

APPENDIX 1 of 2

APPENDIX 1 of2

Table of Contents

United States Court of Appeals Sixth Circuit Opinion & Judgment	1a
United States Court of Appeals Mandate.....	24a
United States Court of Appeals Denying Petition for Rehearing en Banc..	25a
Southern District Court of Ohio order/Daubert.....	26a

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Re: Case No. 25-3750, *Frasure, et al v. City of Wyoming, Ohio, et al.*
Originating Case No. 1:24-cv-00092

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Enclosed are the court's unpublished opinion and judgment, entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Sincerely yours,

s/Laurie A. Weitendorf
Opinions Deputy

cc: Mr. Richard W. Nagel

Enclosures

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0204n.06

No. 25-3750

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED

May 05, 2026

KELLY L. STEPHENS, Clerk

JOSEPH FRASURE and LISA FISHER,)
individually and as Co-Administrators of the Joe)
Frasure Estate, deceased,)

Plaintiffs-Appellants,)

v.)

CITY OF WYOMING, OHIO; DREW JONES;)
JORDAN BATTS; RYAN WARMACK,)

Defendants-Appellees.)

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

OPINION

Before: KETHLEDGE, WHITE, and LARSEN, Circuit Judges.

HELENE N. WIDTE, Circuit Judge. Plaintiffs Joseph Frasure ("Frasure") and Lisa Fisher ("Fisher"), individually and as co-administrators of their son Joe Frasure Jr.'s ("Joe") estate, brought this action against police officers Drew Jones ("Jones"), Jordan Batts ("Batts"), and Ryon Warmack ("Warmack," together "Officers") and the City of Wyoming, Ohio ("City," referred to as "Defendants" together with "Officers") for claims arising out of the fatal officer-involved shooting of their son Joe. Frasure¹ appeals orders excluding his expert witness, granting summary judgment in favor of Defendants, and denying his motion for partial summary judgment. We **AFFIRM**.

I. Facts

Joe's grandmother died on January 6, 2023. During the afternoon of January 29,

¹ We follow the parties' approach and refer to Plaintiffs Frasure and Fisher as "Frasure" collectively when referring to them in their capacity as Plaintiffs.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

2023, Frasure, Joe, and other family members went to clean out her apartment, a top-floor unit of a two-story, four-unit apartment building at 320 Durrell Avenue in Wyoming, Ohio.² Several Wyoming police officers were in the building's vicinity while the family was cleaning out the apartment. At around 11:45 p.m. that day, and under the impression that the unit needed to be emptied to receive the security deposit, Frasure and Joe returned to the building to meet Joe's sister and continue the clean out.

Shortly after midnight on January 30, 2023, Jerome Guest, a neighbor, called what he believed to be a non-emergency City line.³ Guest reported that, although he understood that 320 Durrell "was supposed to be vacant," he could see people "walking around it and doing maybe suspicious things at a late hour" including people "walking around in the window" and "flashlights in the basement." R. 9-1, Ex. C, 0:27-1:03. Guest did not affirmatively mention a potential burglary but, when asked by dispatch "how many people are trying to break into the house," Guest reported seeing two or three people. *Id.* at 1:26-1:45. Because he could only see silhouettes, he was unable to provide descriptions.

The call was dispatched to the Wyoming Police "to investigate a group of two three subjects attempting to break into the vacant residence" at 320 Durrell but with the note that the caller was unable to provide a description and could only see silhouettes. R. 9-1, Ex. D, 0:03--0:38. The Officers responded to the dispatch call in police cars, though they approached

3a

² According to Plaintiff Fisher, at some point after the grandmother's death, her brother (Joe's uncle) told Wyoming Police employees at the City precinct that family members would be removing the grandmother's belongings but did not specify a particular date or time.

³ Although he indicated to the answering agent that he was "trying to call the Wyoming non-emergency line," Guest called the Hamilton County police dispatch. R. 9-1, Ex. C, 0:03-0:12.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

320 Durrell on foot. Each wore a body-worn camera ("BWC")⁴ and a uniform with a police badge and other police indicia. All three Officers had been previously dispatched to 320 Durrell for other calls including domestic-violence incidents, thefts, break-ins, and a drug-related shooting. Although Warmack and Batts were aware that an elderly tenant in the building had recently died, and Warmack knew that the building was in some stage of condemnation, there is no evidence that any of the Officers knew that family members were cleaning out the apartment unit.

Warmack arrived at 320 Durrell at approximately 12:41 a.m. He initially walked past the front of 320 Durrell and up the driveway between 320 Durrell and 322 Durrell. In the paved area behind 320 Durrell, Warmack observed two parked cars, including a silver van. He then walked back down the driveway toward the street and up a few steps to 320 Durrell's front door, which he tried to open but found locked. He heard indiscernible voices inside, and observed that the basement, upper unit, and lower right unit were illuminated.⁵ As he descended the front steps, Warmack said "I got people inside." Warmack BWC, 00:43:10--43:14.⁶ When he tried to open the door, Warmack did not identify himself as an officer.

Jones and Batts arrived at 320 Durrell at the same time as Warmack but from the opposite direction. Jones and Batts observed lights on in an upper unit, lower unit, and the basement, and the silhouettes of people in an upstairs unit. Standing on the side of the building further away from 322 Durrell, they called dispatch to ask if the caller had identified which apartment was being burglarized. As they awaited an answer, Batts hypothesized that "it had to be the upstairs one

⁴ Both Plaintiffs and Defendants entered the BWC footage into the record. See R. 9-1, Ex. E, ID #X60311664 ("Warmack BWC"); R. 9-1, Ex. F, ID #X60317296 ("Batts BWC"); R. 9-1, Ex. G, ID #X60317846 ("Jones BWC"); see also R. 50, Exs. K-M (same). All three BWCs record virtually the same period.

⁵ In an affidavit submitted in support of Defendants' motion for summary judgment, Warmack attested that he had "see[n] shadows in the front-right apartment ... which suggested there were individuals accessing the lower-level of the building." R. 49-4, PID 1610. This was not captured in Warmack's body-camera footage.

⁶ It is not clear if Warmack was speaking into his radio or to Jones and Batts.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

because the old lady died." Jones BWC, 00:42:15-20. Batts and Jones observed someone looking out of the upper-left unit's window and heard a bang-like noise and voices inside. Later in his deposition, Jones testified that he "heard someone ma[k]e a statement that they understood that law enforcement was outside and they could hear [Jones and Batts] talking," but this is not discernible on either Batts' or Jones' body-camera footage. R. 42-1, PID 720.

Batts and Jones then moved toward the building's front and saw an individual at the window of an upper unit and Warmack descending the front steps. Jones walked up to the front door and tried to open it but also found it locked. Jones later testified during his deposition that he "saw someone running down the steps" through the opaque glass door panel, and that "someone passed by the door window," but this is not captured by his body-camera footage. *Id.* at PID 721. While Jones was at the front door, Batts asked "do you want to order them out, we can order them out, the window's open," to which Jones did not respond. Batts BWC, at 00:43:38-46. Like Wannack, Batts and Jones never identified themselves.

At around 12:43 a.m., Warmack headed back up the driveway. As he approached the rear of 320 Durrell, his pace quickened, and he yelled "Back." Warmack BWC, 00:43:45-51. Still at the building's front, Jones and Batts heard Warmack and started to run up the driveway, Jones with his weapon drawn.⁷ Warmack ran toward the paved area at the back of the building where he saw Frasure standing next to a silver van with his hands in the air. Wannack shouted "hey, stop" at Frasure. Warmack BWC, 00:43:54. Frasure then appears to have dropped at least one hand to his waist before Warmack commanded him to "put your hands in the air," after which

⁷ In an interview conducted a few days after the incident, Jones said he only "faintly hear[d]" Warmack yelling "back." R. 9-1, Ex. K, 15:30:20--41. However, in affidavits submitted for summary judgment, both Jones and Batts averred that they perceived Warmack's voice to be "strained" or conveying "a sense of urgency." R. 49-5, PID 1619; R. 49-6, PID 1628.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

Frasure raised and kept his hands up. *Id.* at 43:55-58. Throughout, Frasure repeatedly said "I ain't going nowhere." Warmack BWC, 00:43:52-44:00. During this initial encounter, Warmack unholstered his firearm. Although not evident from the body-camera footage, according to Frasure's testimony, Warmack pointed his gun at him.⁸ When Jones and Batts arrived a few seconds later, they stood by the rear of 320 Durrell with their firearms pointed at Frasure for several seconds.

As Warmack approached Frasure, he saw Joe in the van's driver's seat and pointed his firearm at him.⁹ The sound of the van's ignition can be heard on the body-camera footage after which Warmack moved toward the front of the van with his weapon drawn. He repeatedly yelled "stop" and ordered Joe to "get out of the car now." Warmack BWC, 00:44:00-02. The van reversed until it ran into an obstruction and stopped momentarily, and then the engine revved and the van began accelerating forward. Warmack appears to have been a few feet in front of the van when it began moving forward and he jumped out of the way to avoid being hit. Warmack later testified that he perceived the van as a threat but did not fire his weapon because "[he] knew [he] could jump out of the way." R. 40-1, PID 520. The entire time the van was moving forward, Warmack continued to yell commands for Joe to stop the car and for Joe to get out of the car, including once the van had passed him.

When the van began to reverse, Batts ran in front of Jones and descended the grassy hill between the driveway and the paved area. As Batts descended, Jones said "we got a vehicle taking

⁸ Warmack testified that he had initially placed his firearm at a low ready position and denied pointing it at Frasure. Construing the facts in Frasure's favor, however, the magistrate judge assumed that Warmack did point his firearm at Frasure during their initial encounter.

⁹ When interviewed a few hours after the incident, Frasure said that Joe was fleeing because he had an outstanding warrant for absconding. R. 49-21, Ex. 4, 4:07:31--41; 04:12:25-30. However, later in his deposition, Frasure denied that Joe was wanted. R. 44-1, PID 1006. Frasure does not offer another explanation for why Joe attempted to evade arrest.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

off, silver van, one at gunpoint." Jones BWC, 00:44:02-05. When the van accelerated forward, Batts was positioned behind Warmack and, with his firearm raised at the van, repeatedly told Warmack to "back up" and "be careful." Batts BWC, 00:44:01-10. Jones, who was still by the rear of 320 Durrell, also witnessed the van accelerating forward and yelled at Warmack to back up. Jones later testified that the car "almost ran over" Warmack and that, because he saw Warmack's "flashlight spin around," he "wasn't sure if [Warmack] had been side-swiped" by the van. R. 42-1, PID 721.

After the van passed Warmack, Joe honked its horn and continued driving forward. The van accelerated toward the grassy hill, where Batts was standing, and in the direction of the driveway. Batts turned and ran up the grassy hill to the driveway toward the back corner of 322 Durrell. Jones ran close to the inside wall of 320 Durrell with his weapon raised at the van.

The van continued driving forward and appeared to turn toward the driveway. At 12:44:14 a.m., after the van cut close to him, Jones fired one shot. In an interview conducted three days after the shooting, Jones recalled initially thinking he was in "a pretty okay spot" until the van turned toward the driveway. R. 9-1, Ex. K, 15:35:06-34. Jones said that as the van turned toward the driveway, he had "lost track" of Batts but that Batts was "definitely in front of the van ... somewhere on the right side." *Id.* at 15:36:04-13. In his deposition, Jones stated he shot because he "fear[ed] f[or] [his] life and was certain Officer Batts was going to be struck" and that he "had to try to stop the threat toward the van, the person driving the van, who was about to strike Officer Batts." R. 42-1, PID 722.

At approximately the same time as Jones, Batts fired his weapon three times. When Batts fired his weapon, the van's tires were turned away from him. In his initial interview, Batts stated that he was "running sideways" and saw the van "moving directly at [him]" when he discharged

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

his weapon. R. 9-1, Ex. J, 16:07:27-55. Later in his deposition, Batts testified that, before shooting his weapon, he "could sense the van gaining" on him, that it was only a few feet away, and that he was "running for [his] life." R. 49-6, PID 1630-31. Batts stated that he felt "that [he] would be crushed by [the] van into 322 Durrell" or sideswiped and that "the firing of [his] firearm is what saved [his] life." *Id.* at PID 1631.

Just over three minutes elapsed between when the Officers arrived at 320 Durrell and when the shooting occurred. There were only 30 seconds between when Warmack initially saw Frasure and Joe in the paved area and when Batts and Jones discharged their weapons, less than 15 seconds between when the van initially started reversing and the shooting, and around five seconds between when the car began accelerating forward and when Jones and Batts discharged their weapons.

After the shooting, the van crashed into 320 Durrell. While Warmack moved toward the van, Batts returned to the rear of the driveway where he spotted Frasure still in the paved area. Batts pointed his flashlight and firearm at Frasure and repeatedly ordered him to "get down on the fucking ground." Batts BWC, 00:44:31-39. Frasure did not comply and approached the other vehicle in the paved area, leaning against its hood. Jones then pointed his firearm at Frasure, commanding him to get on the ground. Before Frasure complied, Jones said, "you're gonna get shot! On the ground!" Jones BWC, 00:45:00-03. As Frasure knelt with his hands up, he replied, "why you gonna shoot me for?" *Id.* at 45:05-15.

Joe was pronounced dead at 4:21 p.m. on January 31, 2023 at the University of Cincinnati Medical Center. The cause of death was recorded as a "gunshot wound of head," R. 48-5, PID 1515, and the post-mortem exam report stated that the bullet entered a few inches behind his left inner ear and traveled "left to right, back to front, and slightly do[w]nward," *id.* at 1514, 1517.

The Hamilton County Sheriff's Office Criminal Investigation Section conducted an

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

independent investigation into the shooting, which included a taped interview with Frasure a few hours after the incident, at which time Frasure did not know if Joe was alive. Frasure initially stated that neither Batts nor Jones were in danger but later said that Joe "may have been" close enough to Batts to run him over and that "if [he] was a cop [he]'d probably do the same thing." R. 49-21, Ex. 4, 04:06:57-07:01, 04:13:00-12. Later, at his deposition, Frasure testified that he did not remember the interview or "half of the stuff" he said because he "was scared to death they weren't going to let [him] go home" and that he told the officers "anything they wanted to hear so [he] could get to [his] son." R. 44-1, PID 977-78.

The investigation's findings were presented to the Hamilton County prosecutor who concluded that the Officers had acted in self-defense and, therefore, decided not to bring charges. The City then convened a Use of Force Review Board to conduct a further independent investigation. The Review Board "unanimously decided" that Jones' and Batts' actions were within department policy, including the policies "for the application of deadly force [and] the use of force at moving vehicles." R. 49-17, PID 1898. Brooke Brady ("Chief Brady"), the City's police chief, reviewed and accepted these findings.

II. Procedural History

On February 23, 2024, Frasure and Fisher, individually and as co-administrators of Joe's estate, sued the Officers and the City. Frasure raised eight claims. These included three Fourth Amendment excessive-force claims under 42 U.S.C. § 1983-(1) a claim against all of the Officers for pointing their firearms at Frasure and Joe prior to the shooting; (2) a claim against Jones for pointing his firearm at and threatening Frasure after the shooting;¹⁰ and (3) a claim against Batts

¹⁰ Frasure initially brought this claim against Batts but later filed an amended complaint substituting in Jones.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

and Jones for their use of deadly force; various municipal constitutional claims under 42 U.S.C. § 1983 against the City;¹¹ related state-law claims for wrongful death against the City, Batts, and Jones; and negligence against all Defendants. The parties consented to the jurisdiction of a magistrate judge. After discovery, the parties filed cross-motions for summary judgment; Frasure sought summary judgment on the three excessive-force claims and Defendants sought summary judgment on all claims.

Defendants submitted the expert reports of a forensic analyst who performed a reconstruction of the Officers' use of force using photogrammetric and spectrographic audio analyses, a forensic criminologist and law enforcement practices expert, and an expert in policing and training. In support of his summary judgment motion, Frasure proffered the expert report of Dr. Lawrence Hunter ("Hunter"), a retired police captain from Connecticut, to opine on the Officers' use of force. Defendants moved to exclude Hunter's testimony for failure to comply with Federal Rule of Civil Procedure 26 because, in part, his report did not identify all the facts and data he considered in forming his opinion. Defendants further contended that Hunter's testimony was barred by Rule 702 because Hunter was unqualified to be an expert on excessive force, his opinion did not assist the factfinder, and his opinion was unreliable. The magistrate judge granted Defendants' motion, finding first that the Rule 26 errors were neither substantially justified nor harmless and, second, that although Hunter was qualified, his opinion would not assist the factfinder and was otherwise unreliable.

In a separate order, the magistrate judge granted Defendants' motion for summary

¹¹ Frasure initially asserted two of his three municipality claims (for ratification and failure to train) against all Defendants. At summary judgment, Defendants argued that these claims as asserted against the Officers must fail because municipal liability claims cannot be brought against individuals and were otherwise duplicative. Plaintiffs did not respond to this argument. The magistrate judge therefore considered the argument conceded and addressed these claims only as asserted against the City. Because Frasure does not appear to challenge this ruling on appeal, we consider the municipality liability claims against the City only.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

judgment and denied Frasure's partial motion. The magistrate judge found that the Officers were entitled to qualified immunity for Frasure's three excessive-force claims because Frasure had not demonstrated a constitutional violation or a clearly established right and also granted summary judgment for Defendants on Frasure's municipal liability and state-law claims. This appeal followed.

III. Analysis

"We review grants of summary judgment and qualified immunity de novo." *Novak v. Federspiel*, 140 F.4th 815, 820 (6th Cir. 2025). Summary judgment is appropriate where "there is no genuine dispute [of] material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "We view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in his favor." *Raimy v. City of Niles*, 77 F.4th 441, 447 (6th Cir. 2023). Where video evidence, like bodycam footage, captures the relevant events, we "may not adopt a version of the facts [that] blatantly contradicts the asserted version of events such that no reasonable jury could believe it," and are to construe any "gaps or uncertainties" in the videos in the nonmovant's favor. *Naji v. City of Dearborn*, 120 F.4th 520, 523 (6th Cir. 2024) (citation modified).

We review the magistrate judge's decision to exclude expert testimony for abuse of discretion, "recognizing, of course, that such review calls for deference to the district court's decision." *Conwood Co., L.P. v. US. Tobacco Co.*, 290 F.3d 768, 781 (6th Cir. 2002); *see also United States v. Rios*, 830 F.3d 403, 413 (6th Cir. 2016). We will reverse only if "we are left with a definite and firm conviction that [the district court] committed a clear error of judgment." *Conwood*, 290 F.3d at 781.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

A. Qualified Immunity

Frasure challenges the magistrate judge's finding that qualified immunity barred all three excessive force claims. Qualified immunity "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation modified). The doctrine "balances two important interests-the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Id.* To overcome the Officers' qualified-immunity defense, Frasure must establish that "the evidence, viewed in the light most favorable to [him], would permit a reasonable juror to find that (1) the [Officers] violated a constitutional right; and (2) the right was clearly established." *Raimey*, 77 F.4th at 447 (citation omitted).

The Fourth Amendment's guarantee against unreasonable searches and seizures protects an individual's right not to be subjected to excessive force during an arrest, investigatory stop, or other seizure of his person. *Graham v. Connor*, 490 U.S. 386,394 (1989); *see also* U.S. CONST. amend. IV. The question is whether the search or seizure was objectively reasonable under the circumstances in which it occurred "[t]aken in the light most favorable to the party asserting the injury," *Scott v. Harris*, 550 U.S. 372, 377 (2007), but as 'judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," *Goodwin v. City of Painesville*, 781 F.3d 314, 321 (6th Cir. 2015) (citation omitted). Although the ultimate determination of reasonableness must be based on the totality of the circumstances, we have found three factors to be helpful in excessive force cases: "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

resisting arrest or attempting to evade arrest by flight." *Id* (citation omitted). We do not assess these factors from a distance but rather consider that "police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation." *Mullins v. Cyranek*, 805 F.3d 760, 765-66 (6th Cir. 2015).

If the facts show that a constitutional right was violated, we next ask "whether the right was clearly established ... in light of the specific context of the case." *Scott*, 550 U.S. at 377. A clearly established right is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (citation modified). "In other words, existing precedent must have placed the statutory or constitutional question confronted by the official beyond debate." *Plumhoff v. Rickard*, 572 U.S. 765, 779 (2014) (citation modified). Usually, this requires a plaintiff to "point to a case showing that reasonable officers would have known their actions were unconstitutional under the specific circumstances they encountered." *Bell v. City of Southfield*, 37 F.4th 362, 367 (6th Cir. 2022). But "in an obvious case," the law can be clearly established "even without a body of relevant case law." *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004).

1.

Frasure first claims that the Officers used excessive force when they pointed their firearms at him and Joe prior to the shooting. The magistrate judge concluded, and Frasure does not appear to dispute, that Warmack pointed his weapon at Frasure and Joe for approximately six seconds each, Jones pointed his weapon at Frasure and Joe for about 10 seconds, and Batts pointed his weapon at Frasure for one second and at Joe "for a moment or two" prior to the shooting. R. 90, PID 3981, 3983, 3985. Frasure challenges both the magistrate judge's finding that the Officers'

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

pointing their weapons did not violate Frasure and Joe's constitutional rights and that the right was not clearly established.

Because Frasure has not demonstrated a clearly established right relevant to this claim, "we begin and end with the second prong" of the qualified immunity analysis. *Gordon v. Bierenga*, 20 F.4th 1077, 1082 (6th Cir. 2021). Frasure "bears the burden of showing that a right is clearly established," yet there is scant mention in his brief of any cases clearly establishing the alleged violation here. *Wiley v. City of Columbus*, 36 F.4th 661,669 (6th Cir. 2022).¹² And *Brown v. City of Wyoming*, 2024 WL 5040781 (6th Cir. Dec. 9, 2024) (per curiam)--the only case Frasure raises that could be construed as relevant to this claim--was decided after the events at issue and is therefore "of no use in the clearly established inquiry." *Brosseau*, 543 U.S. at 600 n.4.¹³ Regardless, *Brown* is both distinguishable and unhelpful to Frasure.

In *Brown*, officers were dispatched to a suspected breaking and entering based on a call from a neighbor. 2024 WL 5040781, at *1. One of the officers ("Wieber") had previously responded to a trespassing call made by the same neighbor at the same address and had arrested the suspected trespasser. *Id.* On his way to the building, Wieber called the neighbor who confirmed that the man trespassing was the same person Wieber had previously arrested. *Id.* at *2. When Wieber arrived, he and the other officers commanded anyone inside the house to exit with their hands in the air. *Id.* Three men exited. Despite realizing that the person he had previously arrested was not present, Wieber continued shouting commands and eventually arrested

¹² Indeed, the only section of Frasure's brief that appears to be dedicated to the "clearly established" prong for all three excessive force claims is a single paragraph generally stating the law.

¹³ Frasure also several times cites *Graham v. Connor* when arguing that the Officers acted unreasonably when they pointed their weapons at him and Joe. Even if we construe these citations as part of Frasure's "clearly established argument," *Graham* alone does not provide the level of specificity sufficient to clearly establish a violation. *White v. Pauly*, 580 U.S. 73, 80 (2017) ("[W]e have held that [*Tennessee v. Garner*, 471 U.S. 1 (1985)] and *Graham* do not themselves create clearly established law outside an obvious case.") (citation modified).

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

the men. *Id* Although Wieber's weapon was drawn during the entirety of these events, it was pointed at the ground. *Id.* at *6. One of the officers accompanying Wieber pointed his weapon momentarily at the plaintiffs, while the other trained his gun on them for less than three minutes, lowering it only when the plaintiffs had been handcuffed. *Id* at *6-7.

We found that qualified immunity barred the plaintiffs' claims of excessive force against all the officers, including the officer who pointed his weapon at the plaintiffs for several minutes. *Id* at *6-9. In reaching this conclusion, we emphasized that the officer only "briefly trained his weapon on plaintiffs to protect himself and his fellow officers, who were responding to a potential felony breaking and entering" and that the caselaw does not make clear that "every reasonable officer in [his] shoes would have understood that what he was doing violate[d] a constitutional right." *Id* at *8 (citation modified). It therefore follows that the Officers' pointing their weapons at Frasure and Joe for at most ten-seconds during a burglary investigation is not a constitutional violation clearly established by law.

Frasure's claim that Jones used excessive force after the shooting when he pointed his firearm and shouted at Frasure that "you're gonna get shot" fails for the same reason. Further, Frasure does not identify which part of the magistrate judge's analysis he challenges, develop any argument beyond stating in conclusory fashion that Jones used excessive force in violation of Frasure's Fourth Amendment rights, or cite a single case. The Officers are therefore entitled to qualified immunity for both excessive force claims premised on the drawing of their weapons.

2.

Frasure next contends that the magistrate judge erred in granting qualified immunity to Jones and Batts for their use of deadly force. Frasure takes issue with the magistrate judge's reliance on the Officers' "self-serving affidavits" and their experts' reports over the body-camera

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

footage and interviews, which he contends "do not support the theory Jones and Batts feared for their lives nor that it was objectively reasonable for them to fear for their lives." Appellants' Br. at 23, 25.

Frasure is correct that our analysis is first and foremost guided by the body-camera footage with any gaps construed in his favor. But that does not preclude us from considering the Officers' affidavits and deposition testimony to the extent they are consistent with the video evidence. For example, Batts' testimony that, as he was running up the hill, he peered over his shoulder, sensed the van gaining on him, and saw the front of the van "only a handful of feet away" is consistent with the body-camera footage showing Batts running away from the van in the seconds before the shooting. R. 49-6, PID 1630-31. On the other hand, the video evidence does not conclusively support Batts' assertion that he shot because he felt "the van was going to crush [him] into the wall of 322 Durrell" and that "the van [was] closing in on [him] and the space between the buildings [was] already narrow." *Id.* at 1631. Even so, however, it is clear from the body-camera footage that the van was moving towards Batts in the moments before he fired such that we cannot say that no reasonable officer would have perceived a threat in that moment. Frasure additionally challenges the magistrate judge's reliance on Jones' later testimony that he shot because he was afraid of being sideswiped and, though he had lost track of where Batts was, was certain Batts was going to be struck as incompatible with the video evidence. But Jones' testimony is consistent with his body-camera footage, which captures the car cutting towards him and Batts' running in front of the van the second before Jones fired.

Frasure further argues that *Smith v. Cupp*, 430 F.3d 766 (6th Cir. 2005) clearly established the right not to be seized by deadly force when fleeing arrest. But Frasure has not shown that

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

Jones and Batts violated a clearly established right. *Lawler ex rel. Lawler v. Hardeman County*, 93 F.4th 919, 925 (6th Cir. 2024).

The law "does not require a case directly on point for a right to be clearly established, [but] existing precedent must have placed the statutory or constitutional question beyond debate." *White*, 580 U.S. at 79 (citation modified). The "clearly established law" should not be defined "at a high level of generality." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). "[S]pecificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) (citation modified). However, "[t]here need not be a case with the exact same fact pattern or even 'fundamentally similar' or 'materially similar' facts," to find an officer is not entitled to qualified immunity. *Binay v. Bettendorf*, 601 F.3d 640, 652 (6th Cir. 2010) (quoting *Cummings v. City of Akron*, 418 F.3d 676, 687 (6th Cir. 2005)). "[J]ust as a court can generalize too much, it can generalize too little. If it defeats the qualified-immunity analysis to define the right too broadly" then "it defeats the purpose of § 1983 to define the right too narrowly." *Hagans v. Franklin Cnty. Sheriff's Off*, 695 F.3d 505, 508-09 (6th Cir. 2012).

Smith v. Cupp, the one case Frasure cites, is distinguishable. There, an officer arrested a suspect for making harassing phone calls, a misdemeanor. 430 F.3d at 769. The officer read the suspect his Miranda rights, patted him down, cuffed him, and put him in the back of the police car. *Id.* The officer then left the car unattended with the engine running, and the suspect climbed into the driver's seat and began to drive. *Id.* According to the plaintiffs evidence, the officer shot the suspect after the car had gone by the officer and "there was no immediate danger to anyone in the vicinity." *Id.* at 773. In concluding that the officer's use of force was unreasonable, we

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

emphasized that the suspect "had been cooperative up to this point, and was arrested for the nonviolent offence of making harassing phone calls." *Id* Importantly, we highlighted evidence that the officer had lied when recounting the scene, as well as evidence that he was running up to the side of the car and "was never in the line of flight." *Id.* at 774. And although we recognized that the events had developed rapidly, we determined that "this [was] not a case where a dangerous situation evolved quickly to a safe one before the police officer had a chance to realize the change" in part because the officer "was not in any danger in the first place." *Id.* at 774-75.

Here, unlike the suspect in *Cupp*, Joe was a suspect in a burglary who had not been patted down or secured. Joe was uncooperative before the shooting; less than five seconds before they fired, Jones and Batts saw Joe disobey Warmack's orders and then drive toward him, causing him to jump out of the way. And in the moments right before the shooting, Batts was directly in front of the car, running away as it accelerated up the grassy hill. Jones' and Batts' conduct is therefore unlike that of the officer in *Cupp*, who tried "to get between the [car] and the exit" when the car was accelerating and "fired as he ran toward the driver side of the car after the car passed him." *Id.* at 774. Additionally, as we have recognized in distinguishing *Cupp*, that case "involved officers confronting a car in a parking lot and shooting the non-violent driver as he attempted to initiate flight." *Latits v. Phillips*, 878 F.3d 541, 553 (6th Cir. 2017) (emphasis in original). Batts and Jones shot Joe after he had already initiated flight, sought to evade capture, nearly hit Warmack, and was driving in their direction-"important factual distinction[s] that se[t] this case apart." *Id.*

To be sure, we have previously found that Supreme Court and Sixth Circuit caselaw clearly establishes that an officer may not use deadly force against a fleeing felon who poses no threat to others, but those cases involved materially different circumstances from those present here. *See*,

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

e.g., Bougess v. Mattingly, 482 F.3d 886, 894--95 (6th Cir. 2007) (applying *Garner* to hold that an officer who employs deadly force against a suspect running directly away from the officer on foot is not entitled to qualified immunity); *Sigley v. City of Parma Heights*, 437 F.3d 527, 537 (6th Cir. 2006) (same where officer "was running behind [the suspect's] car, out of danger, and [the suspect] drove in a manner to avoid others on the scene in an attempt to flee"); *Godawa v. Byrd*, 798 F.3d 457, 465-68 (6th Cir. 2015) (applying *Garner* and *Cupp* to hold that "a genuine dispute of material fact exist[ed] regarding the circumstances of [the officer's] impact with [the plaintiff's] vehicle" where officer who used deadly force "was positioned near the rear passenger side [when] he fired his weapon" and the suspect "never attempted to hit [the officer] with his car and did not drive in a manner that endangered [the officer's] life"). Because our analysis must be "reasonably particularized," these key differences render these cases insufficiently analogous. *Latits*, 878 F.3d at 552 (citation modified).

In sum, Frasure has not pointed to a case that meets the requisite level of specificity to place Jones and Batts on notice that their conduct was unlawful. For this reason, the district court did not err when finding Jones and Batts were entitled to qualified immunity.

B. Municipal Liability

Frasure's remaining claims are for municipal liability against the City. The precise theories of municipal liability that Frasure presses are somewhat unclear, but he appears to allege that the City failed to train or supervise officers, had a custom and policy of failing to train, and ratified past unconstitutional behavior.

A municipality can be held liable for a constitutional violation under § 1983 if the plaintiff demonstrates that the violation occurred "because of a municipal policy or custom." *Franklin v. Franklin County*, 115 F.4th 461, 470 (6th Cir. 2024) (quoting *Burgess v. Fischer*, 735 F.3d 426,

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

478 (6th Cir. 2013)). To make a showing of an illegal policy or custom, a plaintiff must demonstrate one of the following: (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 or acquiescence of federal rights violations. *See Thomas v. City of Chattanooga*, 398 F.3d 426, 429 (6th Cir. 2005). A municipality may not be sued under § 1983 on a theory of vicarious liability for injury inflicted by its employees or agents. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978).

Frasure's arguments regarding his municipal liability claims are fatally undeveloped. *See Thomas v. United States*, 849 F.3d 669, 679 (6th Cir. 2017). The thrust of his argument on appeal consists of statements made by Chief Brady, Jones, Warmack, and Batts copied and pasted from his summary judgment briefing that Frasure states, without analysis, demonstrate the City's failure to train and supervise. In several places, Frasure asserts contradictory facts that undermine key elements of his claims,¹⁴ and he elsewhere fails to allege any facts establishing the required elements, including causation. Absent too are citations to any cases-including *Monell*-or an explanation of how the magistrate judge erred. It is insufficient "for a party to mention a possible argument in the most skeletal way, leaving the court to ... put flesh on its bones." *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) (citation omitted). Because Frasure's claims are "adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation,"

¹⁴ For example, Frasure states simultaneously that the City police department had "no procedure or training manual" but also that the department's written policy manual was inadequate. *Compare* Appellants' Br. at 35 *with id.* at 33; R. 58, PID 2050-51. And, in support of his failure-to-supervise claim, he asserts at once that Jones, who was in a supervisory role on the shift, did not adequately communicate with Batts and Warmack, *see* Appellants' Br. at 33, but also that "[t]here was no supervisor on duty," *id.* at 35.

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

they have been forfeited. *Buetenmiller v. Macomb Cnty. Jail*, 53 F.4th 939, 946 (6th Cir. 2022) (citation modified).

C. Expert Disqualification

Finally, Frasure appeals the magistrate judge's disqualification of his expert, Dr. Hunter, for failure to comply with Fed. R. Civ. P. 26(a)(2)(B) and under Fed. R. Evid. 702. Frasure argues that the failure to timely provide a signed expert report, Hunter's CV, and an exhaustive list of evidence on which Hunter relied was harmless, and that Hunter's report complies with F.R.E. 702 because it is consistent with the expert report admitted in *Huntzinger v. Coyle*, 2022 WL 95280 (E.D. Ky. Jan. 10, 2022).

In his report, Dr. Hunter summarizes "three seminal court cases that guide law enforcement in their application of use of force,"¹⁵ as well as sections of the City's policies and procedures manual and non-binding national policies and papers on the use of force. R. 58-1, PID 2058-66. The section dedicated to "Officer Analysis" includes screenshots from the Officers' body-camera footage accompanied by Hunter's narration of the events depicted. *Id.* at PID 2066-78. The report ends with Hunter's "findings" detailing "better approaches" the Officers could have taken and opportunities to de-escalate that are apparent "with hindsight." *Id.* at PID 2078-81.

Because we agree with the magistrate judge's determination that "Dr. Hunter's report is not particularly important to the resolution of this matter" and its admission would not have altered the ultimate outcome of Frasure's excessive force and municipal liability claims, we need not reach the question whether the report's exclusion amounts to an abuse of discretion. R. 89, PID 3941. For example, Hunter opines that Batts was "finished running" when he "turned around to engage

¹⁵ These cases are *Terry v. Ohio*, 392 U.S. 1 (1968), *Tennessee v. Garner*, 471 U.S. 1 (1985), and *Graham v. Connor*, 490 U.S. 386 (1989).

No. 25-3750, *Frasure, et al. v. City of Wyoming, Ohio, et al.*

with the [van]" and that both Batts and Jones were clearly standing on the grass when they discharged their weapons. R. 58-1, PID 2071, 2077. Hunter recognizes, however, that Batts was "running away" from the van as it drove forward. *Id.* at PID 2074. And the video evidence makes clear that what Hunter refers to as "engagement" was Batts turning and shooting as the van moves toward him. Our caselaw recognizes that officers may use deadly force when confronted with a rapidly evolving threat, including where a dangerous situation turns quickly into a safe one before officers have a chance to realize it or react. Hunter's conclusion that the Officers "could have or should have moved out of the way" would not support a finding that it was unreasonable for the Officers not to have simply moved out of the way in what Hunter acknowledges was a rapidly evolving situation. *Id.* at PID 2079-80. And Hunter's statement that "(a)t no time [were] Warmack or Jones in danger of being struck" implicitly concedes that Batts was. *Id.* at PID 2080.

Any error in striking the report outright was thus harmless and does not warrant reversal. *See Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Aguirre*, 410 F.3d 297, 304 (6th Cir. 2005) (finding district court's exclusion of expert affidavit harmless where the affidavit "would not [have] alter[ed] our conclusion that defendants cannot be held liable" if admitted).

IV. Conclusion

For the foregoing reasons, we AFFIRM.



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 25-3750

JOSEPH FRASURE and LISA FISHER, individually
and as Co-Administrators of the Joe Frasure Estate,
deceased,

Plaintiffs - Appellants,

v.

CITY OF WYOMING, OHIO; DREW JONES;
JORDAN BATTS; RYAN WARMACK,

Defendants - Appellees.

FILED
May 05, 2026
KELLY L. STEPHENS, Clerk

Before: KETHLEDGE, WHITE, and LARSEN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Southern District of Ohio at Cincinnati.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs
without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is
AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No: 25-3750

Filed: July 09, 2026

JOSEPH FRASURE, individually and as Co-Administrator Joe Frasure Estate; LISA FISHER,
individually and as Co-Administrator Joe Frasure Estate, deceased

Plaintiffs - Appellants

v.

CITY OF WYOMING, OH; PATROLMAN DREW JONES; POLICE OFFICER JORDAN
BATTS; POLICE OFFICER RYAN WARMACK

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 05/05/2026 the mandate for this case hereby
issues today.

COSTS: None

No. 25-3750

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Jul 1, 2026

KELLY L. STEPHENS, Clerk

JOSEPH FRASURE and LISA FISHER,
individually and as Co-Administrators of the Joe
Frasure Estate, deceased,

Plaintiffs-Appellants,

v.

CITY OF WYOMING, OHIO; DREW JONES;
JORDAN BATTS; RYAN WARMACK,

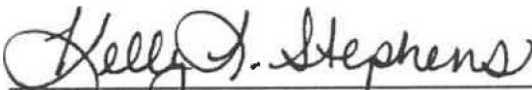
Defendants-Appellees.

ORDER

BEFORE: KETHLEDGE, WHITE, and LARSEN, Circuit Judges.

The court received a petition for rehearing en bane. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en bane.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens, Clerk

25a

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOSEPH FRASURE, *et al.*,

Civil Action No. 1:24-cv-92

Plaintiffs,

Litkovitz, M.J.

vs.

CITY OF WYOMING, OHIO, *et al.*,

ORDER

Defendants.

This matter is before the Court on defendants' *Daubert* motion and motion in limine regarding plaintiffs purported expert witness, Lawrence Hunter (Doc. 65). Plaintiffs opposed the motion (Doc. 67), and defendants filed a reply (Doc. 72).

I. BACKGROUND

A. Facts

On January 30, 2023, Wyoming, Ohio police officers pointed a weapon at plaintiff Joseph Frasure, Sr., and fatally shot his son, Joseph Frasure, Jr., while responding to a report of a burglary in progress. Plaintiffs filed this action pursuant to 42 U.S.C. § 1983, alleging, among other claims, that the officers employed excessive force in violation of the Fourth Amendment. (Docs. 1, 52).

Plaintiffs retained Lawrence Hunter, a retired police captain from Connecticut, as an expert witness in this case. Dr. Hunter produced a report which plaintiffs attached to their complaint. (Doc. 1-1).¹ Pursuant to the Court's Amended Calendar Order, the parties were

¹ The report attached to plaintiffs' complaint (Doc. 1-1) appears identical to the report attached to defendants' *Daubert* motion and motion in limine (Doc. 65-1). For ease of citation and to minimize toggling between various documents, the Court will cite to the copy attached to the instant motion in limine.

required to disclose expert witnesses and submit expert reports no later than February 3, 2025. (Doc. 28). Defendants deposed Dr. Hunter on March 17, 2025 (Doc. 65-6), and then filed the instant motion to exclude or, alternatively, to limit Dr. Hunter's expert testimony (Doc. 65). Plaintiffs oppose defendants' motion (Doc. 67).

B. Procedural Posture

Defendants have moved to exclude any opinion evidence offered by plaintiffs' purported expert, Dr. Lawrence Hunter, because plaintiffs failed to comply with Federal Rule of Civil Procedure 26(a)(2)(B) and because Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) bar Dr. Hunter's testimony. (Doc. 65). Specifically, defendants contend that plaintiffs' disclosure did not comply with Rule 26 because: Dr. Hunter did not sign his report; he failed to identify the facts or data considered in forming his opinion; he failed to disclose his qualifications, including a list of all publications authored in the last ten years; and he failed to provide his deposition and trial testimony history from the last four years. (Doc. 65 at PAGEID 2786-90). Defendants further contend that Rule 702 bars Dr. Hunter's testimony because he is not qualified to render an expert opinion on excessive force (*id.* at PAGEID 2791-92); his opinion does not assist the fact finder because it infringes on the province of the Court and the jury by applying legal precedent and deciding the ultimate issue (*id.* at PAGEID 2792-94); and his opinion does not meet the requirements for reliability (*id.* at PAGEID 2794-2804).

Plaintiffs counter that the Rule 26 "procedural errors" in submitting Dr. Hunter's report were due to inexperience and have been or will be corrected. (Doc. 67 at PAGEID 2933-35). Plaintiffs further argue that Dr. Hunter's law enforcement experience and related education

qualify him as an expert in this case (*id* at PAGEID 2935-36); Dr. Hunter's methodology was reliable (*id* at PAGEID 2936-38); Dr. Hunter's testimony will assist the trier of fact (*id* at PAGEID 2938-42); and Dr. Hunter's testimony should not be limited (*id.* at PAGEID 2942-43).

II. RULE 26 REQUIREMENTS

Pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), an expert disclosure must include:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; (iii) any exhibits that will be used to summarize or support them; (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and (vi) a statement of the compensation to be paid for the study and testimony in the case.

"Rule 26 mandates disclosure from each side of a case to enable the other side to prepare for trial and to prevent surprise tactics from affecting the case's outcome." *Baker v. Blackhawk Mining, LLC*, 141 F.4th 760, 772 (6th Cir. 2025). The rule "places a 'level of rigor and detail' on disclosing expert testimony[.]" and "[t]he expert opinion must 'outline a line of reasoning arising from a logical foundation' and 'include the 'how' and 'why,' not just his conclusions.'" *Id.* (quoting *Adkins v. Marathon Petroleum Co., LP*, 105 F.4th 841, 850 (6th Cir. 2024)).

If a party fails to comply with Rule 26(a) or supplement disclosures as required by Rule 26(e), Rule 37(c) "prohibits the party from using 'that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.'" *Baker*, 141 F.4th at 772 (quoting Fed. R. Civ. P. 37(c)(1)). Failure to timely provide the facts or data considered by the witness in forming his opinion or failure to provide a comprehensive list of all cases in which an expert has testified in the previous four years renders

the disclosure deficient under Rule 26. *Id.* at 773 (rejecting the plaintiffs' claim that such information was "worthless" or otherwise "derived from freely available public resources"). "When an expert disclosure is deficient under Rule 26(a), Rule 37 exclusion is 'mandatory unless there is a reasonable explanation of why Rule 26 was not complied with or the mistake was harmless.'" *Id.* (quoting *Bessemer & Lake Erie R.R. Co. v. Seaway Marine Transp.*, 596 F.3d 357,370 (6th Cir. 2010)).

In this case, plaintiffs' counsel acknowledges that she inadvertently failed to timely satisfy the Rule 26(a)(2)(B) requirements because "Dr. Hunter and [p]laintiffs' counsel are relatively inexperienced in the procedural rules regarding experts." (Doc. 67 at PAGEID 2934). Plaintiffs attached Dr. Hunter's unsigned report to their complaint. (Doc. 1-1). However, plaintiffs failed to provide Dr. Hunter's "qualifications, including a list of all publications authored in the previous 10 years" or the list of cases in which he testified during the previous four years, as Rule 26(a)(2)(B)(iv) and (v) require. Regarding the Rule 26(a)(2)(B)(ii) requirement that an expert provide the facts or data considered in forming his opinion, Dr. Hunter stated:

To prepare for this case, Atty Smith sent me numerous videos, court documents, dispatch audio, the Wyoming (OH) Police Duty Manual, and other pertinent materials. I reviewed all materials provided by Atty Smith, with particular emphasis on the body-worn cameras, video-recorded officer interviews, Hamilton County press release, and crime scene photos.

(Doc. 65-1 at PAGEID 2814).

On December 30, 2024, defendants' counsel emailed plaintiffs' counsel specifically directing her attention to Rule 26(a)(2)(B) and asking that plaintiffs supplement their expert disclosures to comply with that Rule. (Doc. 65-2 at PAGEID 2843). The email also notified

plaintiffs' counsel that failure to timely supplement Dr. Hunter's expert disclosure would result in a motion to strike and/or limit his testimony. (*Id.*).

On February 13, 2025, defendants' counsel again emailed plaintiffs' counsel indicating that they still had not received Dr. Hunter's expert disclosure supplement, as required by the Federal Rules of Civil Procedure. (Doc. 65-3 at PAGEID 2845). When plaintiffs' counsel responded that she had "sent the below Hunter report four times," defendants' counsel again reiterated that they were not asking for Dr. Hunter's report, stating:

Merely providing Dr. Hunter's report is not the same as disclosing an expert witness. As you know, a party cannot just disclose an expert by providing a report - a party must provide other information as well. The issue is not the production of his report - it is everything else required by Fed. R. Civ. P. 26(a)(2) when disclosing expert witnesses - which Plaintiffs have not provided.

(Doc. 65-4 at PAGEID 2848-49). Defendants' counsel then referenced his December 30, 2024 email and again outlined the deficiencies. (*Id.* at PAGEID 2849). Plaintiffs' counsel then indicated that she would ask Dr. Hunter for "information regarding publication and testimony." (Doc. 65-4 at PAGEID 2848).

On March 17, 2025, defendants deposed Dr. Hunter. (Doc. 65-6 at PAGEID 2855). At his deposition, Dr. Hunter testified that the "case experience" list he provided following defendants' February 13, 2025 emails still did not disclose his testimony history because he listed cases in which he had been retained to prepare a report, even if he did not testify or prepare the report requested. (Hunter Depo., Doc. 65-6 at PAGEID 2876-77).

More importantly, Dr. Hunter--even at his deposition--failed to identify all of the facts, data, or exhibits he considered in analyzing the officers' actions and reaching his conclusions. His report noted that he considered "numerous videos, court documents, dispatch audio, the

Wyoming (OH) Police Duty Manual, and other pertinent materials" that plaintiffs' counsel sent to him. (Doc. 65-1 at PAGEID 2814). When deposed on March 17, 2025-well after the expert discovery deadline-Dr. Hunter testified:

It's on my hard drive at home, so I can't give you an exhaustive list, but I certainly can create a supplement to expose that. There was the 9-1-1 tape. There were other body-worn cameras by officers who were not at the scene. Other body-worn cameras from different officers. There were some reports, some data logs, dispatch times, things along those lines.

(Doc. 65-6 at PAGEID 2884). Dr. Hunter acknowledged that he did not disclose prior to his deposition all of the facts or data that he considered in forming his opinions (*id.*), and he was unable to recall specific videos, recorded interviews, or other documents that he considered in forming his opinions. (*Id.* at PAGEID 2884-87).

As plaintiffs admit that Dr. Hunter's expert report failed to comply with Rule 26(a)(2), they "can avoid the exclusion sanction by showing that [their] failure to comply with Rule 26 was 'substantially justified' or 'harmless.'" *Adkins*, 105 F.4th at 849-50 (quoting Fed. R. Civ. P. 37(c)(1)). See *RJ Control Consultants, Inc. v. Multiject, LLC*, 100 F.4th 659, 668 (6th Cir. 2024) (Where party fails to comply with Rule 26(a)'s requirements, "exclusion of such evidence is 'automatic and mandatory' unless the offending party can show that its nondisclosure was substantially 'justified or harmless.'" (quoting *Dickenson v. Cardiac & Thoracic Surg. of E. Tenn., P.C.*, 388 F.3d 976, 983 (6th Cir. 2004))).

Courts consider the following factors in assessing substantial justification and harmlessness:

(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence.

RJ Control Consultants, Inc., 100 F.4th at 668-69 (quoting *Howe v. City of Akron*, 801 F.3d 718, 748 (6th Cir. 2015)). The *Howe* factors need not be applied rigidly, and district courts enjoy broad discretion in applying them. *Id.* at 669. "The factors simply lend themselves to the task at the heart of Rule 37(c)(1): separating 'honest,' harmless mistakes from the type of 'underhanded gamesmanship' that warrants the harsh remedy of exclusion." *Bisig v. Time Warner Cable, Inc.*, 940 F.3d 205,219 (6th Cir. 2019) (quoting *Bentley v. Highlands Hosp. Corp.*, No. cv 15-97, 2016 WL 5867496, at *10 (E.D. Ky. Oct. 6, 2016)).

The first *Howe* factor weighs in favor of exclusion. Even where a plaintiff has disclosed his expert's identity, area of expertise, and brief summary, a defendant experiences surprise and would have difficulty combating the expert's testimony at trial without more information. *RJ Control Consultants*, 100 F.4th at 669. Indeed, the "federal rule contemplates not only the identification of the expert, but also the provision of a written report containing a complete statement of all opinions and the basis and reasons therefor." *Id.* (quoting *Reese v. Herbert*, 527 F.3d 1253, 1265 (11th Cir. 2008) (internal quotation marks omitted)). While Dr. Hunter's opinions are unsurprising given that his report was provided to defendants at the litigation's outset, the facts and information he considered in forming those opinions remain largely unknown. Defendants attempted to cure that surprise by referring plaintiffs' counsel to the Rule 26(a)(2)(B) requirements via emails in December 2024 and February 2025 and by deposing Dr. Hunter. (Doc. 65-2 at PAGEID 2843; Doc. 65-3 at PAGEID 2845; Doc. 65-4 at PAGEID 2848; Doc. 65-6 at PAGEID 2884-87). However, those efforts were unsuccessful as Dr. Hunter acknowledged that he did not adequately include that information in his report and testified at his

deposition that he was unable to recall the specific information he considered in forming his opinions. (Doc. 65-6 at PAGEID 2884-87). *See EQT Production Co. v. Magnum Hunter Produc., Inc.*, 768 F. App'x 459, 468-69 (6th Cir. 2019) (finding surprise analysis weighed in favor of exclusion where damages calculation witness failed to disclose data underlying his opinion prior to his deposition). *But see American Power, LLC v. Harris*, Nos. 3:17-cv-347 and 3:21-cv-21, 2024 WL 5200803, at *2 (S.D. Ohio Dec. 23, 2024) (finding no surprise even though plaintiff failed to timely comply with Rule 26(a)(2)(B) where defendant received expert's report well before the deadline and could have deposed him but did not).

The second and third *Howe* factors weigh slightly in favor of exclusion. In some cases, courts have held that the ability to cross-examine witnesses by subsequent deposition or at trial may remedy the surprise and minimize impact on the trial. *Howe*, 801 F.3d at 749; *American Power*, 2024 WL 5200803, at *3 (citing *Howe*). In other cases, courts have upheld exclusion to avoid rescheduling trial or reopening discovery once it has closed because "allowing expert testimony would require the non-defaulting party 'to bear the effort and expense necessary to cure [plaintiffs'] failure to disclose,' which 'would arguably reward [plaintiffs] for [their] untimeliness and does nothing to deter similar conduct from future litigants.'" *RJ Control Consultants*, 100 F.4th at 669-70 (quoting *EQT Production Co.*, 768 F. App'x at 469).² In this case, defendants possessed Dr. Hunter's report well before the expert discovery deadline, requested supplementation twice, and travelled to Connecticut to depose Dr. Hunter. Now, after discovery is over and motions for summary judgment are pending, plaintiffs still have not

² In *EQT Production Co.*, the Court noted that it had, at times, "held that the ability to cross-examine witnesses about late disclosures during trial both provided an opportunity to remedy surprise and minimized impact on the trial" and deemed those *Howe* factors "to be neutral, not pulling clearly in favor of or against" exclusion. 768 F. App'x at 469.

provided the specific information Dr. Hunter considered in forming his opinions. Requiring the disclosure of information and items considered in forming an expert opinion "ensures parties have the information they need to assess an expert's opinions and to effectively cross-examine him." *Brainchild Surgical Devices, LLC v. CPA Global Ltd.*, 144 F.4th 238,256 (4th Cir. 2025). Under the circumstances present in this case, the Court finds that the second and third *Howe* factors weigh slightly in favor of excluding Dr. Hunter's report from consideration.

The fourth factor-the importance of the evidence-is frequently described as "cut[ting] both ways." *RJ Control Consultants*, 100 F.4th at 670 (quoting *Bisig*, 940 F.3d at 220). "The more important the proof, the greater the effect of preclusion, but also the greater the harm in tardy disclosure." *Id.* (quoting *Bisig*, 940 F.3d at 220). As will be more fully examined below, Dr. Hunter's report is not particularly important to the resolution of this matter. Thus, this factor neither weighs for nor against either party.

Finally, as their explanation for failing to comply with Rule 26(a)(2)(B), plaintiffs state only that "Plaintiffs' counsel receives voluminous, verbose, communications from Defendants[, and] Dr. Hunter and Plaintiffs' counsel are relatively inexperienced in the procedural rules regarding experts." (Doc. 67 at PAGEID 2934). This factor weighs in favor of exclusion. Even after defendants repeatedly referred plaintiffs to the appropriate requirements and the applicable federal rule, plaintiffs failed to comply. Indeed, in the memorandum in opposition to defendants' *Daubert* motion, plaintiffs still fail to understand that the Rule 26 requirements for expert witness disclosures are not "harmless technicalities" (Doc. 67 at PAGEID 2935) or that Dr. Hunter's vague references to "other pertinent materials" and "materials provided by Atty Smith" do not satisfy Rule

26(a)(2)(B). The expert disclosure rule specifically requires that an expert report "must contain" "the basis and reasons" for his opinions, "the facts or data considered by the witness in forming them," the witness's qualifications (including publications in the last 10 years), and a four-year list of prior testimony. Fed. R. Civ. P. 26(a)(2)(B).

To summarize, application of the *Howe* factors indicates that plaintiffs' failure to comply with Rule 26(a)(2)(B) was neither substantially justified nor harmless. Accordingly, Rule 37(c)(1) requires that Dr. Hunter's opinions be excluded as evidence on summary judgment and at trial.

III. RULE 702 AND *DAUBERT* INQUIRIES

Although Dr. Hunter's opinions should be excluded pursuant to Federal Rule of Civil Procedure 37(c)(1), in the alternative and in the interest of thoroughness, the Court will evaluate whether Dr. Hunter's report satisfies the requirements imposed by Federal Rule of Evidence 702. Pursuant to Rule 702:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

Rule 702 entrusts courts with a "'gatekeeping role' to 'ensur[e] that an expert's testimony both rests on a reliable foundation and is relevant.'" *In re Onglyza (Saxagliptin) and Kombiglyze (Saxagliptin and Metformin) Prods. Liab. Litig.*, 93 F.4th 339,345 (6th Cir. 2024) (quoting *Daubert*, 509 U.S. at 597). As the Sixth Circuit has explained:

Parsing the language of [Rule 702], it is evident that a proposed expert's opinion is admissible, at the discretion of the trial court, if the opinion satisfies three requirements. First, the witness must be qualified by "knowledge, skill, experience, training, or education." Fed. R. Evid. 702. Second, the testimony must be relevant, meaning that it "will assist the trier of fact to understand the evidence or to determine a fact in issue." *Id.* Third, the testimony must be reliable. *Id.*

In re Scrap Metal Antitrust Litig., 527 F.3d 517, 528-29 (6th Cir. 2008). *See also United States v. Anderson*, 67 F.4th 755, 767 (6th Cir. 2023). The party proffering the expert must show by a preponderance of the evidence that Rule 702 is satisfied. *Davis v. Sig Sauer, Inc.*, 126 F.4th 1213, 1223-24 (6th Cir. 2025). Of course, "rejection of expert testimony is the exception, rather than the rule." *Id.* at 1224 (quoting *In re Scrap Metal Antitrust Litig.*, 527 F.3d at 530).

A. Qualifications

Defendants contend that Dr. Hunter is not qualified to render opinions about whether the officers' use of deadly force³ was "excessive" because he lacks specialized education or experience in processing or investigating crime scenes, officer-involved shootings, or ballistics. (Doc. 65 at PAGEID 2791-92). A witness cannot qualify as an expert "simply because he self-identifies as such," but the Sixth Circuit takes a "liberal view" of what satisfies Rule 702's "knowledge, skill, experience, training, or education" requirement. *Bradley v. Ameristep, Inc.*, 800 F.3d 205,209 (6th Cir. 2015). "Whether a proposed expert's experience is sufficient to qualify the expert to offer an opinion on a particular subject depends on the nature and extent of that experience." *Id.*; *American Strategic Ins. Corp. v. Meyer*, No. 1:23-cv-119, 2025 WL

³ Dr. Hunter's report states that he was "hired as an expert in the use of force to determine whether the actions taken by Officers Jones and Batts were reasonable in accordance with established court decisions and best law enforcement practices" and whether "the officers involved in killing Joe Frasure, Jr. fire[d] their weapons unnecessarily, or could they have found a different method to apprehend him?" (Doc. 65-1 at PAGEID 2812, 2820). Dr. Hunter was asked at his deposition whether he offered any opinions on the actions of Officer Warmack, and he testified, "So, I only looked at the shooting, the officers who fired their weapons. That was what I was looking at." (Doc. 47-1 at PAGEID 1340-41).

845560, at *3 (S.D. Ohio Mar. 18, 2025) (same quotation). "[T]he issue with regard to expert testimony is not the qualifications of a witness in the abstract, but whether those qualifications provide a foundation for a witness to answer a specific question." *Madej v. Maiden*, 951 F.3d 364, 370 (6th Cir. 2020) (quoting *Berry v. City of Detroit*, 25 F.3d 1342, 1351 (6th Cir. 1994)).

Plaintiffs expert, Lawrence Hunter, "spent 24 years in policing," retiring from the Waterbury, Connecticut Police Department at the rank of captain. (Doc. 65-1 at PAGEID 2812). He holds a Ph.D. in leadership with a concentration in criminal justice and a master's degree in forensic psychology. (*Id.* at PAGEID 2813).⁴ He previously commanded the Professional Standards Unit in Waterbury, which included "Internal Affairs, Inspectional Services, and Training Divisions." (*Id.*). His duties in that role included "reviewing and investigating Use of Force reports (Response to Resistance)" and investigating citizen complaints of officers' use of excessive force. (*Id.*). Dr. Hunter was retained as an expert in the use of force to evaluate the defendant officers' use of lethal force in this case. (Doc. 65-6 at PAGEID 2882).

On the record as it stands, the Court is unwilling to deem Dr. Hunter "unqualified" to evaluate a police use of force.⁵ Employing a liberal view of Dr. Hunter's education and

⁴ On the record before the Court, it is difficult to determine whether Dr. Hunter has taken or taught courses relevant to the issues in this case. He listed in his report some classes he has taken and that he is "Force Science certified." (Doc. 65-1 at PAGEID 2813; *see also* Doc. 47-3, Doc. 67-3). However, he testified at deposition that he did not examine the physics or mechanics of the shooting in this case, and he "wasn't looking at it as a [force] scientist. [He] was looking at it as an expert in police practices and what practices should be employed when doing something." (Doc. 65-6 at PAGEID 2870-71).

⁵ Defendants contend that Dr. Hunter does not adequately connect his knowledge and experience to his approach to this case. (Doc. 72 at PAGEID 3079). Specifically, Dr. Hunter has testified as an expert in only two cases—once to a Labor Board regarding a police officer's termination and once regarding domestic violence in a marriage dissolution. (Doc. 65-6 at PAGEID 2876-77). Although he reviewed Wyoming, Ohio's use of force policy, Dr. Hunter has never investigated an officer-involved shooting. (*Id.* at PAGEID 2877, 2879). He has never processed a homicide scene nor a scene involving an officer-involved shooting. (*Id.* at PAGEID 2880). Dr. Hunter's lack of training or experience in officer-involved shootings, however, is a topic for cross-examination rather than a basis for disqualifying him as an opinion witness.

experience investigating police uses of force, he likely possesses sufficient knowledge and experience to satisfy Rule 702's requirement.

B. Assistance to the Trier of Fact

One of the core inquiries in determining expert admissibility is whether the expert's testimony will help the trier of fact understand the evidence or determine a fact at issue. *In re Scrap Metal Antitrust Litig.*, 527 F.3d at 529; Fed. R. Evid. 702(a). "Although the Sixth Circuit has not ruled explicitly in this regard, other courts have held that when cases involve review of videotaped events, an expert's opinion should not be permitted when the expert is no better suited than the jury to interpret the video's contents." *Estate of Collins v. Wilburn*, 253 F. Supp. 3d 989,992 (E.D. Ky. 2017) (citing *Dunlap v. Hood*, 2009 WL 362292, at *1 (N.D. Tex. 2009)). *See In re FCA US LLC*, MDL No. 2744, 2022 WL 17652686, at *4 (E.D. Mich. Dec. 13, 2022) ("[C]ourts have limited the testimony to merely explaining the process used to extract and enhance images, while disallowing any opinion testimony about what the images depict, especially where jurors are equally able to view the images and assess what is depicted."); *Slack v. City of San Antonio*, No. SA-18-cv-01117, 2021 WL 1390428, at *3-4 (W.D. Tex. Apr. 13, 2021) (excluding forensic video expert from testifying as to what a video depicts because "such testimony does nothing to assist the jurors, who can make their own determination as to whether the video is consistent with or contradicts the various parties' account of the events leading up to and during the police shooting"); *Grover v. BMW of N. Am., LLC*, No. 1:19-cv-12, 2022 WL 205249, at *5 (N.D. Ohio Jan. 24, 2022) (favorably quoting *Estate of Collins*, 253 F. Supp. 3d at 992)). *See also United States v. Glenn*, 146 F.4th 485, 491 (6th Cir. 2025) (finding that trial court should have excluded expert testimony from law enforcement Special Agent because "the

jury was just as competent as Agent Almonte to interpret the common words and phrases used in these text messages") (quoting *United States v. Freeman*, 730 F.3d 590, 597 (6th Cir. 2013) ("A witness, lay or expert, may not form conclusions for a jury that they are competent to reach on their own.")).

In *Estate of Collins*, the plaintiffs-whose decedent died as a result of alleged police excessive force-sought to admit the report of expert witness Dr. George Kirkham, a former police officer⁶ and Criminology Professor Emeritus at Florida State University. 253 F. Supp. 3d at 991. Dr. Kirkham's report concluded that the officers in that case violated established law enforcement standards and proximately caused the preventable harm the plaintiffs' decedent suffered. *Id.* at 992. He sought to testify that "failure to comply with established procedures led to the use of force and that the force was unreasonable and excessive." *Id.* (comma omitted). The incident at issue there had been captured on video, and neither party challenged the video recording's validity. *Id.* The court in that case granted defendants' motion to exclude Dr. Kirkham's testimony, finding that:

Rule 702's "helpfulness" standard requires a valid connection to the pertinent inquiry as a precondition to admissibility. Likewise, credibility determinations fall within the province of the jury. In this case, there is little need for Plaintiffs expert to tell the jury whether the officers' actions were objectively reasonable under the circumstances because a video captures the incident. Dr. Kirkham's testimony will not be of any assistance to the jury in determining whether or not excessive force was used. As such, it does not satisfy the requirements of FRE 702.

Id. (internal citations and quotation marks excluded).

⁶ Report of George L. **Kirkham**, *Estate of Collins v. Wilburn*, 253 F. Supp. 3d 989,992 (E.D. Ky. 2017) (No. 16-cv-00068), 2016 WL 9233670.

In this case, Dr. Hunter's "analysis" of each officer's actions consisted solely of his narration of the video's contents. (Doc. 65-1 at PAGEID 2823-34). Indeed, Dr. Hunter isolated thirteen still photos from the video and "explains" what each image "shows." (*Id.*).

Following the narration of the video, Dr. Hunter reviewed a recorded statement Officer Jones provided to investigators and speculates as to what Officer Jones "meant" in his statement or "believed" as the shooting unfolded. (Doc. 65-1 at PAGEID 2834-35). For example, Dr. Hunter opined:

At 13:48, OFC Jones stated that while the van was egressing from the rear, he (Jones) was "in a pretty okay spot." Meaning that he believed he would not have been struck by the minivan. At 13:55, OFC Jones states that he saw the minivan cut the corner. In other words, the minivan turned toward the street, attempting to flee from officers rather than strike them. This indicates that he believed that the operator was trying to escape and not cause any harm to him or his partner standing to the right.

(*Id.* at PAGEID 2835).

Dr. Hunter is no better suited than the fact finder to watch the videos or observe Officer Jones' recorded statement. Indeed, Dr. Hunter's law enforcement experience and education does not qualify him to speculate what Officer Jones "believed" at any time during the events leading up to the shooting or to explain the meaning of Officer Jones' statement. A juror is just as competent as Dr. Hunter to interpret common and ordinary English language. See *United States v. Glenn*, 146 F.4th at 491. Therefore, Dr. Hunter's analysis fails to assist the trier of fact. In addition, any probative value it may have is substantially outweighed by the danger of confusing the issues, misleading the fact finder, or simply wasting time, and it should be excluded pursuant to Federal Rule of Evidence 403.

C. Reliability

"As for reliability, Rule 702 only allows an expert to testify when the opinion is (1) 'based on sufficient facts or data,' (2) 'the product of reliable principles and methods,' and (3) 'a reliable application' of those 'principles and methods to the facts of the case.'" *Baker*, 141 F.4th at 766 (quoting Fed. R. Evid. 702(b)-(d)). "The task for the district court in deciding whether an expert's opinion is reliable is not to determine whether it is correct, but rather to determine whether it rests upon a reliable foundation, as opposed to, say, unsupported speculation." *In re Onglyza*, 93 F.4th at 346 (quoting *In re Scrap Metal Antitrust Litig.*, 527 F.3d at 529-30).

"District courts evaluating the reliability of expert testimony based on the expert's personal knowledge or experience, may forgo the *Daubert* factors,⁷ and instead focus on whether the expert's testimony 'explain[s] how that experience leads to the conclusion reached ... and how that experience is reliably applied to the facts.'" *Cook v. Erie Ins. Co.*, 478 F. Supp. 3d 658, 662 (S.D. Ohio 2020) (quoting *Thomas v. City of Chattanooga*, 398 F.3d 426,432 (6th Cir. 2005)) (footnote added). When evaluating non-scientific opinion testimony, trial courts enjoy considerable leeway in determining reliability. *Id.* at 666 (citing *Tamraz v. Lincoln Elec. Co.*, 620 F.3d 665, 671-72 (6th Cir. 2010)).

In this case, plaintiffs have failed to establish that Dr. Hunter's opinions are either the product of reliable methods or a reliable application of those methods to the facts of this case. First, Dr. Hunter's report lacks a reliable foundation. Dr. Hunter outlined the basis of his report as follows:

⁷As to reliability, courts evaluating expert scientific evidence are guided by four inquiries: (1) whether the technique is testable; (2) whether it has been subjected to peer review; (3) the error rate and whether there are any standards for lowering it; and (4) whether the technique is generally accepted in the relevant scientific community. *United States v. Gissantaner*, 990 F.3d 457,463 (6th Cir. 2021) (quoting *Daubert*, 509 U.S. at 593-94, 597 (1993)).

This case involves the use of deadly force by duly sworn police officers. As such it is necessary to establish the narrow parameters that the US Constitution, courts, state law, policies, and procedures dictate law enforcers may use force. The force police officers may use and will be analyzed includes their mere presence and verbal commands and escalates up to and including the use of deadly force.

(Doc. 65-1 at PAGEID 2814). Dr. Hunter bases much of his report on legal standards that, even if accurately summarized, do not apply in this case. Dr. Hunter's report is based on, at varying times, "law enforcement takeaways and training" from three United States Supreme Court cases (Doc. 65-1 at PAGEID 2815-18), sections of the Wyoming, Ohio Police Department policies and procedures manual (*id.* at PAGEID 2818-19, 2821-22), a non-binding "National Consensus Policy and Discussion Paper on the Use of Force" (which Dr. Hunter admits "is at odds with" the Wyoming police manual) (*id.* at PAGEID 2819-20, 2822), the mission statement from the Wyoming Police Department's website (*id.* at PAGEID 2820), a paper published by the Police Executive Research Forum ("PERF") entitled "Critical Issues in Policing Series: Guiding Principles on Use of Force" (*id.* at PAGEID 2821), and a "use of force continuum" recognized by the National Institute of Justice (*id.* at PAGEID 2822-23).

Based on these varying sources, Dr. Hunter reached approximately three pages of "findings," including: (1) "In connection with the above consensus of the policymakers and police executives from multiple law enforcement disciplines and organizations, the officers failed to take the necessary steps to preserve life, as their department mission statement declares" (Doc. 65-1 at PAGEID 2835); (2) "It is my expert opinion that Officers [sic] Drew Jones and Officer Jordan Batts used force in excess of best practices and national standards" (*id.* at PAGEID 2836); (3) "All three officers could have used more wisdom in de-escalation techniques" (*id.*); (4) "Officers should have recognized that Joe Jr's first instinct was to evade

capture"; (*id.* at PAGEID 2837); (5) "It is possible that Joe Jr blew his horn to warn officers to move out of the way" (*id.*); (6) Officer Batts "turning around to confront the situation was not the best decision, nor was it in line with de-escalation philosophy" (*id.*); (7) Crime scene photos "indicate that the minivan was already veering toward the asphalt escape route" (*id.*); and (8) "The killing of Joe Jr is what the WPD mission statement and PERF's guides on the use of force stand against" (*id.*).

In this case, plaintiffs allege the defendant officers violated Joe Frasure, Jr.'s Fourth Amendment right to be free from excessive force during arrest. (Doc. 52). Fourth Amendment claims require a determination of whether the force used was objectively reasonable under the totality of the circumstances. *Barnes v. Felix*, 605 U.S. 73, 145 S.Ct. 1353, 1357-58 (2025). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). Fourth Amendment reasonableness does not require "only the best technique available at the time." *Ashford v. Raby*, 951 F.3d 798, 801 (6th Cir. 2020) (citing *Dickerson v. McClellan*, 101 F.3d 1151, 1160 (6th Cir. 1996) (The "Fourth Amendment does not require officers to use the best technique available as long as their method is reasonable under the circumstances"))).

Dr. Hunter's application of various legal and other standards in this case undermines the reliability of his report. For example, Dr. Hunter notes:

Officers Jones and Batts had their weapons drawn before seeing any potential problem or the need for deadly force. To be sure, it is not an uncommon tactic for officers to pull their weapons in a possible burglary situation. However, *with hindsight*, we know that officers were responding to a suspicious person's call. Officers responding with their weapons at the ready seems excessive, especially in today's law enforcement climate....

(Doc. 65-1 at PAGEID 2836 (emphasis added)). Dr. Hunter's use of "hindsight" in evaluating the reasonableness of the officers' actions is contrary to controlling precedent, *Graham*, 490 U.S. at 396, and irrelevant to evaluating an officer's use of force.

Dr. Hunter also repeatedly analyzes the officers' actions in accordance with "best practices" and "better" alternative approaches. (Doc. 65-1 at PAGEID 2836: "A better approach may have been to get to the backyard, slowly round the corner, and assess the situation with their hand on their holstered weapons."; Doc. 65-1 at PAGEID 2836: "A better approach may have been to hold their ground, slowly walk toward the vehicle, or seek cover if they feared the occupant(s) would suddenly exit the vehicle with weapons."; Doc. 65-1 at PAGEID 2837: "OFC Batts could have kept running down the slight hill to safetyHis turning around to confront the situation was not the best decision, nor was it in line with de-escalation philosophy."; Doc. 65-1 at PAGEID 2837: "Best practice suggestions from professional organizations indicate that police officers do not fire their weapons into or at moving vehicles unless the operator deliberately intends to strike the officer or another person."). But the failure to use "best" or "better" practices does not establish that a constitutional violation has occurred. "The Fourth Amendment ... does not require police officers to take the better approach[,].....only that they take a reasonable approach." *Roell v. Hamilton Cty., Ohio*, 870 F.3d 471,486 (6th Cir. 2017) (quoting *Cook v. Bastin*, 590 F. App'x 523, 528 (6th Cir. 2014)). "[E]xpert testimony, which essentially opines on the best approach that the deputies could have taken in ideal circumstances, ... does not establish that the [officers] violated [the suspect's] clearly established rights." *Roell*, 870 F.3d at 486.

Dr. Hunter also opines, "All three officers could have used more wisdom in de-escalation techniques." (Doc. 65-1 at PAGEID 2836). Officers, however, are not "prohibited from using *any* physical force against [a suspect] before first attempting alternative de-escalation techniques." *Roell*, 870 F.3d at 482 (citing *Cook*, 590 F. App'x at 530).

Dr. Hunter also failed to recognize or address the applicable legal standard for an officer's use of deadly force against the driver of a motor vehicle. *See Raimey v. City of Niles*, 77 F.4th 441, 449 (6th Cir. 2023) ("Deadly force is justified against a driver who objectively appears ready to drive into an officer or bystander with his car, but generally not once the car moves away, leaving the officer and bystanders in a position of safety, unless the officer's prior interactions with the driver suggest that the driver will continue to endanger others with his car.") (internal quotation marks omitted) (quoting *Laitit v. Phillips*, 878 F.3d 541, 548 (6th Cir. 2017)). Dr. Hunter's use of standards that are clearly inapplicable to the questions in this case render his opinions unreliable. Furthermore, because Dr. Hunter uses standards that do not apply to the issue of excessive use of force, the report's probative value is substantially outweighed by a danger of confusing the issues and should be excluded under Federal Rule of Evidence 403.

As to methodology, "Courts have repeatedly found opinions unreliable when they were based more on an expert's 'subjective belief' than on an objective method that can be tested." *Madej*, 951 F.3d at 375. Simply put, "[e]xpert reports must include 'how' and 'why' the expert reached a particular result, not merely the expert's conclusory opinions." *R.C. Olmstead, Inc. v. CU Interface, LLC*, 606 F.3d 262,271 (6th Cir. 2010) (quoting *Salgado v. Gen Motors Corp.*, 150 F.3d 735, 742 n.6 (7th Cir. 1998)). The opinions must "outline a line of reasoning arising

from a logical foundation." *Id.* (quoting *Brainard v. Am. Skandia Life Assur. Corp.*, 432 F.3d 655, 657 (6th Cir. 2005)).

Dr. Hunter's report fails to do so. First, his report reveals no discernible methodology. (Doc. 65-1). He makes no effort to explain how he reached his conclusions. Indeed, when deposed about his methods, Dr. Hunter testified:

I looked at case law and I looked at best practices and just made a decision as to whether the actions that I was able to see were in line with that. Did I go out there and take measurements? If that's what you mean by scientific, I didn't take measurements or anything like that.

(Doc. 65-6 at PAGEID 2869-70). For example, Dr. Hunter concluded: "At no time was Warmack or Jones in danger of being struck. In my opinion, Batts and all officers could have or should have moved out of the way and stayed on the side of the vehicle." (Doc. 65-1 at PAGEID 2837). However, Dr. Hunter provided no explanation for this conclusion. He admittedly took no measurements and made no mathematical calculations involving the speed at which the vehicle was travelling, the relative positions of the officers, or whether the officers had the time and space to evade the moving vehicle.

Second, some of Dr. Hunter's "findings" are nothing more than obvious speculation. For example, Dr. Hunter found that "Joe Jr's first instinct was to evade capture," "[i]t is possible that Joe[,] Jr[.] blew his horn to warn officers to move out of the way," and Joe, Jr. was not "deliberately intend[ing]" to strike the officers. (Doc. 65-1 at PAGEID 2837). Dr. Hunter provided no basis for knowing the deceased's instincts or intentions.

In sum, plaintiffs have failed to establish that Dr. Hunter's opinions are either the product of reliable methods or a reliable application of those methods to the facts of this case.

Accordingly, his report should be excluded from consideration during both summary judgment and trial.

IV. CONCLUSION

Because plaintiffs failed to comply with Rule 26(a)(2)(B), because Dr. Hunter's report is neither helpful to the trier of fact nor the product of reliable methods, and because any probative value of the report is substantially outweighed by its danger of confusing the issues and misleading the fact finder, defendants' *Daubert* motion and motion in limine regarding plaintiff's purported expert witness, Lawrence Hunter (Doc. 65), is **GRANTED**. Dr. Hunter's report is excluded from consideration during summary judgment and trial.

/s/Karen Litkovits/s/

Date: 9/17/2025


United States Magistrate Judge

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