the municipality, and [(3)] that the policy or custom caused the constitutional violation." *Spainhoward v. White Cnty., Tenn.,* 421 F.Supp.3d 524, 542-43 (M.D. Tenn. 2019) (citation omitted). As alleged in the Second Amended Complaint, the Metropolitan Nashville Police Department maintained policies or customs of-or acquiesced to such customs or practices of-failing to (1) provide for the safety of arrestees, detainees, and the like from the use of excessive force, (Doc. No. 72 ¶ 68); (2) follow procedures that de-escalate and avoid the use of excessive force when dealing with citizens with a history of mental illness, (id. ¶ 69); and (3) condemn officers turning a blind eye to excessive force, (id. ¶ 72). Such policies or customs must be shown by an alleged "clear and persistent pattern." *Thomas v. City of Chattanooga,* 398 F.3d 426, 432 (6th Cir. 2005); *Okolo v. Metro. Gov't of Nashville,* 892 F.Supp.2d 931, 941-42 (M.D. Tenn. 2012).

Similarly, to adequately allege a custom of inaction towards constitutional violations, a plaintiff must allege facts making plausible "(1) a "clear and persistent pattern" of misconduct, (2) notice or constructive notice on the part of the municipality, (3) the defendant's tacit approval of the misconduct, and (4) a direct causal link to the violations." *Nouri v. City of Oakland, Mich.,* 615 Fed.Appx. 291, 296 (6th Cir. 2015); *see also Thomas v. City of Chattanooga,* 398 F.3d 426, 432 (6th Cir. 2005); *Okolo,* 892 F.Supp.2d at 941-42.

As for the theory of municipal liability based on a failure to properly train or supervise police offices, "a plaintiff may show prior instances of unconstitutional conduct by demonstrating that a governmental entity ignored a history of abuse and was clearly on notice that the training in a particular area was deficient and likely to cause injury." *Spainhoward,* 421 F.Supp.3d at 543 (citing *Slusher v. Carson,* 540 F.3d 449, 457 (6th Cir. 2008); *Fisher v. Harden,* 398 F.3d 837, 849 (6th Cir. 2005)).[2] Again, these prior instances must amount to an alleged "pattern of past misconduct." *Id.*

The Second Amended Complaint alleges instances of Metro's officers using excessive force in order to demonstrate the patten necessary under each of the three theories of municipal liability. (Doc. No. 72 ¶¶ 43-48). Some predate the events underlying this case by a decade or more (*see e.g., Id.* ¶¶ 43, 44 (citing incidents from 1998 and 2005)), and another does not concern Metropolitan Nashville Police Department officers. (*Id.* ¶ 48 (concerning alleged excessive force by employees of the Davidson County Sheriffs' Office)). Notwithstanding these and Metro's several other

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[2] Although a municipality may also be held liable only where there is essentially complete failure to train the police force or training that is so reckless or grossly negligent that future police misconduct is almost inevitable or would properly be characterized as substantially certain to result. Id. (citing Hays v. Jefferson Cnty., Ky., 668 F.2d 869, 874 (6th Cir. 1982)). The Second Amended Complaint's failure-to-train allegations do not allege the "single incident" theory in an adequate or even conclusory manner. (See Doc. No. 72 ¶ 82 (alleging that the deprivation of constitutional rights was only "likely" to result)). Thus, the Court need not consider this alternative theory.

objections to the use of these prior incidents, (Doc. No. 106 at 8-12, 14), Metro contends that the Second Amended Complaint lacks plausible allegations supporting the other essential elements of Plaintiff's claims, (*id.* at 6-8, 14-16). Indeed, according to Metro, the paragraphs supposedly supporting Plaintiff's municipal liability claims "are legal conclusions dressed up as facts." (*Id.* at 7; *see also id.* at 14 (characterizing the allegations as a "formulaic recitation of the elements of the cause of action")).

Plaintiff offers an excuse rather than a responsive argument. After reaffirming her position that the Individual Defendants exercised excessive force, Plaintiff states in full:

> This case has been stayed and discovery has not yet commenced. As alleged in the Second Amended Complaint, Metro has notice of prior incidents of excessive force and has failed to comply with appropriate de-escalation tactics. Once discovery proceeds, the Plaintiff anticipates Metro's failure to train or modify its training regarding the use of force and de-escalating situations with emotionally stressed individuals, as alleged, to be more thoroughly established by the use of extrinsic evidence obtained through discovery. These are issues that are routinely addressed at the summary judgment stage or at trial once discovery is complete and the strength of the Plaintiff's proof and evidence can be presented and considered.

(Doc. No. 124 at 11). Nowhere in this explanation does Plaintiff gesture at-let alone argue that the Second Amended Complaint adequately alleges-the other essential elements required of the three relevant theories of municipal liability. (*Id.*). Accordingly, Plaintiff has abandoned her § 1983 claims against Metro. *ARJN #3 v. Cooper*, 517 F.Supp.3d 732, 750 (M.D. Tenn. 2021) ("Where a party fails to respond to an argument in a motion to dismiss the Court assumes [s]he concedes this point and abandons the claim" (internal quotation marks and citation omitted)).

B. Negligence Claim Against Metro and Mt. Juliet

Although, as previously stated, "a municipality cannot be held liable solely because it employs a tortfeasor," *Monell,* 436 U.S. at 691, Tennessee, through the Tennessee Governmental Tort Liability Act ("TGTLA"), Tenn. Code Ann. § 29-20-101 *et seq*., removed its immunity for "injury proximately caused by a negligent act or omission of any employee within the scope of his employment" but provides a list of exceptions to this waiver of immunity. Tenn. Code Ann. § 2920-205. Injuries that "arise[ ] out of . . . civil rights" are one such exception, that is, sovereign immunity continues to apply in those circumstances. *Id.* "TGTLA's 'civil rights' exception has been construed to include claims arising under 42 U.S.C. § 1983 and the United States Constitution." *Johnson v. City of Memphis,* 617 F.3d 864, 872 (6th Cir. 2010).

Metro and Mt. Juliet contend that Tennessee's sovereign immunity has not been waived because the negligent act alleged was the shooting underlying Plaintiff's excessive force claim against the Individual

Defendants. (Doc. Nos. 106 at 17-18; 110 at 6). In response, Plaintiff asserts that "the poor planning, bad tactics or negligence of [Metro and Mt. Juliet's officers] should be actionable" because "the negligence of the officers that might have created the circumstances that led to the use of force is not . . . considered in an excessive force case." (Doc. No. 124 at 13; *see also* Doc. No. 128 at 9 (same)).

But Plaintiff's negligence claim, as pleaded in the Second Amended Complaint, does not focus on the several minutes between Edge's initial contact with Eastep and when Eastep raised his electronic cigarette towards the line of officers. The negligent act identified is the "use of excessive force by shooting." (Doc. No. 72 ¶ 91). Because the circumstances giving rise to these claims are the same alleged wrongful acts that give rise to Plaintiff's excessive force claim, Metro and Mr. Juliet retain their immunity. *See Grove v. Metro. Gov't of Nashville & Davidson Cnty.,* No. 3:18-cv-01270, 2019 WL 2269884, at *7 (M.D. Tenn. May 28, 2019) (collecting cases). Plaintiff cannot save her claim by amending the pleadings in a response. *Waskul v. Washtenaw Cnty. Cmty. Mental Health,* 979 F.3d 426, 440 (6th Cir. 2020) (explaining that a plaintiff "cannot amend their complaint in an opposition brief or ask the court to consider new allegations (or evidence) not contained in the complaint."); *Bates v. Green Farms Condo. Ass'n,* 958 F.3d 470, 483 (6th Cir. 2020) (same).

III. Metro Officers Carrick and Williams Rule 12(b)(5) Request

At the end of Metro Officers' Motion, Carrick and Williams ask the Court to dismiss without prejudice

all claims against them pursuant to Rules 12(b)(5) and 4(m) for lack of good cause for an extension. (Doc. No. 103 at 2-4; *see also* Doc. No. 104 at 17-19 (arguing in support of same)). Specifically, they argue that dismissal is warranted because Plaintiff failed to perfect service or to request that Metro Officers' counsel accept service of process for Carrick and Williams until 174 days after she filed her initial complaint. (Doc. No. 104 at 18). Plaintiff does not deny this timeline or contend that good cause exists. (Doc. No. 122 at 16). Instead, she asserts the Court should grant an extension because Metro Officers' counsel agreed to accept service on behalf of Carrick and Williams and an extension would promote judicial efficiency. (*Id.*).

The Sixth Circuit has directed district courts to consider seven factors in "deciding whether to grant a discretionary extension of time in the absence of a finding of good cause." *Oakland Physicians Med. Ctr., LLC,* 44 F.4th at 569. Those factors are:

(1) whether an extension of time would be well beyond the timely service of process; (2) whether an extension of time would prejudice the defendant other than the inherent prejudice in having to defend the suit; (3) whether the defendant had actual notice of the lawsuit; (4) whether the court's refusal to extend time for service substantially prejudice the plaintiff, i.e., would the plaintiff's lawsuit be time-barred; (5) whether the plaintiff had made good faith efforts to effect proper service of process or was diligent in correcting any deficiencies; (6) whether the plaintiff is a pro se litigant deserving of additional latitude to correct defects in service of process; and (7) whether any

equitable factors exist that might be relevant to the unique circumstances of this case.

(*Id.*). No party addresses these seven facts. (*See generally* Doc. Nos. 103, 104, 122). However, based on the record, factors one, four, and six support granting Carrick and Williams' request, whereas factors two, three, and four support permitting an extension. In light of its "strong preference" for resolving claims on their merits, *United States v. $22,050.00 U.S. Currency,* 595 F.3d 318, 322 (6th Cir. 2010), the Court will, in its discretion, grant the extension.

CONCLUSION

For the forgoing reasons, the Court will grant Metro and Mt. Juliet's Motions to Dismiss (Doc. Nos. 105, 109) and grant in part and deny in part Metro Officers', THP Officers', and Llukaj's Motions to Dismiss (Doc. Nos. 103, 107, 111).

An appropriate order will enter.

/s/Waverly D. Crenshaw
Waverly D. Crenshaw
Chief United States
District Judge

Appendix C
[Filed: May 8, 2023]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

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Case No. 3:22-CV-00721

———♦———

CHELESY EASTEP, as surviving spouse and next of kin of LANDON DWAYNE EASTEP,

Plaintiff,

vs.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY; BRIAN MURPHY, STEVEN CARRICK, EDIN PLANCIC, SEAN WILLIAMS, JUSTIN PINKELTON, and JAMES KIDD, in their individual capacities as officers of the Metropolitan Nashville Police Department; CITY OF MT. JULIET, TENNESSEE; FABJAN LLUKAJ, in his individual capacity as an officer of the Mt. Juliet Police Department; and REGGIE EDGE, JR, and CHARLES ACHINGER, in their individual capacities as officers of the Tennessee Highway Patrol,

Defendants.

———♦———

Chief Judge Crenshaw
Magistrate Judge Newbern
Jury Trial Demanded

———♦———

SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff, CHELESY EASTEP, who is the surviving spouse and next of kin of LANDON EASTEP, and for cause of actions against the Defendants, respectfully states as follows:

I. Introduction

1. This Complaint arises out of the death of Landon Dwayne Eastep (i.e., "Mr.Eastep") on the afternoon of January 27, 2022. Mr. Eastep was shot twelve (12) times by officers of the Tennessee Highway Patrol, the Metropolitan Nashville Police Department, and the Mt. Juliet Police Department on the northbound shoulder of Interstate 65 at mile marker 76, approximately ten miles south of downtown Nashville, Tennessee.

2. The police officers and state troopers who shot Mr. Eastep acted under color of law when they violated his constitutional right to be free from the use of excessive force, thereby causing his brutal death. Furthermore, these law enforcement officers acted in accordance with unconstitutional policies, customs, usages, and/or practices that had been promulgated by the policymakers in their respective jurisdictions.

3. Mr. Eastep leaves behind an estate with beneficiaries, including his wife and his minor child. Therefore, as Mr. Eastep's surviving spouse, Plaintiff Chelesy Eastep seeks money damages against these law enforcement officers pursuant to 42 U.S.C. § 1983 to redress the deprivation of Mr. Eastep's established rights as secured by the Fourth and Fourteenth Amendments to the United States Constitution. Moreover, Plaintiff seeks money damages against the

Metropolitan Government of Nashville and Davidson County pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978) and its progeny because the unconstitutional policies, customs, usages, and practices of these cities were the moving forces behind the actions of their respective police officers.[1] Plaintiff also seeks her attorney's fees and costs pursuant to 42 U.S.C. § 1988.

II. Jurisdiction and Venue

4. This action is brought against the Defendants pursuant to 42 U.S.C. § 1983 for deprivation of civil rights secured by the Fourth and Fourteenth Amendments to the United States Constitution. It arises out of the execution-style shooting and resultant death of Mr. Eastep on Interstate 65 Northbound at mile marker 76 in Davidson County, Tennessee. Mr. Eastep died because of the actions and omissions of the Defendants, all of whom were acting under color of state law.

5. Jurisdiction is founded upon 28 U.S.C. § 1331, § 1343 (a)(3)(4) and § 1367(a).

Moreover, this Court has jurisdiction over the Plaintiff's claims of violation of civil rights under 42 U.S.C. § 1983.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that the factual acts and omissions which gave rise to this cause of action occurred within this district and within one (1) year of the filing of this Complaint and this Court otherwise has jurisdiction.

7. This action is brought additionally and alternatively pursuant to the Tennessee Governmental Liability Act, T.C.A. § 29-20-101 et seq.

III. The Parties

8. At all times relevant hereto and until the time of his death on January 27, 2022, the decedent, Landon Eastep was a citizen of the United States and of the State of Tennessee.

9. The Plaintiff, Chelesy Eastep, is the surviving spouse and next of kin of Landon Eastep. Pursuant to Tennessee's wrongful death statutes, Ms. Eastep has a duty to protect the interests of her late husband's estate for the benefit of his minor child. Ms. Eastep is an adult resident citizen of the City of Tullahoma, County of Coffee, State of Tennessee.

10. Defendant Metropolitan Government of Nashville and Davidson County ("Metro") is a political subdivision of the State of Tennessee. Pursuant to Metro's Charter, the Metropolitan Government of Nashville and Davidson County is the proper name of the consolidated governments of the City of Nashville and the County of Davidson. Metropolitan Charter § 1.01 ("[C}onsolidation shall result in the creation and establishment of a new metropolitan government….to be known as 'The Metropolitan Government of Nashville and Davidson County.'"). At all material times, Defendant Metro was responsible for the training and supervision of Defendants Brian Murphy, Steven Carrick, Edin Plancic, Sean Williams, Justin Pinkelton and James Kidd. At all material times, Metro delegated to Police Chief John Drake the responsibility to establish and implement policies, practices,

procedures and customs used by Metropolitan Nashville Police Officers regarding the use of force and the de-escalation of encounters with individuals experiencing emotional distress or those with a history of mental illness. At all material times, Metro acted under color of law.

11. Defendant Brian Murphy was employed by the Metropolitan Government of Nashville and Davidson County ("Metro"). At all material times, Defendant Murphy acted under color of state law by virtue of his authority as a law enforcement officer for the Metropolitan Nashville Police Department. He is sued in his individual capacity.

12. Defendant Steven Carrick was employed by the Metropolitan Government of Nashville and Davidson County ("Metro"). At all material times, Defendant Carrick acted under color of state law by virtue of his authority as a law enforcement officer for the Metropolitan Nashville Police Department. He is sued in his individual capacity.

13. Defendant Edin Plancic was employed by the Metropolitan Government of Nashville and Davidson County ("Metro"). At all material times, Defendant Plancic acted under color of state law by virtue of his authority as a law enforcement officer for the Metropolitan Nashville Police Department. He is sued in his individual capacity.

14. Defendant Sean Williams was employed by the Metropolitan Government of Nashville and Davidson County ("Metro"). At all material times, Defendant Williams acted under color of state law by virtue of his authority as a law enforcement officer for the

Metropolitan Nashville Police Department. He is sued in his individual capacity.

15. Defendant Justin Pinkelton was employed by the Metropolitan Government of Nashville and Davidson County ("Metro"). At all material times, Defendant Pinkelton acted under color of state law by virtue of his authority as a law enforcement officer for the Metropolitan Nashville Police Department. He is sued in his individual capacity.

16. Defendant James Kidd was employed by the Metropolitan Government of Nashville and Davidson County ("Metro"). At all material times, Defendant Kidd acted under color of state law by virtue of his authority as a law enforcement officer for the Metropolitan Nashville Police Department. He is sued in his individual capacity.

17. Defendant City of Mt. Juliet, Tennessee is a political subdivision of the State of Tennessee. At all material times, Defendant was responsible for the training and supervision of Defendant Fabjan Llukaj. At all material times, Defendant City of Mt. Juliet, Tennessee delegated to Police Chief John Hambrick the responsibility to establish and implement policies, practices, procedures and customs used by Mt. Juliet Police Department Police Officers regarding the use of force and the escalation of encounters with individuals experiencing emotional distress.

18. Defendant Fabjan Llukaj was employed by the City of Mt. Juliet, Tennessee and the Mt. Juliet Police Department. At all material times, Defendant Llukaj acted under color of state law by virtue of his

authority as a law enforcement officer for the Mt. Juliet Police Department. He is sued in his individual capacity.

19. Defendant Reggie Edge was employed by the State of Tennessee and the Tennessee Highway Patrol. At all material times, Defendant Edge acted under color of state law by virtue of his authority as a law enforcement officer for the Tennessee Highway Patrol. He is sued in his individual capacity.

20. Defendant Charles Achinger was employed by the State of Tennessee and the Tennessee Highway Patrol. At all material times, Defendant Achinger acted under color of state law by virtue of his authority as a law enforcement officer for the Tennessee Highway Patrol. He is sued in his individual capacity.

IV. Factual Allegations

21. On January 27, 2022, at approximately 2:00 p.m., thirty-seven (37) year-old Landon Eastep was on the far shoulder of Interstate 65 Northbound at mile marker 76.

22. Defendant Reggie Edge, Jr. of Tennessee Highway Patrol approached Mr.Eastep and began speaking with him. Landon Eastep answered all of Defendant Edge's questions and upon request cooperated and handed him his driver's license. Trooper Edge returned to his vehicle. For several minutes, while Trooper Edge was in his vehicle (observing Landon Eastep), Landon Eastep was clearly vaping, i.e. smoking an electronic cigarette. Landon Eastep takes several draws from the vape, exhales large clouds of white smoke, and puts the vape back in his hoody pocket as Trooper Edge re-approaches him.

23. After exiting his vehicle and returning to Landon Eastep, Trooper Edge told Landon Eastep that he had to come with him. He asked Landon Eastep if he had anything that could poke him or harm him and if he did, that he had to give it to him. When Landon complied and attempted to give Trooper Edge the box cutter he used for his work, Trooper Edge panicked, pulled his service weapon and pointed it at Landon Eastep. This overreaction on the part of Trooper Edge set forth a calamitous chain of events. Landon Eastep, clearly startled and frightened by Trooper Edge's reaction, tried to run away but had nowhere to run.

24. Defendant Llukaj, an off-duty Mt. Juliet Police Department officer, stopped to assist Defendant Reggie Edge, Jr. Defendant Llukaj, while plain clothed and approaching Landon Eastep from the rear, pointed his pistol at Landon Eastep while unleashing a series of profanity filled commands. These actions lead to further confusion on the part of all parties. Shortly thereafter, Defendants Murphy, Carrick, Plancic, Williams, Pinkelton and Kidd, all from the Metropolitan Nashville Police Department, and Defendant Charles Achinger of the Tennessee Highway Patrol arrived to provide backup support.

25. Negotiations with Landon Eastep aimed at convincing him to "surrender" continued for approximately thirty (30) minutes. Contrary to reasonable practices, the Defendants with situational command decided to call for an inexplicably excessive number of backup officers to respond to the scene, to draw their firearms, to form a semi-circle firing squad and create the danger which ultimately turned fatal. Additionally, no officer present, including those named as a

party to this lawsuit, sought to call off the additional officers or reduce the armed presence. Instead of engaging de-escalation procedures, all of the named Defendants escalated the encounter by continuing to point loaded semi-automatic pistols and long guns at Mr. Eastep in an overt show of force. Although Mr. Eastep was emotionally distressed, he did not pose a threat to law enforcement officers, nor did he commit any misdemeanor or felony in their presence, nor did he pose a danger to himself or to the general public. No law enforcement officer came within arm's reach of Mr. Eastep. The overall impression was clear from the overwhelming physical showing of force, Mr. Eastep would not be able to survive this encounter. Under the concept of divided attention, Mr. Eastep was incapable of fully understanding the verbal commands of the Defendants while having the prodigious display of lethality steadily encroaching and encircling him.

26. Negotiations ceased approximately thirty-five minutes into the encounter when three additional, heavily armed military-styled officers carrying long guns, joined the firing line. Landon Eastep then reached for his vape electronic cigarette which has been described by the defense as a "cylindrical metal object." It was not a gun or any other type of weapon that could have posed a threat to the law enforcement officers. This vape was observed being taken in and out of Landon Eastep's pocket by Trooper Edge. Nevertheless, every police officer and state trooper on the scene simultaneously opened fire on Mr. Eastep, killing him. No law enforcement officers were in any way injured in the incident.

27. According to the TBI Investigative Report, there were a total of twenty-five (25) 9 mm cartridges and eight (8) rifle cartridges found at the scene, for a total of at least thirty-three (33) shots fired.

28. According to the TBI Investigative Report, Defendant Edge of the Tennessee Highway Patrol was in possession of a department issued Glock 45 handgun. Defendant Trooper Edge says he fired his weapon at Landon Eastep until the threat was stopped and until Landon Eastep fell to the ground. Upon information and belief, Defendant Trooper Edge fired his weapon at Landon Eastep approximately seven (7) or eight (8) times.

29. According to the TBI Investigative Report, Defendant Achinger of the Tennessee Highway Patrol was in possession of a department issued Glock 45 handgun. Upon information and belief, Defendant Achinger fired his weapon two (2) times at Landon Eastep.

30. According to the TBI Investigative Report, Defendant Fabjan Llukaj of the Mt.Juliet Police Department was in possession of a his personally owned Glock Model 43 9 mm handgun. Upon information and belief, Defendant Llukaj fired his weapon one (1) time at Landon Eastep.

31. According to the TBI Investigative Report, Defendant Pinkelton of the Metro Nashville Police Department was in possession of a department issued Glock 17 9 mm handgun. Upon information and belief, Defendant Pinkelton fired his weapon three (3) times at Landon Eastep.

32. According to the TBI Investigative Report, Defendant Carrick of the Metro Nashville Police Department was in possession of a department issued Glock 17 9 mm handgun. Upon information and belief, Defendant Carrick fired his weapon at Landon Eastep two (2) times.

33. According to the TBI Investigative Report, Defendant Williams of the Metro Nashville Police Department was in possession of a department issued Glock 17 9 mm handgun. Upon information and belief, Defendant Williams fired his weapon at Landon Eastep five (5) times.

34. According to the TBI Investigative Report, Defendant Kidd of the Metro Nashville Police Department was in possession of a department issued Glock 17 9 mm handgun. Upon information and belief Defendant Kidd fired his weapon four (4) times at Landon Eastep.

35. According to the TBI Investigative Report, Defendant Edin Plancic of the Metro Nashville Police Department was in possession of his personally owned BCM AR15 rifle. Upon information and belief, Defendant Plancic fired his personal rifle AR15 rifle approximately six (6) times at Landon Eastep.

36. According to the TBI Investigative Report, Defendant Murphy of the Metro Nashville Police Department was in possession of his personally owned Colt rifle. Upon information and belief, Murphy fired his personal Colt rifle two (2) times at Landon Eastep.

37. The final two (2) shots were fired by Defendant Murphy after Mr. Eastep had been shot multiple times and had fallen to the ground, was clearly

incapacitated and subdued and after a loud and unmistakable "cease fire" had been yelled by another officer. Within hours of the incident, Defendant Murphy was decommissioned and stripped of his police authority pending an investigation into his actions.

38. Autopsy findings confirm that Mr. Eastep suffered twelve (12) bullet wounds from his shoulders down to his left leg. Four (4) of the bullets that struck him traveled front to back, while five (5) entered through his back. When he was initially struck by the gunfire, Mr. Eastep fell to the ground, landing on his side with his back towards some of the officers. The bullets fractured numerous bones and two vertebrae. A gunshot wound to his chest hit both his lungs, heart, and aorta. The autopsy report confirmed Landon Eastep also had minor blunt force trauma to his body with several bruises, cuts, and scrapes.

39. The actions of the individual Defendants as stated above caused extreme, almost unfathomable, pain and suffering to Landon Eastep prior to his death.

40. All acts of the individual Defendants involved in this incident were performed under the color and pretense of the constitutions, statutes, ordinances, regulations, customs and usages of the United States of America and the State of Tennessee, under the color of law and by virtue of their authority as law enforcement officers, and in the course and scope of their employment as law enforcement officers.

41. The Defendant Llukaj was personally involved in the acts and counts herein described by creating an unnecessary display of deadly force by pointing his

personal weapon at Landon Eastep, by controlling the unsuccessful dialogue, by using abusive profanity, by stating falsities to Landon Eastep during the confrontation, by firing his weapon at Landon Eastep, by assuming situational command as chief negotiator without adequate training or wearing an officer's uniform and he subverted other officers from attempting to deescalate the confrontation.

42. The Defendant Brian Murphy had a longstanding disciplinary history as a Metro Police Officer including multiple incidents of negligent operation of police vehicles and a suspension for violation of Use of Force Policy. On October 23, 2018, Defendant Murphy received a written reprimand for his personal behavior for displaying "The Punisher" emblem after receiving a citizen complaint of seeing "The Punisher" displayed as a sign of condoning vigilante justice. Specifically, the complainant stated he was familiar with "The Punisher" character and "The Punisher" is about torture, coercion, kidnapping and murder in effort to fight crime.

Metro's Notice of Prior Incidents of Excessive Force

43. Metro had notice of an incident wherein Metro Officer used excessive force against Russell Fromuth for which Mr. Fromuth filed suit against Metro alleging that during his detention officers kicked him, administered several blows with the butt of a shotgun and drug him by his feet toward the patrol car. Fromuth v. Metropolitan Government of Nashville, 158 F. Supp. 2d, 787 (M.D. Tenn. 2001).

44. Metro had notice of a 2005 incident wherein Metro Officers used excessive force against Patrick Lee who, after getting too close to a concert stage, was beaten, kicked, struck numerous times with batons and electrically shocked with a Taser stun gun approximately 19 times causing the death of Patrick Lee. Bud Lee and Cindy Lundman, as next friend and natural parents of Patrick Lee v. Metropolitan Gov't. of Nashville, et. al., Case No. 3:06-cv-00108, United States District Court for the Middle District of Tennessee, Nashville Division.

45. According to media sources, from 2013 until 2021, Metro Police Department had nineteen (19) killings by police, and from 2013-2017, there were 2,537 civilian complaints of police misconduct. With regard to the use of deadly force during this time period, 5% of the victims were unarmed and 26% allegedly did not have a gun. As to the use of force complaints, 20% were ruled in favor of civilians. Https://policescorecard.org/tn/police-dept-nashville-metro.

46. Metro had notice of a July 26, 2018 incident wherein Daniel Hambrick was shot and killed by Metro Officer Andrew Delke after he shot Hambrick in the back four (4) times while running away. The released video footage showed that Hambrick never reached for his weapon and was running for his life when Delke shot him. WPLN Reporter Samantha Max's Podcast "Deadly Forcing," released January 2020.

47. According to media sources, Metro Nashville Police Department has continued to use excessive force and failed to comply with the de-escalation tactics, leading to two (2) recent shootings, one (1) fatal.

Specifically, on March 13, 2021, Metro Police were called on a Goodlettsville woman, Melissa Wooden, who threatened suicide before charging at police officers with a pick-axe. Wooden was shot but survived. In a separate incident, Nika Holbert resisted arrest before shooting at a police officer, who in turn, fatally shot her. According to media sources, the Metro Nashville Police Department needs to reinforce the need for police officers to follow procedures that de-escalate and avoid the use of excessive force when dealing with citizens, especially those with a history of mental illness. https://tennesseelookout.com/briefs/8491.

48. Metro had notice of a 2011 incident involving Michael Minnick who was shocked with a stun gun and arrested. After being taken to the hospital and restrained to a bed, Minnick was sprayed in the face with a chemical spray, forcefully taken to the floor and struck in the face until he stopped breathing, stopped moving, defecated on himself and began turning blue from asphyxiation. Minnick v. Metro Gov't. of Nashville, Case No. 3:12-cv-0524 (M.D. 10. August 4, 2014). It was alleged that Metro had a duty to protect Minnick's life and health, to have its employees refrain from conduct that created an unreasonable risk of injury or death, to adequately train its employees and to refrain from the use of deadly force except where reasonably necessary to protect the health and safety of the officers and/or the public. It was further alleged that Metro breached these duties because it failed to protect Minnick from the unreasonable and excessive use of deadly force by the DSCO officers and because it failed to adequately train and supervise its employees in regard to the proper use of force. Id.

COUNT I - EXCESSIVE FORCE

49. Plaintiff re-alleges and incorporates all paragraphs in this Complaint as if fully stated herein.

50. The conduct by the officers identified in this Count and described herein constituted excessive and deadly force in violation of the Fourth Amendment of the United States Constitution, and clearly established law.

51. The individual Defendants' acts of shooting Landon Eastep were an objectively unreasonable, unnecessary, and excessive use of force that constituted punishment and was not rationally related to a legitimate nonpunitive governmental purpose or was excessive in relation to such purpose. Put simply, the law enforcement officers on the scene did not need to shoot Mr. Eastep one time – let alone twelve times in the front and back – since he posed no actual threat to them or to any third party. Furthermore, assuming arguendo that the use of force would have been reasonable in the abstract (which Plaintiff does not admit), the individual Defendants could have used a taser or some other means of non-lethal force. Instead, they gunned him down like a rabid dog.

52. The individual Defendants acted under color of law to deprive Mr. Eastep of his right to be free of excessive force, and this amounts to punishment pursuant to the Fourteenth Amendment to the Constitution of the United States and by 42 U.S.C. § 1983.

53. Mr. Eastep's right to be free from excessive force in the manner described in this Complaint was clearly established at the time the force was used.

54. As a direct and proximate cause of the acts of the individual Defendants described in this Complaint, Mr. Eastep suffered severe mental and physical pain and suffering and injury prior to his death.

55. The individual Defendants are jointly and severally liable for the excessive force used on Landon Eastep because they acted jointly and in conspiracy with one another to cause the harms described herein, which constituted excessive force.

56. The acts and omissions of the individual Defendants complained of herein were unlawful, conscious, shocking and unconstitutional and performed maliciously,recklessly, fraudulently, intentionally, willfully, wantonly and in such a manner as to entitle the Plaintiff to an award of punitive damages.

57. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees under 42 U.S.C. § 1988.

COUNT II - FAILURE TO PROTECT

58. Plaintiff re-alleges and incorporate all paragraphs in this Complaint as if expressly stated herein.

59. The individual Defendants observed or had reason to know that excessive force would be (or was being) used by the other individual Defendants, and as such, they had both the opportunity and the means to prevent the harm from occurring and from continuing to occur.

60. There was sufficient time during the incident described to stop the other individual Defendants from the continued use of excessive force. Nevertheless, not only did each individual Defendant fail to take any action to stop the excessive force, but each

individual Defendant also actively participated in the excessive force.

61. The individual Defendants are liable for failing to protect Mr. Eastep from each other's excessive and unnecessary force because they each owed Mr. Eastep a duty of protection against such use of excessive force.

62. The failure to protect Mr. Eastep from excessive force was a violation of his Fourteenth Amendment rights and was clearly established as such at the time.

63. As a direct and proximate result of the individual Defendants' failure to protect Mr. Eastep from excessive force, Mr. Eastep suffered severe harm including pain and suffering and ultimately death.

64. The actions and omissions of the individual Defendants complained of herein were unlawful, conscience-shocking, and unconstitutional. Moreover, they were performed maliciously, recklessly, intentionally, willfully, wantonly, and in such a manner as to entitle the Plaintiff to an award of punitive damages.

65. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees under 42 U.S.C. § 1988.

COUNT III - 42 U.S.C.§ 1983 - Monell Liability

66. Plaintiff hereby incorporates and re-alleges all preceding paragraphs in this Complaint as if expressly stated herein.

67. Metro, acting by and through its policy makers, had knowledge of Metropolitan Nashville Police

Department's unconstitutional patterns and practices and knowledge that the same gave rise to a risk of violations of citizens federal rights.

68. Metro, acting by and through its policy makers, made a deliberate and/or conscious decision to disregard the known risk of harm that would result from Metropolitan Nashville Police Department's unconstitutional patterns and practices and was deliberately indifferent to and/or tacitly authorized the same. On or prior to January 27, 2022, Metro, with deliberate indifference to the rights of arrestees, detainees and the like, tolerated, permitted, failed to correct, promoted, or ratified a number of customs, patterns or practices that failed to provide for the safety of arrestees, detainees, and the like including but not limited to the use of excessive force.

69. Metro, acting by and through its policy makers, made a deliberate and/or conscious decision to disregard the known risk of harm that would result from Metropolitan Nashville Police Department's unconstitutional patterns and practices and was deliberately indifferent to and/or tacitly authorized the same. On or prior to January 27, 2022, Metro, with deliberate indifference to the rights of arrestees, detainees and the like, tolerated, permitted, failed to correct, promoted, or ratified a number of customs, patterns or practices that failed to provide for the safety of arrestees, detainees, and the like including but not limited to following procedures that de-escalate and avoid the use of excessive force when dealing with citizens, especially with the history of mental illness.

70. Metro, acting by and through its policy makers, made a deliberate and/or conscious decision to

disregard the known risk of harm that would result from Metropolitan Nashville Police Department's unconstitutional patterns and practices and was deliberately indifferent to and/or tacitly authorized the same. On or prior to January 27, 2022, Metro, with deliberate indifference to the rights of arrestees, detainees and the like, tolerated, permitted, failed to correct, promoted, or ratified a number of customs, patterns or practices that condoned and required officers to turn a blind eye to and not to intervene with the use of excessive force by Metro officers.

71. Because of the prior instances of unconstitutional conduct demonstrating that Metro has ignored a history of abuse, Metro was on notice that the training in the areas of excessive force and de-escalation was deficient and likely to cause injury.

72. On or prior to January 27, 2022, Metro, with deliberate indifference to the rights of arrestees, detainees, and the like, tolerated, permitted, failed to correct, promoted or ratified a number of customs, patterns or practices that shall be further identified in discovery.

73. Metro, with deliberate indifference to the rights of arrestees, detainees, and the like, continued to employ Brian Murphy despite knowledge of his unconstitutional and repeated improper conduct.

74. Metro had final policymaking authority regarding the establishment of written policies and training programs governing the conduct of the Metropolitan Nashville Police Department's officers performing policing functions on behalf of the City of Nashville. Moreover, Metro established and/or approved of said

written policies and training programs governing the conduct of the Metropolitan Nashville Police Department's officers performing policing functions.

75. The unconstitutional policies, practices and customs defined herein were the moving forces behind the death of Mr. Eastep. As such, Mr. Eastep died as a direct and proximate result of the acts and omissions of Metro.

76. As a direct and proximate result of the acts and omissions described herein, Mr. Eastep and Mr. Eastep's estate, namely his wife and his minor child, have suffered compensatory and special damages as defined under federal common law and in an amount to be determined by a jury.

77. As a direct and proximate result of these wrongful acts and omissions, the Plaintiff has suffered a pecuniary loss, including medical and funeral expenses, and other compensatory damages to be determined by the jury.

78. Plaintiff is entitled to recover her costs, including reasonable attorneys' fees under 42 U.S.C. § 1988.

COUNT IV - 42 U.S.C. § 1983 - Canton Liability

79. Plaintiff hereby re-alleges and incorporates all paragraphs in the Complaint as if expressly stated herein.

80. Defendant Metro failed to properly train or modify its training for Defendant officers and for its other officers, including but not limited to, (1) matters related to the reasonable and appropriate use of force during such encounters and (2) intervention in the excessive force by fellow officers.

81. Using force to effectuate an arrest and intervening in the use of force are usual and recurring situations with which officers of the Metropolitan Nashville Police Department encounter on a regular basis. As such, Defendant Metro was aware of a need for more and different training.

82. Specifically, Defendant Metro knew that its officers needed training regarding the use of force and de-escalating situations with emotionally distressed individuals. Defendant Metro was aware that deprivation of the constitutional rights of citizens was likely to result from its lack of training and the failure to modify its training. As such, Defendant Metro was deliberately indifferent and exhibited reckless disregard with respect to the potential violation of constitutional rights.

83. The failure to train and/or modify training constituted official policies, customs, usages, or practices of Defendant Metro.

84. Defendant Metro's failure to train and/or modify training were behind the acts and omissions the Defendant officers made toward Mr. Eastep.

85. As a direct and proximate result of Defendant Metro's acts and omissions, Mr. Eastep suffered injuries, experienced pain & suffering, and ultimately died.

86. As a direct and proximate result of the acts and omissions described herein, Mr. Eastep and, by extension, Plaintiff suffered compensatory and special damages as defined under federal common law and in an amount to be determined by jury.

87. Plaintiff is entitled to recovery of costs, including reasonable attorneys' fees under 42 U.S.C. § 1988.

COUNT V - STATE LAW CLAIM IN THE ALTERNATIVE FOR NEGLIGENCE

88. Plaintiff re-alleges and incorporates all paragraphs in this Complaint as if expressly stated herein.

89. In addition to, and in the alternative to, the above federal law claims, Plaintiff asserts claims pursuant to the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 et seq.

90. Defendant City of Nashville, and the City of Mt. Juliet owed a duty of due care to Mr. Eastep to refrain from handling him in a negligent fashion that could, would, and ultimately did cause injury and death to him.

91. The use of excessive force by shooting Landon Eastep execution style was negligent. Moreover, as a direct and proximate result of said negligence, the Plaintiff suffered the loss of consortium, society, companionship, guidance, love and affection and services of Mr. Eastep and is entitled to a judgment against the Defendants for compensatory damages arising as the result of such loss of consortium.

PRAYER FOR RELIEF

1. That process issue to the Defendants and that they be required to answer in the time required by law;

2. That judgment be rendered in favor of the Plaintiff and against the Defendant on all causes of action asserted herein;

3. That Plaintiff be awarded those damages to which she is entitled by proof submitted in this case for the pain and suffering endured by Landon Eastep prior to his death, funeral expenses incurred and the pecuniary value of the life of Landon Eastep as the result of the violation of his rights as guaranteed by the Fourth and Fourteenth Amendment to the Constitution of the United States;

4. That punitive damages be assessed against the individual Defendants;

5. That the Plaintiff be awarded reasonable expenses including reasonable attorneys' fees and expert fees and discretionary costs pursuant to 42 U.S.C § 1988 (b) and (c);

6. That the Plaintiff be awarded all damages allowable for her state cause of action for wrongful death pursuant to Tenn. Code Ann. § 20-5-113 up to the limits provided by Tenn. Code Ann. § 29-20-403;

7. That Defendants be held jointly and severally liable for all damages;

8. That the Plaintiff receive any other further and general relief to which she may be entitled; and

9. That a jury of eight (8) is demanded.

Respectfully Submitted,

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1 Plaintiff would otherwise sue the State of Tennessee or the Tennessee Highway Patrol under the Monell theory of liability. However, the Eleventh Amendment prohibits suits against the State of Tennessee in Federal Court. See Pennhurst State Sch. & Hosp. V. Halderman, 465 U.S. 89, 100, 104 S. Ct. 900, 79 L.Ed. 2d 67 (1984) (holding that Eleventh Amendment prohibits suits against States in Federal Court); Mumford v. Basinski, 105 F.3d 264, 267 (6th Cir. 1997)(holding that Federal suits against agencies of the State of Tennessee are prohibited); Berndt v. State of Tennessee, 796 F.2d 879, 881 (6th Cir. 1986)(noting that Tennessee has not waived immunity to suits under). §1983).