No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

NICHOLAS S. BOLTON,

Petitioner,

v.

SHERIFF OF COWETA COUNTY, GEORGIA; JOHN TAYLOR COLLINS, CHRISTIAN SPINKS; and JON HOUSE;

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON, Plaintiff, v. LENN WOOD, Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia; JOHN TAYLOR COLLINS, individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia; CHRISTIAN SPINKS, individually and in his official capacity as a Deputy Sheriff for Coweta County, Georgia; and JON HOUSE, individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia Defendants.	)	CIVIL ACTION FILE NO. _____

COMPLAINT FOR DAMAGES

COMES NOW NICHOLAS S. BOLTON, Plaintiff in the above-styled Civil Action, and hereby files this Complaint for Damages as follows:



JURISDICTION AND VENUE

1.

This is a civil action brought by Plaintiff pursuant to 42 U.S.C. §§ 1983, and 1988; the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution; O.C.G.A. §§ 51-1-13 and 51-1-14, et seq., as set forth herein.

2.

This Court has jurisdiction under 28 U.S.C. §§1331 and 1343. Plaintiff also invokes the Court's supplemental jurisdiction to hear pendant state law claims under 28 U.S.C. § 1367.

3.

Venue is proper in this Court pursuant to 28 U.S.C §1391(b) and N.D.L.R. 3.1, in that one or more of the Defendants reside in this district and division.

PARTIES

4.

Defendant Lenn Wood ("hereinafter "Wood") is, and was at all times relevant to this Complaint, the duly elected Sheriff of Coweta County, Georgia. Defendant Wood may be served with process in this action at the Coweta County Sheriff's Office located at 560 Greison Trail, Newnan, Georgia 30263.

5.

Defendant John Taylor Collins (hereinafter "Collins") was, at all times relevant to this Complaint, a deputy sheriff for Sheriff's Office of Coweta County, acting under color of state law and under the authority or direction of Sheriff Wood. Defendant Collins may be served with process in this action at his residence located at 130 W. Fork Drive, Newnan, Georgia 30263-4480, or at his place of employment, Honda of Newnan located at 391 Newnan Crossing Bypass, Newnan, Georgia 30265.

6.

Defendant Christian Spinks (hereinafter "Spinks") is and was, at all times relevant to this Complaint, a deputy sheriff for Sheriff's Office of Coweta County, acting under color of state law and under the authority or direction of Sheriff Wood. Defendant Spinks may be served with process in this action at the Coweta County Sheriff's Office located at 560 Greison Trail, Newnan, Georgia 30263, or at his residence located at 79 Sunrise Drive, Newnan, Georgia 30263.

7.

Defendant Jon House (hereinafter "House") was, at all times relevant to this Complaint, a deputy sheriff for Sheriff's Office of Coweta County, acting under color of state law and under the authority or direction of Sheriff Wood. Defendant House may be served with process in this action at his residence located at 6100 Bellmoore Park Lane, Duluth, Georgia 30097-2543.

8.

At all times relevant to this Complaint, Defendants acted under color of state law and within the scope and course of their employment and authority as employees or agents of the Coweta County Sheriff's Office.

FACTS

9.

Plaintiff adopts and incorporates by reference those allegations set forth in Paragraphs 1 through 8 above as if set forth fully herein.

10.

At all relevant dates and times to this matter, Mr. Bolton was unemployed and living in his 2001 Chevrolet Tahoe.

11.

Throughout the several days prior to the subject shooting of Mr. Bolton on June 30, 2019, Mr. Bolton parked his vehicle underneath a tree at the furthest most end of the Kohl's shopping center parking lot in Newnan, Georgia, off Georgia Highway 34 without incident.

12.

Shortly after 10:30 a.m. on the morning of June 29, 2019, Mr. Bolton was approached at this location by Coweta County Sheriff's Deputy Thompson. Deputy Thompson approached Mr. Bolton to inquire as to his identity and his purpose for being parked in this location over the past several days.

13.

During the encounter, Deputy Thompson was informed that Mr. Bolton was homeless and was living out of his vehicle at said location. Deputy Thompson was able to confirm the identity of Mr. Bolton and, upon learning of Mr. Bolton's situation, provided him with a bottle of water. Mr. Bolton was not asked or otherwise instructed to depart the area, and he was not told that he was loitering.

14.

At approximately 2:15 a.m. on June 30, 2019, Mr. Bolton, who remained continuously parked in the same location throughout the day and evening, was asleep in the back seat of his vehicle.

15.

Mr. Bolton was suddenly awoken by Defendant former Deputy John Taylor Collins, who demanded that Mr. Bolton present his driver's license and stand outside of his vehicle.

16.

Defendant Collins was joined by Defendant House at the scene.

17.

Both deputies alleged that Mr. Bolton was loitering, and because he would not immediately step out of his car, he was obstructing an investigation. Defendant House threatened that Mr. Bolton could either get out of his vehicle or "we can take you out and you can go to jail. Your choice . . . you have one chance to get out."

18.

Mr. Bolton was not wearing shoes. Mr. Bolton, who had retrieved his license, attempted to explain his encounter with Deputy Thompson from earlier in the day. Neither Defendant Collins nor Defendant House were receptive to Mr. Bolton's recitation of his encounter with Deputy Thompson earlier that day.

19.

Mr. Bolton, an African American male, was frightened by the aggressive conduct of Defendants Collins and House, both white males, especially in light of the fact that he was told earlier that day by Deputy Thompson that he wasn't doing anything wrong.

20.

After trying to explain his interaction earlier in the day with Deputy Thompson to Defendants Collins and House, and because he was accused of loitering, Mr. Bolton started his vehicle and drove away from the parking spot.

21.

Mr. Bolton proceeded to drive through the parking lot and turned left towards Highway 34.

22.

Both Defendant Collins and Defendant House pursued Mr. Bolton in their police vehicles and requested additional assistance over the police radio.

23.

Defendant Collins performed a Pursuit Intervention Technique (also known as a "PIT" maneuver) on Mr. Bolton's vehicle. As a result, Mr. Bolton's vehicle spun approximately 180 degrees from its original heading and stopped. Defendant Collins immediately struck the front of Mr. Bolton's vehicle with the front of his police SUV.

24.

The front of Defendant Collins' vehicle was in physical contact with the front of Mr. Bolton's vehicle immediately after the PIT maneuver.

25.

Almost immediately after Defendant Collins struck the front of Mr. Bolton's vehicle, Defendant House struck the driver's side of Mr. Bolton's vehicle with the front of his police car.

26.

As Defendant House was physically pinning Mr. Bolton's vehicle on the driver's side, Defendant Christian Spinks almost simultaneously struck the passenger side of Mr. Bolton's vehicle with the front of his police vehicle and also physically pinned it. The force of this impact shoved Mr. Bolton's vehicle towards Defendant House's vehicle, which had already collided with Mr. Bolton.

27.

After being struck in the front (by Defendant Collins), on the driver's side (by Defendant House), and in the passenger's side (by Defendant Spinks), Mr. Bolton's vehicle did not move. Mr. Bolton's car was pinned by the Sheriff's vehicles, so that it could not and did not move.

28.

After having been stopped and pinned in by the Sheriff's vehicles, neither Mr. Bolton nor his vehicle posed any present danger to Defendants Collins, Spinks, or House.

29.

Defendant Collins sprang out of his vehicle.

30.

While standing to the side of his vehicle and out of the zone of danger, Defendant Collins immediately fired his service pistol at Mr. Bolton, striking him in the head.

31.

At the time Mr. Bolton was shot in the head, all three of the Deputies were either in their vehicles or sheltering behind their vehicle doors.

32.

At the time of this shooting, there was no objective threat of serious bodily injury or death to anyone present.

33.

Defendant Collins did not provide any verbal instructions or warnings to Mr. Bolton after the PIT maneuver and before firing his weapon.

34.

Defendant Collins did not say anything to Mr. Bolton after the PIT maneuver and before firing his weapon.

35.

Defendant Collins knew that Mr. Bolton was not armed at the time of the shooting.

36.

Defendant Spinks knew that Mr. Bolton was not armed at the time of the shooting.

37.

Defendant House knew that Mr. Bolton was not armed at the time of the shooting.

38.

Defendant Collins knew that Mr. Bolton was not armed throughout his entire interaction with Mr. Bolton on June 30, 2019.

39.

Defendant Spinks knew that Mr. Bolton was not armed throughout his entire interaction with Mr. Bolton on June 30, 2019.

40.

Defendant House knew that Mr. Bolton was not armed throughout his entire interaction with Mr. Bolton on June 30, 2019.

41.

Defendant Collins did not see Mr. Bolton throw anything from his vehicle prior to the shooting.

42.

Defendant Spinks did not see Mr. Bolton throw anything from his vehicle prior to the shooting.

43.

Defendant House did not see Mr. Bolton throw anything from his vehicle prior to the shooting.

44.

Mr. Bolton's vehicle was searched after the shooting. No guns were found during that search.

45.

Mr. Bolton's vehicle was searched after the shooting. No knives were found during that search.

46.

Mr. Bolton's vehicle was searched after the shooting. No drugs were found during that search.

47.

Mr. Bolton's vehicle was searched after the shooting. No illegal drugs were found during that search.

48.

Mr. Bolton's vehicle was searched after the shooting. No items of any kind were found during that search that the Coweta County Sheriff's Office considered to be a deadly weapon.

49.

Mr. Bolton's vehicle did not move on its own accord after the PIT maneuver. It only shifted after being struck by all three of the Sheriff's vehicles.

50.

Defendant House's police vehicle was in physical contact with Mr. Bolton's vehicle at time of shooting.

51.

Defendant Spink's police vehicle was in physical contact with Mr. Bolton's vehicle at time of shooting.

52.

Defendant Collins's police vehicle was in physical contact with Mr. Bolton's vehicle at time of shooting.

53.

Defendant House's police vehicle was moved away from Mr. Bolton's vehicle after the shooting and before the GBI arrived at the scene.

54.

Defendant Spinks' police vehicle was moved away from Mr. Bolton's vehicle after the shooting and before the GBI arrived at the scene.

55.

When Defendant Collins improperly used deadly force against Mr. Bolton by shooting through the front windshield, Mr. Bolton was struck in the right eye by the bullet. The bullet did not exit his skull. Rather, it fragmented, and several of the subject fragments remain embedded in Mr. Bolton's brain.

56.

After being shot, Mr. Bolton did not move and was unconsciously slumped in his vehicle. He remained this way for a short period of time when his body began to uncontrollably and reflexively jerk and twitch.

57.

Defendant House broke the drivers' window of Mr. Bolton's vehicle with his police baton. By this time, numerous other Coweta County deputies had arrived at the scene.

58.

One of the Coweta County Deputies pulled Mr. Bolton from his vehicle and allowed him to fall uncontrollably onto the concrete parking lot.

59.

Defendant Spinks exerted unnecessary and unreasonable force by handcuffing Mr. Bolton's wrists behind his back, and in doing so, kneeled on Mr. Bolton's back and neck pinning him to the concrete. At this time, Mr. Bolton had been shot in the head, was not resisting in any way, was crying in agony and pain, and begging for water. Mr. Bolton also stated that his shoulder was hurting, and he asked to sit up.

60.

Defendant Spinks exerted unnecessary and unreasonable force by continuing to kneel on Mr. Bolton's back and neck while Mr. Bolton was handcuffed with his hands behind his back and while he was not resisting in any way.

61.

Defendant House was at the scene when Defendant Spinks exerted unnecessary and unreasonable force by handcuffing Mr. Bolton's wrists behind his back, and in doing so, kneeled on Mr. Bolton's back and neck pinning him to the concrete and did not intervene to stop Defendant Spinks' conduct.

62.

Defendant House heard Mr. Bolton crying in agony and pain and did nothing in response.

63.

Mr. Bolton was not allowed to sit up as he requested.

64.

Mr. Bolton was not given water by any Coweta County Deputy after being shot in the head as he requested, while Deputy Collins was offered and provided bottled water at the scene.

65.

None of the Coweta County Deputies rendered any medical care to Mr. Bolton. Defendant Spinks, however, continued to exert unnecessary and unreasonable force by continuing to pin Mr. Bolton to the ground by kneeling on his back and neck.

66.

Once EMS arrived, Defendant House removed the handcuffs on Mr. Bolton from his back to the front so EMS personnel could render medical care and treatment to him.

67.

Upon arrival of medical personnel, Mr. Bolton was initially assessed and treated at the scene by Coweta County Fire and Rescue. They decided that Mr. Bolton's injuries were grave enough to necessitate his evacuation by an aeromedical helicopter.

68.

Mr. Bolton was flown to WellStar Atlanta Medical Center for emergency medical care and treatment. He remained an inpatient for approximately three (3) months. During this time, he underwent numerous surgeries, which included the removal portions of his skull to allow access to the embedded bullet fragments from former Deputy Collins' handgun. Mr. Bolton spent weeks in the intensive care unit and eventually was transferred to inpatient physical therapy before being discharged to West Georgia Medical Center for outpatient therapy.

69.

At the time of the filing of this Complaint, Mr. Bolton's medical treatment for his injuries remains ongoing. For months after the shooting, Mr. Bolton was missing several portions of his skull, which were temporarily covered with skin flaps, and as a result, he had to wear a helmet to protect his brain. He has since had surgery and has been fitted with an implant to cover portions of his brain where his skull was missing as a result of the shooting.

70.

Mr. Bolton has pronounced loss of use and weakness on the left side of his body. He requires a mobility aid to ambulate. He is blind in his right eye, which has also lost focus and crossed, as a result of this shooting. He has constant painful headaches. In short, he remains in the early stages of his treatment and will never fully recover from his injuries, which were improperly and unjustly inflicted by Defendants.

71.

As a direct and proximate result of the injuries he sustained in the June 30, 2019 incident, Mr. Bolton has incurred significant special damages, including medical bills and expenses in excess of $913,400.00, lost wages, and lost capacity to work, for which Defendants are liable. Mr. Bolton will continue to incur substantial medical bills and expenses for future medical care and treatment.

72.

Defendant Collins, Defendant Spinks, and Defendant House violated Mr. Bolton's civil rights by inflicting brutal, excessive, unreasonable, and unnecessary physical force upon him as set forth above, and by failing to intervene to stop the infliction of such force upon Mr. Bolton.

73.

As Sheriff, Defendant Wood is the final decision maker and ultimate policymaker for the Coweta County Sheriff's Office, and implements policies, practices, customs, and procedures of the Coweta County Sheriff's Office. In doing so, Defendant Wood has instituted policies that caused Defendants Collins and Spinks to systematically use excessive force in violation of Mr. Bolton's constitutional rights, and has condoned, encouraged, and approved such use of excessive force with deliberate indifference to Mr. Bolton's constitutional rights.

74.

As Sheriff of Coweta County, Defendant Wood has actual knowledge that his Deputies routinely use excessive force in making stops and arrests with deliberate indifference to the constitutional rights of individuals who they stop, detain, and arrest.

75.

As Sheriff of Coweta County, Defendant Wood is responsible for the oversight, supervision, and training of his Deputies.

76.

As Sheriff, Defendant Wood adopted or approved both formal and informal policies that caused Defendants Collins, Spinks, and House to use excessive force against individuals who they stop, detain, and/or arrest, including Mr. Bolton, and

he has tolerated and condoned the use of excessive force within the Coweta County Sheriff's Office.

77.

Mr. Bolton's attorneys provided Defendants with an *ante litem* notice pursuant to O.C.G.A. § 36-11-1, *et seq.* on June 17, 2020. A true and correct copy of that notice is attached hereto and incorporated herein as Exhibit "A."

78.

Neither Defendants nor anyone acting on their behalf responded to Mr. Bolton's June 17, 2020 *ante litem* notice.

79.

Plaintiff has complied with all statutory and procedural prerequisites prior to filing this lawsuit.

COUNT I
FOURTEENTH AMENDMENT EXCESSIVE FORCE CLAIM AGAINST DEFENDANTS COLLINS, SPINKS, AND HOUSE

80.

Plaintiff adopts and incorporates herein paragraphs 1 through 79 as if as if set forth fully herein.

81.

Mr. Bolton had a Fourteenth Amendment right to be free from the use of excessive force against him.

82.

There was no factual or legal justification at any time for the degree of force used by Defendant Collins when he shot Mr. Bolton in the head, without warning, when Mr. Bolton posed no objectively reasonable threat to Defendants Collins, Spinks, or House.

83.

There was no factual or legal justification at any time for the degree of force used by Defendant Spinks in handcuffing Mr. Bolton's wrists behind his back and kneeling on Mr. Bolton's back and neck, pinning him to the concrete for an excessive period of time after Mr. Bolton had been shot in the head, was handcuffed with his hands behind his back, was not resisting in any way, was crying in agony and pain, and begging for water.

84.

There was no factual or legal justification at any time for the degree of force used by Defendant Spinks in his continuing to kneel on Mr. Bolton's back and neck while Mr. Bolton was handcuffed with his hands behind his back, after being shot in the head, and while he was not resisting in any way.

85.

Defendant House was physically present at the scene and failed to intervene or take any action to prevent Defendant Collins or Defendant Spinks from exerting excessive force in violation of Mr. Bolton's Fourteenth Amendment rights.

86.

Mr. Bolton was subjected to the use of excessive force in violation of his Fourteenth Amendment rights because the force used against him by Defendants Collins and Spinks was not applied in a good faith effort to maintain or restore discipline, but instead was maliciously or sadistically used for the very purpose of causing harm and was gratuitous, unnecessary, and punitive, and Defendant House did nothing to stop or prevent such excessive force from being exerted.

87.

The law was clearly established at all times relevant to this Complaint that a pretrial detainee or arrestee cannot be subjected to malicious and sadistic force used solely for punitive or retaliatory purposes and not in a good faith effort to maintain order and discipline, and accordingly, Defendants are not entitled to qualified immunity with respect to any of the claims set forth herein.

88.

Defendants Collins, Spinks, and House are liable to Plaintiff under 42 U.S.C. § 1983 for violation of Mr. Bolton's Fourteenth Amendment right to be free from the use of excessive force during his arrest.

COUNT II
FOURTEENTH AMENDMENT SUPERVISORY LIABILITY CLAIM AGAINST DEFENDANT WOOD

89.

Plaintiff adopts and incorporates herein paragraphs 1 through 88 as if as if set forth fully herein.

90.

At all times relevant herein, Defendant Wood, as Sheriff, maintained a custom or policy within the Coweta County Sheriff's Office, of permitting deputies to use punitive force against arrestees who were deemed uncooperative under circumstances where there was no constitutional justification for the use of force, and said custom or policy amounted to deliberate indifference to the rights of Mr. Bolton to be free from the use of excessive force.

91.

Defendant Wood's custom or policy of permitting the use of punitive force resulted in a culture of systemic abuse of arrestees and deliberate indifference to the constitutional rights by Coweta County deputies because they believed that they were acting consistently with departmental policy as implemented and enforced by Defendant Wood.

92.

Defendant Wood has supervisory liability under 42 U.S.C. § 1983 for the violation of Mr. Bolton's constitutional rights because Defendant Wood's custom

or policy of permitting the use of punitive force has caused arrestees and pretrial detainees such as Mr. Bolton to be unconstitutionally subjected to excessive force as a result of Defendant Wood's deliberate indifference to such rights.

93.

At the time of the June 30, 2019, incident complained of in this Complaint, Defendant Collins was on probationary employment with the Coweta County Sheriff's Office.

94.

Prior to the June 30, 2019, incident complained of in this Complaint, Defendant Collins had been suspended from his employment with the Coweta County Sheriff's Office.

95.

Despite the suspension for Conduct Unbecoming an Employee and multiple probationary periods, Defendant Wood allowed Defendant Collins to retain his position as a deputy sheriff for Sheriff's Office of Coweta County.

96.

Following the June 30, 2019 shooting, an internal investigation was commenced questioning Defendant Collins's integrity and trust.

97.

Defendant Collins was allowed to resign in lieu of termination after receiving notice that he was being dismissed from employment with Coweta

County Sheriff's Office of for yet another incident of conduct unbecoming an employee and in violation of GCIC rules.

98.

The law was clearly established at all times herein that a supervisor such as Defendant Wood cannot be deliberately indifferent to the use of excessive force against arrestees by subordinate officers, and accordingly, Defendant Wood is not entitled to qualified immunity for purposes Plaintiff's of supervisory liability claim under Section 1983.

99.

Defendant Wood is liable for violating the Fourteenth Amendment rights of Mr. Bolton, and is not entitled to qualified immunity, for both his actions in causing Defendant Collins and Defendant Spinks to violate such rights and for his omissions in failing to stop the continued violation of such rights, both of which resulted from the deliberate indifference of Defendants Collins and Spinks.

100.

The aforementioned customs, policies, and conduct of Defendant Wood, as the Sheriff of Coweta County proximately caused the violation of Mr. Bolton's constitutional rights.

COUNT III
ASSAULT AND BATTERY AGAINST DEFENDANTS COLLINS, SPINKS, AND HOUSE

101.

Plaintiff adopts and incorporates herein paragraphs 1 through 100 as if as if set forth fully herein.

102.

On June 30, 2019, Defendant Collins shot Mr. Bolton in the head, without warning, when Mr. Bolton posed no objectively reasonable threat of harm.

103.

After Mr. Bolton had been shot in the head and was completely unresponsive and not resisting arrest in any way, Mr. Bolton was pulled from his vehicle and thrown to the concrete pavement.

104.

After Mr. Bolton had been shot in the head and was completely unresponsive and certainly not resisting in any way and was lying face-down on the concrete pavement, Defendant Spinks kneeled on Mr. Bolton's back and neck and handcuffed his hands behind his back.

105.

Defendant Spinks continued to kneel on Mr. Bolton's back and neck while Mr. Bolton was handcuffed with his hands behind his back and was not resisting in any way.

106.

Defendant House was physically present at the scene and failed to intervene or take any action to prevent Defendant Collins from shooting Mr. Bolton in the head.

107.

Defendant House was physically present at the scene and failed to intervene or take any action to prevent Defendant Spinks from kneeling on Mr. Bolton's back and neck, handcuffing Mr. Bolton's wrists behind his back, and pinning him to the concrete after he had been shot in the head, was not resisting in any way, and was crying in agony and pain, begging for water, stating that his shoulder was hurting, and was asking for permission to sit up.

108.

Defendant House was physically present at the scene and failed to intervene or take any action to prevent Defendant Spinks from continuing to kneel on Mr. Bolton's back and neck while Mr. Bolton was handcuffed with his hands behind his back and while he was not resisting in any way.

109.

Mr. Bolton was not allowed to sit up as he requested.

110.

Mr. Bolton was not given water by any Coweta County Deputy after being shot in the head as he requested.

111.

None of the Coweta County Deputies rendered any medical care to Mr. Bolton.

112.

At the time of the filing of this Complaint, Mr. Bolton's medical treatment for his injuries remains ongoing. For months after the shooting, Mr. Bolton was missing several portions of his skull, which are temporarily covered with skin flaps, and as a result, he must wear a helmet to protect his brain. He has since had surgery and has been fitted with an implant to cover portions of his skull that were missing as a result of the shooting.

113.

Mr. Bolton has pronounced loss of use and weakness on the left side of his body. He requires a mobility aid to ambulate. He is blind in his right eye, which has also lost focus and crossed, as a result of this shooting. He has constant painful headaches. In short, he remains in the early stages of his treatment and will never

fully recover from his injuries, which were improperly and unjustly inflicted by Defendants.

114.

Defendants Collins, Spinks and House are liable for the torts of assault and battery based on their conduct and actions on June 30, 2019.

COUNT IV
PUNITIVE DAMAGES AGAINST ALL DEFENDANTS

115.

Plaintiff adopts and incorporates herein paragraphs 1 through 114 as if as if set forth fully herein.

116.

Defendants' actions were motivated by evil motive or intent and involved reckless or callous indifference to Mr. Bolton's federally protected rights pursuant to the Fourteenth Amendment to the United States Constitution.

117.

Defendants are liable to Plaintiff for punitive damages as a result of their intentional and malicious acts and omissions as set forth herein.

CLAIM FOR DAMAGES

1. As a direct and proximate result of the aforementioned unconstitutional conduct of Defendants, Mr. Bolton was deprived of his constitutional rights, suffered severe bodily injuries, endured significant physical and mental pain and suffering and emotional distress, and suffered actual

damages that will be proven at trial and determined by the enlightened conscience of fair and impartial jurors.

2. Plaintiff is entitled to recover compensatory damages from Defendants resulting from Defendants' unlawful conduct as alleged herein.

3. Plaintiff is entitled to recover special damages from Defendants resulting from Defendants' unlawful conduct as alleged herein.

4. Because Defendants' conduct was malicious, intentional, and carried out in bad faith, Plaintiff is entitled to recover punitive damages from Defendants.

5. Plaintiff is also entitled to recover reasonable attorney's fees under 42 U.S.C. § 1988.

WHEREFORE, Plaintiff respectfully prays that:

(a) Summons and process issue and that Defendants be served as required by law;

(b) That judgment be rendered in favor of Plaintiff and against Defendants on all counts of this Complaint for Damages and that Plaintiff be awarded general, special, and compensatory damages incurred as a result of Defendants' wrongful conduct;

(c) That Plaintiff be awarded punitive damages against Defendants in an amount sufficient to punish Defendants for their unlawful and

wrongful conduct and to deter Defendants from similar unlawful conduct in the future;

(d) That Plaintiff be awarded attorneys' fees and expenses;

(e) That all costs of this action be taxed against Defendants; and

(f) That Plaintiff be awarded such other and further relief as it just and proper under the circumstances and evidence presented.

A JURY TRIAL IS DEMANDED.

RESPECTFULLY SUBMITTED this the 2nd day of June, 2021.

/s/ Daniel J. Prieto
DANIEL J. PRIETO
Georgia State Bar No. 118510

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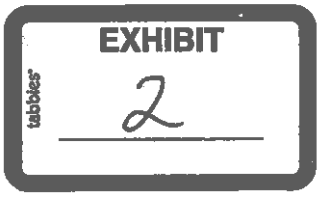
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON, Plaintiff, v. LENN WOOD, Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia; JOHN TAYLOR COLLINS, individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia; CHRISTIAN SPINKS, individually and in his official capacity as a Deputy Sheriff for Coweta County, Georgia; and JON HOUSE, individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia; Defendants.	:	CIVIL ACTION FILE NO. 1:21-CV-2279-MHC

EXPERT REPORT OF DR. ANDREW J. SCOTT, III

My name is ANDREW J. SCOTT, III, DCJ. I am providing the following expert report to summarize relevant facts of the case and state my expert opinions. I am fully qualified to state my expert opinions in this case based on my review of the referenced evidence as well as my knowledge, education, training, and experience in police practices, police training, and use of force.



I prepared this expert report at the request of the plaintiff's attorney, James W. Howard, Esq. My curriculum vitae is attached to this report as Exhibit 1, and it accurately summarizes my credentials. A list of my prior testimony is attached to this report as Exhibit 2. My fee schedule is attached to this report as Exhibit 3.

ITEMS REVIEWED:

1. Complaint for Damages.
2. Coweta County Sheriff's Office (CCSO) Incident Report, dated 06/30/19, Case #1906001285, authored by Deputy John Collins.
3. Coweta County Grand Jury transcripts dated 01/24/20 and 02/04/20 regarding Deputy John Taylor Collins, with Exhibits.
4. Coweta County Grand Jury report.
5. Georgia Bureau of Investigation (GBI) Investigatory Summary, Exhibits 1-36.
6. Coweta County District Attorney John H. Cranford, Jr. letter to SAC Fredrick Wimberly, dated 05/04/20.
7. CCSO CAD report.
8. 12 jpg photographs of Mr. Bolton, post shooting.
9. Kohl's parking lot surveillance video identified as Parking Lot PTZ.
10. Statement of Deputy Spinks.
11. Statement of Deputy Brown.
12. Statement of Deputy House.
13. Statement of Deputy Collins.
14. CCSO policy titled *Arrest*, Chapter VIII, Revised 9/26/02.
15. CCSO policy titled *Use of Force*, Chapter XI.
16. CCSO policy titled *Vehicle Pursuit Policy*, Chapter XII.
17. CCSO Use of Force and Legal Authority Foundation.
18. CCSO Use of Force Analysis - Kohl's s Parking Lot.
19. CCSO Critical Incident Analysis authored by Sergeant Nicolas Jerard.
20. Expert Report authored by Mr. Walter Marchant., Jr., dated 01/24/20.
21. Body Camera video of CCSO Deputy Collins, dated 05/30/20.
22. Body Camera video of CCSO Deputy George Thompson, dated 05/29/20.

INCIDENT, DATE AND TIME:

06/30/2019, Approximately 2:22 a.m.

INCIDENT LOCATION:

1140 E. Highway 34, Newnan, Georgia 30265

INDIVIDUAL INVOLVED:

Mr. Nicholas S. Bolton

LAW ENFORCEMENT:

Coweta County (GA) Sheriff's Office
Deputy John Taylor Collins
Deputy Christian Spinks
Deputy Jon House

INCIDENT SUMMARY:

The incident summary is based upon various materials noted in the "Items Reviewed" section of this report, including police reports, witness statements, and video files. This writer makes no credibility assessments of any of the individuals involved in this incident.

On June 29, 2019, Mr. Bolton had been contacted by CCSO Deputy George Thompson. That encounter was memorialized by Deputy Thompson's body-camera. At that time, Deputy Thompson engaged in a conversation with Mr. Bolton who was sitting at the rear of his vehicle in the same parking lot Mr. Bolton was contacted by Deputy Collins later on the following day. During the interaction between Mr. Bolton and Deputy Thompson, it was revealed that Mr. Bolton was homeless and that he was living in his car. Deputy Thompson offered Mr. Bolton a bottle of water, and allowed Mr. Bolton to remain in the parking lot.

CCSO Deputy Collins wrote in his report, regarding the incident that occurred on June 30, 2019,

"On June 30th, 2019 at approximately 0230 hours, I, Deputy Collins was on general patrol in Coweta County Zone 1b. I was in a marked patrol unit and in full uniform.

I was performing business checks in the area of 1140 E. HWY 34, near Khols [sic] and several other businesses. While driving through the parking lot of Khols [sic] I observed a white Suv [sic] backed into a parking space on the West end of the parking lot. It should also be noted that the particular parking area also backed up to several other businesses, including a cell phone store.

Due to several recent commercial burglaries in the area, specifically cell phone and electronic stores, I stepped out with the vehicle. I positioned my patrol car perpendicular to the suspect vehicle and activated my scene lights to illuminate the vehicle. I called out over radio that I would be stepping out with a suspicious vehicle.

As I approached the vehicle I went to the back of the car to obtain the tag number for dispatch. As I was walking to the back of the car, I was able to observe what appeared to be a male in the back seat, lying down. I also observed that the male was awake and looking at me prior to me making contact with him.

I knocked on the window and identified myself as a Deputy. The suspect pretended to be asleep, and I knocked again. I also illuminated myself with my flashlight so that the suspect could clearly see that I was a uniformed officer. I asked the suspect what he was doing, and he said sleeping. I said ok, do you have your id [sic]. He informed me that he wasn't doing anything, and that he did not have to provide me with his ID. I then asked the male to step out of the vehicle with his ID. The suspect asked me why, and I informed him that he was loitering and needed to produce his ID and step out of the vehicle. I also informed the male that once I completed my investigation he would be allowed to go free.

The male told me that he had already spoken with another officer earlier in the evening. I asked my zone partner if he had spoken with the male, and he said no. The suspect said his back door would not open and that he had to move to the front seat, to be able to exit the vehicle. I asked the suspect several more times to step out, and he kept refusing to, stating that he had already spoken with officers. At that point Deputy House began to speak with the suspect. Deputy House informed the suspect that he was under investigation, and needed to step

out of the vehicle. He informed him that if he didn't step out he would be arrested for loitering and obstruction.

At that point I started walking back towards my patrol car, to obtain a set of gloves, in preparation to break the window of the vehicle (due to the vehicles doors being locked). As I was walking towards my vehicle I heard the ignition of the suspect vehicle turn on. I turned around and I observed Deputy House telling the male to turn the car off. I drew my department issued side arm and told the male to turn the car off, and not drive off. Deputy House also had his weapon drawn and told the male not to leave.
The vehicle then sped off through the parking lot, also striking Deputy House as he did so. I ran back to my patrol car and began to chase after the suspect vehicle, with lights and sirens activated. The vehicle looped around the parking lot, back to the main road, leading toward Ga 34. The suspect vehicle was driving on the wrong side of the access road, and was driving quickly toward Ga 34. In order to keep the chase from reaching Ga 34, and citizen traffic I performed a P.I.T. maneuver.

The suspect's vehicle spun around and was facing the opposite direction. I brought my vehicle to a complete stop and the suspect's vehicle then rammed the front of my patrol car. Deputy House had also arrived and was directly to my right, outside of his vehicle, giving verble [sic] commands. As I was trying to place my vehicle into park, I could feel my vehicle being pushed backwards. I also heard the loud squealing of tires coming from the suspect vehicle.

I observed the male turn his steering wheel to the left, trying to break free of my car. I also observed that Deputy House was standing in the area where the suspect was trying to steer. Deputy House was directly between the suspect vehicle and his patrol car. I felt my car moving and feared that the suspect vehicle was about to break free, and strike Deputy House.

I then exited my patrol car, drew my department issued Glock 17 and fired one round at the suspect through his windshield. I observed that the suspect immediately slump [sic] over to his right. I also observed that the vehicle ceased all movement. Myself and other deputies informed dispatch that shots have been fired, and for EMS to be started for the suspect.

I continued to hold the suspect at gunpoint, while other deputies made contact with the suspect. Other deputies informed me that the suspect had been shot in the head, but was still breathing. I called into dispatch with this information and also requested that Air Life be placed on standby. I retrieved my medical bag from my patrol car and handed it to the other Deputies on the scene.

At that point several other Deputies and NPD officers had arrived on the scene. Other Deputies were performing life saving measures on the suspect, so I backed up and removed myself from the direct area of the suspect.

This ended my involvement.
BWC was activated."

CCSO Deputy House wrote in his statement, in part,

"I told Bolton that he was being investigated as to why he was in the parking lot of a closed business and that if he did not exit, he would be obstructing that investigation and would then be arrested. He still refused to exit and as DS Collins walked to his car to get a pair of gloves, Bolton cranked the vehicle and began to put it into gear. I stepped in front of the vehicle gun drawn giving commands in attempt to keep Bolton from leaving. Bolton then began to drive forward pushing me out of the way with his vehicle and began to flee. DS Collins and I began to pursue Bolton through the parking lot. DS Collins performed a PIT on the vehicle before Bolton could reach Bullsboro Drive to prevent Bolton from placing the public at risk due to his obvious disregard for the safety of others. As Bolton's vehicle spun around, the vehicle struck DS Collins' marked patrol car head on at low speed. Bolton continued trying to drive through the vehicles towards me and was struck by another marked patrol vehicle, turning it back toward DS Collins' vehicle. Due to the crossfire created by the third marked unit, I began giving verbal commands to shut off the vehicle. Bolton was actively driving through DS Collins vehicle causing Bolton's tires to continuously spin. Once the shot was fired, the tires stopped spinning."

CCSO Deputy Brown wrote in his statement, in part,

"When I turned into the east entrance to the pavilion, I heard DS House on the radio state 'he's taking off hold the radio.' I activated my emergency lights and accelerated to assist. I turned left in between Home Depot and Ross and gained a

visual on the vehicle pursuit. I saw the suspect vehicle in front, DS Collins behind it and DS house behind DS Collins. The pursuit turned toward E Highway 34. Before the vehicle could reach the highway, DS Collins spun out the suspect vehicle. At this point I had a clear visual on all vehicles. I saw the suspect vehicle accelerate towards DS Collins and his patrol vehicle, striking it violently. I got within approximately 50 yards of the scene and heard one shot from a firearm."

CCSO Deputy Spinks wrote in his statement, in part,

"I immediately began to head towards Deputy Collins in case he needed backup. A few moments later Deputy Collins requested for another Deputy to meet with him on the scene. Before I could respond, Deputy House replied saying that he was en-route to Deputy Collins. I continued to make my way to the scene. Once I arrived near the location, I spotted Deputy Collins and Deputy House both standing in the parking lot of Kohl's with a white in color SUV. At that point, I decided to drive past the parking lot and wait by Longhorn Steakhouse in case further assistance was needed. A few moments after waiting for him I heard what I believed to be Deputy House stating that the vehicle was taking off from the scene. While waiting at the light beside Longhorn Steakhouse, I looked in my rearview mirror and spotted three sets of headlights headed towards East Highway 34. I immediately turned my vehicle around and proceeded towards the fleeing vehicle and attempt to stop it. Before I was able to reach the fleeing white SUV, Deputy Collins utilized P.I.T. maneuver and spun the vehicle around. At that point the white SUV was facing NE and was nose to nose with Deputy Collins marked patrol vehicle. As I got closer, I noticed that the driver of the vehicle was still attempting to accelerate the vehicle. After hearing the white SUV's tire spinning, I attempted to box the vehicle in by striking the rear passenger side of the vehicle with my marked patrol vehicle. At this point, I noticed a Deputy House's vehicle was located against the driver's door. Before I could exit my vehicle, I heard one single shot come from Deputy Collins."

After Mr. Bolton was shot, he was subsequently transported to a local hospital where he received medical care.

SUMMARY OF PRIMARY OPINION(S):

My opinions are provided to educate the jury on well-established police practices and procedures.

My opinions and the basis for my opinions are formed from the totality of my specialized knowledge, skill, education, research, literature, training, and information I have reviewed. My opinions and basis for my opinions are based on sufficient facts and data reviewed; are the product of reliable law enforcement principles and methods. I have applied these law enforcement principles and methods reliably to the facts and circumstances of this case. There is a body of literature about the practices and standards to which modern, professionally administered police agencies should adhere. The standards and accepted practices have evolved over time to foster and maintain police agencies that are professional, effective, and whose practices and policies are observant of the law. Standards have evolved, in part, as a response to reported cases of police misconduct and as tools to limit police discretion and ensure that police behavior is within acceptable professional, legal, and constitutional limits.

There is a substantial body of literature and knowledge regarding the types and causes of police misconduct. I am well familiar with and have contributed to the literature and body of knowledge regarding the types and causes of police misconduct. Within the broad range of criminal justice, my area of study and practical experience is, and has been, high liability police practices to include police misconduct and its relationship with policy, procedure, training and supervision and accountability mechanisms.

I am currently an active life member of the International Association of Chiefs of Police (IACP), a member of the Police Executive Research Forum (PERF), a life member of the Florida Police Chiefs Associations (FPCA), and a life member of the Palm Beach County Association of Chiefs of Police (PBCAC). I hold a Doctor of Criminal Justice degree from Saint Leo University, Florida. My additional experience, knowledge, and training are further identified in my Curriculum Vitae attached to this report.

I presently hold the following opinions to a reasonable degree of professional certainty:

Opinion 1:

Deputy Collins and Deputy House engaged in a police vehicle pursuit involving Mr. Nicolas Bolton. The pursuit was initiated contrary to Coweta County Sheriff's Office pursuit policy. Mr. Bolton allegedly committed misdemeanor crimes of Loitering and Obstruction. The pursuit was inconsistent with CCSO pursuit policy and well-established police practices and procedures which negligently contributed to the shooting of Mr. Bolton.

Analysis:

1.1 The Coweta County Sheriff's Office policy titled *E. Vehicle Pursuit Policy,* (Revision 1), states in part,

> *"2. POLICY*
>
> ***It shall be the policy of the Coweta County Sheriff's Office to conduct motor vehicle pursuits only when the necessity of immediate apprehension of a suspect outweighs the level of danger to the community created by the pursuit.***

1.2 CCSO Deputies Collins and House initiated a pursuit because Mr. Bolton allegedly committed the crimes of Loitering and Obstruction. Had Mr. Bolton been allowed to escape, there is no evidence that he would have been an immediate threat to the safety of others. The need to immediately apprehend the fleeing driver (Mr. Bolton) based on misdemeanor crimes, did not outweigh the inherent dangers of a vehicle pursuit. It is undisputed that police vehicle pursuits are one of the most dangerous law enforcement activities, placing the public, deputy, and suspect in danger[1] [2]

1.3 The Coweta County Sheriff's Office policy titled *E. Vehicle Pursuit Policy,* (Revision 1), states in part,

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[1] Alpert, G. A., & Lum, C. (2014). *Police pursuit driving policy and research.* Springer

[2] Hicks, W. L. (2007). *Police Vehicular Pursuits*. Charles C. Thomas Publisher, LTD.

3. PROCEDURE

a. A deputy may initiate a vehicle pursuit when the necessity of immediate apprehension of a suspect outweighs the level of danger to the public.

b. In considering the need for and continuation of a pursuit, the deputy shall weigh such factors as:

1) Is the suspect known to the deputy and could apprehension occur at a later date;
2) Type of area where the pursuit will occur, i.e., business district, suburban or rural area, high density neighborhood;
3) Time of day;
4) Road surface;
5) Type of roadway (i.e., city street, highway, state or county road).
6) Weather conditions;
7) Nature of threat presented by the suspect or seriousness of the call for service;
8) Condition of the Sheriff's Office vehicle;
9) Traffic conditions, to include pedestrians;
10) Location and availability of backups;
11) Knowledge of the area;
12) Likelihood of apprehension;
13) Availability of communication;
14) Traffic control devices;
15) Presence of passengers."

1.4 There is no dispute that Deputy Collins and Deputy House were authorized to conduct an investigatory stop as to why Mr. Bolton was parked in the business parking lot at that hour of the night. Furthermore, Deputy Collins and Deputy House had the legal authority to request identification from Mr. Bolton and to have him exit his vehicle. Mr. Bolton, uncertain as to why he was being requested to exit his vehicle, notified the deputies that he had been stopped previously by another officer who allowed him to remain in that area.

1.5 Deputy Collins and Deputy House knew, or should have known, the identity of Mr. Bolton. Mr. Bolton had his identification readily available for the deputies to see even though Mr. Bolton did not get out of his vehicle. However, neither deputy took the time to view Mr. Bolton's ID as presented by Mr. Bolton while he was in his vehicle. Further, Deputy Bolton had an opportunity to view and copy the tag attached to Mr. Bolton's SUV. The tag information would have provided the needed identification information of Mr. Bolton. Armed with the identification of Mr. Bolton, the pursuit of Mr. Bolton once he left the deputies in the parking lot should not have occurred, per CCSO pursuit policy.

1.6 Furthermore, the assertion that Mr. Bolton struck Deputy House with his SUV is not corroborated by the video evidence and did not justify initiating the pursuit. Deputy Collins wrote in his report that Mr. Bolton's vehicle hit Deputy House, however, Deputy Collins made no mention to the Georgia Bureau of Investigation (GBI) Investigators, while giving his statement, that he observed Mr. Bolton's SUV hit Deputy House.[3] Additionally, Deputy House intentionally and unnecessarily placed himself close to Mr. Bolton's SUV, attempting to prevent Mr. Bolton from leaving the parking lot by placing his hand on the left front quarter panel of the SUV while pointing his firearm at him.[4] As the SUV progressed past Deputy House, the sideview mirror of the vehicle passed Deputy House's left shoulder/arm. Deputy House is seen in Deputy Collins' body camera video moving his left shoulder away from the passing sideview mirror while holstering his gun.[5] Deputy House told GBI investigators the SUV ***"made contact"*** with him as the SUV drove away, but he sustained no injuries.[6] It is well known in law enforcement that officers should never, intentionally, put themselves in a position near or in front of a moving vehicle.[7] [8] Deputy House should never have placed himself in a position to have Mr. Bolton's SUV be considered

[3] GBI Investigative Summary of Deputy Collins, Exhibit 16.
[4] Deputy Collins' body camera video.
[5] *Ibid.*
[6] GBI Investigative Summary of Deputy House, Exhibit 12.
[7] National Consensus Policy and Discussion Paper on Use of Force (October 2017).
[8] International Association of Chiefs of Police National Law Enforcement Policy Center, *Use of Force* (February 2006).

an alleged danger to him. Furthermore, Deputy House wrote in his statement that he stood in front of Mr. Bolton's SUV as Mr. Bolton ***"then began to drive forward pushing me out of the way with his vehicle and began to flee."***[9] Deputy House never wrote in his written statement that the SUV hit him. Furthermore, the GBI Investigative Summary determined that Mr. Bolton's vehicle "almost striking Deputy House," corroborates that Deputy House was not hit by Mr. Bolton's vehicle.[10]

1.7 The Coweta County Sheriff's Office policy titled *E. Vehicle Pursuit Policy,* (Revision 1), states in part,

"8. OFFENSIVE TACTICS

The primary pursuit unit may utilize the following tactics to stop the violators vehicle and will do so only when Safety and Training dictate. WHEN MAKING THE DECISION TO PERFORM ANY OFFENSIVE TACTIC, THE SERIOUSNESS OF THE VIOLATION AND THE RISKS SURROUNDING THE PURSUIT MUST BE BALANCED AGAINST THE NEED TO CAPTURE THE VIOLATOR. DEPUTIES MUST CAREFULLY EVALUATE THE TOTALITY OF THE CIRCUMSTANCES BEFORE INITIATING ANY OFFENSIVE TACTICS. All offensive tactics must be approved by a field supervisor or higher prior to use."

c. PIT Maneuver

1) ***The PIT maneuver shall only be used by deputies in accordance with department training received on the PIT maneuver.***
2) ***The PIT maneuver should be used only at a reasonable time and in locations where it is reasonable to expect that the maneuver can be safely accomplished."***

1.8 Once Mr. Bolton fled from the deputies, both deputies began to pursue Mr. Bolton's vehicle. Although still in the parking lot area, Deputy Collins initiated and engaged in a Pursuit Intervention Technique (PIT). He did so

[9] Written Statement of Deputy House.
[10] GBI Investigative Summary, Exhibit 34.

without supervisory permission as mandated by the CCSO's pursuit policy. PIT maneuvers should only be instituted when the use of deadly force is warranted.[11] In this instance, deadly force was not warranted when Deputy Collins implemented the PIT maneuver against Mr. Bolton's SUV. As a result of the PIT maneuver, Mr. Bolton's vehicle transitioned nearly 180 degrees whereby he faced Deputy Collins' patrol car. Mr. Bolton was subsequently boxed in with Deputy Spinks' vehicle against the rear passenger side of the SUV, Deputy House's vehicle against the driver's side of the SUV, and Deputy Collins' vehicle against the front of the SUV.

1.9 Once the PIT maneuver had occurred, according to Deputy Collins' report, Mr. Bolton then ***"rammed"*** his SUV into Deputy Collins' patrol vehicle. However, based on Deputy Collins' body camera, Mr. Bolton's did not 'ram' or ***"striking it violently"*** as noted in Deputy Brown's written statement.[12] More accurately, as noted in Deputy House's written statement, "***As Bolton's vehicle spun around the vehicle struck DS Collins marked patrol car head on at a low speed.***"[13] Furthermore, almost immediately after the PIT maneuver was conducted, Deputy House's vehicle can be seen striking the driver's side of Mr. Bolton's vehicle and within seconds Mr. Bolton's vehicle is struck on the passenger side by Deputy Spinks. Mr. Bolton's vehicle was blocked from moving forward or side to side.

1.10 Deputy Collins and Deputy House should not have engaged in a pursuit over alleged misdemeanor crimes. There was no evidence that Mr. Bolton struck or attempted to strike Deputy House with his SUV as he left the parking lot. If one considers the facts most favorable to Deputy House, even if Mr. Bolton's SUV ***"made contact"*** with Deputy House, he sustained no injury. As a result of this unauthorized pursuit, contrary to agency policy, and the unauthorized PIT maneuver employed by Deputy Collins without supervisory approval, Mr. Bolton was then subjected to deadly force. Deputy House and Deputy Collins should not have engaged in a police pursuit recognizing that if Mr. Collins were allowed to escape, he would not have posed a danger to the public. Furthermore, as previously noted, the deputies

[11] Scott, A. (2022) Should the initiation of police vehicle pursuits be based on the objectively reasonable calculus?
[12] Deputy Brown's written statement.
[13] Deputy House's written statement.

had the tag of Mr. Bolton's vehicle and had access to his identification as presented by Mr. Bolton during the initial encounter. With that information, a warrant could have easily been obtained had Mr. Bolton been allowed to escape. Instead, Mr. Bolton was shot and critically wounded causing catastrophic injuries.

1.11 Engaging in a pursuit for alleged misdemeanor crimes is inconsistent with well-established police practices and procedures and CCSO agency policy. The unnecessary pursuit of Mr. Bolton contributed to Mr. Bolton being shot and catastrophically injured.

Opinion 2:

The force used by Deputy Collins was unnecessary and excessive. Shooting Mr. Bolton when he was not an immediate threat to the safety of Deputy Collins or others was inconsistent with well-established police practices and procedures.

Analysis:

2.1 Law enforcement officers throughout the country, including the law enforcement personnel involved in this incident, are trained on the United States Supreme Court decision *Graham. v. Connor*, 490 U.S. 386 (1989) concerning objectively reasonable force. As the court explained, the "proper application [of force] requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 395.

2.2 *Graham* provided additional information about the reasonableness of force used by the police. The Supreme Court's decision stated:

"...the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20-20 vision of hindsight...the calculus of reasonableness must embody allowance for the fact that 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 that particular situation."[14]

2.3 Police are trained to use only that force which is objectively reasonable and legally justified for the following reasons: in defense of another; in self-defense, to effectuate an arrest, to prevent an arrest from being defeated by resistance or escape. Furthermore, as previously cited in this report, law enforcement officers are trained throughout the country on objectively reasonable force standard when seizing an individual under the 4th Amendment to include: would a reasonably prudent and well-trained officer act in a similar fashion given similar circumstances and were the actions acceptable or, more importantly, reasonable?

2.4 Although the determination of what was reasonable in this incident is the province of the trier of fact, the Jury, the concept of objectively reasonable use of force is a concept law enforcement officers are taught, and repeatedly taught, throughout their careers.

2.5 As previously noted, there is no dispute that Deputy Collins and Deputy House were authorized to conduct an investigatory stop relative to why Mr. Bolton was parked in the business parking lot at that hour of the night.[15] Furthermore, Deputy Collins and Deputy House had the legal authority to request identification from Mr. Bolton and to have him exit his vehicle. Mr. Bolton, uncertain as to why he was being requested to exit his vehicle, notifying the deputies that he had been stopped previously by another officer who allowed him to remain in that area. The deputies still had the legal authority to conduct an investigatory stop, but they could have inquired with dispatch to try and confirm Mr. Bolton's story.

2.6 In the reports generated by Officer Collins and Officer House, Officer Collins wrote that Mr. Bolton struck Deputy House as he fled from the parking lot. However, Deputy Collins' body camera and the GBI review of the video do not corroborate that errant assessment. Furthermore, based upon Deputy Collins body-camera video, Mr. Bolton did not comply with the deputies' commands to exit his vehicle. The body-camera memorialized

[14] *Graham, supra,* 490 U.S. at 396.
[15] *Terry v. Ohio*, 392 U.S. 1 (1968).

that, upon the deputies recognizing that Mr. Bolton was not going to comply and that he started his SUV, Deputy House started to walk towards the front, driver's side, quarter panel of Mr. Bolton's vehicle with his gun drawn. Deputy House unnecessarily placed himself in potential harm's way, but he never was located directly in front of Mr. Bolton's vehicle. Based on the body camera video, there is no evidence that Mr. Bolton struck or attempted to hit Deputy House as Mr. Bolton was leaving the parking lot, as claimed by Deputy Collins in his report.

2.7 When the PIT maneuver was conducted by Deputy Collins, and Mr. Bolton's vehicle was positioned in a 180-degree fashion facing Officer Collins' patrol car, there appeared to be very minor contact between the two vehicles however, it does not appear that Mr. Bolton violently rammed Deputy Collins' patrol car as asserted by Deputy Brown.[16] According to Deputy House's written statement, Mr. Bolton's vehicle slowly hit the front of Deputy Collins' stationary patrol car. Furthermore, body cam evidence indicated that there was no movement of Deputy Collins' vehicle by Mr. Bolton's SUV as asserted in Deputy Collins' report. Similarly, there was no indication that Deputy Collins' motor vehicle was being pushed backwards by Mr. Bolton's vehicle.

2.8 There is no evidence that indicates that Deputy House was in immediate harm's way based upon his position. Deputy Collins' patrol vehicle was positioned against the front of Mr. Bolton's vehicle, Deputy House's patrol car was perpendicular and against the driver's side of Mr. Bolton's vehicle. Deputy House stepped out of his vehicle with his firearm drawn as he yelled to Mr. Bolton to turn off his car. Just as Deputy House finished telling Mr. Bolton to turn his car off, Deputy Collins discharged his firearm striking Mr. Bolton in the head. Mr. Bolton was given no opportunity to comply with Deputy House's command to turn his vehicle off.

2.9 Based on the body camera of Deputy Collins, it was not evident that Deputy Collins or Deputy House safety was in immediate danger or compromised. Mr. Bolton's vehicle was effectively pinned in and could not move forward. There is no evidence in the record that Deputy Collins' vehicle was pushed backwards. Although the body camera video indicates that Mr. Bolton's

[16] Written statement of Deputy Brown.

vehicle tires were squealing, none of the officers were in immediate danger of great bodily harm or death. Both deputies were protected by their respective vehicles. Additionally, both deputies had the ability and time to move away from their respective vehicles without being placed in jeopardy. Furthermore, Deputy Collins had the ability to extract himself from his vehicle, which he did, and he immediately discharged his firearm although his safety was not immediately in danger.

2.10 According to the Coweta County Sheriff's Office policy titled *Use of Force*, Chapter XI, states in part,

"B. RULES AND REGULATIONS

1. General.

Deputies are often confronted with situations where physical contact with citizens must be exercised to effect arrest and protect public safety. The duty of a Deputy requires control of situations that might arise. Control must be achieved through presence, dialogue, persuasion, warnings, and by the use of necessary physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to until all other reasonable alternatives have been exhausted and/or are effective under the particular circumstances. Deputies are permitted to use whatever force is reasonable and necessary to protect others or themselves from bodily harm…

…Deputies shall never use a greater degree of force than that which is lawful, reasonable, and necessary for the specific situation. Such reasonable and necessary force maybe used:

To effect an arrest,
To overcome unlawful passive and active resistance,
To prevent an escape from custody or
To neutralize an unlawful assault upon the officer or another person.

…Justification for the use of force is limited to what reasonably appears to be the facts known or perceived by the officer at the time he

decides to use such force. Facts unknown to the officer, no matter how compelling, cannot be considered in determining whether the action was justified.

Necessary force is that amount of force needed to overcome the resistance to an officer who is attempting to achieve a legitimate police objective."

2.11 According to the Coweta County Sheriff's Office policy titled *Use of Force*, Chapter XI, states in part,

"4. DEADLY FORCE.

Force which, under circumstances in which it is used, is readily capable of causing death or other serious injury is considered deadly force. The use of deadly force by a Deputy during the performance of duty is restricted to the following:

a. Self-defense and defense of others (limited)

When the Deputy reasonably believes it is necessary to defend their own life or the life of another or to prevent grave bodily injury to themselves or another, and all other available means of defense have failed or would be inadequate or dangerous.

5. SPECIAL CONSIDERATIONS

a. Justification for the use of lawful force must be limited to what reasonably appears to be the facts known or perceived by the Deputy at the time they decide to use force.
b. Facts unknown to a Deputy, no matter how compelling, cannot be considered and later determination whether the use of lawful force, particularly that of deadly force, was justified.

6. Use of deadly force by an officer is specifically prohibited under the following conditions:

a. ***To halt the flight of any suspect or prisoner under conditions which do not meet the criteria of the preceding information.***
b. ***To prevent or interrupt the commission of a crime unless the crime being or about to be committed creates an imminent danger of death or serious injury to the death to the Deputy or another person."***

2.12 According to the Coweta County Sheriff's Office policy titled *Use of Force*, Chapter XI, states in part,

Use Of Force/Legal Justification

Georgia Statutory Law, under Criminal Code Section 16-3-21 (Use of Force), justifies the threat or use of force. O.C.G.A. 16-3-21(a) reads:

"A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however,... a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony."

2.13 When Mr. Bolton's vehicle was spun around in a 180-degree fashion from the PIT maneuver, Deputy Collins and Deputy House were within the confines of their patrol vehicles. Mr. Bolton continued to press the accelerator of his SUV as it rested against the front of Deputy Collins' vehicle. Deputy House first exited the safety of his patrol car and ordered Mr. Bolton to turn off the car. Within two seconds, Deputy Collins exited the safety of his patrol car and within another two seconds fired his gun once striking Mr. Bolton in the head. The acceleration of Mr. Bolton's car engine ceased.

2.14 Both Deputy Collins and Deputy House claimed they thought Mr. Bolton was turning his vehicle's steering wheel toward Deputy House.[17] Deputy House said he did not fire his weapon at that time because he was concerned

[17] Written Statement of Deputy Collins.

about a cross-fire that would put Deputy Spinks in jeopardy.[18] Instead, Deputy House told Mr. Bolton to turn off his engine just before he was shot by Deputy Collins.

2.15 Both deputies had the ability to move away from their respective vehicles and away from the direction of Mr. Bolton's immobilized vehicle, but they chose not to. Both deputies left the safety of their respective vehicles to confront Mr. Bolton, knowing he was pressing the accelerator (later calculated to be 71-100% acceleration of the gas throttle) and the SUV's tires were squealing.[19] However, video evidence does not support a claim that Mr. Bolton was moving Deputy Collins' patrol vehicle or that Mr. Bolton was turning his car towards Deputy House. Both deputies intentionally left their patrol cars to place themselves and remain in physical positions they perceived as precarious enough to justify the unnecessary use of deadly force without allowing Mr. Bolton to voluntarily turn off his engine and eliminate the perceived threat.

2.16 Initiating and engaging in a police vehicle pursuit contrary to CCSO agency policy, implementing an unnecessary and unauthorized PIT maneuver contrary to agency policy, and the deputies intentionally placing themselves in a precarious and unsafe position resulted in the unnecessary shooting of Mr. Bolton.

Additional Basis:

My opinions are based upon my 30 years of law enforcement experience, knowledge, and training (see attached Curriculum Vitae). My experience includes seven years as Chief of Police and four years as an Assistant Chief of Police. My experience and training include being an Assessor and Team Leader for The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) and an assessor, Team Leader, and former Chairperson for the Commission on Florida Law Enforcement Accreditation, Inc. (CFA). As an assessor for both accreditation bodies, I conducted assessments for over 100 law enforcement agencies throughout the country. These assessments included the review of all the departments' policies including use of force policies and training policies. My opinions were also derived

[18] Written Statement of Deputy House.
[19] BOSCH Crash Data Retrieval from Mr. Bolton's 2001 Chevrolet Tahoe SUV.

from my experience as Commander of the Personnel and Training Unit, Commander of the Internal Affairs Unit and Commander of Uniform Patrol during my law enforcement career. My opinions were also supported by written material published by The International Association of Chiefs of Police (IACP) Model Policies and Training Keys, IACP Concept and Issues paper, other IACP publications, written publications authored by Dr. Geoffrey Alpert and others.

I reserve the right to amend my opinions as needed in order to rebut the opinions set forth by the defendants' expert and/or as new information is brought to light upon further discovery.

APPENDICES:

1. Curriculum Vitae
2. Testimony List
3. Fees

This 10th day of June, 2022.

Respectfully submitted,

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PROFESSIONAL REPORT

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Re: Bolton v. Wood, et al., N.D. GA, 1:21-CV-2279-MHC

Assignment: In this matter, I was requested to review relevant case materials and offer an opinion regarding:

- The circumstances of the initial law enforcement contact with Mr. Nicholas Bolton and the justification for the initial pursuit and Pursuit Intervention Technique/Precision Immobilization Technique (PIT)[1] maneuver performed on Mr. Bolton's Chevrolet Tahoe, specifically whether the actions and use of force were justified given the facts of the incident, current case law, and the department policies of Coweta County Sheriff's Office (CCSO) and City of Newnan Police Department (NPD) policies.

- The circumstances of the shooting of Mr. Nicholas Bolton, specifically the appropriateness of the use of deadly force directed at Mr. Bolton by CCSO Deputy John Collins, given the circumstances before, during, and following the PIT maneuver, current case law, and the department policies of the CCSO and the NPD.

Background and Experience: My law enforcement career spanned over 26 years and includes extensive tactical, operational, and instructional experience. I spent six years as a police officer with the United States Park Police working patrol, motorcycle, and plainclothes assignments. I participated in many high-profile events, public demonstrations, and escorts of the President of the United States and visiting heads of state. As a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for the following two decades, I investigated armed drug trafficking organizations

[1] The PIT maneuver was initially developed as the Precision Immobilization Technique but is more commonly referred to as the Pursuit Intervention Technique at the present time

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and individuals, served as the lead agent on several arson and bombing investigations, led violent crime investigative teams, and served in undercover capacities. I deployed across the country for hundreds of high-risk operations as a tactical operator and tactical paramedic with ATF's Special Response Team (SRT), supporting hundreds of investigations of violent organizations.

I served as the Division Tactical Advisor, the primary use of force trainer for all division ATF Special Agents and state and local task force officers involving firearms, less lethal equipment, electronic control devices (TASERs), defensive tactics, vehicle stops, vehicle pinning, operational planning, and de-escalation. As an adjunct instructor for the ATF National Academy, I instructed trauma response, tactical movement, use of force, firearms, scenario-based training, and operational planning. I provided subject matter expertise to ATF in the revision of their firearms and use of force policies and directed testing for ATF authorized firearms and ammunition. I was instrumental in mitigating risk and providing guidance to supervisors and agents by reviewing all field division operational plans for every enforcement operation conducted (arrest warrants, search warrants, purchases of evidence, high risk surveillance), providing guidance related to personnel, location selection, equipment, tactics, diversions, and other risk management issues.

As an instructor trainer, I provided training oversight to use of force instructors to ensure consistency and competence in subject matter and presentation skills. Conducted in-service training for Use of Force instructors based on need or annual training requirements. Provided relevant use of force training material from ATF Headquarters, manufacturers, case law, or current events. I served as the lead handgun instructor for the ATF Firearm Instructor Training Program and conducted operational planning training for new supervisors. I advised the ATF Special Operations Division on the annual Use of Force Training Curriculum that set the use of force training requirements for all ATF Special Agents and task force officers.

I have testified in state and Federal courts on hundreds of occasions as a police officer and an ATF Special Agent during Federal and state grand juries, trials, probable cause hearings, and sentencings. As a Senior Special Agent, I provided expert witness testimony in state and Federal courts regarding firearms trafficking, firearms operation, and the interstate movement of firearms. My international instructional experience includes instruction on firearms and ammunition at the International Law Enforcement Academies (ILEA) in Budapest, Hungary and San Salvador, El Salvador, and foreign military officers at the U. S. Marine Corps Command Staff College.

I have received extensive recognition for my firearms and use of force instruction, investigative efforts, and firearm educational presentations.

Overview/Facts of the Case:

At approximately 11:02 AM on June 29, 2019, in the City of Newnan, GA, Mr. Nicholas Bolton was parked alone in an empty business parking lot in his white 2001 Chevrolet Tahoe. Due to life circumstances, Mr. Bolton was living in this vehicle at the time. Deputy George Thompson came into contact with Mr. Bolton and allowed him to remain parked at that location after the contact concluded.

On the morning of June 30, 2019, at approximately 2:20 AM, Mr. Bolton was contacted by CCSO Deputy John Collins at the same location. CCSO Deputy Jon House soon joined Deputy Collins near Mr. Bolton's vehicle. Deputies ordered Mr. Bolton out of his vehicle and advised Mr. Bolton that he was "loitering." Mr. Bolton did not immediately exit his vehicle, rather he engaged the deputies and was asking questions. The deputies then advised Mr. Bolton that he was "obstructing" and vocalized plans to break the glass in his vehicle to remove him from the Tahoe. At that time, Mr. Bolton drove forward out of the parking spot and through the parking lot.

Both deputies pursued Mr. Bolton and Deputy Collins performed a PIT maneuver a short distance later, spinning Bolton's Tahoe in excess of 180 degrees coming to rest with the front of Deputy Collins' patrol vehicle against the front of the Tahoe. Deputy House and Deputy Spinks arrived on scene almost simultaneous to the end of the PIT maneuver and physically pinned the Tahoe from the driver and passenger sides. Although the rear tires on the Tahoe were spinning, the vehicle was pinned in place by three police vehicles and was not making any forward progress. Within 2-3 seconds of exiting his CCSO cruiser after the PIT maneuver, Deputy Collins fired one shot from his Glock 9mm duty pistol, passing through the windshield of Mr. Bolton's Tahoe and striking Mr. Bolton in the head, specifically in the area of his right eye. Deputy Collins later advised the Georgia Bureau of Investigation (GBI) he was in fear for the safety of Deputy House and himself when he fired his pistol at Mr. Bolton. Per Deputy Collins' interview with GBI, Mr. Bolton's Tahoe was initially located in Coweta County, Georgia, but crossed into the jurisdiction of the City of Newnan, Georgia before the PIT maneuver was done.

Findings and Opinions:

<u>The Initial Stop:</u>

On the morning of June 30, 2019, CCSO Deputy John Collins was on patrol in Coweta County, Georgia. He observed a white Chevrolet Tahoe located in a business parking lot, parked his patrol vehicle near the Tahoe without obstructing its exit, and approached on foot. Deputy Collins had not received any calls for service or complaints involving this

vehicle prior to his approach. **Deputy Collins advised as he "*was performing business checks*" in the area "*due to several recent commercial burglaries in the area, specifically cell phone and electronic stores.*"**[2] Neither Deputy Collins nor the CCSO has provided **additional specific details of these commercial burglaries that had occurred. Collins' report** narrative explains that he exited his vehicle and stopped to check on the Tahoe because there was a cell phone store in the area. While there was a cell phone store located across a large parking lot from where the Tahoe was parked, there are also an additional eight cell phone retailers in Newnan, GA with the majority being within a mile or two from the site of this incident.[3] The presence of a cell phone store in the same shopping center, absent additional suspicions, does not provide any reasonable measure of suspicion that the Tahoe or its occupants are involved in any criminal activity. It would be difficult to be in Newnan, Georgia or any business district in the U. S. without being in the vicinity of a cell phone store.

CCSO Deputy George Thompson spoke with Mr. Bolton on the previous day, June 29, 2019, at approximately 11:02 AM.[4] Deputy Thompson **had observed Mr. Bolton's vehicle** parking in the same place the day prior and stopped to check on him. Upon learning that Bolton was living in his vehicle and not in need of further assistance, Thompson advised that he would use the registered owner information from the tag to document the contact. Deputy Thompson provided Bolton with a bottle of water and ended the contact. This contact was consistent with a welfare check, as Deputy Thompson offered to provide phone numbers for service organizations if needed. It is notable that though many of the area businesses were open at 11:00 AM on a Sunday, Mr. Bolton was not present on the property for any purpose relating to those businesses. Bolton was simply parked in the parking lot because he did not have a physical residence and was living out of his vehicle. If Deputy Thompson had any initial concerns about Bolton engaging in loitering, they were quickly refuted and the contact ended. **Deputy Thompson's response was reasonable** based on his observations.

Conducting a self-initiated patrol of a business district is clearly within the scope of Deputy **Collins' duties as a patrol officer. However, once his initial investigation revealed that a "suspicious person" amounted to nothing more than a homeless person sleeping in his** own vehicle, he no longer possessed any reasonable suspicion that Mr. Bolton was involved in a commercial burglary or any other criminal activity. Unfortunately, during the loitering investigation, neither deputy asked Mr. Bolton any questions concerning why he was parked in the area, a prominent component of the loitering statute. Neither Deputy

[2] CCSO Incident/Investigation Report #1906001285, authored by Deputy Collins, p 6
[3] Microsoft Bing search on 06-10-2022 for "cell phone stores in Newnan, GA"
[4] Deputy George Thompson BWC video time stamp 15:02 Zulu (11:02 EST)

Collins nor Deputy House can be heard asking Mr. Bolton if he was homeless, likely due to the large amount of visible debris in his vehicle.[5]

Mr. Bolton twice stated to Deputy Collins that he had prior recent contact with the CCSO. Deputy Collins had an opportunity to confirm that information once his backup arrived, but he failed to do so. Dispatch would have verified that Mr. Bolton had talked to CCSO Deputy George Thompson on the day prior in the exact same parking space. This would have further supported the argument that Mr. Bolton's continued presence in the parking lot was no cause for alarm, as determined by Deputy George Thompson on the previous day. While Deputy Collins did relay the tag number of the Tahoe to the CCSO Dispatch during his contact on June 30, 2019,[6] he threatened to break the window and remove Mr. Bolton from the vehicle before CCSO Dispatch had the opportunity to provide the registered owner information for the Tahoe. A reasonable officer would desire the additional information by attempting to confirm the prior CCSO contact and waiting for the registered owner information.

The allegations by the deputies of Obstruction by Mr. Bolton during the investigative detention can only be based on the lack his lack of cooperation with deputies, specifically the allegations that he failed to produce identification and he failed to exit the vehicle when requested. There is initially no audio on Deputy Collins' BWC. Once it starts, Mr. Bolton's voice is faint on the BWC audio. After Deputy Collins requests identification, Mr. Bolton can be seen on Collins' BWC retrieving his (Bolton's) identification. After that, no one ever asks to see his identification again. Instead, all of the conversation involves a command for Mr. Bolton to get out of the vehicle. For the first part of the contact with audio, the deputies focused their commands exclusively on Mr. Bolton getting out of the vehicle as opposed to producing identification.

If you accept that Deputy Collins was accurate in stating that Mr. Bolton refused to produce identification, the issue then falls to a legal question: Is Mr. Bolton required to produce identification to law enforcement? Georgia Code 40-5-29 (a) requires, *"(a) Every licensee shall have his or her driver's license in his or her immediate possession at all times when operating a motor vehicle."*[7] As Mr. Bolton was not operating his motor vehicle, rather using it as his sole residence, this requirement may not apply. Section (b) does require that *"Every licensee shall display his or her license upon the demand of a law enforcement officer."* Section (b) would also seem to be applicable only when the licensee is operating a motor vehicle, as it would seem much less relevant to pedestrians walking the sidewalk.

[5] GBI photos (#5793, #5892, #5915, #5916, #5934)
[6] GBI Interview of Deputy Collins - Audio
[7] Georgia Code § 40-5-29 - License to be carried and exhibited on demand :: 2014 Georgia Code :: US Codes and Statutes :: US Law :: Justia

By all accounts, Mr. Bolton did not cooperate with the deputies' multiple requests to exit the vehicle. His motivation for this is unclear. But is a person required to exit his vehicle at the request of law enforcement? In *Maryland v. Wilson*, the Court noted "*that the driver's car was already validly stopped for a traffic infraction, we deemed the additional intrusion of asking him to step outside his car "de minimis."*[8] The Court clearly stated that the removal of a passenger or a driver was reasonable. However, this case addresses the occupants of a vehicle not only stopped for a traffic offense, but validly stopped. The Court does not address the removal of a vehicle occupant when the vehicle is used as the primary residence containing all the personal effects of the occupant. If a removal from a vehicle is a greater intrusion on a passenger as compared to the driver, the intrusion on a non-driver living in his vehicle would likely be greater than both. The non-specific reasonable suspicion expressed by Deputy Collins also does not rise to the level of probable cause established prior to the traffic stop in *Maryland v. Wilson*.

Georgia Code, Title 16, Crimes and Offenses § 16-11-36, states:

> "(a) *A person commits the offense of loitering or prowling when he is in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.*"[9]

Every patrol officer likely has experience contacting homeless citizens. It is not unusual for law-abiding persons with no permanent residence to spend time in public parks and business areas. Mr. Bolton's presence in the parking lot may have warranted an initial police contact. However, it was almost immediately clear that Mr. Bolton was living in his vehicle and was asleep when contacted. During his contact with Mr. Bolton the day prior, Deputy Thompson makes the observation that Mr. Bolton appears to be "living out of his vehicle" only 38 seconds into the contact and before he had reached the Tahoe.[10] After the initial contact, it would have been clear to a reasonable officer (with similar experience and training to Deputy Collins) that Mr. Bolton did not warrant "*a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the area*," as neither Mr. Bolton's time nor manner of being in the parking lot were inconsistent with someone in his situation. While most citizens may not find themselves in a business parking lot at 2:00 AM, it is not unusual for someone in Mr. Bolton's situation to find themselves sleeping in their vehicle in a public park or a business parking lot. The observations of Deputy Collins and Deputy House during their contact with Mr. Bolton fully supported this conclusion and did not support any further investigation of Loitering..

[8] *Maryland v. Wilson*, 519 U.S. 408 (1997) accessed at MARYLAND v. WILSON | FindLaw
[9] Georgia Code Title 16. Crimes and Offenses § 16-11-36 | FindLaw
[10] Deputy George Thompson BWC (0:38)

Deputy Collins' BWC video indicates that he could hear Mr. Bolton's speaking, given Deputy Collins' quick responses and the lack of any requests from Deputy Collins for Mr. Bolton to repeat anything. Deputy Collins' confirmed that the back left window where he was conversing with Mr. Bolton was lowered to some degree.[11] Bolton's statements are difficult to hear on Deputy Collins' BWC. Deputy Collins' BWC audio does not begin until 30 seconds into the BWC video. When the audio starts, Deputy Collins asks Mr. Bolton four times to open the door to the Tahoe. It is not for an additional 21 seconds and almost a minute into the contact that Deputy Collins asks Mr. Bolton, "*OK, I need your ID.*"[12] Like the failure to ask Mr. Bolton why he was present in the parking lot, prioritizing the removal of Mr. Bolton from his vehicle over the request for his identification does not address the loitering concern that Deputy Collins stated was the reason for the initial stop. Deputy House showed up shortly thereafter and quickly engaged Bolton. Despite Deputy Collins' statements, it is unclear if Mr. Bolton made any statement regarding his refusal to get out of the vehicle. Deputy Collins reported that Mr. Bolton stated, "*I am not giving you my license.*"[13] This seems inconsistent with a person who just woke up and is seen on Collins' BWC holding what appears to be an identification card in his hand.[14] While Mr. Bolton did not follow instructions to exit the vehicle, it appears from Collins' BWC that he was willing to engage with the officers and calmly ask questions about what the officers wanted.

In Deputy Collins' written CCSO incident report, he stated, *"I informred (sic) him that he was loitering and needed to produce his ID and step out of the vehicle."*[15] By his statement that Bolton was loitering, Deputy Collins indicates that he believed he had exceeded reasonable suspicion and had met a probable cause standard that Mr. Bolton had committed the offense of Loitering. He then wrote, "*I also informred the male that once I completed my investigtion he would be allowed to go free (sic).*"[16] It is not clear, and Deputy Collins and Deputy House never specify, what investigative steps they would have taken that required Mr. Bolton to step out of the vehicle. A reasonable officer would not have concluded that he had probable cause to arrest Mr. Bolton for loitering.

The Georgia Code 16-11-36 details that prior to an arrest for loitering, law enforcement should:

> "*afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under*

[11] GBI Interview of Deputy Collins – Audio (5:25)
[12] Deputy Collins BWC video (00:51)
[13] GBI interview of Deputy Collins – Audio (5:05)
[14] Deputy Collins BWC video (1:14)
[15] CCSO Incident/Investigation Report #1906001285, authored by Deputy Collins, p 6
[16] CCSO Incident/Investigation Report #1906001285, authored by Deputy Collins, p 6

> *this Code section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern."*[17]

Deputy Collins claimed that Mr. Bolton had already committed the offense of loitering, yet Deputy Collins failed "*to dispel any alarm or immediate concern*" with basic questioning. Based on this requirement, Mr. Bolton could not have been convicted of the offense of Loitering. Deputy Collins failed to ask questions about Mr. Bolton's purpose or recognize that the information presented to him actually reduced the concern that Mr. Bolton was involved in commercial robberies in the area. Mr. Bolton did initially retrieve his identification card and his presence in his car is explained by his homelessness. He displayed no suspicious conduct prior to the law enforcement contact other than his mere presence in a business lot at night. It is unclear what additional investigation or steps Deputy Collins would have taken to determine whether a homeless citizen sleeping in his own vehicle created "*reasonable alarm or immediate concern for the safety of persons or property in the vicinity.*"[18]

While the contact with Mr. Bolton was short, the Supreme Court ruled in *Rodriguez v. United States* that officers cannot extend a traffic stop without reasonable suspicion.[19] As information it becomes evident to the deputies that Mr. Bolton is no longer suspected of loitering (sleeping, homeless, no evidence of intoxication, narcotic use, or other criminal activity) the justification for the investigative detention dissipates. While law enforcement may desire to determine if Mr. Bolton possessed any contraband or had any active warrants, without reasonable articulable suspicion of an offense, they no longer have the legal authority to detain Mr. Bolton.

Similar to Mr. Bolton's contact with CCSO Deputy George Thompson on June 29, 2019, Bolton was not a customer of an area business on June 30, 2019 when contacted by Deputy Collins and there were no additional suspicions to justify a further detention. Neither deputy received a call for service or any additional information to link Mr. Bolton or his vehicle to criminal or even suspicious activity, Mr. Bolton was merely present in or around his own vehicle in a business parking lot. None of the deputies that initially approached Mr. Bolton with his vehicle used any emergency equipment when they parked near Mr. Bolton's Tahoe. The also did not park their marked patrol vehicles to block in his Tahoe, possibly indicating to Mr. Bolton that he not being detained and that he was free to leave.[20]

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[17] Georgia Code Title 16. Crimes and Offenses § 16-11-36 | FindLaw
[18] Georgia Code Title 16. Crimes and Offenses § 16-11-36 | FindLaw
[19] *Rodriguez v. United States,* U.S. 135 S.Ct. 1609 (2015)
[20] BWC video from Deputy George Thompson on June 29, 2019; BWC video from Deputy Collins on June 30, 2019; BWC video from Deputy House on June 30, 2019

Deputy Collins approached Mr. Bolton's Tahoe just after 2:00 AM. While there was some ambient street lighting, it was dark inside Mr. Bolton's vehicle. Deputy Collins approached and shined a very bright light inside the Tahoe. When he noticed a person was reclined in the back seat, he continued to shine the light in the rear passenger compartment where Bolton was located. While this is done for officer safety reasons, it also contributes to the disorientation of the subject of the light. Deputy Collins asked Mr. Bolton for identification and Bolton appears to sit up in the back seat of his Tahoe with his identification in his hand. Deputy Collins' BWC shows rapid-fire statements, instructions, and commands directed at a homeless man in his own vehicle (his only residence), who was most recently laying down and asleep in the back seat, facing multiple powerful lights in his face. When Deputy House takes over the communication, he is immediately heard on his BWC immediately ordering Bolton to "Get out or be arrested." Deputy House stated in his interview that the only information he had about Mr. Bolton was the "suspicious person" call that Deputy Collins' put out on the radio. Deputy House had no additional or independent information or reasonable suspicion that Mr. Bolton was loitering in the area.

It is the responsibility of the officer on the scene to view the "*totality of the circumstances*," a method discussed in *Illinois v. Gates* to determine if reasonable suspicion or probable cause exists to conduct an investigative detention or arrest, respectively.[21] The guidance provides that all available information should be considered together, a big picture approach, rather than a test using a fixed checklist or hardline rules.

It is questionable whether Deputy Collins possessed reasonable articulable suspicion to detain Mr. Bolton initially, given the lack of a call for service or public concern, the lack of specificity and detail of the commercial robbery nexus, and no suspicious behavior by Mr. Bolton. Deputy Collins' report of this incident is dated eight days after the shooting incident and contains no more specificity on his commercial burglary concerns. It is notable that Deputy Collins actions with Mr. Bolton did not follow a natural path of inquiry to follow up on his concern that Mr. Bolton may be involved in commercial burglaries. In fact, the audio portion of Deputy Collins' BWC does not show him ask any questions related to the commercial burglaries, the loitering offense, or why Mr. Bolton is at the current time and place.

An officer with Deputy Collins' training and experience would be familiar with consensual citizen encounters. The CCSO refers to these as "*Tier 1- Consensual Encounters*" in their list of Police/Citizen Encounters and specifically state that police have "*No legal Authority to detain.*"[22] Once Mr. Bolton was contacted, assuming reasonable suspicion supported the initial detention, a reasonable officer's observation would have led them to an

[21] *Illinois v. Gates*, 462 U.S. 213 (1983)
[22] CCSO Use of Force and Legal Authority Foundation

immediate recognition that they no longer met a reasonable suspicion standard and the authority for the investigative detention would have ended.

Engine Started/Tahoe Departs:

When Mr. Bolton started his vehicle, both deputies drew their pistols and pointed them at Mr. Bolton with their weapon-mounted lights activated. Regarding the threatened use of force involving the deputies and their display of handguns, the CCSO Use of Force policy cites the Georgia Criminal Code Section 16-3-21(a), stating:

> *"A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force."*[23]

From the beginning of the law enforcement contact up to and including Mr. Bolton starting his vehicle, there was no threat of imminent force or harm directed to the deputies that would justify threatening deadly force by pointing handguns at Mr. Bolton. Both deputies were clearly on the driver's side of the Tahoe when the vehicle started. The CCSO Use of Force Policy does not authorize the threatened use of deadly force by its deputies unless it involves a threat of imminent force or harm directed at the deputies or another person. The NPD policy does allow deputies to draw their firearm "*when circumstances dictate*," but provides no further detail on what under circumstances may be deemed appropriate.[24]

An officer with Deputy Collins' training and experience should be familiar with the fact that some citizens do flee when instructed to stop by police. However, most officers do not have the benefit of the background, criminal history, or recent conduct by the driver when deciding to pursue, thus creating uncertainty about the decision to pursue and the associated risks. Deputy Collins was more fortunate in that he either had this knowledge based on his contact with Mr. Bolton or had access to relevant information through his dispatch. A reasonable officer would have taken advantage of this information and used it to conclude that Mr. Bolton was not involved in criminal activity in the parking lot.

[23] CCSO Use of Force Policy, p XI-5, citing Georgia Code Title 16. Crimes and Offenses § 16-3-21 | FindLaw
[24] NPD Use of Force Policy, p. 3

The Pursuit

The justification for Deputy Collins' pursuit and the PIT maneuver against Mr. Bolton is based almost entirely on the notion that Deputy House was physically struck or at serious risk of injury from the Tahoe as Mr. Bolton drove away from his parking space. The BWC from Deputy Collins shows that Deputy House did move closer to the front of the vehicle after the vehicle started. The BWC from both deputies show that Deputy House repositioned and shone his weapon light at Mr. Bolton through the windshield after the vehicle started.

The testimony on this issue and the video evidence are very inconsistent.

- In his 25-minute interview with GBI, Deputy Collins makes no mention that Deputy House was threatened or made contact with the Tahoe as Mr. Bolton pulled forward out of the parking lot.[25]
- In his written report completed approximately eight days after the shooting, Deputy **Collins stated**, "*The vehicle then sped off through the parking lot, striking Deputy House as he did so.*"[26]
- **In his written report (undated), Deputy House wrote,** "*Bolton then began to drive forward pushing me out of the way with his vehicle and began to flee.*"[27]
- On his BWC after the shooting, Deputy House replied to a statement from Deputy **Collins, stating** "*he tried to . . he almost ran me over over there*," **gesturing** to the original parking space[28]
- Deputy House told GBI investigators the following:
  - That he "*moved in front of his (Bolton's) headlights.*"[29]
  - **Bolton** "*drove through me, [I] rolled off.*"[30]
  - **When asked by the GBI Investigator if Bolton** "*actually come in contact with you with his car*," **his response was** "*yeah.*"[31] No follow-up questions were asked regarding the nature or location of the contact.
  - The GBI Investigator asked Deputy House if he was injured. Deputy House replied that he was not.[32]
  - **The GBI Investigator asked Deputy House,** "*You were able to kind of move to the . . .*" **Deputy House replied,** "*Yeah, I just rolled myself off to the side.*"[33]

[25] GBI Interview of Deputy Collins on June 30, 2019, at 4:40 AM, Investigative Summary and Audio of same
[26] Deputy Collins written statement, p. 1
[27] Deputy House written statement, p. 1
[28] Deputy House BWC (5:28)
[29] GBI Interview Audio of Deputy House (13:13)
[30] GBI Interview Audio of Deputy House (13:50)
[31] GBI Interview Audio of Deputy House (14:03)
[32] GBI Interview Audio of Deputy House (14:17)
[33] GBI Interview Audio of Deputy House (14:25)

- In their use of force investigation, the Georgia Bureau of Investigation (GBI) referenced this investigation on their public website, stating the vehicle (Tahoe) pulled away, "*narrowly missing the deputy.*" [34]
- In the CCSO Critical Incident Analysis, Sgt Jerard concluded, "*The driver side mirror almost struck Deputy House.*"[35]

A review of Deputy House's BWC does show motion by Deputy House when the Tahoe pulls out of the parking lot. Deputy House had previously moved to his left from the driver's door of the Tahoe closer to the front of the Tahoe but does not round the corner by the headlights nor does he stand in front of the vehicle. As the Tahoe pulls off, he retracts his right arm (holding his duty pistol) that had been extended over the hood of the Tahoe.[36]

A review of Deputy Collins' BWC is even more significant. Deputy Collins is the law enforcement officer that originated the pursuit and completed the PIT maneuver on Mr. Bolton's vehicle based at least in part on Mr. Bolton's alleged threat against Deputy House. Deputy Collins was wearing a head mounted BWC at the time of this incident, so it portrays what was available for him to observe at the time. It shows the following:

- At 2:37, after the Tahoe's engine started, Deputy House starts to draw his firearm and moves to his left toward the front of Bolton's vehicle.
- At 2:39, Deputy House can be seen intentionally placing his left hand on the hood of the Tahoe. Shortly thereafter, the Tahoe pulls out of the parking space.
- As the Tahoe is pulling out, you can clearly see spacing between the Tahoe and Deputy House's torso.
- At no time during the video, is there any movement in Deputy House's torso or arm to indicate he was struck or contacted by the Tahoe. Deputy House does move away from the Tahoe, retracts his right arm holding his pistol, and quickly returns to his patrol vehicle.
- At the time, Deputy House made no statements of injury or pain that could have been heard by Deputy Collins, rather Deputy House quickly returned to his vehicle to participate in the pursuit with Deputy Collins.

When faced with multiple high-powered lights being shone on him at the time, it is possible that Mr. Bolton was not aware of the exact positioning of the deputies or the fact that the deputies had drawn their weapons.

[34] GBI Investigates Officer Invovled(sic) Shooting Investigation in Coweta County | Georgia Bureau of Investigation
[35] CCSO Critical Incident Analysis, p. 3
[36] Deputy House BWC (1:34-1:37)

When Mr. Bolton departed the parking space in the Tahoe, there was no threat to, nor any actual physical contact with Deputy House or Deputy Collins. Additionally, Bolton's vehicle departed the parking lot at a much slower rate than did Deputy Collins. Based on a review of the Kohls store video coverage, Mr. Bolton traveled through the parking lot in his Tahoe to the stop sign in about 5 seconds. Deputy Collins covered the same distance in his patrol vehicle in under 3 seconds. When asked by GBI investigators if the Tahoe left the parking space at a high rate of speed, Deputy House only replied, "*as fast as that car would go.*"[37]

Mr. Bolton, threatened with a questionable arrest for Loitering and Obstruction based on the facts previously mentioned, may have felt concern for his safety given the aggressive nature of the contact and the sudden pivot from verbal commands to the threat of breaking the vehicle's window and forcibly removing him from the vehicle. If Mr. Bolton were concerned that the arrest was unlawful, the CCSO Arrest Policy specifically authorizes resistance to an unlawful arrest.[38] Mere flight by Bolton would have been the lowest form of resistance at that point.

The Vehicle Pursuit Policy of the CCSO, paragraph 2, states, "*It shall be the policy of the Coweta County Sheriffs(sic) Office to conduct motor vehicle pursuits only when the necessity of immediate apprehension of a suspect outweighs the level of danger to the community created by the pursuit.*"[39] Deputy Collins viewed the tag of the Chevrolet Tahoe prior to making contact with Mr. Bolton and had an opportunity to identify the registered owner. It is not credible to argue that there was a "*necessity of immediate apprehension*," given that the proper tag was on the vehicle, the deputy viewed the tag and called it in to CCSO Dispatch, a deputy from the same law enforcement agency had documented Mr. Bolton at the same vehicle less at the same location less than 24 hours prior, and Mr. Bolton twice shared his earlier CCSO contact with Deputy Collins. While the danger to the community of conducting a pursuit may have been reduced given the time of day, traffic levels, and the speed involved, that risk is always present for law enforcement, suspects, and uninvolved bystanders.[40]

It is standard practice to consider the nature of the threat or the underlying offense when making a decision about whether to conduct a vehicle pursuit with the associated risks.

[37] GBI interview of Deputy House – Audio (14:19)
[38] CCSO Arrest Policy, p. VIII-6
[39] CCSO Vehicle Pursuit Policy, p XII-8
[40] Hill, John, High-speed Police Pursuits: Dangers, Dynamics, and Risk Reduction, FBI LAW ENFORCEMENT BULLETIN, 15 (July 2002)

- The CCSO Vehicle Pursuit Policy requires the deputy to consider the "*Nature of threat presented by the suspect or seriousness of the call for service*" among other factors (roadway, vehicle condition, passengers, communications, et al.)[41]
- The NPD Vehicle Pursuit Policy 12.2 states, "*never allow the desire to apprehend a suspect to be the sole determining factor.*"[42] It requires the primary pursuit unit to weigh several factors in the decision, including the offense that is the basis of the pursuit.

These policies are consistent with the Georgia Chiefs of Police Vehicle Pursuit report (2006), which states: "*the simplest way to make the decision about which pursuits will be authorized is to formulate the policy in terms of the nature of the charges and the driver's current behavior in relationship to the danger it creates to the public.*" [43] It does not appear that the nature of the threat presented by the suspect or the seriousness of the call were considered by Deputy Collins in initiating the vehicle pursuit.

The CCSO policy states that deputies have a responsibility during a pursuit, among other duties, to advise the dispatch center of the offense committed.[44] A review of the BWC for Deputy Collins and the Coweta County Dispatch Event Report show no communication by Deputy Collins to advise CCSO Dispatch of the offense committed by the subject of the pursuit.

Under the training requirements in the CCSO Vehicle Pursuit policy, it states, "*Deputies shall not engage in a pursuit until they have successfully completed the Emergency Vehicle Operation Course* (E.V.O.C.)."[45] Deputy Collins training record shows that he completed "*Vehicle Operations*," but does not specifically list EVOC. EVOC is specifically designed to train law enforcement officers in the safe operation of police vehicles during high speed driving and vehicle pursuits. It is unknown if Deputy Collins completed EVOC during his Basic Law Enforcement Training (BML13G) curriculum dated June 17, 2016.[46]

CCSO policy, "*Pursuit units shall not drive on the wrong side of any roadway, interstate highway, controlled access highway, on/off ramps, divided highway or the wrong way on one-way streets.*"[47] No exceptions are noted in paragraph 4. The BWC of Deputy Collins clearly shows that he traveled in the oncoming lane of travel during the brief pursuit while passing the stop sign during the pursuit. The CCSO Critical Incident Analysis discusses

[41] CCSO Vehicle Pursuit Policy, p XII-8 - XII-9
[42] NPD Pursuit Policy 12.2
[43] Microsoft Word - Pursuit Title Page.doc (gachiefs.com) p. 21
[44] CCSO Vehicle Pursuit Policy, p XII-9
[45] CCSO Vehicle Pursuit Policy, p XII-15
[46] Deputy Collins POST training record
[47] CCSO Vehicle Pursuit Policy, p XII-10

the improper line of travel of Mr. Bolton but does not discuss the line of travel of Deputy Collins. Deputy Collins violated department policy by operating his vehicle in the opposing lane of travel during the pursuit.

Deputy Spinks arrived on scene shortly after the PIT maneuver and, for unknown reasons, without his vehicle's emergency equipment activated. His BWC was not activated until after he had struck Mr. Bolton's vehicle, exited his own vehicle, and was approaching Deputy Collins' vehicle on foot. During his travel to and striking of Mr. Bolton's vehicle, Deputy Spinks was clearly "*engaged in the emergency operation of an agency vehicle.*"[48] He was in violation of CCSO Policy for failing to utilize his emergency equipment and failure to activate his video camera and microphone during a pursuit.

These are the circumstances presented to Deputy Collins in making a decision whether or not to pursue Mr. Bolton:

- Deputy Collins did not have any reasonable suspicion of any specific criminal activity by Mr. Bolton
- Deputy Collins did not observe the Tahoe strike Deputy House or hear Deputy House make any statements concerning being struck before the pursuit
- There was no necessity of immediate apprehension
- There was no continuing risk of harm to anyone from Mr. Bolton
- Mr. Bolton would have been identified through proper follow-up
- Mr. Bolton's driving behavior was not causing a risk to the officers or the general public.

A reasonable officer with Deputy Collins' training and experience would not have initiated this pursuit.

The PIT Maneuver

The first use of physical force against Mr. Bolton on June 30, 2019 was the PIT maneuver performed by Deputy Collins. A PIT maneuver is considered a use of force, involving risk of injury or death to occupants of the vehicle, the public, and law enforcement.[49] Recognizing this risk, the CCSO Vehicle Pursuit Policy categorizes the use of a PIT maneuver as an "*Offensive Tactic*," and states that "*All offensive tactics must be approved by a field supervisor or higher prior to use.*"[50] The NPD Vehicle Pursuit Policy also

[48] CCSO Vehicle Pursuit Policy, E(4)(a), p XII-9
[49] Georgia Chiefs of Police Vehicle Pursuit Policy Report, p. 5
[50] CCSO Vehicle Pursuit Policy, p XII-11 – XII-12

requires supervisor approval prior to conducting a PIT maneuver.[51] Based on a review of all documents received, specifically the reports authored by Deputy Collins, the Coweta County Dispatch Event Report ID 2019-134944, and the CCSO Critical Incident Analysis, there is no record that Deputy Collins either requested or received supervisory permission to conduct an "offensive tactic" with his CCSO patrol vehicle, specifically a PIT maneuver. This was a violation of the policies of both CCSO and NPD policies. Deputy Collins' written narrative states, "*In order to keep the chase from reaching Ga 34, and citizen traffic I preformed (sic) a P.I.T maneuver.*"[52] Given that this incident occurred around 2:30 AM, traffic was certainly lighter than almost any other time of the day. By initiating the PIT maneuver so quickly and without supervisor approval, Deputy Collins eliminated all opportunity for objective supervisory input, review, and oversight of whether the use of a PIT maneuver was reasonable.

The CCSO Vehicle Pursuit Policy states, "*The PIT maneuver shall only be used by deputies in accordance with department training received on the PIT maneuver.*"[53] Based on a review of all statements provided and the official training records for Deputy Collins, there is no indication that Deputy Collins attended any PIT Maneuver training. The CCSO Critical Incident Analysis did not offer any evidence that Deputy Collins had received the proper training to perform a PIT maneuver. A CCSO Deputy that conducts a PIT maneuver without the required training is in violation of CCSO Vehicle Pursuit Policy.

A PIT maneuver is a use of force against another person that involves a risk of death or serious bodily injury. As with other law enforcement use of force mechanisms (firearms, defensive tactics, impact weapons, chemical irritants, electronic control devices), police academies, police departments and jurisdictions across the United States have implemented clear policies regarding PIT maneuvers. These policies consistently detail mandatory training requirements, outline indications for its use, and require supervisory approval prior to implementation. These policies help to ensure the application of force via a PIT maneuver is reasonable, necessary, and consistent with the totality of the circumstances. Failure to have the required training and failure to receive prior approval for a PIT maneuver increase the potential that the PIT maneuver will be used when it is not reasonable and necessary, thus increasing the risk to the occupants, members of the public, and law enforcement.

Per the Georgia Chiefs of Police Vehicle Pursuit report, Georgia State Patrol policy states that the PIT maneuver "*should not be used until other methods for stopping a fleeing vehicle (e.g., tire deflation devices and roadblocks) have been considered and determined*

[51] NPD Vehicle Pursuit Policy, p. 8
[52] Deputy Collins written statement, p. 1
[53] CCSO Vehicle Pursuit Policy, p XII-13

not to be feasible."[54] By conducting the PIT maneuver so abruptly and without supervisor approval, Deputy Collins eliminated both the opportunity for any other methods for stopping the vehicle to be considered and an objective determination as to whether the use of force (PIT) was appropriate and necessary. Additionally, the report advises that "*policymakers should consider defining the intervention methods that the agency authorizes for terminating a pursuit. For example, if the agency authorizes the use of the PIT maneuver, then the term should be defined.*"[55] The PIT maneuver is neither defined nor spelled out further than "PIT" in the CCSO Vehicle Pursuit Policy. The entire PIT policy consists of two sentences in the CCSO Vehicle Pursuit Policy.

A successful result of a PIT maneuver by an untrained and unauthorized deputy, even if successful and with no apparent injuries to an occupant as a result, does not provide a reasonable justification for the maneuver and does not decrease the potential for unnecessary risk of injury that existed to the occupant, general public, or law enforcement. The "*ends justify the means*" argument is not appropriate here just because an untrained deputy was fortunate in this instance in not causing an injury. Officers who use excessive force by firing a weapon are still held accountable even if their intended victim is not injured by gunfire. The requirement for training and supervisory approval are in written policy to ensure that officer's actions are reasonable, specifically, to aid the deputy in evaluating "the totality of the circumstances before initiating any offensive tactic."[56]

By conducted a PIT maneuver, Deputy Collins utilized a potentially deadly use of force technique with no evidence of prior training, without receiving prior supervisor approval, against a driver that had allegedly committed less than a serious offense. A reasonable officer with similar experience and training would not have conducted a PIT maneuver in this situation.

The Use of Deadly Force - Shooting:

In the seconds prior to Deputy Collins shooting Mr. Bolton, the situation was as follows:

- An PIT maneuver had been successfully conducted by Deputy Collins on Mr. Bolton's vehicle, a 2001 Chevrolet Tahoe
- The tires of Mr. Bolton's vehicle lost traction during the PIT maneuver when the front left of Deputy Collins' patrol vehicle struck the right rear of the Tahoe

[54] Microsoft Word - Pursuit Title Page.doc (gachiefs.com), citing Georgia Department of Public Safety Policy 17.02 Pursuits at 5 (8/25/2005)
[55] Microsoft Word - Pursuit Title Page.doc (gachiefs.com) p. 20
[56] CCSO Vehicle Pursuit Policy, p XII-12

- The successful PIT maneuver resulted in the Tahoe spinning clockwise greater than 180 degrees with Mr. Bolton in the driver's seat
- It appears that Mr. Bolton was not wearing a seatbelt as seen in the BWC of Deputy Collins[57]
- After the Tahoe lost traction and began to spin, Deputy Collins turned his steering wheel to the right, ensure that his patrol vehicle ended up facing head-on, front bumpers touching, and almost parallel with the Tahoe[58]
- Deputy Spinks' patrol vehicle struck the right rear of the Tahoe, spinning it clockwise, turning the front of his vehicle away from the direction of Deputy House's patrol vehicle. This impact is the likely cause of the side to side movement indicated by the tire marks.
- Within seconds of the end of the PIT maneuver, Mr. Boltons vehicle was pinned on three sides by marked CCSO vehicles[59]
- Mr. Bolton's vehicle was in contact with or had been struck three patrol vehicles, a Ford Explorer, a Ford Crown Victoria, and a Dodge Charger
- The rear tires of Mr. Bolton's vehicle appear to spin from the initiation of the PIT up until the time of the shooting
- The Tahoe showed no appreciable forward movement based on all available video footage and the tire markings[60]
- Deputy House and Deputy Collins had exited or began to exit their vehicles while the tires were still spinning.
- Deputy House exited his vehicle and immediately gave a command for Mr. Bolton to "*turn off the car.*"[61]
- At the tail end of Deputy House's command to shut off the engine and within a couple seconds of Deputy Collins exiting his vehicle, Deputy Collins fired a single gunshot from his duty pistol, striking the windshield of the Tahoe, passing through the windshield and striking Mr. Bolton in the head, specifically in the area of his right eye. Both deputies were located behind their driver's doors when the shot was fired.

Law Enforcement Use of Deadly Force Justification

The use of deadly force by law enforcement is governed by department policy, state law, and a Constitutional standard with guidance from current case law. The final

[57] Deputy Collins BWC video (2:10)
[58] Deputy Collins BWC video and GBI photo #5764
[59] Deputy Collins BWC video, Diagrams by Deputy Collins, p 2, and Deputy House Sketch 2
[60] GBI photo #4333
[61] Deputy House BWC video (2:15)

determination of whether the use of deadly force by Deputy Collins against Mr. Bolton was reasonable requires a review based on the U. S, Supreme Court precedent Graham v. Connor, specifically "*whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.*"[62] Further, the reasonableness test "*requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.*"[63] Careful consideration must be made to ensure "*a particular use of force is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.*"[64]

The following are statements made by Deputy Collins that serve as the basis of his justification to use deadly force against Mr. Bolton:

- Deputy Collins advised "the suspect's vehicle rammed the front of my patrol car."[65]
- He advised, "As I was trying to place my vehicle into park, I could feel my vehicle being pushed backwards."[66]
- Deputy Collins stated that he heard the loud squealing of tires coming from the suspect vehicle.
- He stated that he observed the driver turn the steering wheel to the left, toward the area where Deputy House was standing.
- He stated, "Deputy House was directly between the suspect vehicle and his patrol car. I felt my car moving and feared that the suspect vehicle was about to break free, and strike Deputy House."[67]

Regarding the allegation that Mr. Bolton rammed the front of Deputy Collins' patrol vehicle, a review of Deputy Collins and Deputy House BWC do show an mild impact between the two vehicles at the culmination of the PIT maneuver.[68] In the CCSO Critical Incident Analysis, it states, "*After Deputy Collins performed the PIT maneuver, he pulled the front of his patrol vehicle up to the suspects front bumper. Officers use this common practice when trying to prevent the fleeing suspect from pulling back off.*"[69] This would be consistent with the ultimate purpose of the PIT maneuver, to immobilize the suspect vehicle. The safest and most effective way to immobilize a suspect vehicle is to make physical contact,

[62] U.S. Reports: Graham v. Connor et al., 490 U.S. 386 (1989). (loc.gov) p. 387
[63] U.S. Reports: Graham v. Connor et al., 490 U.S. 386 (1989). (loc.gov) p. 396
[64] U.S. Reports: Graham v. Connor et al., 490 U.S. 386 (1989). (loc.gov) p. 396
[65] Deputy Collins written statement, p. 1
[66] Deputy Collins written statement, p. 2
[67] Deputy Collins written statement, p. 2
[68] Deputy Collins BWC video (3:14)
[69] CCSO Critical Incident Analysis, p. 6

allowing for no room between law enforcement and suspect vehicles that could be used for acceleration or steering. A review of Deputy Collin's BWC shows the front end of the Tahoe and Deputy Collins' Ford Explorer appears to make contact immediately after the PIT maneuver and remained touching throughout the incident.[70] According to Deputy Collins BWC and Deputy House's BWC, there appears to be no subsequent impact between the two vehicles. The CCSO Critical Incident Analysis and BWCs contradict Deputy Collins' statement that he was rammed by Mr. Bolton's vehicle.

The only noticeable movement of any vehicles after the initial contact was when Deputy Spinks' patrol vehicle struck the right rear of the Tahoe, causing it to rotate slightly clockwise, pointing further away from Deputy House.[71] The impact of Deputy Spinks' vehicle and the directional change of the Tahoe away from Deputy House (3:18) occurred about two seconds before Deputy Collins fired the shot (3:20). Deputy Collins does not mention in his CCSO written statement that Deputy Spinks' patrol vehicle crashed into the side of the Tahoe, that it turned the Tahoe further from Deputy House, or that it occurred prior to him firing his pistol. Deputy House's written statement confirms that Bolton's vehicle "*was struck by another marked patrol vehicle turning it back toward DS Collins' vehicle.*"[72]

While an officer is not to be judged with the "*20/20 vision of hindsight*,"[73] it is reasonable that a law enforcement officer would observe a white full size patrol vehicle approaching his location with headlights burning, striking your suspect vehicle, causing it to rotate. This impact very likely caused the lateral motion that caused the tire marks. There is no indication from any video supplied that Mr. Bolton's Tahoe continued to ove forward after the initial contact. The lack of traction by the Tahoe (as evidenced by the spinning tires and tire marks), the stationary nature of Deputy Collins' vehicle, the blocking of the Tahoe by three newer model patrol vehicles, and a review of all available BWCs do not support this.

In Deputy Brown's CCSO written statement, he stated, "*I saw the suspect vehicle accelerate toward DS Collins and his patrol vehicle, striking it violently.*"[74] Deputy Brown's BWC does not begin until he is already on scene and after the shooting has occurred. Like Deputy Collins' statement about being rammed by the Tahoe, this statement is inconsistent with other statements, all videos, and physical evidence.[75]

[70] Deputy Collins BWC video (3:14)
[71] Deputy Collins BWC video (3:18)
[72] Deputy House written statement
[73] Graham v. Connor 490 U. S. 386 (1989), p. 396
[74] Deputy Brown CCSO written statement
[75] GBI photo #5742

The GBI requested that the Georgia State Patrol (GSP) review the vehicle data recorder for the Tahoe. The report showed a very low speed (3 – 9 mph) but also provided warnings that spinning tires could impact the accuracy of the data.[76] Since the tires were clearly spinning throughout this incident, the speed data is not conclusive.

Regarding the statement that Deputy Collins's heard the loud spinning of the Tahoe's tires, this is supported by other witness statements and the videos reviewed. Based on the positioning of the Tahoe, it would have been impossible for Deputy Collins to see the Tahoe's rear wheels or accurately determine if they were spinning in a forward or reverse gear. Spinning tires alone does not justify the use of deadly force if a vehicle is otherwise immobilized. The entire purpose of the PIT is to break traction of the rear wheels of a suspect vehicle and cause it to spin, providing the opportunity to immobilize the vehicle with additional law enforcement vehicles. Notwithstanding the lack of supervisory approval and no evidence of prior PIT training by Deputy Collins, the maneuver was successful and responding deputies moved in to position to block it from further movement. Given the immobilization of the suspect vehicle, a reasonable officer would not have escalated to deadly force. Deputy Collins should have continued to immobilize the vehicle until the suspect submitted to law enforcement or the circumstances changed to warrant additional actions or a greater or lesser level of force.

In several statements, the Tahoe's spinning tires were listed as an indication that the Tahoe was being used as a deadly weapon. An alternate explanation exists for the spinning tires. The tires lost traction when the PIT maneuver was initiated (as intended) and appear to have been spinning until the shot was fired by Deputy Collins. In the BWC of Deputy House and Deputy Collins, it appears that Mr. Bolton is not wearing his seatbelt when he was parked in the business parking lot. Since Mr. Bolton was not wearing a seatbelt, he would likely be disoriented at the sudden rotation of his vehicle from the PIT maneuver and the impact of Deputy Spinks' vehicle. It is possible that he used his arms and legs to brace himself in the driver's compartment, pushing against any available surface, to include the accelerator that his foot was already touching, the armrest, the driver's door, and the steering wheel.

Regarding the observation by Deputy Collins that Mr. Bolton was turning the steering wheel of his vehicle to the left in the direction of Deputy House, it is difficult to ascertain what Mr. Bolton was doing from Deputy Collins' BWC as Collins was exiting the vehicle and there is significant camera movement. While Collins BWC and the GBI photograph from the scene do show the front tires turned slightly left of centerline, this slight deviation does not appear consistent with a steering wheel motion that would have been obvious to Deputy Collins during the culmination of a PIT maneuver, while he was exiting his vehicle

[76] GSP Collision Analysis Report, p. 20

and drawing his firearm.[77] [78] He made statements regarding his justification to Deputy House and other law enforcement immediately after the shooting, stating to Deputy House, "his car was coming right at you,"[79] and to another officer, "almost ran over Jon [House]."[80]

Regarding Deputy Collins' statement that Deputy House "*was directly between the suspect vehicle and his patrol car*," this is not supported by any other witness statement, including Deputy House's, and in contradicted by the video evidence on both Deputy Collins' and Deputy House's BWCs. Deputy House had a similar observation point as Deputy Collins, specifically that a suspect vehicle was pinned from three sides, the tires were spinning, and it was making no forward progress. With this information, Deputy House still elected to exit his vehicle and give verbal instructions to the driver to turn off the engine. It is clear from his actions that Deputy House was not concerned that "*the suspect vehicle was about to break free, and strike [him]*."[81] There is no evidence to suggest that Deputy Collins would have any reasonable belief that Deputy House was located "*directly*" between the two vehicles and at risk of death or serious bodily injury. Further, given that the Tahoe was immobilized by three vehicles at the time of the shooting, the Tahoe's rear tires had no traction, and the vehicle was making no forward progress, it was not reasonable for Deputy Collins to believe "*the suspect vehicle was about to break free, and strike Deputy House.*"[82]

During critical incidents, events unfold quickly, and officers are not expected to absorb and recall everything that occurred. However, there is a significant difference between a statement that "*Deputy House had also arrived and was directly to my right, outside of his vehicle*"[83] and a contradictory and incorrect statement that "*Deputy House was directly between the suspect vehicle and his patrol car.*"[84] A reasonable objective officer in the same situation would not have come to this same conclusion to justify the use of deadly force.

In his written statement about his contact with the Tahoe in the parking space, Deputy House wrote, "*I stepped in front of the vehicle gun drawn giving commands in attempt to keep Bolton from leaving. Bolton then began to drive forward pushing me out of the way with his vehicle and began to flee.*"[85] The BWC of Deputy Collins shows that Deputy House did not break the plane at the corner of the Tahoe or actually step in front of the

[77] Deputy Collins BWC video (3:24)
[78] GBI photo #5742
[79] Deputy Collins BWC video (5:28)
[80] Deputy Collins BWC video (9:05)
[81] Deputy Collins written statement, p. 2
[82] Deputy Collins written statement, p. 2
[83] Deputy Collins written statement, p. 2
[84] Deputy Collins written statement, p. 2
[85] Deputy House written statement

vehicle. His hand did make contact with the corner of the vehicle on the hood and he was likely highly focused on Mr. Bolton's actions at the time. Deputy Collins' BWC also shows that Deputy House's body was not pushed out of the way by the Tahoe. It is unknown if he was mistaken or if he was referring to incidental contact with his hand or arm that had been extended toward the windshield at Mr. Bolton. As previously detailed, both the GBI website[86] and the CCSO Critical Incident Analysis[87] concluded that Deputy House was not touched by the Tahoe as it departed the parking space.

Either Deputy Collins or Deputy House were verbally questioned after the shooting. They were asked if a firearm had been involved. One unidentified law enforcement officer is heard on Deputy House's BWC asking, "*was there a gun*? And then "was there a weapon"[88] A second question from an unidentified law enforcement officer asked, "*was it self-inflicted*?"[89] The inquiries indicate that responding officers initially believed that Mr. Bolton was armed with a firearm.

The ultimate objective of a PIT maneuver is to immobilize the vehicle. The deputies consistently used terminology and procedures consistent with this objective, indicating they understood the importance of immobilizing a vehicle after a PIT maneuver:

- As Deputy Spinks was responding to the vehicle pursuit, he recognized that Deputy Collins had conducted a PIT maneuver, spinning the vehicle around[90]
- During his interview with GBI and in his written statement, Deputy Spinks described how he struck the passenger side of the Tahoe with his patrol vehicle in an attempt "*to box the vehicle in.*"[91] [92]
- Deputy House's vehicle made contact with the driver's door of the Tahoe. In his written statement to CCSO, Deputy Brown described how he instructed Deputy Spinks to move Deputy House's vehicle rearward in order to open the driver's door of the Tahoe (to remove Mr. Bolton).[93]
- Deputy House notes in his written statement that the Tahoe was struck by a marked vehicle (Spinks') and noted that his vehicle needed to be moved in order to open the driver's door of the Tahoe.

[86] GBI Investigates Officer Involved(sic) Shooting Investigation in Coweta County | Georgia Bureau of Investigation
[87] CCSO Critical Incident Analysis, p. 3
[88] Deputy House BWC (3:56 & 4:00)
[89] Deputy House BWC (5:18)
[90] Deputy Spinks written statement
[91] Deputy Spinks written statement
[92] GBI Interview with Deputy Spinks audio
[93] Deputy Brown Written Statement

- Deputy Spinks notes in his written statement that Deputy House's vehicle was located against the driver's side door."[94]
- In the CCSO Critical Incident Review, Sgt. Jerard concluded, *"After Deputy Collins performed the PIT maneuver, he pulled the front of his patrol vehicle up to the suspects front bumper."*[95]
- In the Georgia State Patrol (GSP) Collision Report, it describes Deputy Collins' actions, *"Driver 2 (Collins) performed a successful PIT maneuver and proceeded to pin the vehicle from traveling further."*[96]
- GSP diagrammed the accident and shows the extent that the Tahoe was pinned in from three sides.[97]
- The GSP Collision Report noted, "*The front of vehicles 2-4 contacted vehicle 1* (Tahoe)." [98] Vehicles 2, 3 and 4 were identified as vehicles driven by Deputies Collins, House, and Spinks, respectively.
- GBI diagrammed the accident (after the Dodge Charger was moved) and also shows that the Tahoe was pinned from three sides.[99]

Deputy House stated to GBI investigators that he had his gun drawn and was about to fire but observed a crossfire involving Spinks.[100] His BWC does show him notice Deputy Spinks' presence on the other side of the Tahoe, but well after the shooting, and only after Deputy Brown speaks to Deputy Spinks first.[101] Deputy Spinks was standing on the opposite side of the Tahoe from Deputies House and Brown for almost 18 seconds before he was advised to move away from his position. A review of Deputy House's BWC indicates that his view of Deputy Spinks and his patrol vehicle was obstructed by the Tahoe. It is unknown why Deputy House would exit his vehicle or give verbal commands if he planned on firing his pistol at Mr. Bolton. When Deputy Collins fired the shot, Deputy House's BWC shows that he is holding his pistol in his right hand only, as opposed to the standard two handed grip that is taught as the preferred grip for more accurate combat shooting. His left hand later appears on camera in contact with his driver's door. Deputy House's actions do not appear consistent with a law enforcement officer that was planning on firing his weapon at Mr. Bolton.

The CCSO Use of Force and Arrest Policies consistently emphasizes that force or greater force should not be used unless other methods are not or would not be effective, specifically:

[94] Deputy Spinks written statement
[95] CCSO Critical Incident Analysis, p. 6
[96] GSP Collision Report, p. 8
[97] GSP Collision Report, p. 13
[98] GSP Collision Report, p. 12
[99] GBI Accident Diagram
[100] GBI Interview with Deputy House audio (18:24)
[101] Deputy House BWC video (2:43)

- *"Force may not be resorted to until all other reasonable alternatives have been exhausted and/or are ineffective under the particular circumstances."*[102]
- *"Deputies shall never use a greater degree of force than that which is lawful, reasonable, and necessary for the specific situation."*[103]
- *"Deadly physical force should not be used is (if) a less drastic means can be used without unreasonably endangering the officer or another person (sic)"*[104]
- *"The use of deadly force by a Deputy during the performance of duty is restricted to the following:*
    - *Self defense and defense of others (Limited)*
      When the Deputy reasonably believes it is necessary to defend their own life or the life of another or to prevent grave bodily injury to themselves or another, and all other available means of defense have failed or would be inadequate or dangerous."[105]
- *"An officer making a lawful arrest has the right to use whatever force is necessary to accomplish the arrest, but not any more."*[106]
- *"An officer has a right to use that force necessary and reasonable to arrest an individual where probable cause has been attained."*[107] It is unclear what probable cause was established for the offenses of Loitering and Obstructing.

These CCSO policies require deputies to assess the effectiveness of their current situation and actions before they employ force, or a greater degree of force. If existing measures are achieving your goal (immobilization), using a higher level of force is unreasonable and unnecessary. None of these policies were adhered to during this incident. Within seconds after the vehicles stopped moving, Deputy Collins had exited his patrol vehicle. He immediately drew his pistol and fired one round. By failing to recognize the effectiveness of current measures, Deputy Collins unnecessarily escalated to deadly force.

Prominent use of force case law and most use of police force policies instruct law enforcement to provide a warning prior to the use of deadly force, most commonly with a **caveat of "*when feasible*" or when possible.**[108] There is no such requirement in the CCSO Use of Force Policy.[109] While Deputy House was giving a verbal warning to Mr. Bolton to

[102] CCSO Use of Force Policy, p XI-1
[103] CCSO Use of Force Policy, p XI-1
[104] CCSO Vehicle Pursuit Policy, p XII-13
[105] CCSO Use of Force Policy, p XI-4
[106] CCSO Arrest Policy, p. VIII-6
[107] CCSO Arrest Policy, p. VIII-5
[108] Tennessee v. Garner 471 US 1 (1985), p. 8
[109] Although not explicitly stated, it could be argued that a requirement to issue a warning prior to the use of deadly force would fall under the "reasonable alternatives" listed in para. B (1) of the CCSO Use of Force Policy

turn off his vehicle, Deputy Collins was failing to provide a verbal warning prior to his use of deadly force.

Georgia State Code

The CCSO Use-of-Force and Legal Authority Foundation document cites a Georgia state code, specifically, OCGA § 17-4-20, Use of Deadly Force, as the basis for their authority to use deadly force and the guidance and limitations on its use:

> "(b) *Sheriffs and peace officers who are appointed or employed in conformity with Chapter 8 of Title 35 may use deadly force to apprehend a suspected felon only when the officer reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; when the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others; or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm. Nothing in this Code section shall be construed so as to restrict such sheriffs or peace officers from the use of such reasonable nondeadly force as may be necessary to apprehend and arrest a suspected felon or misdemeanant.*"[110]

Similar to *Graham v. Connor*, the state statute requires that the officer have a reasonable belief that a suspect poses an immediate threat to the officer or another before using deadly force. The state code emphasizes that the threat must be occurring in real time, not at some time in the future. With the Tahoe physically immobilized between three vehicles and showing no forward movement, there was no imminent or immediate threat that justified the use of deadly force against Mr. Bolton.

Supreme Court Case Law

Tennessee v. Garner

The primary holding states, "*Under the Fourth Amendment of the U.S. Constitution, a police officer may use deadly force to prevent the escape of a fleeing suspect only if the officer has a good-faith belief that the suspect poses a significant threat of death or serious physical injury to the officer or others.*"[111] It also framed the prohibition on the use of

[110] CCSO Use of Force and Legal Authority, p. 1
[111] Tennessee v. Garner:: 471 U.S. 1 (1985) :: Justia US Supreme Court Center, p. 1

deadly force on fleeing felons, "*unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.*"[112]

Given the facts of this incident as reviewed and described herein, it is clear that this case did not involve a fleeing felon or a subject that posed a significant threat of death or serious physical to any person prior to the PIT maneuver or the shooting of Mr. Bolton.

Graham v. Connor

As the prominent case law on the use of force by law enforcement, *Graham* gives law enforcement agencies and lower courts the following guidance in determining if the use of force was reasonable:

- The Court advised, "*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.*"[113]
- Also, "*The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.*" [114]
- The reasonableness inquiry is an objective one: "the question is whether the officers' actions are `objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." [115]
- The Court laid out a non-exhaustive list of factors to consider in determining if an officer's use of force is justified:[116]
    - The severity of the crime
    - Whether the subject is an immediate threat to others
    - Whether the subject is actively resisting or attempting to evade by flight

Conclusion:

Graham v. Connor provides "an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force in a particular situation," it also

[112] Tennessee v. Garner:: 471 U.S. 1 (1985) :: Justia US Supreme Court Center
[113] Graham v. Connor, (1989), 490 U.S. 386, p 396-397
[114] Graham v. Connor, (1989), 490 U.S. 386, p. 387
[115] Graham v. Connor, (1989), 490 U.S. 386 p 397
[116] Graham v. Connor, (1989), 490 U.S. 386 p. 396

requires that actions be judged objectively from the perspective of a reasonable officer.[117] The seriousness of any alleged offense by Mr. Bolton is the lowest by any reasonable interpretation, as evidenced by how the contact with Mr. Bolton was handled by Deputy Thompson less than 24 hours prior. It is unreasonable to believe that any suspect involved with a commercial burglary would remain in the immediate vicinity. The minimal reasonable suspicion would be quickly dismissed by a reasonable officer upon discovery that Bolton was homeless, asleep in his own vehicle, and not suspected of any additional criminal activity.

Deputy Collins approached Mr. Bolton and immediately gave commands and instructions focused on removing him from the vehicle rather than asking questions that would have confirmed or refuted any suspicion of criminal activity. Deputy Collins (and Deputy House) quickly escalated to threats of arrest and then to threats to break out a vehicle window to forcible remove Mr. Bolton, all as part of a loitering investigation with non-specific reasonable suspicion. There were no observations or statements that would lead Deputy Collins to reasonably believe that Mr. Bolton was attempting to cause bodily harm to Deputy House as he pulled out of the parking space.

Given the CCSO policy limitation to **pursue a vehicle** "*only when the necessity of immediate apprehension of a suspect outweighs the level of danger to community created by the pursuit*," it is unreasonable to conduct a police pursuit under these circumstances, specifically for a loitering investigation of a homeless person sleeping in his own vehicle.

Deputy Collins made a quick decision to perform a PIT maneuver without documented training or waiting for supervisory approval. The CCSO Policy states (in all capital letters and bold print),

> ***"WHEN MAKING THE DECISION TO PERFORM ANY OFFENSIVE TACTIC, THE SERIOUSNESS OF THE VIOLATION AND THE RISK SURROUNDING THE PURSUIT MUST BE BALANCED AGAINST THE NEED TO CAPTURE THE VIOLATOR. DEPUTIES MUST CAREFULLY EVAULATE THE TOTALITY OF THE CIRCUMSTANCES BEFORE INITIATING ANY OFFENSIVE TACTIC."***[118]

Conducting a PIT maneuver on Mr. Bolton's vehicle was unreasonable given the totality of the circumstances, specifically the lack of necessity for immediate apprehension, the lack of probable cause for an articulable offense, the minor offense that was being investigated, the possibility of apprehension at a later time, the apparent lack of PIT maneuver training, and the failure to obtain prior supervisory approval before conducting the use of force

[117] Graham v. Connor, (1989), 490 U.S. 386, p. 387
[118] CCSO Vehicle Pursuit Policy, p XII-12.

maneuver. Deputy Bolton did not properly evaluate the circumstances and elected to conduct a dangerous use of force action that was unreasonable and unnecessary.

Immediately upon exiting his vehicle after the PIT maneuver, he very quickly escalated to the use of deadly force when existing measures were effective in immobilizing the Tahoe. The series of unnecessary actions taken by Deputy Collins would not have been made by a reasonable officer with similar background and training.

Deputy Collins falsely stated that Deputy House was "*directly*" between the Tahoe and his patrol vehicle and at risk of death or serious bodily injury. Despite the successful actions of the PIT maneuver and immobilization of the Tahoe by three patrol vehicles, Deputy Collins still failed to recognize that an immobile vehicle was not a threat to him or his partner. It would have been safer for all involved to continue to immobilize the vehicle than to shoot into it, as there are significant risks of deflection and fragmentation of firearm projectiles when striking the various surfaces of a motor vehicle.

Even if Deputy Collins correctly believed Mr. Bolton was loitering, he obstructed an investigation, he assaulted a law enforcement officer when he pulled out of the parking space, and he unlawfully fled from law enforcement, nothing prior to the shooting supports the claim that the use of deadly force against Mr. Bolton was reasonable. Consistent with *Graham v. Connor*, the CCSO Use of Force Policy states, "*It is the Deputy's responsibility to first exhaust every reasonable means of employing the minimum of force before escalating to a more severe application of force.*"[119] Deputy Collins did not exhaust every reasonable means of employing the minimum of force before he escalated to the use of deadly force against Mr. Bolton.

The Graham factors also support the argument that the use of deadly force was unreasonable in this case. The severity of the offense was minimal, at best. Mr. Bolton did not pose an immediate threat in an immobilized vehicle with no traction, and it is unclear whether Mr. Bolton was attempting to evade by flight when he was pinned between three patrol vehicles or if that was a result of his disorientation after the PIT maneuver. It is my opinion that the use of deadly force by Deputy Collins against Mr. Bolton under these circumstances was objectively unreasonable and excessive by Constitutional standards and in violation of multiple CCSO Use of Force, Vehicle Pursuit, and Arrest policies.[120]

[119] CCSO Use of Force Policy, p XI-3-4

[120] Deputy Collins violated CCSO policies listed on the following pages: Use of Force Policy, p XI-1, 3 4, 5;0 Vehicle Pursuit Policy, p XII-8, 9, 10, 12, 13, 15, CCSO Arrest Policy, p. VIII-5, 6.

Qualifying Statement: I reserve the right to supplement this report and my opinions expressed herein as more information becomes available or is provided by the parties to this case. My opinions detailed in this report are based on the facts of the case, my education, training, and experience.

Curtis R. Marshall (Jun 30, 2022 14:18 EDT)

Curtis Marshall
Eagle Security Group

Jun 30, 2022
Date

Appendix 1 – Materials Reviewed List
Appendix 2 – Curriculum Vitae
Appendix 3 – Retainer Agreement

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON, Plaintiff, vs. LENN WOOD, et al., Defendants.	Civil Action File No.: 1:21-cv-02279-MHC

VIDEOCONFERENCE DEPOSITION OF

NICHOLAS S. BOLTON

Thursday, October 27th, 2022

2:35 p.m.

Hogansville, Georgia

Anne Marie Russell, CCR, CVR, 5756-3343-3978-4704

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(Electronic copies of Defendants' Exhibits Numbers 5, 7-9, 11-16, and 18 have been attached to the original transcript. The originals have been retained by counsel.)

P R O C E E D I N G

NICHOLAS S. BOLTON,

having been first duly sworn, was examined and testified as follows.

MS. WOODWARD: I'm Karen Woodward. This will be the deposition of Nicholas Bolton, the plaintiff in this suit. I represent the defendants in the case, as I told Mr. Bolton a moment ago. We're meeting for the first time via videoconference.

I guess, Jim, if it's all right with you, the same stipulations we've had with the officers, to reserve objections except to the form of the question or the responsiveness of the answer, if that's agreeable?

MR. J. HOWARD: Yes, it is.

MS. WOODWARD: Great.

As we talked about a moment ago, the discovery in this matter has been bifurcated, so questions regarding damages will be reserved for a later time, if necessary.

CROSS-EXAMINATION

BY MS. WOODWARD:

Q. So, Mr. Bolton, can you give your full name?

A. Nicholas Sherod Bolton.

Q. And I'm sorry. What's your middle name?

A. Sherod.
Q. Have you ever given a deposition before, or is this your first time doing this?
A. I don't think I have.
Q. Okay. Well, it's a little strange because we're here on a computer screen, but I'm just going to ask you questions. If you don't understand my question, please ask me, and I'll be happy to rephrase it; is that agreeable?
A. Yes.
Q. Okay. And we're going to be talking about, primarily, the incident on June 30, 2019, that's the subject of the lawsuit that you filed against Sheriff Wood and the other deputies; is that understood?
A. (No response.)
Q. Is that understood?
A. Yes.
Q. You know you have a lawsuit pending; correct?
A. Yes.
Q. Are you currently on any medications that affect your ability to remember things?
A. No.
Q. And you're able to testify truthfully?
A. Yes.
Q. You're living now in Hogansville, I understand?

A. Yes.
Q. And who owns the home where you live?
A. My great aunt.
Q. Your great aunt? Okay.
How long have you been living in Hogansville?
A. Going on -- well, my whole life really. That's where I grew up.
Q. Were you born in Hogansville?
A. No.
Q. Where were you born?
A. Newnan.
Did you hear me?
Q. No.
A. Newnan.
Q. Newnan?
A. Yes.
Q. Sorry. The audio is not very good.
You were born in Newnan, but lived most of your life in Hogansville; is that correct?
A. Yes.
Q. What is your great aunt's name?
A. Gloria Flemming.
Q. And what is her last name?
A. Flemming.
Q. And you've never been married?

A. No.

Q. Does anyone besides your great aunt -- well, let me ask you this.

Does your great aunt live with you there in Hogansville? Ms. Flemming?

A. Yes.

Q. Does anyone else live there with you?

A. No.

Q. Do you have any other relatives that live in Hogansville?

A. I didn't hear your question. Say that again.

Q. Do you have any other relatives that live in Hogansville?

A. Yes.

Q. And who are they?

THE WITNESS: Are you still there?

MS. WOODWARD: I'm still here. Can you see me?

THE WITNESS: Yes, I can see you now.

MS. WOODWARD: Can you hear me?

MR. J. HOWARD: Yes.

Q. (By Ms. Woodward) Do you have any other relatives who live in Hogansville?

A. Yes.

Q. Okay. And who are they?

A. My other aunts.

Q. Do you still have relatives in the Newnan area?
A. Yes.
Q. And who is there?
A. My grandmother.
Q. Your grandmother is in Newnan?
A. Yes.
Q. What is her name?
A. (No response.)
Q. What is your grandmother's name?
A. (Indecipherable.)
MS. WOODWARD: Let's go off the record a moment, please.
(Off the record.)
Q. (By Ms. Woodward) Anne Marie is still there, Mr. Bolton. She has just turned her camera off. Where you see "Court Reporter" there, that's her.
Counsel and I agreed to cover some preliminary matters via written questions that we'll submit to you later.
At some point, you owned a 2001 Tahoe; correct?
A. Yes.
Q. Do you still own it?
A. Yes.
Q. Is it there with you in Hogansville?
A. It's in Hogansville, yes.

Q. Okay. At some point, you were living in the Tahoe; is that correct?

A. It's in Hogansville.

Q. Okay. No. At some point, were you living in the Tahoe?

A. Yes.

Q. How long did you live in the Tahoe?

A. Seven -- seven -- I think seven or six or eight years.

Q. Six, seven, or eight years?

A. Yes. I think.

Q. And during that period, you would park it at the Newnan Pavilion in Newnan, Georgia? At the shopping center?

A. Yes, ma'am.

Q. Are you familiar with the Newnan Pavilion shopping center?

A. Yes.

Q. Do you recall where you would park your car at the Newnan Pavilion? Your Tahoe?

A. Walmart.

Q. Walmart? Okay. Anywhere else?

A. In the Kohl's parking lot.

Q. Kohl's? Okay.

A. That's where they told me I was. I thought I

was at the Walmart parking lot.

MR. L. HOWARD: I think he's done with his answer.

MS. WOODWARD: Can you see this? Exhibit 13?

MR. L. HOWARD: I can't see it.

MR. J. HOWARD: I can see it now.

THE WITNESS: I see it.

(Defendants' Exhibit Number 13 was previously marked for identification.)

Q. (By Ms. Woodward) Okay. Does this refresh your recollection of what stores were at the Newnan Pavilion shopping center?

A. Yes.

Q. Did you stay in the parking lot of any of these other stores listed here?

A. Parking lot of what?

Q. Of any of the other stores that are on this shopping center sign?

A. No.

Q. No? Just Kohl's and Walmart?

A. Yes.

Q. Were you familiar with the "No Loitering" signs at Newnan Pavilion? Had you seen those before?

A. No.

Q. No, you haven't seen them?

A. No.

(Defendants' Exhibit Number 14 was previously marked for identification.)

Q. (By Ms. Woodward) Can you see Exhibit 14? It says I'm screen sharing.

A. Are you talking about the sign on the pole?

Q. Yes. Can you see that, Mr. Bolton?

A. Yes. It says "private" something.

Q. I know it's hard to tell. Do you recognize this as Newnan Pavilion?

A. I can't tell what that is.

(Defendants' Exhibit Number 15 was previously marked for identification.)

Q. (By Ms. Woodward) Okay.

Can you see Defense Exhibit 15?

A. Yes.

Q. Do you recognize that as Newnan Pavilion?

A. I can't really make out what it is. I can see it, but I can't make out what it is.

Q. Were you familiar with an establishment called "Sky Zone"?

A. Can you say that again, please?

Q. Are you familiar with a business called "Sky Zone"?

A. No, I don't think so.

Q. Are you familiar with the Home Depot at Newnan Pavilion?

A. Could you say that again for me, please?

Q. Are you familiar with the Home Depot a Newnan Pavilion?

A. Yes. I know where it's at. Yeah.

Are you asking me if I know where it's at?

Q. Yes.

A. Yes. I know where it's at.

Q. Had you ever stayed in the parking lot of the Home Depot?

A. Not that I recall.

Q. Okay.

A. If I have, I can't remember.

(Defendants' Exhibit Number 16 was previously marked for identification.)

Q. (By Ms. Woodward) Can you see -- can you see Defendants' Exhibit 16 on your screen?

A. I can't see anything yet.

I see a stop sign.

Q. Yes.

Do you recognize that as the Home Depot at Newnan Pavilion?

A. No, ma'am.

//

(Defendants' Exhibit Number 18 was previously marked for identification.)

Q. (By Ms. Woodward) Can you see what's been marked as Defendants' Exhibit 18 on your screen?

A. Yes.

Q. Do you recognize that photograph, 18? The Home Depot at Newnan Pavilion?

A. It looks like I can see Home Depot back there. I'm not sure.

Q. And you graduated from Greenville High School; correct?

A. Yes, ma'am.

Q. Where is that?

A. I don't know.

Q. Did you graduate from high school?

A. Yes.

Q. Did you go to any schools after that?

A. Maybe, but I'm not sure.

Q. At some point, you worked at the Pet Smart distribution center; is that correct?

A. Yes.

Q. Do you remember when that was?

A. I don't remember.

Q. And the Pet Smart is in Newnan, Georgia?

A. Yes, ma'am.

Q. What did you do there?
A. Order filling, I think.
Q. Okay. How long did you work there?
A. Three -- three, I think.
Q. Three years?
A. Yeah, I think. Three or four.
Q. Three or four?
A. I think. I'm not sure.
Q. You told me you lived six, seven, or eight years in your Tahoe; correct?
A. Correct.
Q. Did you work at the Pet Smart distribution center before that or at the same time?
A. It was before that I think.
Q. Okay. Where were you living when you worked at the Pet Smart distribution center?
A. Here in Hogansville. And I think a couple times in a hotel in Luthersville.
Q. Luthersville?
A. Yes, ma'am.
Q. The hotel was in Luthersville, or did you have an apartment or a place in Luthersville?
A. It was a trailer, I think. I think it was a trailer in Luthersville. The hotel was in Newnan, I think.

Q. While you worked at Pet Smart, sometimes you were in Hogansville, sometimes a trailer in Luthersville, and sometimes at a hotel in Newnan. Do I have that right?

A. Yes. I think.

Q. And then at some point, you were laid off from the Pet Smart job?

A. I think I was laid off. I'm not sure.

Q. Okay. Do you know why you left that job?

A. I think they let me go. They didn't give me any reason, I think.

Q. Have you worked since then?

A. I don't think so. I'm not sure. I don't think I did.

Q. Before June 30, 2019, which is the date of the incident we're here about --

Now there's an echo. Is that mine? I don't know what that is.

In any event, before the date of the incident, how long had you been parking your car to sleep at the Newnan Pavilion?

A. I think pretty much all the time I was there, but I'm not sure.

Q. The six, seven, or eight years that you were living in your Tahoe?

A. Yes. Pretty much.

Q. So pretty much, you stayed in that same area --
A. I think.
Q. Were you familiar with the owners of any of the stores?
A. No.
Q. Had you ever met the property manager of the Newnan Pavilion?
A. (Indecipherable.)
Q. I'm sorry. Did you answer?
No?
A. No.
Q. Sometimes you encountered law enforcement officers while you were on the premises of the Newnan Pavilion; is that correct?
A. Yes.
Q. I'm sorry?
A. Yes.
Q. And sometimes they would tell you that you could not stay there; is that correct?
A. Correct.
Q. Do you remember the day of June 30, 2019?
A. So-so.
Q. When you were living at the Newnan Pavilion -- when you were living in your Tahoe that you would park on the premises of the Newnan Pavilion, did you leave and

come back? Or did you stay there for at least six years?

In other words, did you ever leave and stay elsewhere? Or you were there, pretty much, for all of six-plus years?

A. I think I was pretty much there. Somewhere in that area.

Q. Okay. As far as June 30th, 2019, what do you remember about that day?

A. I remember the officer coming up to me and telling me I was good to be in the parking spot.

Q. So this was when? This was in the morning?

A. In the daytime.

Q. In the daytime?

A. Yes.

Q. And the stores were open at that time; correct?

A. Say again.

Q. The stores were open?

A. Yes.

Q. A deputy approached you when you were sitting at your Tahoe; is that correct?

A. Yes.

Q. The deputy that approached you, he didn't say anything about your living at that location, did he?

A. No. He checked my license and my tag and told me I was good. And he gave me a bottle of water.

Q. Do you know his name?
A. No, ma'am. I don't remember that.
Q. Had you ever met him or seen him before?
A. I don't think so.
Q. Did you have any other encounters with law enforcement after that officer left -- gave you the bottle of water and left?
A. No.
Q. What did you do from the time the deputy gave you the bottle of water until the time of the incident? Do you remember?
A. I didn't hear you. You broke up.
Q. What did you do from the time the officer gave you the bottle of water until the incident? Do you remember?
A. I think I pretty much just stayed outside sitting on my truck all day.
Q. Did you move your truck?
A. No, I didn't move it.
Q. And then you said another officer approached you? Or did another officer, at some point, approach you?
A. Yes.
Q. At this time, it was night; correct?
A. Yes. I thought it was -- yes. Or morning.
Q. Was it light or dark outside?

A. I think it was dark, but I think they said it was morning. I don't remember.

Q. Do you remember whether it was dark?

A. It was -- it was still dark.

Q. When the deputy approached you in the parking spot, you were in your Tahoe; is that correct?

A. Yes, ma'am. Asleep.

Q. You were asleep?

A. Yes, ma'am.

Q. And you were in the backseat of the vehicle?

A. Yes.

Q. Then what happened?

A. I think someone knocked on the door or shined a light in the window. I'm not really sure.

Q. What's the next thing that you remember?

A. Moving to the front seat.

Q. Why did you move to the front seat?

A. I'm not -- I'm not sure. I don't -- I think -- I don't really remember. I remember the officer asked me -- I don't know. He might have asked me to come to the door. I don't know. I just went to the front.

Q. Did the officer ask you for your ID?

A. He might have did.

Q. He might have, but you don't remember?

A. Yes.

Q. Do you remember any conversation with the officer?

A. No.

Q. No?

A. No.

I think he said, Leave, or, Get out, or something. I think that's the only thing I remember.

Q. The officer told you to get out of the car; correct?

A. To leave or to get out. I don't remember which one it was.

Q. And you don't remember the officer asking for your ID?

A. No, ma'am.

Q. So after you moved to the front seat, what's the next thing you remember?

A. I think he said to leave. I think that's why I cranked my truck up.

Q. That's when you started your truck?

A. Yes, ma'am.

Q. And then what did you do?

A. Cranked up and proceeded to leave.

Q. And the officers told you not to leave; correct?

A. I don't know if they did or not.

Q. Do you know where the officers were located at

that point?

A. No, ma'am. I just thought there was one.

Q. Okay. You just thought there was one?

A. Yes, ma'am.

Q. Do you remember seeing any weapons? Any firearms?

A. I didn't see anything.

Q. When you cranked up your truck and started to leave, where were you headed?

A. To another -- I guess to another location. Somewhere else.

Q. Do you remember which direction you went?

A. I don't remember.

Q. Do you -- the officers told you to turn the car off? Do you remember that?

A. (Shakes head.)

Q. No, you don't remember?

A. No, I don't remember.

Q. Do you remember giving a statement to a GBI investigator -- or being interviewed -- let me start over.

Do you remember being interviewed by a GBI, Georgia Bureau of Investigation, investigator?

A. The same -- are you talking about that same night?

Q. I'm sorry?

A. You talking about the same day? The same night?
Q. No, no. This was much later.
Do you remember giving an interview about what happened that night?
A. I think so.
Q. You think so? Okay.
You think so, or do you actually remember talking to someone about this incident?
A. I think I did.
Q. Who, besides your lawyers, Mr. Howard and Mr. Leif Howard, have you talked to about this lawsuit?
A. I'm not understanding. What do you mean?
Q. Have you talked to anyone besides your lawyers about the lawsuit?
A. Do you mean who else knows? Or?
Q. Well, let me ask you this instead.
Who besides your lawyers have you talked to about the incident that happened at the Newnan Pavilion on June 30th, 2019?
A. My -- my aunt and my dad knows.
Q. Anybody else?
A. My sister knows.
Q. Is that all?
A. My brother, my cousin and them.
Q. Have you talked about the incident with any law

enforcement officials?

A. With who?

Q. Any law enforcement officials?

A. No.

Q. So you -- on the night or the early morning of June 30th, 2019, you cranked up your truck and drove away; is that correct?

A. Correct.

Q. Do you recall that there was a law enforcement officer up at the front corner -- front driver's side corner of your vehicle?

A. No, I don't.

Q. You don't remember seeing him?

A. No, ma'am.

Q. And you don't remember a law enforcement officer telling you to turn off the car?

A. No, ma'am.

Q. Do you remember seeing any blue lights?

A. No.

Q. Do you remember hearing any sirens?

A. No.

Q. What do you remember next, after you pulled out of the parking lot?

A. I felt one or two or three bumps.

Q. Okay. Feeling bumps, what do you mean by that?

A. I guess something hit my truck, I guess.
Q. Okay. A car hit your truck?
A. I'm assuming. I just felt it.
Q. Did you see the car?
A. No, I did not see it.
Q. What did you do after you felt the bumps?
A. Nothing that I remember.
Q. You don't remember?
A. I said, Nothing that I remember.
Q. Okay. You continued to put your foot on the gas; is that correct?
A. I don't know. I guess. I don't know.
Q. Were you trying to get to the highway?
A. Yes. Because I was trying to move to another location.
Q. Right now, though, you don't remember what location?
A. No.
Q. After you felt the bump that you think was a car hitting you, what do you remember?
A. Might have been some light shining bright in my face. I'm not sure. And after that, I think, I don't know, I fell out my truck or fell out the ambulance or -- I don't know. I just -- I don't --
Q. Do you remember being in an ambulance?

A. I thought I was in an ambulance. I don't know what it was. I think it was an ambulance. I'm not sure.

Q. So you think you were in an ambulance because you remember, or you think you were in an ambulance because someone told you that?

A. No. I think I was in an ambulance. I think I asked someone. I'm not sure. And I think I asked an officer or the ambulance or -- they told me they were going to get me some water. That's the last thing I remember.

Q. Did you lose consciousness?

A. I don't know.

Q. Do you remember being in a hospital?

A. Yes. I remember, when I did come back to, I heard voices.

Q. So you heard voices? Do you know whose voices?

A. No, I don't know whose voices. I just heard voices.

Q. Did you recognize --

A. It was some of the doctors, I'm guessing, nurses.

Q. Did you know where you were?

A. I just remember hearing voices.

Q. Did you recognize any of the voices?

A. (Shakes head.)

Q. You're shaking your head, No?
A. No. I'm saying, No. No, I don't.
Q. Have you watched any video -- videos of the incident?
A. No.
Q. No?
A. No.
Q. Have you seen any photographs of the incident?
A. I saw the photograph when my sister showed me.
Q. Your sister showed you?
A. Yes.
Q. And what was the subject of the photographs that your sister showed you?
A. It was on some website or something. I don't remember what website it was on.
Q. Do you remember what they were of?
A. My Tahoe. I know that.
Q. Your Tahoe?
A. Yeah.
Q. Okay. Where does your sister live?
A. West Point, I think.
Q. West Point?
A. Or Carrollton. Somewhere in there.
Q. Somewhere in the Atlanta metro area?
A. No. I think Carrollton. I'm not sure.

Q. Have you ever served in the military?
A. No, ma'am.
Q. So you told me that when you were parked in your Tahoe on the night or the early morning of June 30th, 2019, where were you parked?
A. I didn't hear you.
Q. Where were you parked on the early morning of June 30th, 2019?
A. The Kohl's parking lot.
Q. Okay. And you were backed into the parking spot; is that correct?
A. (No response.)
Q. Do you remember whether you were backed into the parking spot?
A. I was backed in because I was sitting on the back when the officer approached me.
Q. Was your Tahoe pulled into the parking spot, or was it backed in to the parking spot?
MR. J. HOWARD: Why don't you ask him one more time just to make sure --
MS. WOODWARD: It was a convoluted question.
MR. J. HOWARD: I understand.
Q. (By Ms. Woodward) Was your Tahoe facing the rear of the parking spot? Or was your Tahoe facing the parking lot?

A. That sounds -- I don't --

Q. Okay. You were -- when the officer first approached you during the daytime, the day before the incident, you said you were sitting on the back end of your Tahoe? Do I have that right?

A. Correct.

Q. Okay. And were you -- if you were sitting on the back end of your car, you were facing what? Were you facing a store? Or were --

A. No.

Q. -- you facing the bushes?

A. Bushes.

Q. Bushes? Okay.

And you told me already that you hadn't moved your car all day; correct?

A. No, ma'am, I didn't.

Q. Okay. Until the next morning when you cranked up your truck and drove out of the spot; correct?

A. Correct.

Q. When you drove out of the spot, did you drive forward? Or did you have to back up?

A. Forward.

Q. So you didn't have to put your car in reverse?

A. No, ma'am.

Q. You just put it in drive and pulled out of the

spot; is that correct?

A. Yes.

Q. And at that time, you thought there was just one -- you saw only one --

A. I only heard one.

Q. -- law enforcement officer?

A. I only heard one.

Q. You just heard one?

A. Yes.

Q. What did you hear the one -- what did you hear?

A. That's what I said, I think he told me to come to the front. That's why I think I moved to the front.

Q. Okay. Do you remember anything else that the officer asked you to do?

A. No.

Q. Do you remember saying anything to the officer?

A. No. Besides leave or get out or whatever they said, he or she said.

(Defendants' Exhibit Number 8 was previously marked for identification.)

Q. (By Ms. Woodward) Can you see what I've marked as Exhibit 8 on your screen?

A. It looks like a picture of my Tahoe.

Q. Can you see yourself in this photograph?

A. No, I can't.

Q. No?
A. No.
Q. Can you see anyone else in the photograph?
A. I don't see anyone.
Q. Do you see an officer at the front of the Tahoe -- toward the front of the Tahoe?
I know it's not a very good picture.
A. It looks like someone maybe on the side. I can't really tell, but it looks like it might be.
Q. Do you recall anyone being in that area on the date of the incident?
A. What do you mean? Anyone else with me?
Q. Do you remember an officer standing -- can you see? I don't know if you can see -- but in that area (indicating with cursor)?
A. Yes. I see your little arrow movement, I guess.
Q. Yeah. Do you remember -- do you actually have any memory of an officer standing in this general area on the date of the incident?
A. No.
Q. No.
A. Was that picture when they approached my car?
Q. I'm going to show you another picture.
A. Okay.
//

(Defendants' Exhibit Number 9 was previously marked for identification.)

Q. (By Ms. Woodward) Do you see what I've marked as Defendants' Exhibit 9? Is that on your screen?

A. I see my Tahoe again. It looks like it might be a person. I'm not sure.

Q. Do you have any memory of that person on the date of the incident?

A. I do not.

Q. You don't know?

A. I do not.

Q. You do not?

A. No.

(Defendants' Exhibit Number 7 was previously marked for identification.)

Q. (By Ms. Woodward) What about Defendants' Exhibit 7? Can you see that on your screen?

A. Yes, I can -- police car on the side of my car and in front of my car?

Q. Do you recognize your Tahoe in this picture marked as Defendants' Exhibit 7?

A. Yes. I see it.

Q. Do you have any recollection -- independent of this picture, do you have any recollection of your Tahoe being in this position?

A. I don't understand. You got to ask --
Q. I'll ask again. That's fair.
Do you remember being inside your Tahoe, in approximately this position, on the date of the incident?
A. No, ma'am, I don't.
Q. But you do recognize your Tahoe; correct?
A. Correct.
(Defendants' Exhibit Number 11 was previously marked for identification.)
Q. (By Ms. Woodward) Mr. Bolton, can you see what I've marked as Defendant's Exhibit 11 on your screen?
A. Yes.
Q. And it appears to be a series of photographs; is that correct?
A. Yes.
Q. Do you know what they are?
A. A picture of my face?
Q. Do you know who took them?
A. I do not.
Q. Do you know when they were taken?
A. No, I do not. When -- I don't know.
Q. Were these photos that belong to you?
A. I'm thinking so.
Q. You don't know who took them?
A. I do not.

Q. Do you know who took them?
A. I do not.
(Defendants' Exhibit Number 12 was previously marked for identification.)
Q. (By Ms. Woodward) Can you see what's been marked as Defendants' Exhibit 12 on your screen?
A. A receipt for -- a receipt for what?
Q. Is that your motor vehicle registration for a 2001 Chevrolet Tahoe?
A. Yes, that's it.
Q. Is that something that you kept inside your Tahoe?
A. It is. It looks like it.
Q. Do you see up in the right corner, it says, Expires 3/24/2014?
A. I do not.
Q. You can't see that?
A. Huh-uh.
Q. Do you have any recollection whether you'd renewed your motor vehicle registration?
A. I do not.
Q. You don't remember?
A. I do not.
Q. Have we already talked about the fact that you had been told by law enforcement officers before

June 30, 2019, to leave the Newnan Pavilion? Do you recall that?

A. Yes. To leave the area -- to leave the location. Yes.

Q. Do you remember the property manager of the Newnan Pavilion telling you not to return to the area?

A. I do not.

Q. You don't remember that?

A. I do not.

Q. Do you remember being given criminal tresspass warnings from property owners within the Newnan Pavilion?

A. Yes. The Walmart told me not to come back there.

Q. Okay. What about CATO department store?

A. I don't remember a CATO department store, I don't think.

Q. What about a Marathon service station?

A. I don't think so.

Q. What about a Waffle House?

A. I don't think so.

Q. You don't think so?

A. No.

Q. What about an ALDI grocery store?

A. Not sure. Might have been, but I'm not sure.

Q. Did you ever park your Tahoe overnight at an

ALDI grocery store?

A. No.

Q. Did you live with anyone when you lived in Luthersville?

A. Yes. My girlfriend at the time.

Q. Does she still live in Luthersville, or do you know?

A. I do not know.

Q. What is her name?

A. Tameka.

Q. What's her last name?

A. I don't remember.

(Defendants' Exhibit Number 5 was previously marked for identification.)

Q. (By Ms. Woodward) Can you see the photograph that's marked as Defendants' Exhibit 5?

A. It looks like my Tahoe and a police car.

Q. Do you have any recognition of being in your Tahoe in this position on the early morning of the incident?

A. I do not.

Q. You do not? Okay.

MS. WOODWARD: I think that, subject to the damages related testimony and some written questions we probably could put off until the damages portion,

I don't have any further questions at this time.

MR. J. HOWARD: Okay. I may have a couple. Let me see. I just want to clarify some things.

MS. WOODWARD: Sure.

DIRECT EXAMINATION

BY MR. J. HOWARD:

Q. Nick, you said you remember that a deputy came by earlier that day and checked you out, and then these other deputies came by later.

Were you parked in the same spot when the first deputy came and the other deputies came later?

A. Correct.

Q. And when the deputies came, you said you were in the back of the car. Were you sleeping in the back of the car?

A. Correct.

Q. Do you remember whether you were asleep when the officer or the deputy either shined his light or knocked on the car, whatever he did?

A. I was asleep. Yeah, I was asleep.

Q. Is that what woke you up, the light being shined or somebody knocking on the car?

A. Yes.

Q. Okay. I thought that's what you said, but I just wanted to be sure.

When you were leaving the parking lot -- when you drove away from where you were parked, were you leaving the parking lot?

A. You got to say that again. I didn't understand that.

Q. When you drove away from where you were parked, were you trying to leave the parking lot?

A. Yes. To move to another location.

Q. Do you remember at all at this point where you were headed to?

A. I don't.

Q. Okay. After you felt the bumps -- when you were driving away and you felt the bumps on your car, do you remember feeling anything after that? Any kind of -- anything happening to you or any pain?

A. I think I remember feeling a sharp pain in my head. I'm not sure.

Q. A pain in your head?

A. I think.

Q. Okay. Do you remember feeling or hearing anything else?

A. No. I don't.

MR. J. HOWARD: Karen, I think that's all I have, but let me go off for a second just to call my partner and see if there's anything else.

(Recess was taken from 4:00 p.m. until 4:02 p.m.)

MR. J. HOWARD: I don't have any further questions.

MS. WOODWARD: Okay. We'll be in touch.

(Deposition concluded at 4:03 p.m.)

(The reading and signing of the deposition by the witness was not discussed.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE NO.:
vs.	)	
	)	
LENN WOOD, et al.,	)	1:21-cv-02279-MHC
	)	
Defendants.	)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants LENN WOOD, sheriff of Coweta County, Georgia; JOHN TAYLOR COLLINS, individually and in his official capacity; CHRISTIAN SPINKS, individually and in his official capacity; and JON HOUSE, individually and in his official capacity, and, pursuant to Federal Rule of Civil Procedure 56, file this Motion for Summary Judgment on the ground that there is no genuine issue as to any material fact and Defendants Wood, Collins, Spinks and House (hereinafter, "Defendants") are entitled to judgment in their favor as a matter of law. In support of their Motion, Defendants rely on the following:

1. Defendants' accompanying brief in support of this motion;
2. Defendants' Statement of Undisputed Material Facts;
3. Exhibit 3, Declaration of Sheriff Lenn Wood and exhibits thereto;
4. Exhibit 4, Declaration of John Taylor Collins;



5. Deposition of Nicholas Bolton taken October 27, 2022, and the exhibits thereto (excerpts of cited pages from Bolton deposition are attached as Exhibit 5);

6. Deposition of John Taylor Collins taken August 2, 2022, and the exhibits thereto (excerpts of cited pages from Collins deposition are attached as Exhibit 6);

7. Deposition of Jon House taken October 18, 2022, and the exhibits thereto (excerpts of cited pages from House deposition are attached as Exhibit 7);

8. Deposition of Christian Spinks taken July 8, 2022, and the exhibits thereto (excerpts of cited pages from Spinks deposition are attached as Exhibit 8);

9. Deposition of 30(b)(6) Coweta County, Corporate Representative Major Mark Fenninger taken July 8, 2022, and the exhibits thereto (excerpts of cited pages from Fenninger deposition are attached as Exh. 9);

10. Exhibit 10, Expert Report of John J. Ryan;

12. All pleadings of record.

WHEREFORE, Defendants Wood, Collins, Spinks and House respectfully request this Court to grant their Motion for Summary Judgment and to dismiss Plaintiff's Complaint with prejudice in its entirety.

This 4th day of January, 2023.

Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE NO.:
vs.	)	
	)	
LENN WOOD, et al.,	)	1:21-cv-02279-MHC
	)	
Defendants.	)	

BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

As required by Local Rule 7.1(A)(1), Defendants Wood, Collins, Spinks and House (hereinafter, collectively "DeKalb Defendants") submit this brief in support of their Motion for Summary Judgment.

I. PRELIMINARY STATEMENT

This civil rights case stems from an unfortunate incident where a Coweta County Sheriff's deputy, fearing for his partner's life, fired one shot from his service weapon to stop the driver of a SUV from running over his partner as the suspect driver (later identified as Nicholas Bolton) attempted to elude law enforcement. The incident began when Deputy Collins, on night watch duty patrolling a prominent retail area, sought to investigate the driver's presence in the SUV that was backed into a parking space behind a cell phone store after hours. Instead of opening the locked vehicle door in order to converse with the deputy and to hand him his ID so

that Deputy Collins could check for warrants and complete a field contact form, the driver refused to cooperate with the investigation.

Rather than follow lawful instructions repeated numerous times by Collins and his partner Deputy House, the driver started his vehicle, ignored commands to turn off the SUV, and fled the scene, turning the vehicle toward House and striking him on the hip as he drove away. Collins and House followed in pursuit, with blue lights and sirens activated. Running two stop signs and traveling on the wrong side of the road in excess of the posted speed, the driver headed toward the highway. To protect other motorists, Collins performed a P.I.T. maneuver on a stretch of vacant, private parking lot, thereby changing the direction of the SUV's travel. Collins stopped his vehicle as House pulled up to Collins' right and immediately exited his patrol car. The driver rammed his SUV into the front of Collins' vehicle. Deputy Collins heard the SUV tires squealing and feared that the SUV was about to hit House, who was standing in the area between the two patrol vehicles. As Collins exited his vehicle, the driver was gunning his SUV engine and Collins felt his vehicle moving back. Deputy Collins fired one round to stop the threat: Plaintiff's Chevrolet Tahoe.

II. STATEMENT OF BACKGROUND FACTS

The Newnan Pavilion is a privately owned shopping center located at I-85 and Bullsboro Drive. (Wood Decl., ¶ 17; Collins Dep., p. 85, ll: 21-24; House Dep., p.

47, ll: 10-20). Newnan Pavilion posts "No Loitering" signs throughout the property. (Wood Decl., ¶ 18 and Exh. D; Collins Dep., p. 107, ll: 20-24).

Within a year or so before the subject shooting, there was a break-in or armed robbery at the T-Mobile in Newnan Pavilion shopping center, and there was an armed robbery at an AT&T store down the street where deputies chased the subject all the way to Atlanta. (Fenninger Dep., pp 78-80, ll: 23-2). At the time of the subject incident, there had been a string of gas station and cell phone store burglaries in the area. (Collins Dep., pp. 82, ll: 17-21; 83-84, ll: 2-6; House Dep., pp. 53, ll: 1-15; 54, ll: 11-18; Spinks Dep., p. 21, ll: 19-23). Collins also was aware of the burglary of a rental car company and several car dealerships located within a mile of Newnan Pavilion in the six months to a year before the incident. (Collins Dep., pp. 87-88, ll: 20-19).

On June 30, 2019, Deputy Collins was on duty in full uniform performing "business checks" while on burglary patrol, which is the main part of the job on the night shift in the business district. (Collins Dep., p. 80, ll: 16-24; Collins Decl., ¶ 4; Spinks Dep., p. 17, ll: 13-21). At approximately 2:30 a.m., Deputy Collins spotted a white Chevrolet Tahoe that he had never seen before backed into a spot in the Kohl's parking lot located behind the T-Mobile store. (Collins Dep., pp. 89, ll: 4-15; 90, ll: 2-3; Collins Decl., ¶ 5; House Dep., pp. 47-49, ll: 25-19; 49, ll: 14-16; Bolton Dep., pp. 28, ll: 7-9, 29, ll: 7-12, 20-22). Deputy Collins parked his patrol vehicle in a

manner that he could shine his scene lights on the Tahoe; Collins' vehicle was not blocking the Tahoe. (Collins Decl., ¶ 5; House Dep., p. 51, ll: 15-24). Deputy Collins considered the vehicle suspicious because it was in a dark, secluded parking lot backed in for a quick get-away behind a potential burglary target. (Collins Dep., p. 108, ll. 5-10; Collins Decl., ¶ 5).

Seeing a person in the back seat of the Tahoe, Deputy Collins knocked on the window and identified himself. (Collins Dep., pp. 9-21; Collins Decl., ¶ 6; Wood Decl., Exh. M (Collins BWC footage) at :10; Bolton Dep., p. 20, ll: 10-14). Collins illuminated himself with his flashlight so that the occupant of the Tahoe could see Collins was a uniformed officer and told the man to provide his ID. (Collins Decl., ¶ 6; Wood Decl., Exh. M; Collins Dep., p. 96-97, ll: 25-1). The man refused and Deputy Collins said, "I need you to open the door, please." (Collins Decl., ¶ 6; Wood Decl., Exh. M at :34). The man did not comply, and Deputy Collins said, "I need you to open the door so I can talk to you." (Collins Decl., ¶ 6; Wood Decl., Exh. M at :40). Concerned for his safety because the Tahoe occupant was agitated and non-compliant, Deputy Collins radioed for back-up ("25"). (Collins Dep., p. 91, ll: 6-11; Collins Decl., ¶ 7; Wood Decl., Exh. M at :44).

When Deputy Collins again asked the man to open the Tahoe door, the man argued with Collins instead of complying. (Collins Decl., ¶ 7; Wood Decl., Exh. M at :47). Deputy Collins asked the occupant, now known to be Nicholas Bolton, for

his driver's license. (Collins Dep., pp. 95, ll: 2-14; 96, ll: 10-12; Collins Decl., ¶ 7; Wood Decl., Exh. M at :52). Instead of complying, the man asked why and Collins responded that if he would just give Collins his ID and let him check it then Collins could be on his way. (Collins Decl., ¶ 7; Wood Decl., Exh. M at :53-1:09; Collins Dep., pp. 103-104, ll: 24-4; 122, ll: 7-8). Collins did not feel it would be prudent for him to go back to his patrol car to try to identify the person in the vehicle because of the man's confrontational demeanor and refusal to comply with lawful orders. (Collins Decl., ¶ 8). Deputy Collins explained to the man that he was loitering. (Collins Decl., ¶ 9; Wood Decl., Exh. M at 1:14-1:26).

Deputy Collins then directed the man to step out of his vehicle due to concerns for officer safety given the time of night, the man's refusal to comply with directions, and the lack of visibility into the vehicle. (Collins Dep., pp. 97, ll: 7-24; 98, ll: 5-12; 119, ll: 22-23; 164, ll: 18-21; Collins Decl., ¶ 9; Wood Decl., Exh. M at 1:31-1:33). The man did not comply. (Collins Decl., ¶ 9; Wood Decl., Exh. M at 1:39-1:46). Instead, the man then moved to the front seat, and Deputy Collins again asked him to step out of the vehicle. (Collins Decl., ¶ 10; Wood Decl., Exh. M at 1:47-1:52; Collins Dep., p. 99, ll: 7-9; House Dep., p. 59, ll: 2-10; Wood Decl., Exh. N (House BWC video) at :42; Bolton Dep., p. 20, ll: 15-16).

After Deputy Collins again asked the man to step out of the Tahoe, the man said, "I already talked to the other officer," and Collins pointed out that the man had

not talked to Collins. (Collins Decl., ¶ 10; Wood Decl., Exh. M at 1:52-1:58). At this point, Deputy House, responding to the call for back-up, approached and Deputy Collins asked House if he had talked to the man in the SUV, to which House responded, "No." (Collins Decl., ¶ 7; Wood Decl., Exh. M at 1:59-2:00; Collins Dep., pp. 101-102, ll: 17-9; House Dep., pp. 46, ll: 4-14; 57, ll: 2-3; 60, ll. 13-16; Wood Decl., Exh. N at :49 -:57).

Collins again told the man to get out of the vehicle and when the man continued to argue, Deputy Collins said, "Nobody's talked to you tonight, so go ahead and step on out." (Collins Decl., ¶ 10; Wood Decl., Exh. M at 2:01-2:08; Exh. N at 1:04; House Dep., p. 60, ll: 17-19). Collins had never seen the Tahoe or its occupant before. (Collins Decl., ¶ 10; Collins Dep., p. 89, ll: 4-15). Mr. Bolton never handed his ID to Collins or House. (Collins Dep., pp. 117, ll. 15-18; 118, ll. 15-20; Collins Decl., ¶ 8; Wood Decl., Exh. M).

Collins interpreted the man's behavior as a threat, because the man's demeanor was non-compliant and he was acting very agitated. (Collins Dep., pp. 104-105, ll: 22-8). Based on the man's demeanor, which was argumentative, House also believed that the deputies needed the man to exit the vehicle for officer safety. (House Dep., pp. 66, ll: 10-15; 74, ll: 10-17; 75, ll: 8-10).

Deputy House then explained to the man, "Let me explain something to you real quick. We don't know you. We're investigating why you're here." (Collins

Decl., ¶ 9; Wood Decl., Exh. M at 2:11-2:17; Exh. N at 1:07-1:14). The man asked, "For what?" and Deputy House responded, "For loitering. You're loitering, and now that you're not stepping out of the car you're obstructing an investigation, so you can either get out and talk to us or we can take you out and go to jail. It's your choice." (Collins Decl., ¶ 9; Wood Decl., Exh. M at 2:18-2:30; Exh. N at 1:15-1:31; House Dep., pp. 72-73, ll: 24-4; 79, ll: 4-6).

Mr. Bolton then started his ignition. (Collins Decl., ¶ 12; Wood Decl., Exh. M at 2:35; Exh. N at 1:32; Collins Dep., p. 111, ll: 10-13; House Dep., pp. 79, ll: 8-10); Bolton Dep., p. 21, ll: 17-22. In response, Deputy Collins commanded Bolton to stop the car and pulled his gun, pointing his firearm at the SUV with his finger along the outside, not on the trigger. (Collins Decl., ¶ 12; Wood Decl., Exh. M at 2:38-2:39; Collins Dep., pp. 130, ll: 16-20; 138, ll. 5-21).

Deputy House drew his gun and pointed it at Bolton's windshield with his finger along the slide. (Wood Decl., Exh. M at 2:39; Exh. N at 1:35-1:36; House Dep., pp. 83-84, ll: 17-10; Collins Dep., p. 112, ll: 15-24). The deputies pointed their guns at Mr. Bolton as a show of force because Mr. Bolton started a two-ton vehicle and the officers did not know what he intended to do with it. (Collins Dep., pp. 112-113, ll: 25-5; 125, ll: 5-8, 16-18; 132, ll: 19-23; Collins Decl., ¶ 12; House Dep., pp. 84, ll: 17-21; 85, ll: 1-16; 86, ll: 3-6).

Deputy House yelled, "Turn the car off!" (Collins Decl., ¶ 13; Wood Decl., Exh. M at 2:39-2:40; Exh. N at 1:35; House Dep., p. 85, ll: 22-24). Mr. Bolton drove off despite the deputies' repeated instructions to get out of the vehicle. (Collins Dep., pp. 113-114, ll: 25-1; 115, ll: 3-5; 172, ll: 10-23; Collins Decl., ¶ 14; House Dep., p. 80, ll: 11-19, 24; 81, ll: 12-14; 86, l: 9; 94, ll: 18-20; Wood Decl., Exh. M at 2:40-2:43; Exh. N at 1:35-1:41; Bolton Dep., p. 24, ll: 5-8). Mr. Bolton turned his wheels toward Deputy House, striking him on the hip. (Collins Decl., ¶ 14; Wood Decl., Exh. M at 2:40-2:41; Exh. N at 1:36-1:37, 5:29; House Dep., pp. 85, l: 21; 90, ll: 5-19; 92, ll: 3-9; 93, ll: 5, 9; Exh. 7 (statement); Collins Dep., pp. 114, ll: 7-11; 123, ll: 17-18; 170-71, ll: 25-3).

At the time Mr. Bolton fled in his vehicle, he had committed a number of crimes, including obstruction/hindering an investigation, fleeing or eluding, loitering, and aggravated assault. (Collins Dep., pp. 136, ll: 5-17; p. 141, ll: 1-12; 142, ll. 14-19; House Dep., pp. 61, ll: 12-14; 86-87, ll: 21-1; 90, ll: 5-11).

Deputy Collins and Deputy House got in their cars, activated blue lights and sirens, and proceeded to chase the Tahoe in excess of the posted speed. (Collins Decl., ¶ 15; Wood Decl., Exh. M at 2:46; Exh. N at 1:45-2:17; House Dep., p. 99, ll: 23-25; Collins Dep., p. 139, ll: 18-21; 143, ll: 15-20). The driver ignored two stop signs. (Collins Dep., pp. 170, l: 7; 174, ll: 16-17; Collins Decl., ¶ 15; Wood Decl., Exh. M at 2:53, 3:02; Exh. N at 2:00). He also drove on the wrong side of the

roadway. (Collins Dep., p. 170, ll: 7-8; Collins Decl., ¶ 15; Wood Decl., Exh. M at 3:02-3:10; Exh. N at 2:01-2:07). Bolton was heading in the direction of the highway. (Collins Decl., ¶ 15; Collins Dep., p. 143, ll: 18-20; Wood Decl., Exh. N at 2:00; Bolton Dep., p. 25, ll: 13-14). There were 24-hour businesses along the main road bordering Newnan Pavilion. (Collins Dep., p. 173, ll: 8-25).

To prevent Bolton from getting on a busy highway and posing a threat to the public, Deputy Collins performed a PIT maneuver, which caused Bolton's vehicle to spin around 180 degrees. (Collins Decl., ¶¶ 16, 17; Wood Decl., Exh. M at 3:10; Wood Decl., Exh. M at 3:02-3:10; Exh. N at 2:06-2:07; House Dep., pp. 99-100, ll: 20-4; Collins Dep., pp. 143, ll: 21-23; 175, ll: 13-16). When Deputy Collins performed the P.I.T. maneuver, the weather was clear, there was no vehicular or pedestrian traffic on the stretch of roadway inside Newnan Pavilion on which they were traveling, they were not driving at a high rate of speed, and the deputies did not know the identity of the Tahoe driver at that time. (Collins Decl., ¶ 16; Wood Decl., ¶ 15; Exh. M at 3:10; Collins Dep., pp. 161, ll: 19-21; 174, ll: 5-7; 175, ll. 20-24). The PIT maneuver caused the Tahoe to turn 180 degrees. (Collins Decl., ¶ 16; House Dep., p. 101, ll: 10-13; Wood Decl., M at 3:10-3:14).

Deputy Collins then brought his vehicle to a complete stop. (Collins Decl., ¶ 17; Collins Dep., p. 145, ll: 17-18; Wood Decl., Exh. M at 3:14). Mr. Bolton drove

the Tahoe forward and rammed Collins' vehicle. (Collins Decl., ¶ 17; Collins Dep., pp. 145, ll: 17-22; 153, ll: 20-23; Wood Decl., Exh. M at 3:15).

Deputy House, who had joined the pursuit behind Deputy Collins, pulled his vehicle to a high-risk stop position to the right of Collins' vehicle and exited his patrol car. (Collins Decl., ¶¶ 15, 17; Collins Dep., pp. 145, l: 25; Wood Decl., Exh. N at 2:14-2:15; House Dep., pp. 101, ll: 24-25; 105, ll: 12-24). Deputy House heard Bolton's tires squealing and he felt the Tahoe was trying to run him over. (House Dep., p. 103-104, ll: 21-1; p. 108, ll: 13-20). Deputy Collins could not hear anything other than the sound of Bolton's tires squealing loudly. (Collins Decl., ¶ 17; Collins Dep., p. 148, ll: 10-11).

As Deputy Collins tried to put his vehicle in park, he could feel his vehicle being pushed backward. (Collins Decl., ¶ 17; Collins Dep., p. 147, ll: 12-16; 153, ll: 1-8). Collins observed Bolton turn his steering wheel to Collins' right, trying to break free of Collins' car. (Collins Decl., ¶ 17). Out of his peripheral vision, Collins, who was looking at the Tahoe driver, observed Deputy House standing in the area where Bolton was trying to steer. (Collins Decl., ¶ 17; Collins Dep., pp. 149, ll: 2-12; 150, ll: 3-7; 152, ll: 2-6). Fearing the Tahoe was about to break free and strike Deputy House, Deputy Collins exited his patrol car to fire his weapon and felt his vehicle move, causing Collins to stumble. (Collins Dep., ¶ 17; Collins Dep., pp. 134-

35, ll: 22-2; 135, ll: 17-21; 147, ll: 12-20; 148, ll: 19-24; 149, ll: 17-19; 150, ll: 19-21; Wood Decl., Exh. M at 3:16-3:20).

Meanwhile, Deputy House closed his car door while yelling, "Turn off the car!" as the driver of the Tahoe had the gas pedal pushed down and was trying to push through the patrol vehicles. (Wood Decl., ¶ 24; Exh. F (GSP Report); Exh. N at 2:16; House Dep., p. 104, ll: 3-4; 107, ll: 8-25; 108-109, ll: 25-4). At approximately the same time, Deputy Spinks approached the rear passenger side of the Tahoe with his patrol car in an attempt to box in the Tahoe. (Wood Decl., Exh. M at 3:18; House Dep., p. 106, ll: 6-10; 109, ll: 22-25). As Spinks approached, he saw the Tahoe's tires spinning due to the driver's attempt to accelerate the vehicle. (Spinks Dep., pp. 84, ll: 11-13; 85, ll: 5-7, 13-15).

As Deputy Collins exited his patrol car, he drew his department-issued Glock 17 and fired one round at the suspect, through the windshield. (Collins Decl., ¶ 18; Wood Decl., Exh. M at 3:16-3:19-3:20; Exh. N at 2:17). Deputy Collins did not have an opportunity to issue any warning as he feared for House's life. (Collins Decl., ¶ 18; Collins Dep., p. 151, ll: 8-10). Deputy Collins felt authorized to use deadly force against Mr. Bolton at the point a life was threatened by a the SUV, a deadly weapon. (Collins Dep., p. 134, ll. 14-21; 150, ll: 9-12; 153, ll: 16-19; 154, ll: 5-7; 160, ll: 1-4). The Tahoe left tire marks on the pavement. (Wood Dec., ¶ 32 and Exh. J). The data retrieved from Mr. Bolton's vehicle showed that the accelerator on Mr. Bolton's

Chevrolet Tahoe was being pressed between 71% and 100% at the time Collins decided to use deadly force. (Wood Decl., ¶ 24 and Exh. F). After Collins fired his weapon, Bolton's vehicle stopped accelerating. (Collins Decl., ¶ 19; House Dep., p. 109, ll: 16-21; Wood Decl., Exh. M at 3:20-3:21; Exh. N at 2:18).

Deputy Collins immediately informed dispatch "shots fired." (Collins Decl., ¶ 19; Wood Decl., Exh. M at 3:22-3:23; Exh. N at 2:20). Deputy House requested EMS be started for the suspect. (Wood Decl., Exh. E; Exh. N at 2:26-2:27; Collins Decl., ¶ 19).

III. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Consideration

Pursuant to Federal Rule of Civil Procedure 56(c)(2), summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Where, as here, the non-moving party bears the burden of proof at trial, "the moving party may simply point out to the district court that there is an absence of evidence to support the non-moving party's case on the issue in question." Chem-Nuclear Systems, Inc. v. Arivec Chemicals, Inc., 978 F. Supp. 1105, 1109 (N.D. Ga. 1997); *see also* Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115-16 (11th Cir. 1993).

The court is required to enter summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Accordingly, in responding to a properly supported motion for summary judgment, "an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must . . . must set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

B. Court Can Rely on Objective Video Evidence

Plaintiff does not recall the incident. He is "not really sure" whether someone knocked on his door. (Bolton Dep., p. 20, ll. 13-14). He does not remember whether an officer asked for his ID. (Id at pp. 20, ll: 22-25; 21, ll: 12-14). He does not remember any conversation with the officer, but he thinks the officer told him to leave or get out and he thinks that is why he cranked up his car. (Id at p. 21, ll: 1-18). He remembers feeling "one or two or three" bumps, but he did not see what caused them. (Id at pp. 24-25, ll: 22-5).

Bolton's recollection was better when the District Attorney interviewed him. At that time, Bolton recalled that he fled because he did not want to go back to jail. (Wood Decl, Exh. H (audio interview)). He also stated several times that he knew that when officers ask for ID, you should give it to them. (Id.)

Where Plaintiff does not remember the incident, the sources of evidence consist solely of the participating deputies' statement and BWC video footage. *See* Hinson v. Bias, 927 F.3d 1103, 1108 (11th Cir. 2019). A rational trier of fact could not find for Plaintiff based the record as a whole, including the objective video evidence. Scott v. Harris, 550 U.S. 372, 380-81 (2007). Where, as here, video recordings show the pertinent events, the court should view the facts in the light depicted by the videos. Kraus v. Martin Cnty Sheriff's Office, 753 F. App'x 668, 673 (11th Cir. 2018)(*quoting* Jones v. Michael, 656 F. App'x 923, 926 (11th Cir. 2016)(*quoting* Scott, 550 U.S. at 381)).

C. Section 1983 Excessive Force Claim.

In Count I of the Complaint, Plaintiff asserts a Fourteenth Amendment claim against Defendants Collins, Spinks and House. (Doc. 1, ¶ 82). This claim should be dismissed for the reasons discussed below.

1. Plaintiff Has Failed to State a Claim Under the Fourteenth Amendment.

Plaintiff's excessive force claim implicates the Fourth Amendment, not the Fourteenth Amendment. Claims involving alleged excessive force during an arrest

should be analyzed under the reasonableness standard of the Fourth Amendment. Graham v. Conner, 490 U.S. 386, 395 (1989). An officer's actions must be objectively reasonable under the circumstances known to the officer. Graham, 490 U.S. at 396-97. The Fourth Amendment prohibition against unreasonable seizures encompasses a bar on the use of excessive force in the course of an arrest. Crocker v. Beatty, 995 F. 3d 1232, 1246 (11th Cir., Apr. 20, 2021) (*citing* Graham v. Conner, 490 U.S. 386, 393 (1989)). Fourth Amendment excessive force claims apply to "all claims that law enforcement officers have used excessive force ... in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen." Id. On the other hand, Fourteenth Amendment excessive force claims cover those who already have been arrested: pre-trial detainees. Crocker at 1246 (*quoting* Piazza v. Jefferson Cnty, 923 F.3d 947, 952 (11th Cir. 2019)). An individual who has "received 'a "judicial determination of probable cause as a prerequisite to 'the' extended restraint of [his] liberty following arrest'" is a pretrial detainee. Crocker at 1247 (*quoting* Bell v. Wolfish, 441 U.S. 520, 536 (1979)). In Crocker v. Beatty, the Eleventh Circuit recognized that the law in this Circuit is not settled with regard to where a seizure ends and a pretrial detention begins. Id. As acknowledged by the concurring opinion in Crocker, the Circuits are split on the standard applicable to the claim of an individual challenging force applied against him after the initial act of arrest but before he has received a judicial determination of probable cause. Id., at 1253-54

(*citing* Miranda-Rivera v. Toledo-Davila, 813 F.3d 64, 70 (1st Cir. 2016)(collecting cases)). The Eleventh Circuit has not ruled on the issue. Id., 995 F.3d at 1256.

Here, however, Plaintiff had not been arrested prior to the shot fired by Deputy Collins. An order for a suspect to halt does not become an arrest "unless and until the arrestee complies with the demand." Torres v. Madrid, 141 S.Ct. 989 (2021)(*citing* California v. Hodari D., 499 U.S. 621, 624 (1991). The record in this case is undisputed that Bolton did not comply with orders to turn off his car or with he blue lights and sirens but he instead fled from the scene. Unlike the situation in Torres v. Madrid, 141 S.Ct. 989, 1003 (2021), the deputies did not apply physical force to Plaintiff's **body** with intent to restrain until Collins' application of deadly force. On the contrary, a seizure by acquisition of control. As the Supreme Court recognized in Torres, there is no arrest by acquisition of control--such as use of a roadblock or ramming a vehicle--absent termination of freedom of movement. Id. at 1001 (*citing* Brower v. County of Inyo, 489 U.S. 593, 598-599 (1989)).

Notwithstanding the fact that the PIT maneuver constituted a seizure, Bolton was not yet under law enforcement control at the time of the shooting. Additionally, Plaintiff had not yet received a judicial probable cause determination. The facts of the instant case are governed by the Fourth Amendment, similar to any number of Fourth Amendment excessive force cases where there is a continuing effort to restrain a suspect in the course of placing him under arrest (such as a fight, followed

by a chase, followed by use of a Taser, etc., until the law enforcement officers finally gain control over the suspect.) In Small v. Glynn County, with similar facts, the court analyzed the plaintiff's claim under the Fourth Amendment and concluded that officers were not liable for lethally shooting a driver attempting to flee. 77 F. Supp. 3d 1271, 1278, 1280 (S.D. Ga. 2014). The court concluded that "[o]bjectively reasonable officers would conclude that [the driver] posed a threat to, at a minimum, the officers standing a few yards away." Id. at 1282. The decision was affirmed by the Eleventh Circuit. McGehee v. Glynn Cnty, 598 Fed. App'x 752 (11th Cir. 2015).

2. Defendants' Use of Force Was Objectively Reasonable.

Even if this Court disagrees and determines that Plaintiff properly asserted a Fourteenth Amendment claim under these facts, these Defendants are entitled to summary judgment. Plaintiff alleges that "[t]here was no factual or legal justification at any time for the degree of force used by Defendant Collins when he shot Mr. Bolton in the head, without warning, when Mr. Bolton posed no objectively reasonable threat to Defendants Collins, Spinks, or House." (Doc. 1, ¶ 82). Here, Plaintiff conflates the objective reasonableness standard, because the question is whether the officer's use of force was objectively reasonable, not whether Bolton posed an objectively reasonable threat. Nor do Bolton's subjective perceptions regarding whether he had permission to be in the private parking lot or whether the officers provided a sufficient explanation for their commands play any role in this

Court's consideration of the excessive force claim. Torres, 141 S.Ct. at 999. The objectively reasonable standard applies to both Fourth and Fourteenth Amendment claims. *See* Patel v. Lanier Cnty, 969 F. 3d 1173, 1182 (11th Cir. 2020).

a. Initial Stop Was Lawful.

Plaintiff's own expert, Dr. Andrew Scott, opined that Collins and House were authorized to conduct an investigatory stop of Bolton and had legal authority to request identification and to have Bolton exit the vehicle. (Doc. 40).

Additionally, an officer may briefly detain a person if the officer has an objective basis--more than a subjective hunch--for suspecting that the person is involved in criminal activity. *See* Dryer v. State, 323 Ga. App. 734 (2013). Deputy Collins had reasonable suspicion to investigate Bolton, among other reasons, because of burglaries in the area. LeRoux v. State, 300 Ga. App. 310 (2009)(there was articulable suspicion of criminal activity where numerous crimes had been committed on golf course property after hours and the officer observed the suspect drive past private property signs at 2:30 a.m. and enter a parking lot); Bozeman v. State, 196 Ga. App. 743 (1990)(investigative detention authorized where defendant was sitting in a parked automobile at 4:45 a.m. in a remote part of a motel parking lot in a high crime area).

Collins and House had at least reasonable suspicion that Bolton was loitering. See United States v. Carr, 296 F.App'x 912 (11th Cir. 2008)(officer had reasonable

suspicion to approach parked car in which defendant was sitting in the driver's seat where he was loitering at 7:45 p.m. in the parking lot of a strip mall known for its drug traffic where posted signs stated "No Loitering," defendant's car was parked in a manner that obscured its license plate.) Georgia law[1] outlaws loitering. *See* OCGA § 16-11-36. The United States Supreme Court cited Georgia's loitering statute as a proper "stop and identify" statute. Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177, 186 (2004)(arrest of a Terry stop suspect for refusal to identify himself under a "stop and identify" statute did not violate Fourth Amendment). Hence, Collins and House had probable cause to arrest Bolton for his refusal to identify himself and to explain his presence. Additionally, an attempt to avoid a legal detention justifies an obstruction charge.

b. Pursuit was Lawful

In any event, as discussed above, the officers did not seize Bolton in the parking lot, as he did not submit to their authority. An attempted seizure does not constitute a seizure for Fourth Amendment purposes. California v. Hodari, 499 U.S. 621, 626, 629 (1991); U.S. v. Knight, 336 F. App'x 900 (11th Cir. 2009)(suspect not seized when he fled upon being asked to speak to officer.) The court may consider everything that happened up to the point of seizure to establish reasonable suspicion.

[1] Section 42-32 of the Coweta County code of ordinances also prohibits loitering.

U.S. v. Brown, No. 1:17-CR-142-ELR-STW, 2018 WL 2925919 *9 (May 10, 2018) (*citing* United States v. Franklin, 323 F.3d 1298, 1301 (11th Cir. 2003).

The unprovoked flight of a suspect is suggestive of wrongdoing. Illinois v. Wardlow, 528 U.S. 119 (2000). Under Georgia law, it is unlawful to refuse to flee a pursuing police vehicle or officer when given a visual or an audible signal to stop the vehicle. OCGA § 40-6-395. Bolton violated traffic laws by running two stop signs and driving on the wrong side of the road. OCGA §§ 40-6-40; 40-6-72. Collins and House also had probable cause to arrest Bolton for aggravated assault on a public safety officer in violation of OCGA § 16-5-21(c)(1), as well as the lesser included offense of aggravated assault. OCGA § 16-5-21.

c. PIT Maneuver was Lawful

Plaintiff has not brought a claim challenging the use of a PIT maneuver; on the contrary, Count I alleges that Deputy Collins used excessive force when he shot Mr. Bolton. (Doc. 1, ¶ 82). Even if Plaintiff had brought such a claim, the PIT maneuver did not violate the Constitution. Deputy Collins performed a PIT maneuver on the Tahoe while it was on a vacant stretch of private roadway in order to stop Bolton from reaching the state highway and to keep him away from citizen traffic. (Collins Decl., ¶ 16; Wood Decl., ¶ 15; Exh. M at 3:10; Collins Dep., pp. 161, ll: 19-21; 174, ll: 5-7; 175, ll. 20-24). An officer does not violate the Fourth Amendment when he acts to terminate a car chase to avoid an imminent threat to

pedestrians and motorists. Scott v. Harris, 550 U.S. 372, 386 (2007). Not only was Bolton approaching a major roadway, but also he had been driving in a dangerous manner. Accordingly, the maneuver was lawful. Moreover, as discussed above, this maneuver implicated the Fourth Amendment, not the Fourteenth. Id. Therefore, Plaintiff has failed to state a claim challenging the PIT maneuver.

d. Collins' Use of Deadly Force Was Objectively Reasonable.

As for Collins' use of deadly force, the Fourth Amendment protects individuals from "unreasonable" seizures, but Plaintiff has brought a cause of action under the Fourteenth Amendment. In any event, the use of force was objectively reasonable. The issue is whether a reasonable officer in the shooter's place, possessing the same information he did, would have believed Mr. Bolton was gravely dangerous.

In Robinson v. Arrugueta, 415 F.3d 1252, 1256 (11th Cir. 2005), there was no Fourth Amendment violation and the officer was entitled to qualified immunity where the officer, **who was standing in a narrow space between two vehicles**, shot the suspect who was disobeying orders to put his hands up and slowly drove his car forward. Although the officer could have avoided the vehicle by stepping aside and the car was moving slowly, the officer had just under three seconds to react to what he perceived as a threat of serious physical harm. Id. An objectively reasonable officer could perceive that a moving vehicle was being used as a deadly weapon,

especially after the officer has warned the driver to stop, in which case the use of lethal force is objectively reasonable under the Fourth Amendment. Terrell v. Smith, 668 F.3d 1244, 1254-55 (11th Cir. 2012). Even where the underlying violation was a mere seatbelt violation, a police officer's use of deadly force did not violate the Fourth Amendment where the driver aggressively backed his car toward the officer, hitting the officers' vehicle as he tried to flee. Spencer v. City of Orlando, 725 F. App'x 928 (11th Cir. 2018).

The data obtained from Bolton's vehicle shows that he was actively accelerating 71% to 100% in the moments leading up to the shooting. (Wood Decl., ¶ 24 and Exh. F). The tires squealing on Bolton's vehicle is audible on Deputy Collins' BWC. (Wood Dec., ¶ 32 and Exh. M at 3:15-3:20). The Eleventh Circuit found that there was no Fourth Amendment violation where officers "used deadly force in a split-second situation where a suspect late at night refused to pull over, engaged in a high-speed chase, and then, after pulling over, repeatedly refused to show his hands or respond to officers, revved his engine, and then drove his truck toward the deputy standing nearby in a parking lot." McCullough v. Antolini, 559 F.3d 1201, 1208 (11th Cir. 2009). Deputy Collins' decision to shoot to protect his partner likewise was objectively reasonable.

e. Spinks' Use of Force Was Objectively Reasonable.

Plaintiff claims that Deputy Spinks kneeled on Bolton's back and neck, pinning him to concrete for an excessive period after the shooting. (Complaint, ¶ 83). Plaintiff also claims that Deputy "Spinks did not apply force in a good faith effort to maintain or restore discipline, but instead was maliciously or sadistically used for the very purpose of causing harm and was gratuitous, unnecessary, and punitive…." (Complaint, ¶ 86). The question of whether Deputy Spinks used force in a good faith effort to maintain or restore discipline is irrelevant, as "the relevant standard is objective not subjective." Kingsley v. Hendrickson, 576 U.S. 389, 395 (2015). The question is whether Deputy Spinks' conduct was objectively reasonable in light of facts confronting him at the time he used force in the course of effecting the arrest of Mr. Bolton.

Contrary to the allegations in the Complaint, the body camera footage does not show Deputy Spinks kneeling on Bolton's neck. The footage does show that Deputy Spinks put his knee on Bolton's lower back for a brief period of approximately ten seconds while he attempted to handcuff him for the safety of the deputies and Bolton himself. (Spinks Dep., pp. 39, ll: 24-25; 40, ll: 2-7; 45, ll: 4-17; Wood Decl., Exh. P at 5:50-6:00; Exh. Q at :50-1:00). Deputy Spinks considered Mr. Bolton a threat until he was placed in handcuffs. (Spinks Dep., pp. 56-57, ll: 25-6).

This amount of force was *de minimis*. *See* Durruthy v. Pastor, 351 F.3d 1080, 1094 (11th Cir. 2003)(*cert. den.*, 543 U.S. 917 (2004)) (the application of *de minimis* force—forcing the arrestee to the ground and placing him in handcuffs—was not unlawful if the arrest was founded on probable cause). "[T]he application of *de minimis* force, without more, will not support a claim for excessive force." Nolin v. Isbell, 207 F.3d 1253, 1257 (11th Cir. 2000) (holding that only *de minimis* force was used where an officer grabbed plaintiff by the wrist, threw him against a van three or four feet away, kneed him in the back, pushed his head into the side of a van, searched his groin area in an uncomfortable way, and placed him in handcuffs, resulting in minor bruising after Plaintiff was arrested for public fighting). *See, also*, Croom v. Balkwill, 645 F.3d 1240, 1252 (11th Cir. 2011). *De minimis* force is not actionable even where the plaintiff never physically or verbally resisted the officer. *See* Gomez v. U.S., 601 F. App'x 841, 843, 851 (11th Cir. 2015).

f. House Did Not Fail to Intervene.

According to the Complaint, Deputy House failed to intervene or to take any action to prevent Collins from shooting. (Complaint, ¶ 106). The Eleventh Circuit has held, "'[i]f a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under Section 1983.'" Dukes v. Miami-Dade Cnty, 232 F. App'x 907, 913 (11th Cir. 2007) (*quoting* Ensley v. Soper, 142

F.3d 1402, 1407 (11th Cir.1998)). This liability applies only when the defendant officer was in a position to intervene. Id. Liability "arises when the officer is in a position to intervene and fails to do so." Helm v. Rainbow City, 989 F. 3d 1265, 1272 (11th Cir. 2021). Plaintiff's failure to intervene claim fails for two reasons. First, as discussed above, Deputy Collins' shooting of Bolton does not violate the Constitution. Second, Deputy House was not in a position to stop Collins. House could not hear Collins above the squealing tires. (House Dep., p. 103-104, ll: 21-1; p. 108, ll: 13-20). From the time Deputy House exited his vehicle and stepped back to the time Deputy Collins fired was almost instantaneous. (House Dep., p. 106, ll: 9-13). Moreover, the law does not require an officer to block a bullet.

The Complaint also accuses Deputy House of failure to intervene to prevent Spinks from kneeling on Bolton's neck and back, handcuffing Bolton behind his back, and pinning Bolton to the concrete, and of failure to intervene when Spinks continued to kneel on Bolton's back and neck, while handcuffed and not resisting in any way. (Complaint, ¶¶ 86, 107). As stated above, there is no evidence that Deputy Spinks put his knee on Bolton's neck at any point on June 30, 2019. The act of handcuffing Mr. Bolton was not a constitutional violation. Furthermore, first aid protocol required the deputies to keep Mr. Bolton as still as possible. (Wood Decl., ¶ 16; Collins Decl., ¶ 20). As such, Deputy House did not have a duty to intervene.

D. Defendants are Entitled to Qualified Immunity.

Even assuming Plaintiff did establish a 14th Amendment claim, these individual Defendants are shielded from liability by the doctrine of qualified immunity. Qualified immunity protects actions by police officers in the hazy border between excessive force and acceptable force. Mullenix v. Luna, 577 U.S. 7 (2015).

1. The Subject Acts are Discretionary.

A law enforcement officer's decision whether to arrest a suspect and the proper amount of force to use to effect that arrest are discretionary acts. Jones v. City of Atlanta, 192 F. App'x 894, 897 (11th Cir. 2006). Thus, these Defendants have satisfied the first prong of the qualified immunity analysis.

2. Defendants Did Not Violate Clearly Established Law.

Where, as here, the low bar of discretionary authority is met, the standard requires the Court to make two determinations: (1) whether the defendants committed a violation of the plaintiff's constitutional rights, and (2) whether the violation was governed by clearly established law. Saucier v. Katz, 533 U.S. at 201. As discussed above, the Defendants did not violate Plaintiff's constitutional rights. Additionally, they did not violate clearly established law. The U.S. Supreme Court clarified the qualified immunity standard by reiterating that qualified immunity "is effectively lost if a case is erroneously permitted to go to trial" and that "clearly established law" should not be defined "at a high level of generality" but must be

"particularized" to the facts of the case. White v. Pauly, 137 S.Ct. 548, 551-52 (2017).

There is no clearly established law that would require the officers on the scene to wait to see if Bolton would stop trying to move his vehicle. *See* Garczynski v. Bradshaw, 573 F.3d 1158, 1167 (11th Cir. 2009) (The Constitution does not require the officers "to wait and see if [the suspect] remained stationary"); Scott v. Harris, 550 U.S. 372, 385 (2007) ("the police need not have taken that chance and hoped for the best"). In Powell v. Snook, 25 F.4th 912 (11th Cir. 2022), the court affirmed the grant of qualified immunity to an officer who went to the wrong house due to a dispatch error and shot and killed the homeowner in his driveway. Hearing noises outside, the homeowner got out of bed and went outside through his garage. He was holding a pistol because he thought he heard a prowler. Upon seeing the officer, the homeowner raised the gun hip-high. With no warning, the officer fired his weapon at the homeowner. The court concluded that, when the homeowner started to raise his pistol while facing the officer's direction, the officer had the authority to use deadly force. A reasonable officer could have decided that the safest thing to do in that situation was to wait to see what the person holding the gun did with the pistol, rather than calling attention to himself. Because the law does not clearly establish that the officer was required to give a warning in the second between the homeowner raising his gun and the officer firing, the officer was entitled to qualified immunity.

Similarly, clearly established law did not require Collins to give a warning to Bolton or to wait to see if he would run over his partner where the threat was imminent.

In Tillis v. Brown, 12 F.4th 1291 (11th Cir. 2021), the Eleventh Circuit upheld the grant of qualified immunity to an officer who fired two rounds of shots at the driver of a vehicle who led officers on a high-speed chase across state lines before crashing into bushes on the side of the road. When the officer stepped out of his car to make an arrest, the car's reverse lights turned on and the car started backing up. The officer fired eleven shots as the car passed near him, then changed magazines and fired another eleven shots, killing the driver and wounding two passengers. The total gunfire lasted thirteen seconds. The Eleventh Circuit affirmed the district court's grant of summary judgment regarding the first round of shots, pointing out that the officer was on foot next to his vehicle, where he was exposed and, with only seconds to react, reasonably believed that his life was in danger. The court stated that even if the suspect's vehicle could not possibly have swerved to hit the officer given the turning radius, the officer reasonably perceived a threat. In the split second that the officer had to react "he certainly did not have time to calculate angles and trajectories to determine whether he was a few feet outside of harm's way." Id. at 1299.

Additionally, the fact that the law in this Circuit is unsettled regarding when a suspect is considered a pretrial detainee shows that the law in this area is not clearly

settled and, therefore, the individual defendants are entitled to qualified immunity on that basis as well.

As for the use of force claim against Deputy Spinks, in WBY, Inc. v. DeKalb County, 2016 WL 3128397 (N.D.Ga., Jan. 13, 2016)(May, J.)(*reconsid. granted on false arrest claim*, 2016 WL 7334648 (N.D.Ga., April 11, 2016)), the court concluded that the law is not clearly established that use of *de minimis* force will support a claim for excessive force in violation of the Fourth Amendment. Accordingly, the court granted the officers' motions for summary judgment as to the excessive force claims.

Deputy House also is entitled to qualified immunity. Where deputies were not present where the force was used and did not observe the alleged physical attacks, the law was not clearly established that they were in a position to intervene and the court ruled they were entitled to qualified immunity. Militello v. Sheriff of Broward Sheriff's Office, 684 F. App'x 809, 813-814 (11th Cir. 2017). Deputy House is entitled to qualified immunity for the same reason.

E. Sheriff Wood Should Be Dismissed

In Count II of the Complaint, Plaintiff alleges that Sheriff Wood maintained a custom or policy of permitting deputies to use punitive force against arrestees who were deemed uncooperative. (Doc. 1, ¶¶ 90, 100). Plaintiff alleges that "Defendant Wood's custom or policy of permitting the use of punitive force resulted in a culture

of systemic abuse of arrestees and deliberate indifference to the constitutional rights by Coweta County deputies because they believed they were acting consistently with departmental policy as implemented and enforced by Defendant Wood." (Doc. 1, ¶ 91). Plaintiff has sued Sheriff Wood in his official capacity, naming him as "a political subdivision of the State of Georgia" in the style of the case.

The court does not even consider a municipal liability claim until and unless the plaintiff has established a constitutional violation. Collins v. City of Harker Heights, 503 U.S. 115, 123 (1992). There is no evidence that Sheriff Wood failed to discipline officers or that he created a custom or practice of excessive force.

1. **Section 1983 Does Not Apply to Defendant Wood in Official Capacity**

As a matter of law, a suit against the sheriff in his official capacity constitutes a suit against the State of Georgia, as defendant Wood is a state official in promulgating policies and procedures governing the use of force by patrol deputies. Purcell v. Toombs County, Ga., 400 F.3d 1313, 1325 (11th Cir. 2005). The Complaint clearly states that it is brought pursuant to 42 U.S.C. § 1983. Neither the State nor its officials acting in their official capacities are "persons" under Section 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989). Therefore, Count II against Defendant Wood only should be dismissed.

2. **Eleventh Amendment Immunity Bars Count II**

Plaintiff's claims against Sheriff Wood are barred by the Eleventh Amendment. Under the Eleventh Amendment, a state is immune from suit in federal court without its consent. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). This immunity extends to an "arm of the State," which includes agents and instrumentalities of the state. Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429-30 (1997). "Whether a defendant is an 'arm of the State' must be assessed in light of the particular function in which the defendant was engaged." Manders v. Lee, 338 F.3d 1304, 1328 (11th Cir. 2003) (*en banc*), *cert. denied*, 540 U.S. 1107 (2004). In Manders, the Eleventh Circuit examined Georgia law and held that a Georgia Sheriff was entitled to Eleventh Amendment immunity as an "arm of the state" when he established and executed a use of force policy. Id. In light of Manders, the Eleventh Amendment should bar Count II.

F. State law Assault and Battery Claims Should Be Dismissed

Count III asserts claims of assault and battery against Defendants Collins, Spinks and House. (Doc. 1, ¶ 114). Specifically, Plaintiff alleges that Defendant Collins shot him in the head when he posed on objectively reasonable threat of hard. (Doc. 1, ¶ 102). He also alleges that Defendant Spinks pulled him from his SUV, threw him to the ground, and kneeled on Mr. Bolton's back and neck when handcuffing him. ((Doc. 1, ¶¶ 103, 104, 105). He alleges that Defendant House

failed to intervene in the allegedly unlawful acts of Defendants House and Spinks. (Doc. 1, ¶¶ 107, 108). Plaintiff also complains that unspecified persons did not allow him to sit up and did not give him water. (Doc. 1, ¶¶ 109. 110).

Although Plaintiff alleges that none of the Defendant Deputies rendered medical care to Plaintiff (Doc. 1, ¶ 111), this does not establish a cause of action for assault or battery. In any event, the undisputed facts show that Defendants called EMS to the scene immediately. (Collins Decl., ¶ 19; Wood Decl., Exh. E; Exh. M at 3:22-3:23; Exh. N at 2:20, 2:26-2:27). In addition, Defendant House held a compress to Plaintiff's wound in an attempt to reduce the bleeding. (House Dep., Exh. 7; Fenninger Dep., p. 102, ll: 15-16; Wood Decl., ¶ 16; Exh. N at 10:29-13:32; Exh. O at 7:48-10:43; Exh. Q at 2:55 – 4:40).

1. The Battery Claim Should Be Dismissed

To state a claim for battery, Mr. Bolton must show that the officers carried out illegal contact. Gardner v. Rogers, 224 Ga. App. 165 (1996); O.C.G.A. § 51-1-13. Georgia law is clear that if the touching is used in connection with a valid arrest, it does not constitute a battery unless the degree of force used was excessive. Haile v. Pittman, 194 Ga. App. 105, 389 S.E.2d 564, 566 (1989)(*cert. den.*, Jan. 25, 1990). If the physical contact was legally authorized, it does not constitute a battery. Greenfield v. Colonial Stores, 110 Ga. App. 572, 574-75 (1964); Houston v. Kinder-Care Learning Ctrs., 208 Ga. App. 235, 239 (1993)(*cert. den.*, Jul. 1, 1993).

For the reasons described above, to the extent the Defendants had any physical contact with Mr. Bolton, the physical contact was lawful. In the case of House and Spinks, the contact was minimal. As such, the Defendants did not commit a battery and summary judgment is proper.

2. Defendants are Entitled to Official Immunity

When performing a discretionary act, municipal officers sued in their individual capacities only lose their official immunity when they act with actual malice or intent to injure, and they retain their official immunity when they merely act in a negligent manner. Touchton v. Bramble, 284 Ga. App. 164, 167 (2007)(*cert. den.*, June 25, 2007). The actual malice necessary to defeat a claim of official immunity requires a deliberate intention to cause harm to the plaintiff, and does not encompass acts taken in reckless disregard for the rights or safety of others. Phillips v. Hanse, 281 Ga. 133, 136 (2006); Merrow v. Hawkins, 266 Ga. 390, 392 (1996). Intent to do the act that resulted in the injury is not sufficient. Kidd v. Coates, 271 Ga. 33 (1999). An officer who shoots a person in self-defense or in the defense of others is shielded from tort liability by the doctrine of official immunity. Id. at 34 (*citing* O.C.G.A. § 51-11-1).

3. Defendants in their Official Capacity are Entitled to Sovereign Immunity

Although sheriffs may be deemed agents of the State for the purpose of determining liability for constitutional violations under Section 1983, sheriffs are

county officials under Georgia tort laws.[2] A county sheriff is entitled to assert any defense to a tort action that the county could, including sovereign immunity. Strength v. Lovett, 311 Ga. App. 35, 38 (2011).

The Georgia Supreme Court has held that sovereign immunity extends to counties under the 1991 Amendment to the Georgia Constitution. Gilbert v. Richardson, 264 Ga. 744, 747 (1994) (*quoting Ga.* Const. of 1983, Art. I, Sec. II, Par. IX). Thus, Defendants Collins, House and Spinks, in their official capacities, are entitled to sovereign immunity with regard to Plaintiff's assault and battery claims against them in their official capacities.

Georgia law is well-settled that Plaintiff has the burden of proof on the issue of sovereign immunity, which is "not an affirmative defense that the governmental defendants must establish" but is "a privilege, subject to waiver by the State, and which the party seeking to benefit from the waiver must show." Scott v. City of Valdosta, 280 Ga. App. 481, 484 (2006). No legislative act that specifically waives Fulton County's immunity applies to this situation. *See* O.C.G.A. § 36-1-4. The General Assembly has never provided generally for actions against counties. *See* Schulze v. DeKalb Cnty, 230 Ga. App. 305, 307 (1998). Thus, Defendants Collins,

[2] The Georgia Tort Claims Act, O.C.G.A. § 50-21-20, *et seq.*, does not apply here. Nichols v. Prather, 286 Ga. App. 889, 892-93 (2007).

House and Spinks are immune from the state tort claims against them in their official capacities.

G. Punitive Damages

In Count IV, Plaintiff seeks punitive damages against all Defendants for violations of Plaintiff's Fourteenth Amendment rights. (Doc. 1, ¶ 117). Plaintiff's punitive damages claim is barred against Sheriff Wood in his official capacity. Colvin v. McDougall, 62 F.3d 1316, 1319 (11th Cir. 1995).

IV. CONCLUSION

For the foregoing reasons, Defendants request this Court to enter summary judgment in their favor.

This 4th day of January, 2023.

Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP

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CERTIFICATE OF COMPLIANCE WITH L.R. 7.1

The undersigned attests that this document was prepared in Times New Roman, 14-point font that complies with this Court's Rules.

This 4th day of January, 2023.

Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP

/s/ Karen E. Woodward
Karen E. Woodward
Georgia Bar No. 775260

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day I have filed the foregoing **BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF file and serve system which will serve electronic copies of same upon all counsel of record, as follows:

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This 4th day of January, 2023.

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/s/ Karen E. Woodward
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION FILE NO.
	:	1:21-CV-2279-MHC
LENN WOOD, et al.,	:	
	:	
Defendants.	:	

PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff NICHOLAS S. BOLTON ("Bolton") respectfully submits this response the motion for summary judgment and supporting documents filed by Defendants LENN WOOD, Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia ("Sheriff Wood"); JOHN TAYLOR COLLINS, individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia ("Deputy Collins"); CHRISTIAN SPINKS, individually and in his official capacity as a Deputy Sheriff for Coweta County, Georgia ("Deputy Spinks"); and JON HOUSE, individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia ("Deputy House").

The following Exhibits are attached to this response:



EXHIBITS

1. Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment
2. Plaintiff's Response to Defendants' Statement of Facts
3. Plaintiff's Statement of Additional Material Facts to be Tried
4. Attorney Affidavit of James W. Howard
5. Transcript: Grand jury testimony of Deputy George Thompson
6. Transcript: Body Worn Camera of Deputy George Thompson (see Doc. 82)
7. Transcript: Body Worn Camera of Deputy John Collins (see Doc. 75, Exh. M)
8. Transcript: Body Worn Camera of Deputy Jon House (see Doc. 75, Exh. N)
9. Photos: Nicholas Bolton in Tahoe with ID (from Doc. 75, Exh. M, N)
10. Photos: Deputy Jon House next to Tahoe (from Doc. 75, Exh. M)
11. Sketch & Photos: Tahoe pinned between patrol cars after PIT maneuver
12. Photos: Deputy Jon House aiming at Tahoe (from Doc. 75, Exh. N)
13. Photos: Deputy John Collins firing at Tahoe (from Doc. 75, Exh. M)
14. Affidavit of Emmanuel Onyeka, M.D.
15. CCSO analysis and findings for Dr. Onyeka's complaint
16. Expert Report of Dr. Andrew J. Scott, III (Doc. 40)
17. Professional Report of Curtis Marshall (Doc. 43-1)

This 18th day of February, 2023.

Respectfully submitted,

/s/ James W. Howard

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing *Plaintiff's Response in Opposition to Defendants' Motion for Summary Judgment* with the Clerk of Court for filing and uploading to the CM/ECF system, which will automatically send e-mail notification of such filing to the appropriate parties and opposing counsel of record, including:

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This 18th day of February, 2023.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON, Plaintiff, v. LENN WOOD, Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia; *et al.* Defendants.	:	CIVIL ACTION FILE NO. 1:21-CV-2279-MHC

PLAINTIFF'S RESPONSE BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff NICHOLAS S. BOLTON respectfully submits this response brief in opposition to the motion for summary judgment and supporting documents (Doc. 74) filed by Defendants LENN WOOD, in his official capacity as Sheriff of Coweta County, Georgia, and three (3) of his deputies: JOHN TAYLOR COLLINS, CHRISTIAN SPINKS, and JON HOUSE.

I. INTRODUCTION & SUMMARY

This is a civil rights and tort action based on 42 U.S.C. § 1983, 42 U.S.C. § 1983, the Fourth Amendment to the United States Constitution, and Georgia state law. The "Preliminary Statement" to the defendants' brief in support of their motion

for summary judgment (Doc. 74-1, pp. 1-2) mischaracterizes the nature of the case and evidence supporting the plaintiff's claims. The plaintiff was intimidated into leaving a parking lot, pursued, and shot in the head without any legal justification.

A deputy sheriff approached the plaintiff living out of his vehicle in a remote section of a large shopping center parking lot. The deputy verified the plaintiff's identity and ownership of his vehicle, notified the Sheriff's Office, and had a pleasant conversation with the plaintiff, allowing him to remain in the parking lot.

Later that night, two (2) other deputies woke the plaintiff in the same location and requested identification. Plaintiff produced his driver's license, but the deputies ignored the license and instructed the plaintiff to exit his vehicle. When the startled plaintiff was reluctant to exit his vehicle in that secluded location, the deputies refused to explain their instruction. One deputy prepared to break the window of the plaintiff's vehicle as the other deputy told the plaintiff to "get out" or go to jail.

The plaintiff was not under arrest or detained, so he started his vehicle to "get out" of the parking lot and avoid going to jail. As the plaintiff drove away, the deputies gave chase and forcibly stopped the plaintiff's vehicle before he left the street adjoining the parking lot. As soon as the plaintiff's vehicle was stopped and immobilized, a deputy shot the plaintiff in the head while he posed no threat to anyone and without even giving the plaintiff an opportunity to turn off his vehicle.

II. STATEMENT OF THE FACTS

Plaintiff NICHOLAS S. BOLTON ("Plaintiff" or "Bolton") is a 37-year-old black male born in Newnan, Georgia. Bolton currently lives and was raised in Hogansville, Georgia. Doc. 70, pp. 7-11.

Defendant LENN WOOD ("Sheriff Wood") is sued in his official capacity as the Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia. On June 30, 2019, Defendants JOHN TAYLOR COLLINS ("Deputy Collins"), CHRISTIAN SPINKS ("Deputy Spinks"), and JON HOUSE ("Deputy House") were all deputy sheriffs employed with the patrol division of the Coweta County Sheriff's Office (CCSO). Doc. 74-2, pp. 2-3, ¶¶ 11-14; Doc. 74-3, p. 2, ¶ 2.

The Newnan Pavilion is a large shopping center with an enormous parking lot in Newnan, Coweta County, Georgia. The retail establishments in this shopping center include a Kohl's store and many other businesses. Doc. 74-3, p. 7, ¶ 17.

The following numbered paragraphs are presented in Plaintiff's Statement of Additional Facts to be Tried (Exhibit 3) with appropriate record citations.

1. In June 2019, Bolton owned and lived in a white 2001 Chevrolet Tahoe SUV ("the Tahoe") while he picked up odd jobs and begged for handouts in Newnan. At night, Bolton parked the Tahoe to sleep in the large vacant parking lots used by Walmart and the Kohl's store in the Newnan Pavilion.

2. On June 29, 2019, Bolton parked the Tahoe in a remote section of the Newnan Pavilion parking lot used by the Kohl's store. Bolton was sitting on the Tahoe bumper at about 11:00 a.m. when Coweta County Sheriff's Office (CCSO) Deputy George Thompson approached and had a pleasant conversation with Bolton. Bolton readily answered questions and produced his driver's license so Deputy Thompson could verify Bolton's identity.

3. Deputy Thompson verified that Bolton owned the Tahoe, and that Bolton was living and sleeping in the Tahoe at that location. Deputy Thompson told Bolton that he was "fine" while parked at that location. Deputy Thompson even encouraged Bolton to seek employment at the retail establishments in the Newnan Pavilion while he was parked in the lot.

4. Deputy Thompson reported his interaction with Bolton to the CCSO dispatch office. Deputy Thompson had no negative impressions or concerns about Bolton or his presence in the parking lot. Deputy Thompson never considered arresting Bolton for loitering, presumably because Deputy Thompson verified Bolton's identity and found no reason to suspect he was in the parking lot for any illegal purpose.

5. On June 30, 2019, at 2:22 a.m., Deputy Collins found the Tahoe parked at the same remote location in the parking lot. Deputy Collins did not receive any

complaints about the Tahoe being at the location, and he did verify that another deputy checked it out. Deputy House was called to the scene as back up, then Deputy Collins approached the Tahoe and saw Bolton asleep in the rear cargo area.

6. Deputy Collins asked Bolton to open a window and produce identification. Deputy Collins assured Bolton that he just needed to check Bolton's ID before he left because Bolton was loitering. Bolton explained that he had recently spoken to two (2) other officers, but he promptly moved up into the driver's seat and retrieved his driver's license. Bolton referred to Deputy Thompson as an "officer," so Bolton apparently spoke to another unidentified officer who may have been employed with the City of Newnan Police Department.

7. As Bolton retrieved his driver's license, Deputy Collins told Bolton to exit from the Tahoe. Bolton apparently intended to sit in his vehicle while he showed his driver's license to the deputies. Bolton was already holding his driver's license in his hand, so he did not expect or understand this new instruction.

8. Deputy Collins and Deputy House both accused Bolton of "loitering" even though there was "nothing illegal about parking (his) car in a lot like that and going to sleep." The deputies never asked Bolton to identify himself, never asked why Bolton was parked at that location, never noted the tag number of the Tahoe to verify the registration or ownership of the vehicle, and never tried to verify whether

another deputy had already spoken to Bolton about parking at that location.

9. Bolton never refused to exit from the Tahoe, but he stayed in the vehicle while he asked, "How am I loitering?" and explained that he had already spoken to the other officers. Without providing any explanation or reason for Bolton to exit from the Tahoe, both deputies raised their voices and demanded obedience.

10. Deputy Collins walked toward his patrol car for gloves to break a window of the Tahoe and forcibly remove Bolton from the vehicle. At the same time, Deputy House continued to demand that the sleepy and confused Bolton to exit the vehicle. The deputies chose to demand or force Bolton to get out of the vehicle, even if it required breaking a window, instead of providing an explanation for the demand.

11. Most traffic stops are conducted with the driver seated in his vehicle, so a driver may be concerned or confused when a deputy tells the driver to exit from his vehicle. A deputy may explain why he wants a driver out of his vehicle, and the most common explanation is a concern for officer safety. For example, a deputy may be concerned about passing cars, or whether a motorist has a weapon in his vehicle.

12. Deputies receive annual "de-escalation training," but they are not trained or obligated to explain why they want a driver to exit from his vehicle during a traffic stop. Drivers commonly ask why they are being instructed to exit from their vehicles, and deputies *should* explain to seek voluntary compliance. CCSO policies

do not require a deputy to explain why he wants someone to exit from his vehicle. Deputies are trained to request, demand, and force compliance without providing any explanation. Providing an explanation is certainly "consistent with the principle of de-escalation," but a deputy is not trained to apply this principle in traffic stops.

13. Deputy Collins said he had no obligation to explain why someone must step out of a vehicle. When "drivers objected to getting out of a vehicle," Deputy Collins might inform the drivers "that they needed to get out of the vehicle for officer safety reasons." However, Deputy Collins understood that his decision to provide an explanation for a demand to exit from a vehicle was "a judgment call."

14. Deputy House said he intended to "make the situation safer" when he told Bolton to step out of the Tahoe. However, Deputy House could not explain why he refused to "tell Mr. Bolton the reason he needed to get out of the vehicle was for officer safety if that was (his) primary concern?" Instead, Deputy House only said that he was not obligated to give Bolton a reason.

15. Bolton only remembered conversing with a single deputy. The video recordings verify that Bolton never spoke to or looked at both deputies at the same time, so Bolton apparently thought that both deputies were the same person.

16. Deputy House stepped forward to speak to Bolton as Deputy Collins went back to his patrol car. Bolton did not realize that Deputy Collins was retrieving

a glove to break a window and forcibly remove Bolton from the vehicle.

17. Deputy House refused to explain why he wanted Bolton to exit from his vehicle instead of checking his driver's license. Deputy House asked, "You going to get out, or you going to jail?"

18. Bolton chose to "get out" of the parking lot because he was afraid of going to jail. Bolton was not sure whether he was specifically "told to leave or not," but he started the Tahoe engine to drive away from the parking lot. Bolton did not hear Deputy Collins and Deputy House telling him to turn off his engine.

19. At that point, Deputy Collins was close to the rear of the Tahoe. Deputy House was standing close to Bolton and the driver's window. A light was shining in Bolton's face, and he does not remember seeing any firearms. Bolton did not realize that the deputies were aiming their service pistols directly at Bolton's head.

20. Bolton shifted the Tahoe into gear and drove away. Bolton concluded that his best option was to drive away from the parking lot to avoid going to jail. After the Shooting, Bolton has a brain injury and a limited recollection of the events.

21. Deputy House claims that he intended to tell Bolton to "get out" *of the Tahoe* or go to jail. However, the deputies never told Bolton that he was under arrest or that he could not leave to "get out" of the parking lot.

22. Nobody advising Bolton that he was under detained, under arrest, or

unable to leave the parking lot. Deputy Collins and Deputy House got in their patrol cars to chase Bolton as he drove away at a normal speed on an empty street. Deputy Collins chased at a higher speed on both sides of the street and performed a pursuit intervention technique ("PIT maneuver") by striking the rear right corner of the Tahoe. Deputy Collins never received permission from a supervisor or any training to perform the PIT maneuver as required by the CCSO Vehicle Pursuit policy.

23. The Tahoe spun around and stopped facing Deputy Collins' patrol car. Deputy House and Deputy Spinks both arrived immediately in their own patrol cars. The Tahoe was pinned and immobilized between all three (3) patrol cars.

24. The Tahoe engine was still running, and its wheels were spinning after Bolton lost control of the vehicle during the PIT maneuver. However, the Tahoe remained stationary and pinned between all three (3) patrol cars. The wheels of the Tahoe were pointed straight ahead toward Deputy Collins' patrol car and never turned. Bolton never attempted to move the Tahoe after it stopped.

25. Deputy House stopped his patrol car next to and facing the driver's door of the Tahoe. Within three (3) seconds after he stopped, Deputy House jumped out of his patrol car, stood behind the driver door, aimed his pistol, and yelled at Bolton to "turn off the car."

26. Deputy Collins stopped his patrol car in front of and facing the front of

the Tahoe. Within four (4) seconds after he stopped, Deputy Collins jumped out of his patrol car, stood behind the driver door, and aimed his pistol. Without giving Bolton any verbal commands, Deputy Collins fired a bullet through the Tahoe windshield into Bolton's right eye. Deputy Collins shot Bolton at the same moment when Deputy House was yelling at Bolton to "turn off the car."

27. CCSO trained the deputies to exercise a great deal of discretion in firing their weapons. Based on that training, Deputy Collins and Deputy House both had complete discretion to either give Bolton a verbal warning or shoot him. As Deputy House gave a warning, Deputy Collins immediately shot Bolton in the head.

28. The bodycam footage verifies the sequence of events prior to and when Deputy Collins shot Bolton ("the Shooting"). Bolton never posed a threat to anyone before Deputy Collins and Deputy House drew their pistols and pointed them at Bolton's head. Bolton did not pose a threat to anyone before or when Deputy Collins drew his pistol again after the chase and immediately shot Bolton in the head.

29. Bolton was critically injured when the bullet entered his right eye as he was sitting in the driver's seat of the Tahoe. Deputies at the scene initially ignored Bolton while they comforted Deputy Collins about his role in the Shooting. In response, Deputy Collins smiled and commented that he "put one on him," a reference to firing the bullet through Bolton's right eye.

30. Bolton was immobile and twitching in the Tahoe after the Shooting. Deputy Spinks dragged Bolton out of the Tahoe face-down on the pavement, then put a knee on Bolton's back to handcuff him. Deputy Spinks had no EMT training or medical reason to remove Bolton from the Tahoe, and he knew Bolton suffered a gunshot wound to his head. Deputy Spinks was concerned with restraining Bolton, but unconcerned with whether the movement would affect Bolton's injury.

31. None of the defendant deputies were disciplined or reprimanded for any conduct or violations of CCSO policy related to Bolton or the Shooting.

The Comparable Traffic Stop of Dr. Onyeka

32. On December 18, 2020, Deputy Spinks was involved in a comparable incident. Deputy Spinks initiated a routine traffic stop of Emmanuel Onyeka, M.D., a hospital emergency room physician. Dr. Onyeka was driving home from a hospital shift in the middle of the night. While Deputy Spinks wrote a traffic citation for an expired tag registration, he told Dr. Onyeka to exit from his vehicle. Exhibit 14.

33. Dr. Onyeka did not understand why Deputy Spinks suddenly wanted him out of the vehicle, so he was "apprehensive about getting out of the car at that location with no witnesses and very little traffic." Dr. Onyeka never refused to exit from the car, but he repeatedly asked why the deputy wanted him to get out. Deputy Spinks refused to answer this question or to provide any explanation. Exhibit 14.

34. Dr. Onyeka was trying not to take any action that could be perceived as a threat. Dr. Onyeka is certain that he would have gotten out of the car if he had been given any reasonable explanation or reason for the request, or if he understood that the deputies would forcibly remove him from the car. Exhibit 14.

35. Deputy Spinks placed Dr. Onyeka in a headlock to forcibly remove him from his vehicle. Dr. Onyeka did not resist while deputies pushed him to ground, put him in handcuffs, and detained him in a patrol car. After this abuse, Dr. Onyeka was given a traffic citation for his expired registration and released. Exhibit 14.

36. Dr. Onyeka promptly wrote a letter to the local police department to complain about this incident. The letter was forwarded to CCSO, and it investigated the traffic stop. CCSO made "findings" and took no further action because "Deputy Spinks did not violate any department policy." Exhibit 14; Exhibit 15.

Expert Witnesses

37. Plaintiff employed Dr. Andrew J. Scott, III and Curtis Marshall as experts in police practices, police training, and use of force. Dr. Scott and Curtis Marshall independently evaluated evidence in this case, reached conclusions based on the evidence, and drafted expert reports with opinions summarized as follows:

a) The deputies had no reason to detain Bolton after the initial stop.

b) Both deputies initiated the vehicle pursuit contrary to CCSO policy and

well-established police practices and procedures.

c) Deputy Collins conducted the PIT maneuver and used deadly force contrary to CCSO policy and well-established police practices and procedures.

III. STANDARD AND SCOPE OF REVIEW

To obtain summary judgment, the moving party must show that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a). The movant always bears the initial burden of demonstrating the absence of a genuine issue of material fact capable of affecting the outcome of the litigation. Conflicting evidence can only be resolved by a trial on the merits, not by summary judgment. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248(1986).

The nonmoving party can defeat a motion for summary judgment on any issue by merely showing a legitimate conflict in the evidence. The nonmoving party does not have to "produce evidence in a form that would be admissible at trial in order to avoid summary judgment." *Celotex, supra,* 477 U.S. at 324.

When a party moves for summary judgment, the court "view[s] the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion." Any reasonable doubts must be resolved in favor of the opposing party. *Cast Steel Products, Inc. v. Admiral Ins. Co.*, 348 F.3d 1298, 1301 (11th Cir. 2003);

United States v. Oakley, 744 F.2d 1553, 1555 (11th Cir. 1984); *Hill v. Linahan*, 697 F.2d 1032, 1035 n. 4 (11th Cir. 1983).

"Summary judgment is an extreme remedy which should not be granted, unless the moving party has established his right to judgment beyond controversy." Unresolved issues and conflicting evidence will not support a summary judgment. *Hill, supra*, 697 F.2d at 1035 n. 4; *Warrior Tombigbee Transp. Co. v. M/V Nan Fung,* 695 F.2d 1294 (11th Cir. 1983).

A plaintiff is not required to respond to issues that are not raised in a defendant's motion for summary judgment. A plaintiff is not required to present his entire case or to respond to issues that the defendants failed to present. See *Reflectone, Inc. v. Farrand Optical Co.*, 862 F.2d 841, 845 (11th Cir. 1989).

IV. ARGUMENT & CITATION OF AUTHORITY

A. AN EXCESSIVE FORCE CLAIM AGAINST A COUNTY SHERIFF AND HIS DEPUTIES IS ACTIONABLE UNDER 42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State…subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law…" 42 U.S.C. § 1983.

"Section 1983 creates no substantive rights. (Cit.) Rather, it provides a vehicle through which an individual may seek redress when his or her federally protected rights have been violated by an individual or individuals acting under color of state law." *Gainor v. Douglas County, Georgia,* 59 F.Supp.2d 1259, 1269 (N.D.Ga. 1998); *Byrd v. Cavenaugh*, 269 Ga.App. 612, 614 n. 7, 604 S.E.2d 655, 657 (2004), citing *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994).

Bolton asserted a § 1983 civil rights claim against State law enforcement officers for using excessive force. Any "claim that law enforcement officials used excessive force in the course of an arrest, investigatory stop, or other 'seizure'…of a free citizen...invok(es) the protections of the Fourth Amendment" to the U.S. Constitution.[1] *Graham v. Conner*, 490 U.S. 386, 388, 394 (1989).

The parties agree that Bolton "had not been arrested prior to the shot fired by Deputy Collins." Although "the PIT maneuver constituted a seizure, Bolton was not yet under law enforcement control at the time of the shooting." The "facts of the instant case are governed by the Fourth Amendment." Doc. 74-1, p. 26.

[1] The parties agree that Bolton's "excessive force claim implicates the Fourth Amendment, not the Fourteenth Amendment." Doc. 74-1, pp. 14-17. The Fourth Amendment is correctly cited in the first paragraph of the Complaint. Doc. 1, ¶ 1.

B. THE DEPUTIES ARE NOT PROTECTED BY QUALIFIED IMMUNITY BECAUSE THEY ARGUABLY USED EXCESSIVE AND DEADLY FORCE IN VIOLATION OF CLEARLY ESTABLISHED LAW AND CCSO POLICIES

Defendants contend the deputies "are shielded from liability by the doctrine of qualified immunity" because their acts were discretionary, and they did not violate clearly established law. Doc. 74-1, pp. 26-29. Defendants also contend that the use of force against Bolton was "objectively reasonable." Doc. 74-1, pp. 17-18.

"The defense of qualified or 'good faith' immunity is available to law enforcement officers to protect them from liability for damages if they acted in the good faith belief based upon reasonable grounds that the measures they took were necessary" and consistent with clearly established law. *Patterson v. Fuller*, 654 F. Supp. 418, 427–28 (N.D.Ga. 1987). See also *Anderson v. Creighton,* 483 U.S. 635 (1987); *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982); *Butts v. Economou,* 438 U.S. 478, 507 (1978).

In resolving "a summary judgment motion based on qualified immunity," a district court is "required to resolve all issues of material fact in favor of the plaintiff." The "legal question of whether the defendant [is] entitled to qualified immunity" must be answered "under that version of the facts." *Lee v. Ferraro*, 284 F.3d 1188, 1190 (11th Cir. 2002); *Sheth v. Webster*, 145 F.3d 1231, 1236 (11th Cir. 1998); *Thornton v. City of Macon*, 132 F.3d 1395, 1397 (11th Cir. 1998).

"Qualified immunity protects officers engaged in discretionary functions from civil liability only if the officers' actions do 'not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Perez v. Suszczynski*, 809 F.3d 1213, 1218 (11th Cir. 2016), quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In *Perez, supra,* a sheriff's deputy "assert(ed) that his use of deadly force was constitutionally permissible because *he* believed…that his life or his fellow deputy's life was in danger…However, this argument misunderstands the relevant standard." The district court "must engage in an objective inquiry to determine the reasonableness of an officer's actions in an excessive force case: "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.*, 809 F.3d at 1219, quoting *Graham, supra,* 490 U.S. at 397. See also *Hall v. McGhee*, 762 Fed. Appx. 837, 841 (11th Cir. 2019).

An officer may constitutionally use deadly force when he:

> (1) has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others or that he has committed a crime involving the infliction or threatened infliction of serious physical harm; (2) reasonably believes that the use of deadly force was necessary to prevent escape; *and* (3) has given some warning about the possible use of deadly force, if feasible. *Perez, supra,* 809 F.3d at 1218-19; *Morton v. Kirkwood*, 707 F.3d 1276, 1281 (11th Cir. 2013).

The italicized word "*and*" is critical to the analysis. Deadly force is unjustified unless all three (3) of these criteria are met. Deadly force is inherently unjustified unless the suspect presents an immediate "threat of serious physical harm." *Perez, supra,* 809 F.3d at 1220-21, quoting *Morton, supra,* 707 F.3d at 1281.

In this case, Bolton produced ample evidence that the defendant deputies created an extremely dangerous situation and an excuse to use excessive, deadly force against Bolton. Their acts may be "discretionary," but the deputies knowingly and intentionally violated clearly established law and CCSO policies during the stop, pursuit, and shooting of Bolton. The Shooting did not even arguably meet the established criteria for this exercise of excessive, and deadly force.

1. The initial stop was lawful, but it was conducted in an unlawful, threatening, and confusing manner

Plaintiff's experts both recognized that "Bolton's presence in the parking lot may have warranted an initial police contact." An "investigatory stop was authorized," and the deputies also "had the legal authority to request identification from Mr. Bolton." The deputies even had legal authority to instruct Mr. Bolton to "exit his vehicle" for other purposes (*e.g.* officer safety) unrelated to an investigation into whether Bolton was loitering. Exhibit 16 (Doc. 40), p. 10; Doc. 43-1, p. 6.

However, the issues pertain to how this investigatory stop was conducted. Defendants rely heavily on a theory that Bolton was suspected of loitering and

obstructing an investigation of the loitering. In fact, the deputies never conducted a legitimate investigation into whether Bolton was loitering as he slept in his vehicle.

"A person commits the offense of loitering or prowling when he is in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." O.C.G.A. § 16-11-36(a).

However, a person cannot be arrested for loitering unless he has been afforded "an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct." O.C.G.A. § 16-11-36(b). Bolton could not be charged with loitering unless he refused to identify himself or explain why he was parked in the lot.

Based on the statutory criteria, Deputy Collins and Deputy House managed to completely avoid any legitimate investigation into whether Bolton was loitering in the parking lot. Bolton readily produced his driver's license, but the deputies were no longer interested in looking at it after they told Bolton to exit from the vehicle. The deputies never looked at the tag of the Tahoe to determine whether Bolton was the owner. The deputies never even asked Bolton to "explain his presence and conduct." The deputies "failed 'to dispel any alarm or immediate concern' with basic questioning." Exhibit 17 (Doc. 43-1), p. 8, quoting O.C.G.A. § 16-11-36(b).

In fact, Bolton had already "identif(ied) himself and explain(ed) his presence and conduct" to another CCSO deputy. Bolton explicitly and repeatedly explained that he'd spoken to another officer (*i.e.* Deputy Thompson), but Deputy Collins and Deputy House never even tried to contact the CCSO dispatch office to confirm whether Bolton had already provided information to confirm he was not loitering.[2] Exhibit 16 (Doc. 40), p. 11, ¶ 1.5.

Finally, a routine traffic stop is usually conducted while the driver remains seated in his vehicle. A driver may be asked to exit from his vehicle, but the driver is likely to ask for a reason, particularly when the vehicle is stopped in a remote location. By providing an explanation, a deputy may ease the driver's mind and encourage voluntary compliance with the deputy's request. Doc. 69, pp. 84-87.

Deputy Collins and Deputy House both received annual "de-escalation training." Therefore, the deputies knew how to answer Bolton's question to encourage his voluntary compliance by just giving Bolton a reason to exit from the Tahoe. Instead, the deputies intentionally demanded compliance and accused Bolton

[2] Deputy House also suggested that Bolton was "obstructing an investigation." Exhibit 8, p. 3. However, the only "investigation" was into whether Bolton was loitering. Bolton could only obstruct a loitering investigation by refusing to identify himself or to explain why he was in the parking lot.

of loitering while refusing to answer Bolton's question. Meanwhile, the deputies took no steps to truly investigate whether Bolton was loitering in the parking lot.

For some reason, "explaining to drivers why they should get out of the car" during a traffic stop is not a "part of the (de-escalation) training." Providing an explanation is "consistent with the principle of de-escalation," but a deputy is not trained to apply this principle in traffic stops. Doc. 69, p. 87.

By comparison, Deputy Thompson promptly verified Bolton's identity by asking him to produce his driver's license. Deputy Thompson also confirmed that Bolton was living out of his vehicle on consecutive days at precisely the same location, so he was probably sleeping there at night. Deputy Thompson efficiently confirmed that Bolton was not "loitering" in the parking lot, so he was allowed to remain. Deputy Collins and Deputy House were more interested in exerting their authority, intimidating Bolton into compliance, and dragging him out of the Tahoe.

"The observations of Deputy Thompson and Deputy House during their contact with Mr. Bolton…did not support any further investigation of Loitering." Doc. 43-1, p. 6. The purported "investigation" by the deputies had the desired effect. Bolton was so intimidated and confused that he reasonably concluded his best option was to leave the parking lot. The flawed investigation proximately caused and culminated in an unjustified, dangerous vehicle pursuit and a bullet in Bolton's brain.

2. The Tahoe chase was an unjustified, dangerous violation of proper police practices and CCSO vehicle pursuit policy

Defendants contend that they were entitled to pursue Bolton in patrol cars because the "unprovoked flight of a suspect is suggestive of wrongdoing." Doc. 74-1, pp. 19-20. Not true, and generic "wrongdoing" would not justify the car chase.

Bolton was not "provoked"; he was startled and intimidated by an unexplained demand to exit from his vehicle. Bolton understandably "felt concern for his safety given the aggressive nature of the contact (with the deputies) and the sudden pivot from verbal commands to the threat of breaking the vehicle's window and forcibly removing him from the vehicle." Even if the deputies intended to arrest Bolton, he was unaware and entitled to resist an unlawful arrest. "Mere flight by Bolton would have been the lowest form of resistance at that point." Exhibit 17 (Doc. 43-1), p. 13.

Bolton was understandably confused and intimidated when he decided to drive away from the parking lot. At that point, Bolton certainly was not a legitimate "suspect" for any criminal offense, and he certainly not a suspect for any offense that authorized a vehicle chase.

A police practices expert, Dr. Andrew J. Scott, III, concluded that "the pursuit of Mr. Bolton once he left the deputies in the parking lot should not have occurred, per CCSO pursuit policy." In fact, the "pursuit was inconsistent with CCSO pursuit policy and well-established police practices and procedures which negligently

contributed to the shooting of Mr. Bolton." Exhibit 16 (Doc. 40), pp. 9, 11.

The alleged "misdemeanor crimes of Loitering and Obstruction" could not justify the deputies' decision to pursue the Tahoe. Bolton never struck Deputy House with the Tahoe. The deputies made this allegation to fabricate a felony aggravated assault charge and justify the pursuit. Exhibit 16 (Doc. 40), pp. 9-12.

Another police practices expert, Curtis Marshall, reached the same conclusion. The pursuit of the Tahoe was "based almost entirely on the notion that Deputy House was physically struck or at serious risk of injury from the Tahoe as Mr. Bolton drove away from the parking space." The evidence (including BWC video footage and the deputies' statements) overwhelmingly established that Deputy House was never struck or endangered by the vehicle." Exhibit 17 (Doc. 43-1), pp. 11-13. See also Exhibit 10; Doc. 75, Exh. M.

According to CCSO policy, deputies may "conduct motor vehicle pursuits only when the necessity of immediate apprehension of the suspect outweighs the level of danger to the community created by the pursuit." Doc. 73, p. 282. The vehicle pursuit of Bolton as a suspected "loiterer" cannot arguably meet this standard without fabricating a more serious crime. "The need to apprehend the fleeing driver (Mr. Bolton) based on misdemeanor crimes, did not outweigh the inherent dangers of a vehicle pursuit." Exhibit 16 (Doc. 40), p. 9; Exhibit 17 (Doc. 43-1), p. 13.

The deputies violated another CCSO policy by failing to "advise the dispatch center of the…offense committed." Exhibit 17 (Doc. 43-1), p. 14; Doc. 73, p. 283. The deputies probably realized that they would not be authorized to engage in a vehicle pursuit of a suspect for loitering, and the deputies fabricated this aggravated assault charge after the Shooting.

The deputies ignored the CCSO Vehicle Pursuit policy because they decided it was more important to prevent Bolton from leaving the scene of a nonexistent loitering offense. The unjustified, inherently dangerous vehicle pursuit proximately caused and culminated in the Shooting and the bullet in Bolton's brain.

3. The PIT maneuver was dangerous, unauthorized, unjustified, and prohibited by a written CCSO policy

Defendants contend that the PIT maneuver performed by Deputy Collins was lawful and not specifically included in Bolton's claims. Doc. 74-1, pp. 20-21. Bolton does not claim that he suffered any physical injury during the PIT maneuver. However, Deputy Collins performed the PIT maneuver during his vehicle pursuit of Bolton's Tahoe. The propriety of the PIT maneuver is explicitly encompassed within the CCSO Vehicle Pursuit Policy. Doc. 73, p. 287.

A PIT maneuver is an "offensive tactic" that must be approved by a CCSO supervisor. Deputy Collins violated CCSO's Vehicle Pursuit policy by driving "on the wrong side of (the) roadway" to perform the PIT maneuver without "department

training" or supervisory permission. Deputy Collins had no "specific training in performing PIT maneuvers" and he never even asked for permission. PIT maneuvers are inherently dangerous, so they "should only be instituted when the use of deadly force is warranted. In this instance, deadly force was not warranted when Deputy Collins implemented the PIT maneuver." Exhibit 16 (Doc. 40), pp. 12-13; Exhibit 17 (Doc. 43-1), pp. 15-17; Doc. 73, pp. 27, 284-287: Doc. 75, Exh. M.

Thus, Deputy Collins was prepared to use deadly force when he performed the PIT maneuver. He also performed the PIT maneuver during a vehicle pursuit that was dangerous, unauthorized, unjustified, and prohibited by a written CCSO policy. The PIT maneuver proximately caused the Shooting and the resulting injuries.

4. Deputy Collins unreasonably and unjustifiably used excessive, deadly force against Bolton

Defendants contend that Deputy Collins' use of deadly force against Bolton was "objectively reasonable" because "a reasonable officer…would have believed Mr. Bolton was gravely dangerous." Doc. 74-1, pp. 21-22. In fact, the deputies created a situation that was only dangerous to Bolton, falsely alleged that his immobilized vehicle was imminently dangerous, and shot Bolton in the head before he had any opportunity to follow an instruction to turn off his engine.

As an expert, Dr. Scott concluded that the "force used by Deputy Collins was unnecessary and excessive. Shooting Mr. Bolton when he was not an immediate

threat to the safety of Deputy Collins or others was inconsistent with well-established police practices and procedures." Exhibit 16 (Doc. 40), p. 14. Another expert, Mr. Marshall, agreed and both experts outlined a detailed factual basis for this opinion. Exhibit 16 (Doc. 40), pp. 14-20; Exhibit 17 (Doc. 43-1), pp. 17-29.

5. Deputy Spinks used excessive force against Bolton

Defendants contend Deputy Spinks only used reasonable force when he "put his knee on Bolton's lower back… to handcuff him for the safety of deputies and Bolton himself." Doc. 74-1, pp. 23-24.

Bolton was grievously injured, harmless, and twitching spasmodically on the ground due to the gunshot wound to his head. Deputy Spinks yelled at Bolton to "stop moving" as he put a foot and knee on Bolton's back and neck to handcuff him.. Doc. 75, Exh. N, O. Deputy Spinks obviously used excessive force against Bolton.

6. Deputy House failed to intervene

Defendants contend Deputy House cannot be liable for failing "to intervene or to take any action to prevent Collins from shooting." Defendants concede that a law enforcement officer who "fails or refuses to intervene when a constitutional violation such as (a use of excessive force) takes place in his presence …is directly liable under Section 1983." Liability arises when an "officer is in a position to intervene and fails to do so." Doc. 74-1, pp. 24-25, quoting *Helm v. Rainbow City*,

989 F.3d 1265, 1272 (11th Cir. 2021); *Dukes v. Miami-Dade County*, 232 Fed.Appx. 907, 913 (11th Cir. 2007); *Ensley v. Soper*, 142 F.3d 1402, 1407 (11th Cir. 1998).

Plaintiff agrees that Deputy House could not intervene "to prevent Collins from shooting." Deputy Collins decided to fire that bullet before he even stopped his patrol car. Nobody could have intervened to prevent the Shooting within the four (4) seconds it took for Deputy Collins to jump out of his seat, aim, and fire a bullet through Bolton's right eye.

However, Deputy House failed to intervene several times before the Shooting. Instead, he chose to support Deputy Collins during every flawed step of the encounter. Deputy House should have intervened by:

- explaining to Bolton that he needed to exit the vehicle for "officer safety";
- confirming Bolton's identity;
- inquiring why Bolton was sleeping in his vehicle in the parking lot;
- declining to join in the unauthorized, dangerous pursuit of the Tahoe;
- advising Deputy Collins not to pursue the Tahoe; and
- advising Deputy Collins not to perform an unauthorized PIT maneuver.

An intervention by Deputy House in any of these matters would have probably prevented the Shooting and its tragic consequences.

7. The deputies' false statements provide evidence that they knowingly and intentionally violated Bolton's civil rights

Perhaps the most damning evidence of the deputies' knowledge and intent is their misrepresentations of facts to justify their conduct and evade CCSO policies.

1. Deputy Collins falsely alleged that he investigated the parked Tahoe "due to several recent commercial burglaries in the area, specifically cell phone and electronics stores." Doc. 73, pp. 81-82, 297. This misrepresentation suggests that Deputy Collins had a specific, legitimate reason to be concerned about whether Bolton was parked at that location for an illegal purpose.

Deputy Collins admitted he could not recall any break-ins or burglaries in the Newnan Pavilion within the previous year. In fact, he could not recall such a crime in that general area during the six (6) months before the Shooting. Doc. 73, p. 87.

Deputy House admitted that he could not recall any break-ins or burglaries in the Newnan Pavilion. Doc.72, pp. 54. The CCSO representative, Major Fenninger, also admitted that he was unaware of any break-ins or burglaries in or near the Newnan Pavilion during the six (6) months prior to the Shooting. Doc. 69, p. 78.

2. Deputy Collins falsely alleged that Bolton "pretended to be asleep" when the deputy knocked on the Tahoe window. Doc. 73, p. 297. This misrepresentation infers that Bolton was deceptive and/or a potential lookout for a burglary, so Deputy Collins would have a reason to be concerned about why Bolton

was parked in the shopping center lot.

Bolton was obviously asleep in the back of the Tahoe when Deputy Collins knocked. Bolton sounded groggy as he responded, and nothing about Bolton's conduct or appearance suggested that he "pretended to be asleep." Doc. 75, Exh. M.

3. Deputy Collins falsely alleged that Bolton claimed "he did not have to provide his identification." Doc. 73, pp. 94-95, 297. This misrepresentation suggests that Bolton was deceptive and uncooperative with the deputies.

Bolton never claimed that he did not have to produce identification. Bolton only questioned why he had to produce identification again after he had already shown it to another officer. In fact, Bolton promptly retrieved his driver's license and he never refused to produce it. Deputy Collins could see the driver's license in Bolton's hand as and after he moved to the front seat of the Tahoe. Exhibit 7; Exhibit 8; Exhibit 9; Doc. 69, p. 60; Doc. 73, pp. 95-96; Doc. 75, Exh. M, N.

4. Deputy Collins falsely alleged that he told Bolton that "he would be allowed to go free" after Deputy Collins "completed (his) investigation." Doc. 73, p. 297. This misrepresentation suggests that Bolton had no reason to be surprised when he was instructed to exit from his vehicle during the "investigation."

Deputy Collins initially told Bolton: "give me your ID and let me check you and then I'll be on my way." At that point, Bolton had to reasonably believe that the

deputies just wanted to see Bolton's driver's license to identify him before they would leave the parking lot and let him sleep. Bolton readily produced his driver's license when Deputy Thompson previously requested it. As Bolton was producing his driver's license, he was surprised and confused by the additional instruction to exit from his vehicle. Exhibit 7; Exhibit 8; Doc. 75, Exh. M, N.

5. Deputy Collins falsely alleged Bolton "kept refusing to" exit from the Tahoe. Doc. 73, p. 298. This misrepresentation suggests Bolton fostered a conflict with the deputies by repeatedly refusing to complying with their instructions.

Bolton only refused to exit from the Tahoe the first time because he clearly did not understand the reason for the request. Bolton previously conversed with other deputies while parked at the same location, identified himself, and confirmed that he was living in his car. Bolton did not "keep refusing to" exit from his vehicle. Bolton merely continued to ask the deputies to explain why they wanted Bolton to step out of the vehicle at night in an isolated location with no witnesses when he was already holding a driver's license that the deputies no longer showed any interest in seeing.

The deputies had multiple opportunities to avoid a conflict by explaining their instructions. It is significant that Dr. Onyeka asked essentially the same question during another CCSO traffic stop six (6) months later. In that traffic stop, Deputy Spinks refused to explain why he wanted the doctor to exit from his vehicle. Instead,

the doctor was forcibly dragged from his vehicle and detained before he received a minor traffic citation for an expired tag. Once again, the deputy's conduct was approved because he did not violate any CCSO policy. Exhibit 14; Exhibit 15.

6. Deputy Collins and Deputy House knew that drivers would sometimes ask why they were told to exit from their vehicles during traffic stops. Sometimes these deputies would give the driver a reasonable explanation (*e.g.* "officer safety") to alleviate his concerns and promote voluntary compliance with the instruction. Despite "de-escalation training" consistent with this approach, these deputies knew they were also authorized to forcibly remove a driver from a vehicle without any explanation or effort to encourage voluntary compliance.

Deputy Collins and Deputy House made a conscious decision to forcibly remove Bolton from the Tahoe without explaining their demand to exit the vehicle. Deputy Spinks subsequently made the same decision when he forcibly removed Dr. Onyeka from his vehicle during a routine traffic stop. In short, CCSO deputies routinely used excessive force against selected drivers. It is no coincidence that Bolton and Dr. Onyeka are both black males.

At his deposition, Deputy Collins falsely alleged that he had no "chance" to explain why Bolton needed to exit from his vehicle. Deputy Collins obviously had ample time and opportunity to give Bolton an explanation. Deputy Collins made this

false statement to avoid admitting his conscious, intentional decision to "get his glove" and forcibly remove Bolton instead.

7. Deputy Collins falsely reported that the Tahoe struck Deputy House before Bolton drove away from the parking lot. Doc. 73, p. 298. Deputy House also falsely reported that the Tahoe pushed him "out of the way" before Bolton drove away from the parking lot. Deputy House claimed that he "stepped in front of the" Tahoe with his gun drawn while he was giving commands "to keep Bolton from leaving." Doc. 72, pp. 92, 310. This misrepresentation suggests that Bolton committed an aggravated assault, a felony offense that could be used to justify the deputies' decision to conduct a vehicular pursuit of the Tahoe.

Both deputies gave inconsistent and false accounts of this event. The BWC of each deputy verifies that Deputy House was already standing to the side of the Tahoe before Bolton drove away from the parking lot. In fact, Deputy House was standing next to the driver's window of the Tahoe when Bolton started the engine. Deputy House stepped back and aimed his gun as he reached over with his left hand to touch the front fender. Deputy House withdrew his hand and holstered his gun as Bolton started to drive away. Deputy House did not mention being struck by the Tahoe when he gave written and recorded statements about the Shooting to the GBI. Exhibit 10; Doc. 72, pp. 79, 90-91, 174; Doc. 73, pp. 141-143; Doc. 75, Exh. M (02:16-02:40).

Video evidence shows that the Tahoe never struck or moved toward Deputy House as Bolton drove away from the parking space. Plaintiff's experts, Dr. Scott and Mr. Marshall, both reviewed the evidence and reached the same conclusion. Exhibit 16 (Doc. 40), pp. 11-12; Exhibit 17 (Doc. 43-1), pp. 12-13.

8. Deputy Collins falsely reported that the Tahoe continued to ram and push Deputy Collins' patrol car after the PIT maneuver. Doc. 73, pp. 134-135, 147, 298. This allegation was intended to justify the deputy's otherwise unauthorized use of deadly force when he shot Bolton. Doc. 73, 135.

Except that it never happened. After the PIT maneuver, Deputy Collins drove his patrol car forward until it bumped into the front of the Tahoe. Tire marks verify that the Tahoe tires were spinning, but the vehicle did not move after this "mild impact" with Deputy Collins' patrol car. Deputy Collins' BWC and Deputy House's BWC both show that the Tahoe moved backward and stopped a short distance away without ever pushing the patrol car. Exhibit 11; Doc. 75, Exh. M, N.

Plaintiff's experts examined the evidence and agreed that the Tahoe was immobilized between three (3) patrol cars when Deputy Collins used deadly force to shoot Bolton. The spinning tires only suggest that Bolton was disoriented after the Tahoe spun around during the PIT maneuver and his foot was still on the accelerator. Exhibit 16 (Doc. 40), pp. 16-17; Exhibit 17 (Doc. 43-1), pp. 19-20.

9. Deputy Collins falsely reported that he was still in his patrol car while Deputy House was "giving verbal commands" to Bolton. This allegation was intended to justify the Shooting by claiming Bolton had ample time to comply with instructions that could have eliminated the need to use deadly force. Doc. 73, p. 298.

Deputy House only gave Bolton one (1) verbal command. Deputy House shouted "turn off the car" at the same moment Bolton was shot in the head. Deputy Collins was already out of his patrol car and aiming his pistol at Bolton's head when Deputy House shouted this verbal command. Bolton had no opportunity to comply with the single verbal command to turn off his engine before Deputy Collins fired the bullet that struck Bolton in the head. Exhibit 7; Exhibit 8; Doc. 75, Exh. M, N.

10. Deputy Collins falsely reported that Bolton was "trying to break free" by turning "the steering wheel to the left" toward Deputy House. This allegation was intended to justify the Shooting by claiming that Bolton used the Tahoe to pose a threat to Deputy House. Doc. 73, 149-150, pp. 298.

Bolton was shot immediately after the Tahoe stopped. During the four-second interval before the Shooting, the videos do not show Bolton trying to turn the steering wheel. Based on the positioning of the vehicles, Bolton could not possibly turn the Tahoe toward Deputy House. In fact, the Tahoe came to rest with its wheels pointed straight ahead or very slightly to the left. Plaintiff's experts examined the evidence

and agreed that Bolton was not trying to break free, turning his steering wheel, or posing any danger to Deputy House at that time. Exhibit 12; Exhibit 16 (Doc. 40), pp. 16-17; Exhibit 17 (Doc. 43-1), pp. 19-20; Doc. 75, Exh. M, N.

11. Deputy Collins falsely reported he shot Bolton while he saw Deputy House was in danger "directly between the suspect vehicle (*i.e.* the Tahoe) and his patrol car." This allegation was intended to justify the Shooting by claiming that the Tahoe "was a fleeing vehicle using deadly force against" Deputy House. Otherwise, the Shooting violated the CCSO Vehicle Pursuit Policy prohibiting the use of a firearm "against a fleeing vehicle or its occupants." Doc. 73, pp. 287, 298.

Deputy Bolton did not even see Deputy House's physical location before the Shooting. As a result, Deputy Collins initially reported that Deputy House was standing "directly between the suspect vehicle and his patrol car" when he was really standing a safe distance away behind the door of his patrol car. Deputy House and the experts all agree that Deputy House was not endangered by the Tahoe. Exhibit 11; Exhibit 12; Exhibit 13; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20, 25-26; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 72, p. 111; Doc. 73, p. 298; Doc. 75, Exh. M, N.

C. DEFENDANTS ARE POTENTIALLY LIABLE UNDER § 1983 IN THEIR OFFICIAL CAPACITIES

Sheriff Wood contends that the claim against him should be dismissed because he is an agent of the State, and the Eleventh Amendment protects the State

from a § 1983 suit in federal court without its consent. Sheriff Wood also claims sovereign immunity as an agent of Coweta County. Doc. 74-1, pp. 30-31, 33-34.

Quite simply, a county sheriff is not an "agent of the State" for purposes of a § 1983 claim. A county sheriff represents the county, just as a city official represents the municipality. These governmental entities are only liable in official capacities for their own contributions to a police officer's misconduct. "(M)unicipal bodies sued under § 1983 cannot be entitled to an absolute immunity." *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 691, 701 (1978).

County and municipal liability can be based on deficiencies in police department policies, practices, or training that caused or contributed to a police officer's conduct in pursuing an unjustified arrest or criminal prosecution. These entities may also be liable for sanctioning, ratifying, or even acquiescing to police officer conduct which promotes a constitutional violation. *Id.* at 694. See also *Board of County Commissioners v. Brown,* 520 U.S. 397, 403–04 (1997); *Pembaur v. City of Cincinnati,* 475 U.S. 469, 478, 480 (1986); *Matthews v. Columbia County,* 294 F.3d 1294, 1297 (11th Cir. 2002).

The question is whether a governmental entity "was the 'moving force' behind the injury alleged. A plaintiff must show a direct causal link between the municipal action and the deprivation of federal rights." *Brown, supra,* 520 U.S. at 404.

The county, through its sheriff, may be held liable even if the deputies are protected by qualified immunity. A deputy may act reasonably, but inappropriately, if the sheriff fails to provide adequate training or implement appropriate practices.

In the case at bar, the Sheriff Wood is at least partially responsible for the conduct of the defendant deputies due to deficiencies in training and supervision. The evidence identifies multiple deficiencies that may be summarized in a list:

- Deputies are not properly trained on the legal definition of loitering, so they don't know how to conduct a proper investigation of that offense.
- Deputies are not properly trained to contact CCSO to confirm whether another deputy has already spoken to someone or investigated a matter.
- Deputies are not properly trained or supervised to conduct vehicle pursuits in accordance with CCSO's own written policy. Doc. 73, pp. 282-287. Consequently, deputies may pursue any fleeing vehicle based "on their discretion at the time" without any limitations. As implemented by CCSO, the policy allows a deputy to pursue someone in a fleeing vehicle "who simply didn't want to cooperate with the officers and decided to leave." Doc. 69, pp. 44-46.
- Deputies are not properly trained or supervised to conduct PIT maneuvers in vehicle pursuits in accordance with CCSO's written policy. Doc. 73, pp. 282-287. Consequently, a deputy is not bound by written policy requirements to

restrict use of this procedure after prior training and supervision. Doc. 69, pp. 47-48.

- Deputies are not properly trained or supervised to apply de-escalation training to traffic stops. A deputy has no obligation to seek voluntary compliance with a demand for a motorist to exit from his vehicle. Instead, deputies may choose to break a window and drag the motorist from his vehicle. Doc. 69, pp. 83-87.

- Deputies are trained and supervised to exercise enormous discretion in using deadly force. Doc. 69, pp. 103-108. Deadly force shouldn't be used against someone committing a traffic violation, misdemeanor, or non-forcible felony, and a CCSO written policy prohibits it. However, deputies are trained and supervised to use "necessary force" to achieve any legitimate police objective and overcome (any) "resistance." In this case, any level of force can be used to identify someone sleeping in his vehicle, to remove a driver from his vehicle, to keep someone from leaving a scene, or to pursue any "fleeing vehicle." Deadly force is always a viable option, even if it is contrary to a written policy. Doc. 69, pp. 21, 24, 44-46.

- Sheriff Wood condones the conduct of the deputies, even when they violate official policies or use excessive force. No deputy was disciplined in this case despite the blatant violations of CCSO policies. Similarly, Deputy Spinks was not even chastised for dragging Dr. Onyeka out of his car for an expired tag because Deputy Spinks did not violate any CCSO policy. Exhibit 14; Exhibit 15.

D. BOLTON STATED VIABLE STATE LAW ASSAULT AND BATTERY CLAIMS AGAINST THE DEPUTIES

The defendant deputies contend that the state law tort claims for assault and battery should be dismissed because a "touching" during "a valid arrest…does not constitute a battery unless the degree of force used was excessive." Doc. 74-1, p. 32. In this case, Bolton was never the subject of "a valid arrest," and the defendant deputies arguably used excessive force well beyond a mere "touching."

The deputies also claim they are entitled to "official immunity when they merely act in a negligent manner." Conversely, the deputies admit that they "lose their official immunity when they act with actual malice or intent to injure." Doc. 74-1, p. 33, citing *Touchton v. Bramble*, 284 Ga.App. 164, 167 (2007).

Deputy Collins and Deputy House deliberately intimidated and frightened Bolton by ignoring his driver's license, statements, and questions while refusing to give him a reason to step out of his vehicle. These deputies chased Bolton down in an unauthorized vehicle pursuit, forcibly stopped his vehicle, and unjustifiably shot him in the head even though Bolton was not under arrest and he committed no crime.

Deputy Spinks dragged Bolton out of the Tahoe face-down on the pavement, then put a knee on Bolton's back to handcuff him. Deputy Spinks had no EMT training or medical reason to remove Bolton from the Tahoe, and he knew Bolton suffered a gunshot wound to his head. Deputy Spinks was concerned with restraining

Bolton, but unconcerned with whether the movement would affect Bolton's injury.

Under these circumstances, a jury could reasonably conclude that each deputy acted "with actual malice and intent to injure" Bolton. *Id.*

E. PLAINTIFF HAS NO VIABLE PUNITIVE DAMAGES CLAIM AGAINST SHERIFF WOOD

Sheriff Wood contends he cannot be liable for punitive damages in his official capacity. Doc. 74-1, p. 35. Plaintiff agrees. The punitive damages claim is only viable against the deputies; Plaintiff will seek to amend the Complaint accordingly.

V. CONCLUSION

For the reasons set forth herein, the Court should deny *Defendants' Motion for Summary Judgment.* Each defendant is arguably liable for acts and omissions. The established legal parameters for use of deadly force did not exist, and qualified immunity does not apply. Plaintiff has asserted viable claims against each defendant that are supported by evidence, so the factual disputes must be resolved by a jury.

This 18th day of February, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation established by Local Rules 5.1(C) and 7.1(D). The length of this brief is within the prescribed page limitation; the type size and style of this entire brief is 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing *Plaintiff's Response Brief in Opposition to Defendants' Motion for Summary Judgment* with the Clerk of Court for filing and uploading to the CM/ECF system, which will automatically send e-mail notification of such filing to the appropriate parties and opposing counsel of record, including:

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This 18th day of February, 2023.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON, Plaintiff, v. LENN WOOD, Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia; *et al.* Defendants.	:	CIVIL ACTION FILE NO. 1:21-CV-2279-MHC

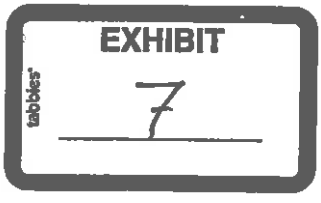
PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS

Plaintiff NICHOLAS S. BOLTON, pursuant to Local Rule 56.1 (B)(2)(a), respectfully submits this response to the individual paragraphs of *Defendants' Statement of Material Facts* (Doc. 74-2).

1.

The Newnan Pavilion is a privately owned shopping center located in Coweta County at I-85 and Bullsboro Drive, partly in incorporated Newnan, Georgia, and partly outside the city limits. (Declaration of Lenn Wood, ¶ 17; Deposition of John Taylor Collins, p. 85, ll: 21-24; House Dep., p. 47, ll: 10-20).

RESPONSE: Correct.



2.

Positioned in the area's most prominent retail corridor, Newnan Pavilion is alongside and is visible from I-85. (Wood Decl., ¶ 17).

RESPONSE: Correct.

3.

The retail establishments in Newnan Pavilion include Aldi, Home Depot, Kohl's, Five Below, Academy Sports, PetSmart, T-Mobile, restaurants, and other businesses. (Wood Decl., ¶ 17).

RESPONSE: Correct.

4.

Newnan Pavilion posts "No Loitering" signs throughout the property. (Wood Decl., ¶ 18 and Exh. D; Collins Dep., p. 107, ll: 20-24).

RESPONSE: Correct, but vague and immaterial. "No Loitering" signs were posted at unspecified locations near the parking lot, but Bolton did not see a sign, there is no evidence that a sign was visible to Plaintiff, and there was no evidence that Plaintiff was loitering. See Exhibit 3, ¶¶ ___.

5.

Within a year or so before the subject shooting, there was a break-in or armed robbery at the T-Mobile in Newnan Pavilion shopping center, and there was an

armed robbery at an AT&T store down the street where deputies chased the subject all the way to Atlanta. (Deposition of M. Fenninger, pp. 78-80, ll: 23-2).

RESPONSE: Disputed, unverified, and immaterial. Fenninger only believed a break-in or armed robbery occurred at an AT&T store located somewhere near the same highway exit that was used for the Newnan Pavilion within a year-and-a half prior to the Shooting. Fenninger did not see or refer to any police report and he was not even sure of the nature of the crime. Doc. 69, Fenninger Dep., pp. 78-80.

6.

Collins said there is a burglary in Coweta County "just about every night," especially at gas stations and cell phone stores. (Collins Dep., p. 82, ll: 17-21).

RESPONSE: Correct. Collins made the statement, but it is unverified and immaterial. Collins provided no factual support for this conclusion, and he could only recall hearing about one (1) burglary at a Chevron gas station in the vicinity of the Newnan Pavilion. Doc. 73, Collins Dep., pp. 82-85.

7.

At the time of the subject incident, there had been a string of cell phone store burglaries in the area. (House Dep., p. 53, ll: 1-15).

RESPONSE: Incorrect and unverified. House "thought" that two Verizon stores were burglarized "along Highway 14," but he didn't "remember exactly where

they were." House was unaware "of any break-ins or burglaries in any commercial or retail establishments in the Newnan Pavilion." Doc. 72, House Dep., pp. 52-54.

8.

A couple of gas stations along Highway 34 also had been burglarized. (House Dep., p. 54, ll: 11-18; Spinks Dep., p. 21, ll: 19-23).

RESPONSE: Unverified and immaterial. House only "thought" that two Verizon stores were burglarized "along Highway 14," but he didn't "remember exactly where they were." House was unaware "of any break-ins or burglaries in any commercial or retail establishments in the Newnan Pavilion." Doc. 72, House Dep., pp. 52-54.

9.

A gas station across the street from Newnan Pavilion and a Valero store 2-3 miles from Newnan Pavilion had been burglarized weeks before the incident. (Collins Dep., p. 83-84, ll: 2-6).

RESPONSE: Unverified and immaterial. Collins provided no factual support when he recalled hearing about a burglary at a Chevron gas station "maybe a month or so before" the Shooting in the vicinity of the Newnan Pavilion. Collins recalled that a Valero gas station was burglarized at some unspecified time "two to three miles" away. Doc. 73, Collins Dep., pp. 82-85.

10.

Collins also was aware of the burglary of a rental car company and several car dealerships located within a mile of Newnan Pavilion in the six months to a year before the incident. (Collins Dep., pp. 87-88, ll: 20-19).

RESPONSE: Unverified and immaterial. Collins provided no factual support when he recalled hearing about these burglaries at some unspecified time within a mile of the Newnan Pavilion. Doc. 73, Collins Dep., pp. 82-85.

11.

While Defendant Lenn Wood was serving as Interim Sheriff, he was elected to the position of Coweta County Sheriff on June 18, 2019. (Wood Decl., ¶ 2).

RESPONSE: Correct.

12.

Defendant Taylor Collins was a deputy sheriff with the patrol division of the Coweta County Sheriff's Office on June 30, 2019. (Collins Decl., ¶ 4).

RESPONSE: Correct.

13.

Defendant Jon House was a deputy sheriff with the patrol division of the Coweta County Sheriff's Office on June 30, 2019. (House Dep., pp. 23, ll: 7-9; 26, ll: 10-14; 35, ll: 13-20).

RESPONSE: Correct.

14.

Defendant Christian Spinks was a deputy sheriff with the patrol division of the Coweta County Sheriff's Office (CCSO) on June 30, 2019. (Spinks Dep., pp. 8, ll: 18-24; 9, ll: 3-5; 15, ll: 21-23).

RESPONSE: Correct.

15.

After graduating from basic training at the Academy, Coweta County Sheriff's deputies must complete a field training program. (Spinks Dep., pp. 10-11, ll: 13-12).

RESPONSE: Correct.

16.

The training required by the Coweta County Sheriff's Office meets or exceeds the training hours required by the Georgia Peace Officer Standards and Training (POST) Council. (Wood Decl., ¶ 8).

RESPONSE: Correct.

17.

CCSO Deputies receive Use of Force training every year. (Deposition of Mark Fenninger, p. 23, ll: 13-15; Collins Dep., p. 69, l: 17-20; Spinks Dep., p. 75, ll: 20-

21).

RESPONSE: Correct.

18.

De-escalation is a course that the CCSO deputies take annually. (Collins Dep., p. 69, l: 17-20; House Dep., p. 40, ll: 1-11; Spinks Dep., p. 75, ll: 20-21).

RESPONSE: Correct.

19.

The CCSO Use of Force policy states, "Necessary force is the amount of force needed to overcome the resistance to an officer who is attempting to achieve a legitimate police objective." (Fenninger Dep., p. 21, ll: 8-11, and Exh. 2; Wood Decl., Exh. A).

RESPONSE: Correct.

20.

The CCSO Use of Force policy provides that deputies "shall never use a greater degree of force than that which is lawful, reasonable, and necessary for the specific situation." (Wood Decl., ¶ 12, and Exh. A; Fenninger Dep., Exh. B).

RESPONSE: Correct.

21.

The CCSO Use of Force policy provides that deputies may use deadly force

in self-defense and in defense of others, as well as to prevent the commission of a forcible felony. (Fenninger Dep., p. 26, ll. 20-23, p. 29, ll. 1-6, and Exh. 2; Wood Decl., ¶ 12 and Exh. A).

RESPONSE: Correct.

22.

Pointing a weapon is not a use of deadly force. (Collins Dep., pp. 72-73, ll: 25-8).

RESPONSE: Disputed. Exhibit 17 (Doc. 43-1), p. 10; Doc. 69, Fenninger Dep., pp. 26, 31-34.

23.

CCSO Deputies are trained never to touch the trigger of their duty weapon until they are ready to shoot. (Fenninger Dep., p. 34, ll: 10-11; House Dep., p. 44, ll: 1-23).

RESPONSE: Correct.

24.

It normally takes a highly trained officer 1.5 seconds to get his gun out of his holster and get it on target, and a regular officer will take a little longer. (Fenninger Dep., p. 36, ll: 10-14).

RESPONSE: Undetermined. Fenninger provided no factual basis or legal qualifications to present this opinion.

25.

Because officers' reaction time is slower than the suspect's action, and officers have to react to what the suspect is doing, CCSO trains deputies to have their weapon out and to be ready to fire if the situation warrants. (Fenninger Dep., p. 36, ll: 7-20).

RESPONSE: Correct.

26.

A deputy cannot confirm that a vehicle is registered to the driver of the vehicle without confirming the driver's identity. (Collins Decl., ¶ 8).

RESPONSE: Correct.

27.

On June 30, 2019, Deputy Collins was on duty in full uniform performing "business checks" while on burglary patrol, which is the main part of the job on the night shift in the business district. (Collins Dep., p. 80, ll: 16-24; Collins Decl., ¶ 4; Spinks Dep., p. 17, ll: 13-21).

RESPONSE: Correct.

28.

At approximately 2:30 a.m., Deputy Collins spotted a white Chevrolet Tahoe that he had never seen before backed into a spot in the Kohl's parking lot located behind the T-Mobile store. (Collins Dep., pp. 89, ll: 4-15; 90, ll: 2-3; Collins Decl., ¶ 5; House Dep., pp. 47-49, ll: 25-19; 49, ll: 14-16; Bolton Dep., pp. 28, ll: 7-9, 29, ll: 7-12, 20-22).

RESPONSE: Correct, except to the extent the word "behind" suggests the Tahoe was parked in close proximity to a T-Mobile store. The Tahoe was parked in the shopping center parking lot, but not in close proximity to any retail store. Doc. 70, pp. 29, 37; Doc. 82.

29.

Deputy Collins parked his patrol vehicle in a manner that he could shine his scene lights on the Tahoe; Collins' vehicle was not blocking the Tahoe. (Collins Decl., ¶ 5; House Dep., p. 51, ll: 15-24).

RESPONSE: Correct.

30.

Deputy Collins notified dispatch that he was stepping out to investigate a suspicious vehicle. (Wood Decl., Exh. E; Collins Dep., pp. 92, ll: 23-25; 93, ll: 16-22; Collins Decl., ¶ 5; House Dep., p. 46, ll: 6-7).

RESPONSE: Correct.

31.

Deputy Collins considered the vehicle suspicious because it was in a dark, secluded parking lot backed in for a quick get-away behind a potential burglary target. (Collins Dep., p. 108, ll. 5-10; Collins Decl., ¶ 5).

RESPONSE: Incorrect. Deputy Collins made this false allegation, but the Tahoe was not parked in close proximity to a retail store or in a position "for a quick get-away behind a potential burglary target." Doc. 70, pp. 29, 37; Doc. 82.

32.

Seeing a person in the back seat of the Tahoe, Deputy Collins knocked on the window and identified himself. (Collins Dep., pp. 9-21; Collins Decl., ¶ 6; Wood Decl., Exh. M (Collins BWC footage) at :10; Bolton Dep., p. 20, ll: 10-14).

RESPONSE: Correct.

33.

Deputy Collins illuminated himself with his flashlight so that the occupant of the Tahoe could see Collins was a uniformed officer and told the man to provide his ID. (Collins Decl., ¶ 6; Wood Decl., Exh. M; Collins Dep., p. 96-97, ll: 25-1).

RESPONSE: Correct.

34.

The man refused to get out of the vehicle, and Deputy Collins said, "I need you to open the door, please." (Collins Decl., ¶ 6; Wood Decl., Exh. M at :34).

RESPONSE: Incorrect. The man, Bolton, did not refuse to get out of the vehicle. Bolton did not comply while he was asking the deputies why they wanted him to exit from the vehicle when he was producing his driver's license and another deputy had already allowed Bolton to park there. Exhibit 6; Exhibit 7; Exhibit 8; Doc. 75, Exh. M, N; Doc. 77-2, p. 5, ¶ 7.

35.

The man did not comply, and Deputy Collins said, "I need you to open the door so I can talk to you." (Collins Decl., ¶ 6; Wood Decl., Exh. M at :40).

RESPONSE: Disputed to the extent it does not specify how the "man did not comply." Bolton produced his driver's license, but he did not open the door or get out of the car. Exhibit 7; Exhibit 8; Doc. 75, Exh. M, N; Doc. 77-2, p. 5, ¶ 7.

36.

Concerned for his safety because the Tahoe occupant was agitated and non-compliant, Deputy Collins radioed for back-up ("25"). (Collins Dep., p. 91, ll: 6-11; Collins Decl., ¶ 7; Wood Decl., Exh. M at :44).

RESPONSE: Disputed as to the motives of Deputy Collins. Deputy Collins did not express or exhibit any concern for his safety. Bolton only became "agitated and non-compliant" when the deputies refused to explain why they wanted Bolton to exit from his vehicle. Deputy Collins would have logically explained that he wanted Bolton to exit the vehicle for officer safety because that explanation would have also alleviated Bolton's agitation and noncompliance. There was no reason for Deputy Collins to be concerned for his safety beyond the normal parameters of a traffic stop. Exhibit 7; Exhibit 8; Doc. 69, p. 86; Doc. 75, Exh. M, N.

37.

When Deputy Collins again asked the man to open the Tahoe door, the man argued with Collins instead of complying. (Collins Decl., ¶ 7; Wood Decl., Exh. M at :47).

RESPONSE: Correct to the extent Bolton "argued" that another deputy allowed Bolton to park at that location. Bolton also asked why he needed to get out of the car while he was following the instructions to produce his identification. The deputies' refusal to provide any explanation was not an argument. Exhibit 7; Exhibit 8; Doc. 69, p. 86; Doc. 75, Exh. M, N.

38.

Deputy Collins asked the occupant, now known to be Nicholas Bolton, for his

driver's license. (Collins Dep., pp. 95, ll: 2-14; 96, ll: 10-12; Collins Decl., ¶ 7; Wood Decl., Exh. M at :52).

RESPONSE: Correct.

39.

Instead of complying, the man asked, "What do you need my ID for? I talked to the other officer," and Collins responded that if he would just give Collins his ID and let him check it then Collins could be on his way. (Collins Decl., ¶ 7; Wood Decl., Exh. M at :53-1:09; Collins Dep., pp. 103-104, ll: 24-4; 122, ll: 7-8).

RESPONSE: Incorrect and incomplete. The man, Bolton, complied and produced his driver's license. Deputy Collins *initially* said he would be on his way after he checked Bolton's ID. As Bolton produced his driver's license, however, Deputy Collins changed this instruction and told Bolton to exit from the vehicle. Exhibit 7; Exhibit 8; Doc. 69, p. 86; Doc. 75, Exh. M, N.

40.

For officer safety, Deputy Collins did not feel it would be prudent for him to go back to his patrol car to try to identify the person in the vehicle because of the man's confrontational demeanor and refusal to comply with lawful orders. (Collins Decl., ¶ 8).

RESPONSE: Incorrect. Bolton did not have a "confrontational demeanor," Deputy Collins was not giving "lawful orders" when he refused to explain his instruction for Bolton to exit from his vehicle after Bolton was obviously confused and concerned about the instruction. If Deputy Collins was concerned for his safety, then he would have logically explained that he wanted Bolton to exit the vehicle for officer safety because that explanation would have also encouraged Bolton to comply. There was no reason for Deputy Collins to be concerned for his safety beyond the normal parameters of a traffic stop. Finally, Deputy House was also at the scene providing back-up and watching Bolton when Deputy House went "back to his patrol car" to retrieve a glove to break the Tahoe window. Exhibit 7; Exhibit 8; Doc. 69, p. 86; Doc. 75, Exh. M, N.

41.

Dispatch cannot confirm whether a driver is the registered owner of a vehicle based on the tag number alone because the dispatcher is not on the scene to confirm the driver's identity. (Collins Decl., ¶ 8).

RESPONSE: Correct.

42.

Deputy Collins and the man engaged in the following exchange:

Collins: "You're back in front of a bunch of closed businesses so you're loitering."

Bolton: "I'm what? Nah man."

Collins: "Is this business open, do you have a reason to be here?"

Bolton: No response.

Collins: "Then you're loitering. Do you live right here? Then you're loitering."

(Collins Decl., ¶ 9; Wood Decl., Exh. M at 1:14-1:26).

RESPONSE: Correct, but incomplete. Bolton had no opportunity to respond to the question because Deputy Collins continued to talk. In context, Bolton had no opportunity to respond to the question before Deputy Collins continued and instructed Bolton to get out of his vehicle. Exhibit 7; Exhibit 8; Doc. 75, Exh. M, N.

43.

Deputy Collins then directed the man to step out of his vehicle due to concerns for officer safety given the time of night, the man's refusal to comply with directions, and the lack of visibility into the vehicle. (Collins Dep., pp. 97, ll: 7-24; 98, ll: 5-12; 119, ll: 22-23; 164, ll: 18-21; Collins Decl., ¶ 9; Wood Decl., Exh. M at 1:31-1:33).

RESPONSE: Disputed and undetermined. Deputy Collins' motives were subjective, and he refused to give any reason for Bolton to step out of his vehicle. Furthermore, Bolton was not refusing to comply with directions; he was asking the deputies to explain why he was instructed to step out of his vehicle while he was

complying with the initial instruction to produce ID. If Deputy Collins was concerned for "officer safety," then he would have logically explained that he wanted Bolton to exit the vehicle for officer safety because that explanation would have also encouraged Bolton to comply. There was no reason for Deputy Collins to be concerned for his safety beyond the normal parameters of a traffic stop. Exhibit 7; Exhibit 8; Doc. 69, p. 86; Doc. 75, Exh. M, N.

44.

Deputy Collins again directed the man to step out of the vehicle, but he did not comply. (Collins Decl., ¶ 9; Wood Decl., Exh. M at 1:39-1:46).

RESPONSE: Correct.

45.

The man then moved to the front seat, and Deputy Collins again asked him to step out of the vehicle. (Collins Decl., ¶ 10; Wood Decl., Exh. M at 1:47-1:52; Collins Dep., p. 99, ll: 7-9; House Dep., p. 59, ll: 2-10; Wood Decl., Exh. N (House BWC video) at :42; Bolton Dep., p. 20, ll: 15-16).

RESPONSE: Correct.

46.

After Deputy Collins again asked the man to step out of the Tahoe, the man said, "I already talked to the other officer," and Collins pointed out that the man had

not talked to Collins. (Collins Decl., ¶ 10; Wood Decl., Exh. M at 1:52-1:58).

RESPONSE: Essentially correct. Bolton said, "I done already talked to two other officers" and "It's two other officers…" Exhibit 7, pp. 1, 3; Exhibit 8, p. 1.

47.

At this point, Deputy House, responding to the call for back-up, approached and Deputy Collins asked House if he had talked to the man in the SUV, to which House responded, "No." (Collins Decl., ¶ 7; Wood Decl., Exh. M at 1:59-2:00; Collins Dep., pp. 101-102, ll: 17-9; House Dep., pp. 46, ll: 4-14; 57, ll: 2-3; 60, ll. 13-16; Wood Decl., Exh. N at :49 -:57).

RESPONSE: Essentially correct. House responded, "Nope." Exhibit 7, p. 3; Exhibit 8, p. 1.

48.

House parked on the passenger side of the Tahoe, without blocking it. (House Dep., p. 52, ll: 2-4; Wood Decl., Exh. N at :18).

RESPONSE: Correct.

49.

Collins again told the man to get out of the vehicle and when the man continued to argue, Deputy Collins said, "Nobody's talked to you tonight, so go

ahead and step on out." (Collins Decl., ¶ 10; Wood Decl., Exh. M at 2:01-2:08; Exh. N at 1:04; House Dep., p. 60, ll: 17-19).

RESPONSE: Essentially correct. Deputy Collins said, "Nobody has talked to you tonight so, go ahead and step out for me." Exhibit 7, p. 3; Exhibit 8, p. 1.

50.

Deputy Collins had never seen the Tahoe or its occupant before. (Collins Decl., ¶ 10; Collins Dep., p. 89, ll: 4-15).

RESPONSE: Correct.

51.

Deputy Collins interpreted the man's behavior as a threat, because the man's demeanor was non-compliant and he was acting very agitated. (Collins Dep., pp. 104-105, ll: 22-8).

RESPONSE: Disputed and undetermined. Deputy Collins' interpretation is subjective, and Bolton's behavior did not suggest a threat. If Deputy Collins interpreted Bolton's behavior as a threat because he seemed "agitated" and "non-compliant", then Deputy Bolton would have logically explained that he wanted Bolton to exit the vehicle for officer safety because that explanation would have also alleviated Bolton's agitation and noncompliance. Exhibit 7; Exhibit 8; Doc. 69, p. 86; Doc. 75, Exh. M, N.

52.

Deputy House then explained to the man, "Let me explain something to you real quick. We don't know you. We're investigating why you're here." (Collins Decl., ¶ 9; Wood Decl., Exh. M at 2:11-2:17; Exh. N at 1:07-1:14).

RESPONSE: Correct.

53.

The man asked, "For what?" and Deputy House responded, "For loitering. You're loitering, and now that you're not stepping out of the car you're obstructing an investigation, so you can either get out and talk to us or we can take you out and go to jail. It's your choice." (Collins Decl., ¶ 9; Wood Decl., Exh. M at 2:18-2:30; Exh. N at 1:15-1:31; House Dep., pp. 72-73, ll: 24-4; 79, ll: 4-6).

RESPONSE: Essentially correct, but incomplete. At the end, Deputy House said "…or we can take you out and *you can* go to jail. It's your choice. You got one chance to get out or you're going to jail." Exhibit 7, p. 3; Exhibit 8, p. 2.

54.

Based on the man's demeanor, which was argumentative, Deputy House believed that the deputies needed the man to exit the vehicle for officer safety. (House Dep., pp. 66, ll: 10-15; 74, ll: 10-17; 75, ll: 8-10).

RESPONSE: Disputed. Deputy House's belief and the characterization of

Bolton's demeanor as "argumentative" are subjective conclusions. If Deputy Collins was concerned for "officer safety," then he would have logically explained that he wanted Bolton to exit the vehicle for officer safety because that explanation would have also encouraged Bolton to comply. There was no reason for Deputy Collins to be concerned for his safety beyond the normal parameters of a traffic stop. Exhibit 7; Exhibit 8; Doc. 69, p. 86; Doc. 75, Exh. M, N.

55.

Mr. Bolton never handed his ID to Collins or House. (Collins Dep., pp. 117, ll. 15-18; 118, ll. 15-20; Collins Decl., ¶ 8; Wood Decl., Exh. M).

RESPONSE: Correct.

56.

At the scene, Collins never saw Bolton's ID. (Collins Dep., p. 119, ll. 11-13; 121, ll. 16-18; 122-123, ll: 14-3; Collins Decl., ¶ 8).

RESPONSE: Incorrect. The video and photos clearly show Bolton holding his driver's license in his hand and visible through the window. Deputy Collins made no effort to look at or request Bolton's driver's license after he produced it. Exhibit 7, p. 2; Exhibit 8, p. 2; Exhibit 9; Doc. 75, Exh. M, N.

57.

At the scene, House never saw Bolton's ID. (House Dep., pp. 59, ll: 11-13;

64, ll: 4-5; 68, ll: 2-4).

RESPONSE: Disputed. The video and photos clearly show Bolton holding his driver's license in his hand and visible through the window on Collins' BWC and House's BWC. Deputy House made no effort to look at or request Bolton's driver's license after he produced it. Exhibit 7, p. 2; Exhibit 8, p. 1; Exhibit 9; Doc. 75, Exh. M, N.

58.

Mr. Bolton then started his ignition. (Collins Decl., ¶ 12; Wood Decl., Exh. M at 2:35; Exh. N at 1:32; Collins Dep., p. 111, ll: 10-13; House Dep., pp. 79, ll: 8-10); Bolton Dep., p. 21, ll: 17-22.

RESPONSE: Correct.

59.

In response, Deputy Collins commanded Bolton to stop the car and pulled his gun, pointing his firearm at the SUV with his finger along the outside, not on the trigger. (Collins Decl., ¶ 12; Wood Decl., Exh. M at 2:38-2:39; Collins Dep., pp. 130, ll: 16-20; 138, ll. 5-21).

RESPONSE: Correct.

60.

Deputy House drew his gun and pointed it at Bolton's windshield with his

finger along the side of the weapon, not on the trigger. (Wood Decl., Exh. M at 2:39; Exh. N at 1:35-1:36; House Dep., p. 83-84, ll: 17-10; Collins Dep., p. 112, ll: 15-24).

RESPONSE: Correct.

61.

The deputies pointed their guns at Mr. Bolton as a show of force because Mr. Bolton started a two-ton vehicle and the officers did not know what he intended to do with it. (Collins Dep., pp. 112-113, ll: 25-5; 125, ll: 5-8, 16-18; 132, ll: 19-23; Collins Decl., ¶ 12; House Dep., pp. 84, ll: 17-21; 85, ll: 1-16; 86, ll: 3-6).

RESPONSE: Disputed. Evidence shows the deputies pointed their guns at Bolton because he was about to drive away from the parking lot. There was no reason for the deputies to be concerned about what Bolton "intended to do with" the vehicle. Exhibit 7, p. 2; Exhibit 8, p. 1; Doc. 75, Exh. M, N.

62.

Collins pulled his weapon to have it ready as an officer safety measure. (Collins Dep., pp. 125, ll: 16-22; 134, ll: 4-5; Collins Decl., ¶ 12).

RESPONSE: Disputed. An expert witness saw no identifiable risk to "officer safety" when Deputy Collins pulled his weapon. As noted in the preceding ¶ 61, the deputies also claimed to use their weapons as a "show of force" to intimidate Bolton

into turning off the engine to the Tahoe. Evidence shows the deputies pointed their guns at Bolton because he was about to drive away from the parking lot. Exhibit 7; Exhibit 8; Exhibit 17 (Doc. 43-1), p. 10; Doc. 75, Exh. M, N.

63.

Deputy House yelled, "Turn the car off!" (Collins Decl., ¶ 13; Wood Decl., Exh. M at 2:39-2:40; Exh. N at 1:35; House Dep., p. 85, ll: 22-24).

RESPONSE: Correct.

64.

Mr. Bolton did not comply with the deputies but drove off despite the deputies' repeated instructions to get out of the vehicle. (Collins Dep., pp. 113-114, ll: 25-1; 115, ll: 3-5; 172, ll: 10-23; Collins Decl., ¶ 14; House Dep., p. 80, ll: 11-19, 24; 81, ll: 12-14; 86, l: 9; 94, ll: 18-20; Wood Decl., Exh. M at 2:40-2:43; Exh. N at 1:35-1:41; Bolton Dep., p. 24, ll: 5-8).

RESPONSE: Disputed. Bolton drove off after the deputies instructed Bolton to exit from the vehicle, but immediately after Deputy House told Bolton to either "get out" or go to jail. At that point, Bolton reasonably understood that he was complying with the option Deputy House gave Bolton to drive out of the parking lot and avoid going to jail. Exhibit 7, p. 3; Exhibit 8, p. 2; Doc. 70, Bolton Dep., p. 21; Doc. 75, Exh. M, N.

65.

Mr. Bolton turned his wheels toward Deputy House, striking him on the hip. (Collins Decl., ¶ 14; Wood Decl., Exh. M at 2:40-2:41; Exh. N at 1:36-1:37, 5:29; House Dep., pp. 85, l: 21; 90, ll: 5-19; 92, ll: 3-9; 93, ll: 5, 9; Exh. 7 (statement); Collins Dep., pp. 114, ll: 7-11; 123, ll: 17-18; 170-71, ll: 25-3).

RESPONSE: Incorrect. In fact, a BWC video verifies that Bolton did not turn the vehicle toward Deputy House, and the vehicle did not strike Deputy House on the hip. Exhibit 16 (Doc. 40), pp. 11-12, 15-16; Exhibit 17 (Doc. 43-1), p. 12; Doc. 75, Exh. M,N.

66.

At the time Mr. Bolton fled in his vehicle, he had committed a number of crimes, including obstruction/hindering an investigation, fleeing or eluding, loitering, and aggravated assault. (Collins Dep., pp. 136, ll: 5-17; p. 141, ll: 1-12; 142, ll. 14-19; House Dep., pp. 61, ll: 12-14; 86-87, ll: 21-1; 90, ll: 5-11).

RESPONSE: Incorrect. Bolton was not fleeing when he drove away, and he had not committed any crime. O.C.G.A. § 16-11-36; Exhibit 16 (Doc. 40), pp. 11-12; Exhibit 17 (Doc. 43-1), pp. 11-12; Doc. 70, Bolton Dep., p. 21; Doc. 75, Exh. M, N.

67.

Deputy Collins initially had articulable reasonable suspicion for loitering or prowling. (Collins Dep., p. 142, ll. 9-13).

RESPONSE: Correct.

68.

By not giving his drivers' license, he committed obstruction and the officers had probable cause to arrest. (Collins Dep., p. 142, ll: 11-12; House Dep., pp. 87, ll: 5-6; 87, ll: 11-16; 88, ll: 4-7; 89, ll: 10-19; Collins Decl., ¶ 12).

RESPONSE: Incorrect. Bolton produced his driver's license, but the deputies made no effort to look at or request Bolton's driver's license after he produced it. A BWC video and photos clearly show Bolton holding his driver's license in his hand and visible through the Tahoe window. The deputies never even asked Bolton why he was sleeping in his vehicle or parked in the lot. O.C.G.A. §§ 16-10-24, 16-11-36; Exhibit 7, p. 2; Exhibit 8, p. 1; Exhibit 9: Doc. 75, Exh. M, N.

69.

The man in the Tahoe fled from police. (Collins Dep., pp. 142, l: 13; 172, ll: 10-14; Collins Decl., ¶ 14; House Dep., p. 80, ll: 17-19; Wood Decl., Exh. M at 2:40-3:20; Spinks Dep., p. 84, ll: 3-5).

RESPONSE: Incorrect. The man, Bolton, initially drove away from the deputies before he was pursued. At the time, Bolton thought he was given permission to get out of the parking lot. Exhibit 7, p. 3; Exhibit 8, p. 2; Doc. 70, Bolton Dep., p. 21; Doc. 75, Exh. M, N.

70.

Deputy Collins and Deputy House got in their cars, activated blue lights and sirens, and proceeded to chase the Tahoe in excess of the posted speed. (Collins Decl., ¶ 15; Wood Decl., Exh. M at 2:46; Exh. N at 1:45-2:17; House Dep., p. 99, ll: 23-25; Collins Dep., p. 139, ll: 18-21; 143, ll: 15-20).

RESPONSE: Partially correct. Disputed to the extent the speed of the Tahoe has not been determined. The deputies chased the Tahoe as stated, but the dashcam video does not show the Tahoe traveling at an excessive speed. Doc. 75.

71.

The CCSO Pursuit Policy sets out guidelines governing the pursuit of motor vehicles by deputies and provides deputies with discretion to pursue a suspect when the necessity of immediate apprehension outweighs the level of danger to the public caused by the pursuit. (Wood Decl., ¶ 14 and Exh. B; House Dep., pp. 97-99, ll: 5-19; Spinks Dep., p. 49, ll: 4-16).

RESPONSE: Correct.

72.

Bolton ignored two stop signs. (Collins Dep., pp. 170, l: 7; 174, ll: 16-17; Collins Decl., ¶ 15; Wood Decl., Exh. M at 2:53, 3:02; Exh. N at 2:00).

RESPONSE: Incorrect. Bolton slowed the Tahoe, but did not come to a full stop at the stop signs on the access road to the vacant parking lot. Doc. 75, Exh. M.

73.

Bolton rode on the wrong side of the roadway. (Collins Dep., p. 170, ll: 7-8; Collins Decl., ¶ 15; Wood Decl., Exh. M at 3:02-3:10; Exh. N at 2:01-2:07).

RESPONSE: Correct to the extent Bolton drove in both lanes on the access "roadway" to the vacant parking lot. Doc. 75, Exh. M.

74.

Bolton was heading in the direction of the highway. (Collins Decl., ¶ 15; Collins Dep., p. 143, ll: 18-20; Wood Decl., Exh. N at 2:00; Bolton Dep., p. 25, ll: 13-14).

RESPONSE: Correct.

75.

There were 24-hour businesses along the main road bordering Newnan Pavilion. (Collins Dep., p. 173, ll: 8-25).

RESPONSE: Correct.

76.

To prevent Bolton from getting on a busy highway and posing a threat to the public, Deputy Collins performed a PIT maneuver, which caused Bolton's vehicle to spin around 180 degrees. (Collins Decl., ¶¶ 16, 17; Wood Decl., Exh. M at 3:10; Wood Decl., Exh. M at 3:02-3:10; Exh. N at 2:06-2:07; House Dep., pp. 99-100, ll: 20-4; Collins Dep., pp. 143, ll: 21-23; 175, ll: 13-16).

RESPONSE: Partially incorrect. Bolton posed no threat to the public and Deputy Collins' motives are disputed. Evidence suggests that the deputies chased and apprehended Bolton only because he drove away from the parking lot without obeying an instruction to exit from the Tahoe. Deputy Collins did perform the PIT maneuver with the stated result. Exhibit 7; Exhibit 8; Exhibit 16 (Exhibit 16 (Doc. 40)), pp. 11-16; Exhibit 17 (Doc. 43-1), pp. 11-17; Doc. 75, Exh. M.

77.

A Pursuit Intervention Technique (P.I.T.) maneuver is a force option to stop a suspect vehicle during a pursuit. (Wood Decl., ¶ 15).

RESPONSE: Correct.

78.

The practice of the CCSO is that an officer may do a PIT maneuver at his discretion. (Wood Decl., ¶ 15; Fenninger Dep., p. 48, ll: 10-19).

RESPONSE: Correct.

79.

When Deputy Collins performed the P.I.T. maneuver, the weather was clear, there was no vehicular or pedestrian traffic on the stretch of roadway inside Newnan Pavilion on which they were traveling, they were not driving at a high rate of speed, and the deputies did not know the identity of the Tahoe driver at that time. (Collins Decl., ¶ 16; Wood Decl., ¶ 15; Exh. M at 3:10; Collins Dep., pp. 161, ll: 19-21; 174, ll: 5-7; 175, ll. 20-24).

RESPONSE: Partially incorrect. The speed of the patrol cars is undetermined, but the deputies were driving at a much higher rate of speed than the Tahoe. The deputies chose not to identify the Tahoe driver by failing to look at his driver's license or contacting the dispatcher to confirm that Bolton had already identified himself to another deputy. The deputies "knew or should have known, the identity of Mr. Bolton" based on his previous encounter with another deputy, Bolton's driver's license that he produced, and his vehicle tag. Exhibit 16 (Doc. 40), p. 11; Exhibit 75, Exh. M, N.

80.

The PIT maneuver caused the Tahoe to turn 180 degrees. (Collins Decl., ¶ 16; House Dep., p. 101, ll: 10-13; Wood Decl., M at 3:10-3:14).

RESPONSE: Correct.

81.

Deputy Collins then brought his vehicle to a complete stop. (Collins Decl., ¶ 17; Collins Dep., p. 145, ll: 17-18; Wood Decl., Exh. M at 3:14).

RESPONSE: Correct.

82.

Mr. Bolton drove the Tahoe forward and rammed Collins' vehicle. (Collins Decl., ¶ 17; Collins Dep., pp. 145, ll: 17-22; 153, ll: 20-23; Wood Decl., Exh. M at 3:15).

RESPONSE: Disputed and incorrect. Bolton had no control of the Tahoe as it spun around from the PIT maneuver and was pinned between three (3) patrol cars. The Tahoe moved forward after the spin and may have bumped Deputy Collins' patrol car, but then the Tahoe moved back and stopped a short distance away. Bolton was not "driving" the vehicle, and it did not ram Deputy Collins' patrol car. Exhibit 11; Exhibit 12; Exhibit 16 (Doc. 40), pp. 13, 16; Exhibit 17 (Doc. 43-1), pp. 19-21; Doc. 70, Bolton Depo, pp. 24-25, 38; Doc. 75, Exh. M, N.

83.

The data retrieved from Mr. Bolton's vehicle showed that the accelerator on Mr. Bolton's Chevrolet Tahoe was being pressed between 71% and 100% at the time

Collins decided to use deadly force. (Wood Decl., ¶ 24 and Exh. F).

RESPONSE: Undetermined. Sheriff Wood provided no factual basis or legal qualifications to analyze this data or present this opinion. However, Bolton's foot apparently remained on the gas pedal after Bolton lost control of the vehicle during the PIT maneuver. Doc. 70, Bolton Dep., pp. 24-26, 38; Doc. 75, Exh. M, N.

84.

Deputy House, who had joined the pursuit behind Deputy Collins, pulled his vehicle to a high-risk stop position to the right of Collins' vehicle and exited his patrol car. (Collins Decl., ¶¶ 15, 17; Collins Dep., pp. 145, l: 25; Wood Decl., Exh. N at 2:14-2:15; House Dep., pp. 101, ll: 24-25; 105, ll: 12-24).

RESPONSE: Correct.

85.

Deputy House heard Bolton's tires squealing and he felt the Tahoe was trying to run him over. (House Dep., p. 103-104, ll: 21-1; p. 108, ll: 13-20).

RESPONSE: Disputed. Deputy House's personal feelings are subjective. "However, video evidence does not support a claim that Mr. Bolton was moving Deputy Collins' patrol vehicle or that Mr. Bolton was turning his car towards Deputy House." The Tahoe was not moving, Bolton was not turning the steering wheel, and Deputy House was not in a physical position to be "run over" during the three (3)

seconds he was there prior to the Shooting. Exhibit 11; Exhibit 12; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 75.

86.

Deputy Collins could not hear anything other than the sound of Bolton's tires squealing loudly. (Collins Decl., ¶ 17; Collins Dep., p. 148, ll: 10-11).

RESPONSE: Disputed. Deputy Collins certainly should have heard Deputy House yelling at Bolton to turn off the engine and the simultaneous gunshot from his own pistol as he shot Bolton in the head. Doc. 75, Exh. M, N.

87.

The squealing tires is audible on the BWC footage. (Wood Dec., ¶ 32 and Exh. M at 3:15-3:20; Wood Decl., Exh. N at 2:14-2:18; Fenninger Dep., p. 80, l: 22).

RESPONSE: Correct.

88.

The Tahoe left tire marks on the pavement after the PIT maneuver turned it around. (Wood Dec., ¶ 32 and Exh. J).

RESPONSE: Correct.

89.

As Deputy Collins tried to put his vehicle in park, he could feel his vehicle being pushed backward. (Collins Decl., ¶ 17; Collins Dep., p. 147, ll: 12-16; 153, ll:

1-8).

RESPONSE: Disputed. The physical evidence, photos, and video do not show or verify Deputy Collins' patrol car was pushed backward. To the contrary, scene photos show the Tahoe was immobilized and stopped a short distance from the patrol car. The BWC videos do not suggest any movement of the patrol car after it stopped in front of the Tahoe just four (4) seconds prior to the Shooting. Exhibit 11; Exhibit 12; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 75; Exhibit M, N.

90.

Collins observed Bolton turn his steering wheel to Collins' right, trying to break free of Collins' car. (Collins Decl., ¶ 17).

RESPONSE: Incorrect. The physical evidence and video do not show Bolton turning his steering wheel. To the contrary, the BWC videos and scene photos show the Tahoe remained in the same position with the front wheels pointed directly ahead toward Deputy Collins' patrol car. After Collins stopped his patrol car, he certainly did not see Bolton turn his steering wheel during the four (4) seconds prior to the Shooting. Exhibit 11; Exhibit 12; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 75, Exh. M, N.

91.

Out of his peripheral vision, Collins, who was looking at the Tahoe driver, observed Deputy House standing in the area where Bolton was trying to steer. (Collins Decl., ¶ 17; Collins Dep., pp. 149, ll: 2-12; 150, ll: 3-7; 152, ll: 2-6).

RESPONSE: Incorrect. The physical evidence and video do not show Bolton turning his steering wheel toward Deputy House. To the contrary, BWC videos and scene photos show the Tahoe remained in the same position with the front wheels pointed directly ahead toward Deputy Collins' patrol car. After Collins stopped his patrol car, his BWC verified that he could not observe Deputy House's position during the four (4) seconds prior to the Shooting. As a result, Deputy Collins initially reported that Deputy House was standing "directly between the suspect vehicle and his patrol car" when he was really standing a safe distance away behind the door of his patrol car. Exhibit 11; Exhibit 12; Exhibit 13; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 73, p. 298; Doc. 75, Exh. M, N.

92.

Fearing the Tahoe was about to break free and strike Deputy House, Deputy Collins exited his patrol car to fire his weapon and felt his vehicle move, causing Collins to stumble. (Collins Dep., ¶ 17; Collins Dep., pp. 134-35, ll: 22-2; 135, ll: 17-21; 147, ll: 12-20; 148, ll: 19-24; 149, ll: 17-19; 150, ll: 19-21; Wood Decl., Exh.

M at 3:16-3:20).

RESPONSE: Incorrect. The physical evidence and Deputy Collins' BWC video show that he immediately exited his patrol car as soon as it stopped to fire his weapon at Bolton. Deputy Collins' patrol car did not move, and he did not stumble as he drew his weapon and shot Bolton in the head. The BWC video did not show Bolton attempting to "break free" or turning his steering wheel toward Deputy House. To the contrary, the video and scene photos show the Tahoe remained in the same position with the front wheels pointed directly ahead toward Deputy Collins' patrol car. After Collins stopped his patrol car, his BWC video verified that he could not observe Deputy House's position during the four (4) seconds prior to the Shooting. As a result, Deputy Collins initially reported that Deputy House was standing "directly between the suspect vehicle and his patrol car" when he was really standing a safe distance away behind the door of his patrol car. Exhibit 11; Exhibit 12; Exhibit 13; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 73, p. 298; Doc. 75, Exh. M, N.

93.

Meanwhile, Deputy House closed his car door while yelling, "Turn off the car!" as the driver of the Tahoe had the gas pedal pushed down and was trying to push through the patrol vehicles. (Wood Decl., ¶ 24; Exh. F (GSP Report); Exh. N

at 2:16; House Dep., p. 104, ll: 3-4; 107, ll: 8-25; 108-109, ll: 25-4).

RESPONSE: Partially incorrect. Deputy House told Bolton to "turn off the car" as he was being shot in the head, but Bolton was not trying to push through any patrol vehicles while his vehicle was immobilized. Exhibit 11; Exhibit 12; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 75.

94.

At approximately the same time, Deputy Spinks approached the rear passenger side of the Tahoe with his patrol car in an attempt to box in the Tahoe. (Wood Decl., Exh. M at 3:18; House Dep., p. 106, ll: 6-10; 109, ll: 22-25).

RESPONSE: Correct.

95.

As Deputy Collins exited his patrol car, he drew his department-issued Glock 17 and fired one round at the suspect, through the windshield. (Collins Decl., ¶ 18; Wood Decl., Exh. M at 3:16-3:19-3:20; Exh. N at 2:17).

RESPONSE: Correct, to the extent Bolton is characterized as "the suspect."

96.

As Spinks approached, he saw the Tahoe's tires spinning due to the driver's attempt to accelerate the vehicle. (Spinks Dep., pp. 84, ll: 11-13; 85, ll: 5-7, 13-15).

RESPONSE: Partially correct. Deputy Spinks saw the Tahoe's tires spinning

after Bolton lost control of the vehicle during the PIT maneuver. Bolton's foot remained on the gas pedal for a few seconds, but the Tahoe stopped and Bolton was not attempting to accelerate. Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 70, Bolton Dep., pp. 24-26, 38; Doc. 75, Exh. M, N.

97.

Deputy Spinks' patrol car hit the Tahoe and the back end of the Tahoe shifted, which is the final position of the vehicles. (House Depo., pp. 104, ll: 2-3; 104-105, ll: 25-11; 106, ll: 15-17; Spinks Dep., p. 84, ll: 14-16).

RESPONSE: Correct.

98.

From the time Deputy House exited his vehicle and stepped back to the time Deputy Collins fired was almost instantaneous. (House Dep., p. 106, ll: 9-13).

RESPONSE: Incorrect. Deputy House had time to exit from his vehicle, draw his firearm, and yell "Get out of the car!" as Deputy Collins fired his gun. Doc. 75; Exh. M. N.

99.

Deputy Collins felt authorized to use deadly force against Mr. Bolton at the point a life was threatened by the SUV, a deadly weapon. (Collins Dep., p. 134, ll. 14-21; 150, ll: 9-12; 153, ll: 16-19; 154, ll: 5-7; 160, ll: 1-4).

RESPONSE: Disputed. Deputy Collins' personal feelings are subjective. However, no life was threatened by Bolton, and the deputies created the situation by initiating an unjustified chase. "Deputy Collins unnecessarily escalated to deadly force" because the Tahoe engine was still on, he felt no obligation "to provide a verbal warning," and he failed to recognize that deadly force was unjustified and unnecessary. Deputy Bolton did not even see Deputy House's physical location before the Shooting. As a result, Deputy Collins initially reported that Deputy House was standing "directly between the suspect vehicle and his patrol car" when he was really standing a safe distance away behind the door of his patrol car. Exhibit 11; Exhibit 12; Exhibit 13; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20, 25-26; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 73, p. 298; Doc. 75, Exh. M, N.

100.

Deputy Collins did not have an opportunity to issue any warning as he feared for House's life. (Collins Decl., ¶ 18; Collins Dep., p. 151, ll: 8-10).

RESPONSE: Incorrect. Deputy Collins had an opportunity to issue a verbal warning, but he chose to shoot Bolton in the head while Deputy House was issuing a verbal warning. Deputy Collins had no reason to fear for Deputy House's life. The Tahoe was immobilized, it could not have struck Deputy House, and it was never turned toward Deputy House. Exhibit 11; Exhibit 16 (Doc. 40), pp. 13, 16-17, 20;

Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 75, Exh. M, N.

101.

After Collins fired his weapon, Bolton's vehicle stopped accelerating. (Collins Decl., ¶ 19; House Dep., p. 109, ll: 16-21; Wood Decl., Exh. M at 3:20-3:21; Exh. N at 2:18).

RESPONSE: Correct to the extent acceleration of the engine is distinguished from movement. Bolton's vehicle was not moving when Deputy Collins fired his weapon. Bolton's foot came off the accelerator when he was shot. Exhibit 16 (Doc. 40), pp. 13, 16-17, 20; Exhibit 17 (Doc. 43-1), pp. 18-24; Doc. 75, Exh. M, N.

102.

Deputy Collins immediately informed dispatch "shots fired." (Collins Decl., ¶ 19; Wood Decl., Exh. M at 3:22-3:23; Exh. N at 2:20).

RESPONSE: Correct.

103.

Deputy House requested EMS be started for the suspect. (Wood Decl., Exh. E; Exh. N at 2:26-2:27; Collins Decl., ¶ 19).

RESPONSE: Correct.

104.

Deputy Brown and Deputy House direct Deputy Spinks to back up Deputy

House's patrol vehicle so that they could open Bolton's door. (Wood Decl., Exh. N at 2:56-2:57; Exh. O at :15-:17).

RESPONSE: Correct.

105.

Deputy Spinks backed up Deputy House's car to provide better access to Mr. Bolton. (Wood Decl., Exh. O at :24-:36; Spinks Dep., p. 32, ll: 15-22; p. 33, ll: 12-16).

RESPONSE: Correct.

106.

After Spinks moved House's patrol vehicle back slightly, Deputy Brown attempted to open the door, but it is locked. (Wood Decl., Exh. N at 3:14; Exh. O at :34; Exh. P at :38).

RESPONSE: Correct.

107.

Deputy House broke open the window with his baton and saw Bolton was non-responsive with a bullet wound to his right eye. (Wood Decl., Exh. N at 3:21; Exh. O at :40-:46; Exh. P at :45-:50).

RESPONSE: Correct.

108.

Deputy Brown advised that the suspect had been shot in the head and Deputy House relayed the information to Dispatch. (Collins Decl., ¶ 20; Wood Decl., Exh. N at 3:49-3:52; Exh. O at :59; Exh. P at 1:02).

RESPONSE: Correct.

109.

Deputy Brown then advised that the suspect was still breathing and Collins immediately relayed this information to Dispatch and also requested that Airlife be placed on standby. (Collins Decl., ¶ 20; Wood Decl., Exh. M at 4:57-5:00; Exh. N at 3:53-4:00; Exh. O at 1:13; Exh. P at 1:16-1:20; Spinks Dep., pp. 34-35, ll: 23-8).

RESPONSE: Correct.

110.

Deputy Brown reached inside the vehicle, appeared to shift it into park, removed the keys, and threw them on the roof of Bolton's vehicle. (Wood Decl., Exh. P at 3:30-3:36; Exh. O at 3:30-3:34).

RESPONSE: Correct.

111.

Deputy House began installing crime scene tape. (Wood Decl., Exh. N at 6:25-8:20).

RESPONSE: Correct.

112.

Shortly thereafter, because the deputies became concerned about Mr. Bolton's erratic movements and the fact that they did not know what was inside the Tahoe, Deputy Spinks removed Bolton from the vehicle. (Spinks Dep., pp. 37-38, ll: 4-12; 39, l: 4; Wood Decl., Exh. O at 5:27-5:33; Exh. P at 5:24-5:40; Exh. Q at :32-:39).

RESPONSE: Correct.

113.

Deputy Spinks handcuffed Mr. Bolton's hands behind his back. (Spinks Dep., p. 39, ll: 11-18; Wood Decl., Exh. O at 5:33-6:02; Exh. P at 5:40-6:00; Exh. Q at :39-1:00).

RESPONSE: Correct.

114.

In order to keep Mr. Bolton still while applying the handcuffs, Deputy Spinks put his knee on Mr. Bolton's lower back for approximately ten seconds. (Spinks Dep., pp. 39, ll: 24-25; 40, ll: 2-7; 45, ll: 4-17; Wood Decl., Exh. P at 5:50-6:00; Exh. Q at :50-1:00).

RESPONSE: Disputed. There was no reason to handcuff Bolton or keep him still after he was shot in the head. Deputy Spinks put his knee in Bolton's back for a

full 20 seconds. Doc. 75, Exh. N @ 08:23; Exh. O @ 05:35; Exhibit P @ 0545.

115.

It is CCSO protocol to handcuff the suspect after an officer involved shooting if the deputy has not checked the suspect or the immediate area for weapons for officer safety and to keep the suspect from touching his wounds. (House Dep., p. 115, ll: 14-21; Spinks Dep., pp. 43-44, ll: 13-1).

RESPONSE: Correct, but immaterial. Bolton was removed from the Tahoe and immobilized on the ground after he was shot in the head, so he could not access any weapons in his area or touch his wounds.

116.

Deputy Spinks considered Mr. Bolton a threat until he was placed in handcuffs. (Spinks Dep., pp. 56-57, ll: 25-6).

RESPONSE: Disputed. Deputy Spinks' thoughts are subjective, but Bolton did not pose a threat to anyone after he was shot in the head. Doc. 75, Exh. _.

117.

Deputy Spinks and Deputy House put Mr. Bolton on his side to keep his airway clear. (Spinks Dep., p. 40, ll: 19-20; Wood Decl., Exh. N at 8:50; Exh. O at 6:06; Exh. P at 6:12).

RESPONSE: Correct.

118.

Deputy House held a bandage to Mr. Bolton's wound in an attempt to reduce the bleeding until EMS arrived on the scene. (House Dep., Exh. 7; Fenninger Dep., p. 102, ll: 15-16; Wood Decl., ¶ 16; Exh. N at 10:29-13:32; Exh. O at 7:48-10:43; Exh. Q at 2:55 – 4:40).

RESPONSE: Correct.

119.

In the case of a head wound, the deputies are limited in what type of first aid they can administer, with the only thing being application of pressure in an attempt to stop the bleeding. (Fenninger Dep., p. 68, ll. 22-24; Wood Decl., ¶ 16; Collins Decl., ¶ 20).

RESPONSE: Correct.

120.

Where there may be brain injury, individuals should be immobilized until they can be assessed by medical professionals; therefore, deputies are trained to keep the person shot as still as possible to reduce the loss of blood and possible further injury. (Wood Decl., ¶ 16; Collins Decl., ¶ 20).

RESPONSE: Correct.

121.

It is not proper to give fluids by mouth in many situations, including where the person has a facial trauma, and deputies are trained not to give water or other liquids to a person with severe injuries where it is likely that the person will be undergoing major surgery within the next several hours. (Wood Decl., ¶ 16; Collins Decl., ¶ 20).

RESPONSE: Correct.

122.

Under CCSO policy, a deputy may use deadly force for self-defense or the defense of others, or to prevent commission of a forcible felony. (House Dep., pp. 44-45, ll: 24-6; Collins Dep., pp. 72-73, ll: 23-4; Spinks Dep., p. 58, ll: 2-10).

RESPONSE: Correct, but immaterial because Deputy Collins did not use deadly force against Bolton for any of these reasons. Exhibit 16 (Doc. 40), pp. 14-20; Exhibit 17 (Doc. 43-1), pp. 17-26; Doc. 75, Exh. M, N.

123.

Prior to June 30, 2019, Deputy Spinks had not had any previous encounter with Nicholas Bolton. (Spinks Dep., p. 15, ll: 14-20).

RESPONSE: Correct.

124.

Defendants timely identified use of force expert John J. Ryan. (Doc. 50).

RESPONSE: Correct.

125.

Mr. Ryan agrees with Plaintiff's expert Scott that Collins and House were authorized to conduct an investigatory stop of Bolton and had legal authority to request identification and to have Bolton exit the vehicle. (Defendants' Exhibit 10, p. 32).

RESPONSE: Correct; Ryan and Scott shared that opinion.

126.

Second, Ryan opines that the decision to pursue Bolton was consistent with law, practices, training, and the CCSO pursuit policy, which is a discretionary policy allowing deputies to pursue when the necessity of immediate apprehension outweighs the level of danger to the public. (Defendants' Exhibit 10, pp. 39-44).

RESPONSE: Correct; he stated that opinion.

127.

Third, Ryan states that a PIT maneuver is not recognized as deadly force and opined that Deputy Collins had a window of opportunity to keep Bolton from entering the highway and the force used objectively reasonable notwithstanding the

fact that the pursuit began over a speeding violation. (Defendants' Exhibit 10, pp. 44-45).

RESPONSE: Correct; he stated that opinion.

128.

Fourth, Ryan opined that the PIT maneuver performed by Collins is consistent with policies, practices, training, and legal mandates and that any reasonable officer would conclude that the PIT maneuver was appropriate to protect the innocent public by terminating Bolton's flight before he went out on the roadway. (Defendants' Exhibit 10, p. 45).

RESPONSE: Correct; he stated that opinion.

129.

Ryan opines that any reasonable officer would recognize that Bolton had committed serious crimes, and that he posed an extreme threat of serious bodily harm or death with a 5000 plus pound missile capable of causing serious bodily harm or death when he revved the engine and that he posed an ongoing threat to the public should he escape because a vehicle is a deadly weapon when driving at an officer or in a manner that poses threat of serious bodily harm. (Defendants' Exhibit 10, pp. 45-50).

RESPONSE: Correct; he stated that opinion.

130.

Ryan opines that the manner in which Deputy Spinks removed Bolton from the vehicle after the shooting was consistent with generally accepted policies, practices, training, and law, as it is standard law enforcement practice to handcuff arrested subjects to secure the scene and the videos clearly show there is no evidence Spinks kneeled on Bolton's neck as part of the restraint process. (Defendants' Exhibit 10, pp. 51-53).

RESPONSE: Correct; he stated that opinion.

131.

It is Ryan's opinion that no excessive force occurred, but even if it had, there was no reasonable opportunity to intervene to stop an unforeseen gun discharge that occurred in a split second. (Defendants' Exhibit 10, p. 53).

RESPONSE: Correct; he stated that opinion.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON, Plaintiff, v. LENN WOOD, Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia; *et al.* Defendants.	CIVIL ACTION FILE NO. 1:21-CV-2279-MHC

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS PRESENTING GENUINE ISSUES TO BE TRIED

Plaintiff NICHOLAS S. BOLTON, pursuant to Local Rule 56.1(B)(2)(B), respectfully submits this statement of additional material facts that present genuine issues to be tried against Defendants LENN WOOD, JOHN TAYLOR COLLINS, CHRISTIAN SPINKS, and JON HOUSE in opposition to their motion for summary judgment.

1.

In June 2019, Bolton owned and lived in a white 2001 Chevrolet Tahoe SUV ("the Tahoe") while he picked up odd jobs and begged for handouts in Newnan. At night, Bolton parked the Tahoe to sleep in the large vacant parking lots used by

EXHIBIT
8

Walmart and the Kohl's store in the Newnan Pavilion. Exhibit 6; Doc. 70, pp. 7-11;

2.

On June 29, 2019, Bolton parked the Tahoe in a remote section of the Newnan Pavilion parking lot used by the Kohl's store. Bolton was sitting on the Tahoe bumper at about 11:00 a.m. when Coweta County Sheriff's Office (CCSO) Deputy George Thompson approached and had a pleasant conversation with Bolton. Bolton readily answered questions and produced his driver's license so Deputy Thompson could verify Bolton's identity. Doc. 77-2, p. 3, ¶ 1; Doc. 70; Exhibit 5; Exhibit 6.

3.

Deputy Thompson verified that Bolton owned the Tahoe, and that Bolton was living and sleeping in the Tahoe at that location. Deputy Thompson told Bolton that he was "fine" while parked at that location. Deputy Thompson even encouraged Bolton to seek employment at the retail establishments in the Newnan Pavilion while he was parked in the lot. Exhibit 5; Exhibit 6; Doc. 70, pp. 18-19; Doc. 77-2, p. 3, ¶ 2; Doc. 82.

4.

Deputy Thompson reported his interaction with Bolton to the CCSO dispatch office. Deputy Thompson had no negative impressions or concerns about Bolton or his presence in the parking lot. Deputy Thompson never considered arresting Bolton

for loitering, presumably because Deputy Thompson verified Bolton's identity and found no reason to suspect he was in the parking lot for any illegal purpose. Exhibit 5; Exhibit 6; Doc. 82.

5.

On June 30, 2019, at 2:22 a.m., Deputy Collins found the Tahoe parked at the same remote location in the parking lot. Deputy Collins did not receive any complaints about the Tahoe being at the location, and he did verify that another deputy checked it out. Deputy House was called to the scene as back up, then Deputy Collins approached the Tahoe and saw Bolton asleep in the rear cargo area. Exhibit 7; Exhibit 8; Doc. 70, pp. 29, 37; Doc. 72, p. 60; Doc. 73, p. 297; Doc. 75, Exh. M, N.

6.

Deputy Collins asked Bolton to open a window and produce identification. Deputy Collins assured Bolton that he just needed to check Bolton's ID before he left because Bolton was loitering. Bolton explained that he had recently spoken to two (2) other officers, but he promptly moved up into the driver's seat and retrieved his driver's license. Bolton referred to Deputy Thompson as an "officer," so Bolton apparently spoke to another unidentified officer who may have been employed with

the City of Newnan Police Department. Exhibit 7; Exhibit 8; Doc. 69, p. 60; Doc. 72, p. 68; Doc. 73, pp. 95-96, 99-100, 102; Doc. 75, Exh. M, N.

7.

As Bolton retrieved his driver's license, Deputy Collins told Bolton to exit from the Tahoe. Bolton apparently intended to sit in his vehicle while he showed his driver's license to the deputies. Bolton was already holding his driver's license in his hand, so he did not expect or understand this new instruction. Exhibit 6; Exhibit 7; Exhibit 8; Doc. 69, p. 60; Doc. 73, pp. 96, 99-100; Doc. 75, Exh. M, N; Doc. 77-2, p. 5, ¶ 7.

8.

Deputy Collins and Deputy House both accused Bolton of "loitering" even though there was "nothing illegal about parking (his) car in a lot like that and going to sleep." The deputies never asked Bolton to identify himself, never asked why Bolton was parked at that location, never noted the tag number of the Tahoe to verify the registration or ownership of the vehicle, and never tried to verify whether another deputy had already spoken to Bolton about parking at that location. Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 17 (Doc. 43-1), p. 8; Doc. 72, pp. 57, 59, 66, 68-69, 73; Doc. 73, pp. 90, 94, 108-110, 161, 297-298; Doc. 75, Exh. M, N; Doc. 77-2, p. 5, ¶¶ 8-9; Doc. 82.

9.

Bolton never refused to exit from the Tahoe, but he stayed in the vehicle while he asked, "How am I loitering?" and explained that he had already spoken to the other officers. Without providing any explanation or reason for Bolton to exit from the Tahoe, both deputies raised their voices and demanded obedience. Exhibit 7; Exhibit 8; Doc. 73, pp. 123, 164-165; Doc. 75, Exh. M, N.

10.

Deputy Collins walked toward his patrol car for gloves to break a window of the Tahoe and forcibly remove Bolton from the vehicle. At the same time, Deputy House continued to demand that the sleepy and confused Bolton to exit the vehicle. The deputies chose to demand or force Bolton to get out of the vehicle, even if it required breaking a window, instead of providing an explanation for the demand. Exhibit 7; Exhibit 8; Doc. 72, pp. 70-72; Doc. 73, p. 111; Doc. 75, Exh. M, N.

11.

Most traffic stops are conducted with the driver seated in his vehicle, so a driver may be concerned or confused when a deputy tells the driver to exit from his vehicle. A deputy may explain why he wants a driver out of his vehicle, and the most common explanation is a concern for officer safety. For example, a deputy may be

concerned about passing cars, or whether a motorist has a weapon in his vehicle. Exhibit 14; Exhibit 15; Doc. 69, p. 86.

12.

Deputies receive annual "de-escalation training," but they are not trained or obligated to explain why they want a driver to exit from his vehicle during a traffic stop. Drivers commonly ask why they are being instructed to exit from their vehicles, and deputies *should* explain to seek voluntary compliance. CCSO policies do not require a deputy to explain why he wants someone to exit from his vehicle, and deputies are trained to request, demand, and force compliance without providing any explanation. Providing an explanation is certainly "consistent with the principle of de-escalation," but a deputy is not trained to apply this principle in traffic stops. Doc. 69, pp. 84-87; Doc. 72, pp. 77; Doc. 73, pp. 165-166.

13.

Deputy Collins said he had no obligation to explain why someone must step out of a vehicle. When "drivers objected to getting out of a vehicle," Deputy Collins might inform the drivers "that they needed to get out of the vehicle for officer safety reasons." However, Deputy Collins understood that his decision to provide an explanation for a demand to exit from a vehicle was "a judgment call." Doc. 73, pp. 162-166.

14.

Deputy House said he intended to "make the situation safer" when he told Bolton to step out of the Tahoe. However, Deputy House could not explain why he refused to "tell Mr. Bolton the reason he needed to get out of the vehicle was for officer safety if that was (his) primary concern?" Instead, Deputy House only said that he was not obligated to give Bolton a reason. Doc. 72, pp. 74-78.

15.

Bolton only remembered conversing with a single deputy. The video recordings verify that Bolton never spoke to or looked at both deputies at the same time, so Bolton apparently thought that both deputies were the same person. Doc. 70, pp. 19-21, 30; Doc. 75, Exh. M, N.

16.

Deputy House stepped forward to speak to Bolton as Deputy Collins went back to his patrol car. Bolton did not realize that Deputy Collins was retrieving a glove to break a window and forcibly remove Bolton from the vehicle. Exhibit 7, p. 3; Doc. 72, p. 70; Doc. 73, pp. 111, 165; Doc. 75, Exh. M, N.

17.

Deputy House refused to explain why he wanted Bolton to exit from his vehicle instead of checking his driver's license. Deputy House asked, "You going

to get out, or you going to jail?" Exhibit 8, p. 2; Doc. 72, p. 79; Doc. 75, Exh. N.

18.

Bolton chose to "get out" of the parking lot because he was afraid of going to jail. Bolton was not sure whether he was specifically "told to leave or not," but he started the Tahoe engine to drive away from the parking lot. Bolton did not hear Deputy Collins and Deputy House telling him to turn off his engine. Doc. 70, pp. 21-24; Doc. 75, Exh. M, N.

19.

At that point, Deputy Collins was close to the rear of the Tahoe. Deputy House was standing close to Bolton and the driver's window. A light was shining in Bolton's face, and he does not remember seeing any firearms. Bolton did not realize that the deputies were aiming their service pistols directly at Bolton's head. Doc. 70, pp. 22, 24; Doc. 72, pp. 49-50 , 79, 83; Doc. 73, p. 112; Doc. 75, Exh. M, N.

20.

Bolton shifted the Tahoe into gear and drove away. Bolton concluded that his best option was to drive away from the parking lot to avoid going to jail. After the Shooting, Bolton has a brain injury and a limited recollection of the events. Exhibit 7; Exhibit 8; Doc. 70, pp. 17-26, 30-38; Doc. 72, p. 88; Doc. 75, Exh. M, N.

21.

Deputy House claims that he intended to tell Bolton to "get out" *of the Tahoe* or go to jail. However, the deputies never told Bolton that he was under arrest or that he could not leave to "get out" of the parking lot. Exhibit 8; Doc. 72, p. 81; Doc. 73, p. 117; Doc. 75, Exh. M, N.

22.

Nobody advising Bolton that he was under detained, under arrest, or unable to leave the parking lot. Deputy Collins and Deputy House got in their patrol cars to chase Bolton as he drove away at a normal speed on an empty street. Deputy Collins chased at a higher speed on both sides of the street and performed a pursuit intervention technique ("PIT maneuver") by striking the rear right corner of the Tahoe. Deputy Collins never received permission from a supervisor or any training to perform the PIT maneuver as required by the CCSO Vehicle Pursuit policy. Exhibit 7; Exhibit 8; Exhibit 16 (Doc. 40), pp. 12-13; Exhibit 17 (Doc. 43-1), pp. 15-17; Doc. 72, p. 88; Doc. 73, pp. 143-144, 282-287; Doc. 75, Exh. M, N.

23.

The Tahoe spun around and stopped facing Deputy Collins' patrol car. Deputy House and Deputy Spinks both arrived immediately in their own patrol cars. The Tahoe was pinned and immobilized between all three (3) patrol cars. Exhibit 7;

Exhibit 8; Exhibit 11; Doc. 72, pp. 104-105; Doc. 73, pp. 144, 308-309; Doc. 75, Exh. M, N.

24.

The Tahoe engine was still running, and its wheels were spinning after Bolton lost control of the vehicle during the PIT maneuver. However, the Tahoe remained stationary and pinned between all three (3) patrol cars. The wheels of the Tahoe were pointed straight ahead toward Deputy Collins' patrol car and never turned. Bolton never attempted to move the Tahoe after it stopped. Exhibit 13; Exhibit 14; Doc. 40, pp. 13, 16; Doc. 43-1, p. 18; Doc. 72, pp. 103-105; Doc. 75, Exh. M, N.

25.

Deputy House stopped his patrol car next to and facing the driver's door of the Tahoe. Within three (3) seconds after he stopped, Deputy House jumped out of his patrol car, stood behind the driver door, aimed his pistol, and yelled at Bolton to "turn off the car." Exhibit 8; Exhibit 13; Doc. 72, p. 109; Doc. 73, p. 148; Doc. 75, Exh. N (02:14-02:17).

26.

Deputy Collins stopped his patrol car in front of and facing the front of the Tahoe. Within four (4) seconds after he stopped, Deputy Collins jumped out of his patrol car, stood behind the driver door, and aimed his pistol. Without giving Bolton

any verbal commands, Deputy Collins fired a bullet through the Tahoe windshield into Bolton's right eye. Deputy Collins shot Bolton at the same moment when Deputy House was yelling at Bolton to "turn off the car." Exhibit 7; Exhibit 8; Exhibit 13; Exhibit 15; Doc. 73, pp. 148, 160; Doc. 75, Exh. M (03:16-03:20).

27.

CCSO trained the deputies to exercise a great deal of discretion in firing their weapons. Based on that training, Deputy Collins and Deputy House both had complete discretion to either give Bolton a verbal warning or shoot him. As Deputy House gave a warning, Deputy Collins immediately shot Bolton in the head. Doc. 69, pp. 83, 103-108; Doc. 73, pp. 152, 160-161.

28.

The bodycam footage verifies the sequence of events prior to and when Deputy Collins shot Bolton ("the Shooting"). Bolton never posed a threat to anyone before Deputy Collins and Deputy House drew their pistols and pointed them at Bolton's head. Bolton did not pose a threat to anyone before or when Deputy Collins drew his pistol again after the chase and immediately shot Bolton in the head. Exhibit 7; Exhibit 8; Doc. 72, p. 111; Doc. 73, p. 161; Doc. 75, Exh. M, N.

29.

Bolton was critically injured when the bullet entered his right eye as he was

sitting in the driver's seat of the Tahoe. Deputies at the scene initially ignored Bolton while they comforted Deputy Collins about his role in the Shooting. In response, Deputy Collins smiled and commented that he "put one on him," a reference to firing the bullet through Bolton's right eye. Doc. 72, p. 115; Doc. 75, Exh. M, N, O.

30.

Bolton was immobile and twitching in the Tahoe after the Shooting. Deputy Spinks dragged Bolton out of the Tahoe face-down on the pavement, then put a knee on Bolton's back to handcuff him. Deputy Spinks had no EMT training or medical reason to remove Bolton from the Tahoe, and he knew Bolton suffered a gunshot wound to his head. Deputy Spinks was concerned with restraining Bolton, but unconcerned with whether the movement would affect Bolton's injury. Doc. 71, pp. 38-42; Doc. 72, p. 115; Doc. 75, Exh. N, O.

31.

None of the defendant deputies were disciplined or reprimanded for any conduct or violations of CCSO policy related to Bolton or the Shooting. Doc. 71, pp. 74-75; Doc. 72, p. 111; Doc. 73, p. 177.

The Comparable Traffic Stop of Dr. Onyeka

32.

On December 18, 2020, Deputy Spinks was involved in a comparable

incident. Deputy Spinks initiated a routine traffic stop of Emmanuel Onyeka, M.D., a hospital emergency room physician. Dr. Onyeka was driving home from a hospital shift in the middle of the night. While Deputy Spinks wrote a traffic citation for an expired tag registration, he told Dr. Onyeka to exit from his vehicle. Exhibit 14.

33.

33. Dr. Onyeka did not understand why Deputy Spinks suddenly wanted him out of the vehicle, so he was "apprehensive about getting out of the car at that location with no witnesses and very little traffic." Dr. Onyeka never refused to exit from the car, but he repeatedly asked why the deputy wanted him to get out. Deputy Spinks refused to answer this question or to provide any explanation. Exhibit 14.

34.

Dr. Onyeka was trying not to take any action that could be perceived as a threat. Dr. Onyeka is certain that he would have gotten out of the car if he had been given any reasonable explanation or reason for the request, or if he understood that the deputies would forcibly remove him from the car. Exhibit 14.

35.

Deputy Spinks placed Dr. Onyeka in a headlock to forcibly remove him from his vehicle. Dr. Onyeka did not resist while deputies pushed him to ground, put him

in handcuffs, and detained him in a patrol car. After this abuse, Dr. Onyeka was given a traffic citation for his expired registration and released. Exhibit 14.

36.

Dr. Onyeka promptly wrote a letter to the local police department to complain about this incident. The letter was forwarded to CCSO, and it investigated the traffic stop. CCSO made "findings" and took no further action because "Deputy Spinks did not violate any department policy." Exhibit 14; Exhibit 15.

Plaintiff's Expert Witnesses

37.

Plaintiff employed Dr. Andrew J. Scott, III and Curtis Marshall as experts in police practices, police training, and use of force. Dr. Scott and Curtis Marshall independently evaluated evidence in this case, reached conclusions based on the evidence, and drafted expert reports with opinions summarized as follows:

a) The deputies had no reason to detain Bolton after the initial stop.

b) Both deputies initiated the vehicle pursuit contrary to CCSO policy and well-established police practices and procedures.

c) Deputy Collins conducted the PIT maneuver and used deadly force contrary to CCSO policy and well-established police practices and procedures. Exhibit 4, ¶¶ 5-6; Exhibit 16 (Doc. 40), Exhibit 17 (Doc. 43-1).

/s/ James W. Howard
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BWC TRANSCRIPT OF DEPUTY GEORGE THOMPSON

Deputy George Thompson, Nicholas Bolton
June 29, 2019

Thompson: How you doing, sir?

Bolton: (UI)

Thompson: Hey, I rode by the last few days and saw you out here, man I wanna check on you and just—It looks like you're living in your car. Seeing if you need anything or—

Bolton: (UI) Well, food all I can (UI)

Thompson: You just living out here in the car.

Bolton: Yeah

Thompson: You got some water or anything to drink or working anywhere? Tell me what's your backstory man? Maybe—I ain't got the answers, man I point you in the right direction, you know what I mean?

Bolton: Had a job, lost the job. Been putting in applications for everything and still won't nobody give me no job (UI) and they move me from everywhere and so I'm here

Thompson: You from down here?

Bolton: I was born here (UI)

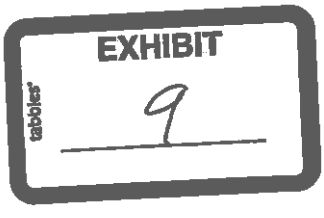
Thompson: Alright, well shit, man. How long you've been having to stay in your truck?

Bolton: (UI) I don't know probably 6 years

Thompson: Living out your truck?

Bolton: Yeah (UI)

Thompson: No kidding



Bolton: (UI)

Thompson: Damn. Well like I said, I saw you yesterday and you know—I ain't think much of it, then I saw you today sitting in the same spot. I said well—

Bolton: I just—(UI)

Thompson: I understand. You're fine. I just said, well let me at least get out and say my peace and I ain't a miracle worker but, I was like at least let me see what the hell is going on, man. You want a bottle of water?

Bolton: I'll take it.

Thompson: I got one. Hey, you got your ID on you? And say I spoke to you and log you in the parking lot of the Kohl's business Ima get out your hair. Let me see that right quick. Just something with your name on it. I ain't worried about it. I just gotta punch it into the computer anytime we talk to somebody.

(Bolton stands up and walks towards front of the Tahoe)

(Bolton returns to rear of the Tahoe)

Thompson: I can write it down. Hell, you ain't gotta go look. Are you the registered owner? Hell, I can get it off the tag.

Bolton: Bolton

Thompson: Are you the registered owner tho? That'll save you from having to look.

Bolton: Yeah, I'm the owner.

Thompson: Yeah, I can get it off the tag. All I gotta have is something to punch into that computer.

Bolton: Ok.

Thompson: Yea. Let me grab you a water man.

Bolton: Alright

(Thompson walks to patrol car to retrieve a bottle of water)

Thompson: Hey, here you go. It ain't the coldest.

Bolton: (UI)

Thompson: But it'll do. It's cool.

Bolton: (UI) appreciate it

Thompson: So, you're welcome, man. Take care of yourself. Good luck. I mean, I wish
I had the answers for you, you know? (UI)

Bolton: (UI)

Thompson: That's right. Hey, keep your head up. Maybe you'll get lucky and maybe one of these restaurants will hire you, or—who knows man. All these businesses around here. Maybe so. Take care of yourself alright, man.

Bolton: (UI)

(Thompson returns to patrol car)

BWC RECORDING OF DEPUTY JOHN TAYLOR COLLINS
Deputy John Collins, Deputy Jon House, Nicholas Bolton
June 30, 2019

Collins: I need you to open the door man.

Bolton: What is it man?

Collins: Open the door, please, so I can talk to you.

Bolton: I can hear you right here.

Collins: Okay, Open the door for me.

Bolton: I can hear you right here.

Collins: (UI on radio) Go ahead, open the door for me, okay.

Bolton: (UI) I done talked to two other officers.

Collins: Okay, I need your ID.

Bolton: My ID for what?

Collins: I need your ID.

Bolton: What do you need my ID for? I done talked to two other officers.

Collins: Okay, well you hadn't talked to me, so…

Bolton: (UI)

Collins: Okay, look man, just give me your ID and let check you and then I'll get on my way. You're backed in front of a bunch of closed businesses, so you're loitering.



Bolton: I'm what?

Collins: Loitering.

Bolton: How am I loitering?

Collins: Is the business open? Do you have a reason to be here? Then you're loitering. Do you live right here? Then you're loitering.

Bolton: How am I loitering?

Collins: I need for you to step out for me too, okay?

Bolton: Say what?

Collins: I need for you to step out for me.

Bolton: (UI)

Collins: Look man, just go ahead and step out so I don't have to drag you out.

Bolton: (UI – moves into driver's seat)

(Bolton holds driver's license in his hand)

Collins: Okay, Just go ahead and step out for me, okay?

Bolton: I'm not gonna do anything.

Collins: You're gonna step out.

Bolton: I done this already. To everybody. (UI)

Collins: Okay, well I've never talked to you.

You ever talk to him? (speaking to Deputy House)

House: Nope.

Collins: Okay, then step on out.

Bolton: It's two other officers (UI)

Collins: Nobody's talked to you tonight, so go ahead and step out for me.

Bolton: (UI) He ran my license. (UI) ran my license.

House: Listen dude. Hey.

Bolton: (UI)

House: Let me explain something to you right quick, ok. We don't know you. We're investigating why you're here.

Bolton: For what?

House: For loitering, you're loitering. And now that you're not stepping out of a car, you're obstructing an investigation. So you can either get out and talk to us, or we can take you out and you can go to jail. It's your choice. You got one chance to get out, or you're going to jail.

Collins: Alright, let me get my glove.

House: You going to get out, or you going to jail?

(Bolton starts Tahoe engine)
(Deputy House places right hand on holstered pistol; points with left hand at Bolton's head)

Collins: You drive off in this car…

(Both deputies draw pistols and aim them at Bolton's head)
(Deputy House is next to front left fender of Bolton's Tahoe)
(Deputy Collins approaches Bolton's Tahoe from rear)

House: Turn the car off.

Collins: Turn the car off.

(House points gun in right hand at Bolton. House rests left hand on front left fender of Bolton's Tahoe)

House: Turn the car off. Turn the car…

(House ntakes left hand off front fender of Bolton's vehicle before Bolton drives away)

House: Go. Go. Go.

(Collins gets in vehicle and pursues Bolton's vehicle)

(PIT maneuver spins Bolton's vehicle around so it stops facing Collins)

(Collins opens patrol car door as he stops in front of Tahoe at 03:16)

(Collins aims gun at Bolton seated in the Tahoe)

House: Turn off the car!

(Gunshot fired by Collins at 03:20)

AFFIDAVIT OF EMMANUEL ONYEKA, M.D.

I, EMMANUEL ONYEKA, M.D., hereby verify and affirm the following facts are true and accurate to the best of my knowledge, information, and belief:

1.

My name is Emmanuel Onyeka, M.D. I reside in Tyrone, Fayette County, Georgia. I am a medical doctor employed in the Emergency Department of the St. Francis – Emory Healthcare hospital in Columbus, Georgia. I am a 39-year-old black male and competent to testify.

2.

On December 18, 2020, I was driving home from the hospital after 1:00 a.m. when I was followed and stopped by Coweta County Sheriff Deputy Christian Spinks and another deputy driving in a separate patrol car. At the time, I thought that Deputy Spinks was a police officer employed by the Newnan Police Department. I was wearing my white lab coat with my name and credentials embroidered on it.

3.

Deputy Spinks said that he stopped me because I was "swerving in my lane." I was not swerving as I drove, so I believed Deputy Spinks was giving me a false excuse for the traffic stop.

4.



Deputy Spinks noticed that my tag registration was expired. I expected to receive a traffic citation for failing to renew my registration. I gave Deputy Spinks my valid Georgia driver's license, but he insisted that he wanted to see another driver's license in my wallet. I assured Deputy Spinks that he was already holding my only Georgia driver's license.

5.

At that point, Deputy Spinks told me to get out of my car. I did not understand why Deputy Spinks wanted me out of the car, and I was apprehensive about getting out of the car at that location with no witnesses and very little traffic. I never refused to get out of my car, but I asked Deputy Spinks why he wanted me out of the car. Deputy Spinks never responded to my question.

6.

I was not moving around in my car seat, my hands were always located where they could be seen by Deputy Spinks, and it never occurred to me that I could be perceived as a threat. Even so, I would certainly have gotten out of the car immediately if I had been told that it was necessary for officer safety, if I had been given a reason to get out, or if I had realized that the deputies would forcibly remove me from the car with no further explanation or warning.

7.

Instead of answering my question, Deputy Spinks unbuckled my seat belt, put me in a headlock, and forcibly dragged me out of my vehicle. The deputies pushed me on the ground, put me in handcuffs, and placed me in the back seat of a patrol car. I did not resist Deputy Spinks, but he yelled, used profane language, broke my watch, and injured my arm during this incident.

8.

Deputy Spinks gave me a traffic citation for the expired registration and released me without any apology. I was not charged with any other offense.

9.

I sent the letter attached to this affidavit as Exhibit A to the Newnan Police department to request an investigation of this incident. My letter accurately describes the incident, but I did not put the handwritten numbers on the letter.

EMMANUEL ONYEKA, M.D.

Sworn to and subscribed
before me this 16th day of
February, 2023.

Kina Williams

NOTARY PUBLIC

KINA WILLIAMS NOTARY PUBLIC STATE OF GEORGIA MY COMM. EXP. 2/7/2025 HENRY COUNTY, GEORGIA

To Whom It May Concern

Please consider this letter as a formal complaint against 2 Officers of the Newnan Police Department. My name is Emmanuél Onyeka. I am an Emergency Medicine physician. On the early morning of December 18th, 2020, I was driving home from an evening shift when I noticed that Officer Spinks and his partner were following behind me. They followed me for about 2 miles before turning on their sirens and pulled me over.

Officer Spinks claimed that he stopped me because I was "swerving in my lane" – which was not true. He also pointed out that my registration tag was expired – this is in fact the case. Due to my busy work schedule, I was waiting for a stretch of days off I had coming up to take my car in for emissions check before renewing my registration. Officer Spinks asked me if I was coming from work, I answered in the affirmative. I presumed he asked me this question because I was wearing my white coat from work. He asked for my driver's license. I opened my wallet and gave him my license. Now this is the point this supposed routine traffic stop took a potentially dangerous turn.

After handing the officer my license, he then began inexplicably demanding that I give him "the other license in my wallet". I told him that I had given him my license and he could go and run it, and he would see that it is a valid license. He refused. He kept insisting that I had another license and that I should show it to him. Again, I told him that I had already given him my license. At this point Officer Spinks says to me, he is "gonna figure out what is going on here". He then commands me to get out of my vehicle. What I can surmise at this point is that for some reason Officer Spinks does not believe I am who I am portraying to be. Mind you, I was wearing my white coat with my name and credentials embroidered on it.

Before I had time to comprehend what was happening, Officer Spinks has now opened my driver side door. Again, commanding me to get out of the car. I repeatedly asked him why. Within seconds he reached over, unbuckled my seat belt. He put me in a head lock and forcibly removed me from my vehicle. He threw me on the ground and put me in handcuffs. At this point, he was joined by his partner. Initially he asked me to sit on the hood of the police car before placing me in the back seat of the police car. Throughout, he was yelling and using profanities.

Officer Spinks looked through my wallet, realizing that I did not have another Georgia license. He also must have seen my work ID laying on my passenger seat after briefly going through my car, because he quickly became less confrontational.

What could have been a simple traffic stop and a ticket for an expired registration, turned into me been dragged out of my car in a head lock because these Officers racially profiled me. Officer Spinks partner asked me while I was handcuffed at the back seat of his cruiser, "how could they have possibly known that the white coat I was wearing was mine?" to which I replied how could I have stolen someone's white coat and drive around wearing it? Why would their first impression be that I stole the white coat I was wearing? Why couldn't I just be a black physician going home after work? I mean if he was that suspicious of me, all he had to do was run my license which I gave to him or google my name. There are not that many physicians in the area with my name.

At the end of the encounter, Officer Spinks wrote me a ticket for the expired registration. No apologies for the way I was treated. My watch was damaged in the process. He twisted my arms so hard that there were sore for most of the following day. In the process exposed me to Covid-19 more than I ever had throughout this pandemic because neither one of them were wearing masks while yelling (spitting) in my face and as a physician who has personally seen the devastation of this virus, I find that unconscionable.

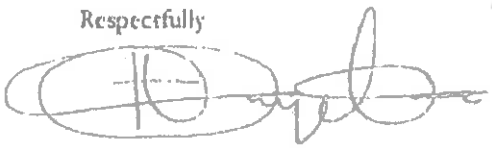
I understand that police officers have a stressful job. I have a stressful job as well but if I even treated one of my psychotic (threatening me and my staff) patients the way these Officers treated me, I would not be

EXHIBIT A

employed right now. I will lose my license to practice medicine. All I keep thinking is that if they treated me this way, I only imagine how they have treated many in the past. Why did they see me and immediately assumed that I was a criminal in my white coat? Most of all, this dangerous incident created by Officer Spinks could have taken a more lethal turn because what worried me after the fact is that when he was dragging me out of my car, I was still wearing my stethoscope grip holder with my stethoscope (black on black) to my right waist. If Officer Spinks had felt it when he was taking off my seat belt, he easily could have thought it was a gun since he already considered me a criminal at that point, and I could have ended up dead. I have seen black men die for far less.

I ask that this traffic stop be investigated. They were both wearing body cams. The events that took place are as I describe them. I look forward to the report of your investigation.

Respectfully



Emmanuel Onyeka MD

Staff Physician

St Francis – Emory Health Care, Columbus, GA

EXHIBIT
12


2019-06-30 T06:25:37Z
AXON FLEX 2 X83034613

2019-06-30 T06:25:41Z
AXON FLEX 2 X83034613

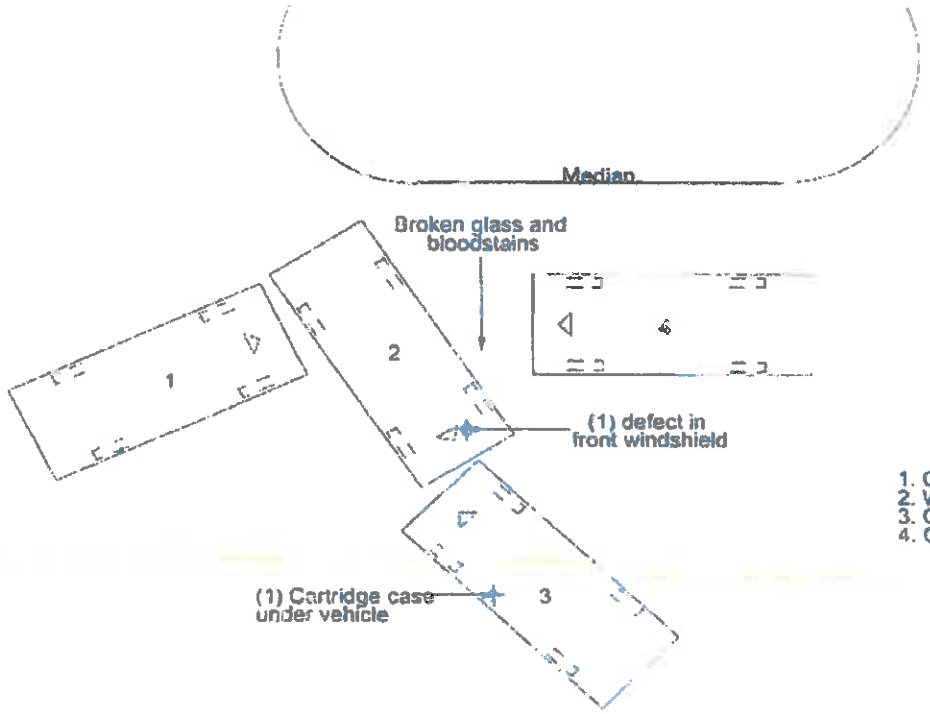

2019-06-30 T06:25:40Z
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2019-06-30 T06:25:41Z
AXON FLEX 2 X83009112

The State v. Deputy John T. Collins, DA Case No. 19COW01011



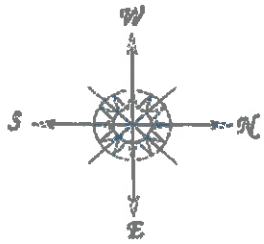
EXHIBIT
13



02-0301-34-18
June 30, 2019
1025 GA Highway 34,
Newnan, Coweta County, Georgia

Subject:
NICHOLAS SHEROD BOLTON

Sketch by: S/A Christina Kanner
Not to scale



1. Coweta County Sheriff's Office Crown Victoria "GV0379C"
2. White Chevy Tahoe "BQ6AZ7"
3. Coweta County Sheriff's Office Ford Explorer "GV6554M"
4. Coweta County Sheriff's Office Dodge Charger "GV8379L"

Case 1:21-cv-02279-MHC Document 85-11 Filed 02/18/23 Page 1 of 4

The State v. Deputy John T. Collins, DA Case No. 19COW01011



2019-06-30 T06:26:20Z
AXON FLEX 2 X83034613


2019-06-30 T06:26:23Z
AXON FLEX 2 X83009112

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NICHOLAS S. BOLTON,

Plaintiff,

v.

LENN WOOD, Sheriff of Coweta County, Georgia, a political subdivision of the State of Georgia; JOHN TAYLOR COLLINS, Individually and in his Official Capacity as a former Deputy Sheriff for Coweta County, Georgia; CHRISTIAN SPINKS, Individually and in his Official Capacity as a Deputy Sheriff of Coweta County, Georgia; and JON HOUSE, Individually and in his Official Capacity as a former Deputy Sheriff for Coweta County, Georgia,

Defendants.

CIVIL ACTION FILE

NO. 1:21-CV-2279-MHC

ORDER

This case comes before the Court on Defendants Lenn Wood ("Sheriff Wood"), John Taylor Collins ("Deputy Collins"), Christian Spinks ("Deputy Spinks"), and Jon House ("Deputy House")'s Motion for Summary Judgment [Doc. 74].



I. BACKGROUND[1]

This lawsuit arises from a shooting of Bolton that occurred after his encounter with multiple Coweta County Deputy Sheriffs. At all relevant times, Deputies Collins, Spinks, and House were Deputy Sheriffs with the patrol division of the Coweta County Sheriff's Office ("CCSO"), and Sheriff Wood was the Coweta County Sheriff. Pl.'s Resp. to Defs.' SMF ¶¶ 11-14.

A. The Initial Encounter Between Bolton and Law Enforcement Officials

The Newnan Pavilion is a privately-owned shopping center located in Coweta County alongside Interstate 85, and it contains a number of retail establishments, including a Kohl's Department Store. Id. ¶¶ 1-3. There were signs posted throughout the Newnan Pavilion property that read: "No Loitering." Id. ¶ 4.

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[1] At the outset, the Court notes that as this case is before it on Defendants' Motion for Summary Judgment, the Court views the evidence presented by the parties in the light most favorable to Plaintiff Nicholas S. Bolton ("Bolton"), and has drawn all justifiable inferences in his favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Sunbeam TV Corp. v. Nielsen Media Rsch., Inc., 711 F.3d 1264, 1270 (11th Cir. 2013). In addition, the Court has excluded assertions of facts that are immaterial or presented as arguments or legal conclusions or any fact not supported by citation to evidence (including page or paragraph number). LR 56.1B(1), NDGa. Further, the Court accepts as admitted those facts in Defendants' Statement of Material Facts ("Defs.' SMF") [Doc. 74-2] that have not been specifically controverted with citation to the relevant portions of the record. See LR 56.1B(2), NDGa; Pl.'s Resp. to Defs.' SMF [Doc. 85-2].

On June 30, 2019, Deputy Collins was on duty in full uniform, performing business checks as a part of the burglary patrol, a main component of his job on the night shift in the business district. Id. ¶ 27. At around 2:30 a.m., Deputy Collins spotted a white Chevrolet Tahoe (the "Tahoe") parked in the Kohl's parking lot. Id. ¶ 28. As Deputy Collins approached the Tahoe, he parked his patrol vehicle in such a way that his vehicle lights shined on the Tahoe without blocking it. Id. ¶ 29. Deputy Collins informed dispatch that he was stepping out to investigate a suspicious vehicle. Id. ¶ 30.

Deputy Collins saw a person in the back seat of the Tahoe, later identified as Bolton, and knocked on the window and identified himself. Id. ¶¶ 32, 38. Deputy Collins shined his flashlight on himself so that Bolton could see that he was a uniformed officer, and told Bolton to provide his ID. Id. ¶ 33.

Deputy Collins can be heard on his body camera once sound becomes available at 00:30, asking Bolton four times to open the car door, but Bolton did not comply with those instructions and instead said that "I can hear you right here," and informed Deputy Collins that he already spoken to other police officers.[2]

[2] Bolton testified that a police officer approached him in his Tahoe earlier that day, during the day time when the stores were open, checked his license and his tag, and "told me I was good." Dep. of Nicholas Bolton (Oct. 27, 2022) [Doc. 70] at 18.

Footage from Deputy Collins's Body-Worn Camera ("Collins Bodycam") [Doc 75] at 00:30-00:51[3]; Pl.'s Resp. to Defs.' SMF ¶¶ 34-35, 37. Deputy Collins then asked Bolton for his ID three times. Collins Bodycam at 00:51-1:11; Pl.'s Resp. to Defs.' SMF ¶ 38.[4] Bolton did not hand Deputy Collins his driver's license, but instead questioned why Deputy Collins needed his driver's license, and again stated that he already talked to two other officers, to which Deputy Collins replied, "Okay, well you haven't talked to me . . . ." Collins Bodycam at 00:51-1:11. On his third and last request, Deputy Collins stated: "Okay, look man, just give me your ID, and let me check you, and then I'll get on my way." Id. at 1:05-1:11.

After Bolton's refusal to cooperate, Deputy Collins informed Bolton that he was loitering because he was "back[ed] in front of a bunch of closed businesses." Pl.'s Resp. to Defs.' SMF ¶ 42; Collins Bodycam at 1:11-1:15. Deputy Collins then directed Bolton to step out of the Tahoe three times, but Bolton failed to

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[3] Although the parties agree that the events started at 2:30 a.m., the bodycam footage referenced in this Order shows the "clock" starting at a time other than the time of the actual events. To avoid confusion, the Court will refer to time elapsed on the relevant bodycam footage.

[4] It is axiomatic that deputies cannot confirm that a vehicle is registered to the driver without confirming the identity of the driver. Pl.'s Resp. to Defs.' SMF ¶ 26. Similarly, dispatch is unable to confirm whether a driver is the registered owner of a vehicle based on the car tag alone because the dispatcher is not on the scene to confirm the driver's identity. Id. ¶ 41.

comply with the deputy's instructions. Id. at 1:28-1:48. Bolton moved to the front seat[5], and Deputy Collins asked him to step out of the vehicle for a fourth time; Bolton responded saying "I'm not fixing to do anything," and Collins told him, "you're gonna step out." Collins Bodycam at 1:46-2:00; Pl.'s Resp. to Defs.' SMF ¶ 45. Bolton replied by again referencing two other police officers he talked to earlier in the day. Collins Bodycam at 1:57-2:05. Deputy Collins again stated that he had never talked to Bolton. Id. at 1:50-2:00. Approximately two minutes after Deputy Collins approached the Tahoe, Deputy House, responding to a call for backup, arrived at the scene and parked his patrol car on the passenger side of the Tahoe without blocking it. Pl.'s Resp. to Defs.' SMF ¶¶ 47-48; Dep. of Jon House (Oct. 18, 2022) ("House Dep.") [Doc. 72] at 60. Deputy Collins asked Deputy House if he had talked to Bolton, and Deputy House responded "Nope." Pl.'s Resp. to Defs.' SMF ¶ 47. After Deputy House said this, Deputy Collins again instructed Bolton to get out of the vehicle for the fifth time, by stating "okay, then step on out," and Bolton continued to argue with the deputies. Id. ¶ 49; Collins

[5] Bolton had an item in his hand at that point which appeared to be a driver's license and can be seen through the window as Bolton moved his hands near the window while talking. Dep. of John Collins (Aug. 2, 2022) ("Collins Dep.") [Doc. 73] at 95-96; Collins Bodycam at 1:46-1:52. However, it is undisputed that Bolton never handed his driver's license or any form of identification to any police officer at the scene. Pl.'s Resp. to Defs.' SMF ¶ 55.

Bodycam at 2:00-2:15. Deputy Collins said, "Nobody has talked to you tonight so, go ahead and step out for me." Pl.'s Resp. to Defs.' SMF ¶ 49; Collins Bodycam at 2:00-2:15.

Deputy House then said, "[l]et me explain something to you real quick. We don't know you. We're investigating why you're here." Pl.'s Resp. to Defs.' SMF ¶ 52; Collins Bodycam at 2:10-2:18. Bolton asked, "For what?" Pl.'s Resp. to Defs.' SMF ¶ 53; Collins Bodycam at 2:15-2:20. Deputy House responded, "For loitering. You're loitering, and now that you're not stepping out of the car, you're obstructing an investigation, so you can either get out and talk to us or we can take you out and you can go to jail. It's your choice. You got one chance to get out, or you're going to jail." Pl.'s Resp. to Defs.' SMF ¶ 53; Collins Bodycam at 2:18-2:30. Deputy House then again asked, "You gonna get out or you gonna go to jail?" Collins Bodycam at 2:30-2:34. In total, Bolton was asked or told to get out of his car at least seven times. Id. at 00:00-2:34.

Bolton then started the ignition on the Tahoe. Pl.'s Resp. to Defs.' SMF ¶ 58. Deputy Collins commanded that Bolton turn the car off, pulling out his firearm and pointing it at the Tahoe with his finger on the outside of the gun, rather than on the trigger. Collins Bodycam at 2:34-2:40; Pl.'s Resp. to Defs.' SMF ¶ 59. Deputy House also drew his gun, pointing it at the Tahoe's windshield, with his

finger similarly on the outside of the gun. Pl.'s Resp. to Defs.' SMF ¶ 60. Deputy House yelled, "Turn the car off!" Id. ¶ 63. As he did so, Deputy House moved towards the driver's side of the Tahoe, placed one hand on the front hood of the vehicle while keeping his other hand on his gun pointed at Bolton, and again said, "Turn the car off." Collins Bodycam at 2:38-2:40; Footage from Deputy House's Body-Worn Camera ("House Bodycam") [Doc 75] at 1:33-1:37. In total, the deputies asked Bolton to turn off his car at least three times. Collins Bodycam at 2:34-2:41. Instead of turning off his car, Bolton drove away. Pl.'s Resp. to Defs.' SMF ¶¶ 64, 69. It is unclear from the bodycam footage whether the Tahoe made contact with Deputy House as Bolton drove away, but Deputy House quickly moved out of the way of the Tahoe. Collins Bodycam at 2:40-2:41; House Bodycam at 1:36-37.

B. The Subsequent Pursuit and Shooting

Deputies Collins and House got into their patrol vehicles, activated their blue lights and sirens, and chased the Tahoe. Pl.'s Resp. to Defs.' SMF ¶ 70. Bolton was headed in the direction of the highway and drove in both lanes of the access roadway, including the lane meant for oncoming traffic. Id. ¶¶ 73-74. He failed to come to a full stop at two stop signs. Id. ¶ 72.

After chasing Bolton in his patrol vehicle, Deputy Collins performed a Pursuit Intervention Technique ("PIT") maneuver[6], contacting the right rear corner of the Tahoe, causing it to spin around 180 degrees. Id. ¶¶ 76, 80; Collins Bodycam at 3:08-3:14. After the PIT maneuver, Deputy Collins stopped his vehicle in front of the Tahoe. Pl.'s Resp. to Defs.' SMF ¶ 81; Collins Bodycam at 3:14. The accelerator on the Tahoe was still being pressed and the vehicle's tires were spinning after the PIT maneuver. Pl.'s Resp. to Defs.' SMF ¶¶ 83, 96.[7] The Tahoe moved slightly forward, making contact with Deputy Collins's marked patrol vehicle. Id. ¶ 82 (admitting that the Tahoe "moved forward after the spin and may have bumped Collins' patrol car"); Collins Bodycam at 3:10-20; House

[6] A PIT Maneuver uses the force of the police officer's vehicle to stop a suspect's vehicle during a pursuit. Id. ¶ 77.

[7] Sheriff Wood testified that the data retrieved from the Tahoe shows that the accelerator was being pressed between 71% and 100% at the time Deputy Collins fired his weapon. Defs.' SMF ¶ 83 (citing Decl. Leonard C. Wood (Dec. 28, 2022) ("Wood Decl.") [Doc. 74-3 at 1-14] of ¶ 24); see also Ga. State Patrol Dept. of Public Safety Specialized Collision Reconstruction Collision Analysis Report (June 20, 2019) [Doc. 74-3 at 64-86] at 80. Although Bolton contends this is undetermined because Sheriff Wood provides no factual basis or legal qualifications to analyze this data, the Court finds that the Georgia State Patrol Department of Public Safety Specialized Collision Reconstruction Collision Analysis Report sufficiently supports Sheriff's Wood's statement, and Bolton does not present any evidence creating a genuine dispute of material fact regarding this issue.

Bodycam at 2:00-2:15; Collins Dep. at 144. Deputy Collins's body camera footage confirms that there was contact between his patrol vehicle and the Tahoe after the PIT maneuver at 3:14 and what appears to be a slight and almost instantaneous movement of Deputy Collins's patrol vehicle backwards in reaction to being contacted by the Tahoe. Collins Bodycam at 3:13-3:16; see also House Bodycam at 2:10-2:12. Deputy Collins then opened his car door and exited his patrol vehicle; he was standing near the front, passenger side of the Tahoe. Collins Bodycam at 3:14-3:20.

Deputy House pulled his vehicle up to the driver's side of the Tahoe with the front of his vehicle pointed at the driver's door of the Tahoe. Pl.'s Resp. to Defs.' SMF ¶ 84; House Bodycam at 2:10-2:17. Deputy House exited his vehicle and can be seen standing a few feet in front of the driver's door of the Tahoe, between his own patrol vehicle and Deputy Collins's patrol vehicle. House Bodycam at 2:14-2:20. Deputy House closed his car door and yelled a fourth and final time, "Turn off the car!" Pl.'s Resp. to Defs.' SMF ¶ 93; House Bodycam at 2:14-2:17; Collins Bodycam at 3:18-3:20. The squealing tires are audible on the bodycam footage, and the Tahoe left tire marks on the pavement after the PIT maneuver turned it 180 degrees. Pl.'s Resp. to Defs.' SMF ¶¶ 87-88; House Bodycam at 2:14-2:18; Wood

Decl. ¶ 32 (stating that the Tahoe left tire marks as Deputy Collins fired his weapon).

At approximately the same time or just before Deputy House directed Bolton to turn off the car, Deputy Spinks arrived and approached the rear passenger side of the Tahoe with his patrol vehicle in an effort to box in the Tahoe. Pl.'s Resp. to Defs.' SMF ¶ 94; Collins Bodycam at 3:15-3:20. Deputy Spinks's patrol car hit the Tahoe at the rear, shifting the Tahoe in a clockwise fashion, which became the final resting position of the Tahoe. Pl.'s Resp. to Defs.' SMF ¶ 97; House Dep. at 104-05, 110; Collins Bodycam at 3:18-3:29. Deputy Spinks saw the Tahoe's tires spinning. Pl.'s Resp. to Defs.' SMF ¶ 96.

Approximately one second after House yelled at Bolton to turn off the car, Deputy Collins fired one round at Bolton through the Tahoe's windshield, and immediately notified dispatch that there were "shots fired." Id. ¶¶ 95, 102; Collins Bodycam at 3:18-3:21; House Bodycam at 2:15-2:20. Bolton's foot came off of the accelerator after he was shot. Pl.'s Resp. to Defs.' SMF ¶ 101. Deputy House requested Emergency Medical Services ("EMS") for Bolton. Id. ¶ 103.

C. Events After the Shooting

Deputy Spinks had to move Deputy House's patrol vehicle backward in order to open the driver-side door on the Tahoe. Id. ¶¶ 104-05. Deputy Brown,

another CCSO deputy, arrived on scene and attempted to open the door to the Tahoe, but was unable to do so because it was locked. Id. ¶ 106; Footage from Todd Brown's Body-Worn Camera ("Brown Bodycam") [Doc 75] at 00:42-00:45. Deputy House used his baton to break the window, and saw that Bolton was non-responsive with a bullet wound to his right eye. Pl.'s Resp. to Defs.' SMF ¶ 107. Deputy Brown advised that Bolton was shot in the head and was still breathing, which information was relayed to dispatch with a request that Airlife be placed on standby. Id. ¶¶ 108-09. Deputy Brown then reached inside the Tahoe, shifted the vehicle from drive to park, removed the keys, and threw them onto the roof of the vehicle. Id. ¶ 110. Bolton made slight movements as he remained in the car. Brown Bodycam from 2:30-5:20.

The deputies became concerned about Bolton's movements and the fact they did not know what was inside the Tahoe, and therefore decided to remove Bolton from the Tahoe. Pl.'s Resp. to Defs.' SMF ¶ 112; Brown Bodycam at 5:20-5:50; Footage from Jeremy Crooks's Body-Worn Camera ("Crooks Bodycam") [Doc. 75] at 00:35-00:39. After removing Bolton from the Tahoe, Deputy Spinks handcuffed Bolton's hands behind his back. Pl.'s Resp. to Defs.' SMF ¶ 113. While applying the handcuffs, Deputy Spinks put his knee on Bolton's lower back. Id. ¶ 114; Footage from Deputy Spinks Body Worn Camera ("Spinks Bodycam")

[Doc 75] from 5:40-6:10. Although the exact length of time is difficult to discern from the bodycam footage, Deputy Spinks's knee is on Bolton's back for between ten to twenty seconds.[8] Compare Spinks Bodycam at 5:36 (full view of Bolton before the contact, with no knee in his back), with id. at 6:18-20 (full view of Bolton after the contact, with Deputy Spinks's knee no longer on Bolton's body); see also Crooks Bodycam at 00:48-1:00; Brown Bodycam at 5:45-6:05. Deputies Spinks and House put Bolton on his side to keep his airway clear, and Deputy House held a bandage to Bolton's wound to reduce the bleeding until EMS arrived. Pl.'s Resp. to Defs.' SMF ¶¶ 117-18.

D. The Complaint

On June 2, 2021, Bolton filed a Complaint for Damages [Doc. 1] against Defendants, asserting both federal and state law claims. Bolton asserts Fourth Amendment[9] excessive force claims against Deputies Collins, Spinks, and House

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[8] Defendants contend it was ten seconds, while Bolton contends it was twenty seconds. Compare Defs.' SMF ¶ 114, with Pl.'s Resp. to Defs.' SMF ¶ 114.

[9] Although the Complaint labels this as Fourteenth Amendment excessive force claims, see, e.g., Compl. ¶¶ 81, 88, Bolton and Defendants agree these claims implicate the Fourth, rather than the Fourteenth, Amendment because the alleged force was pre-arrest. Br. in Supp. of Defs.' Mot. for Summ. J. ("Defs.' Mem.") [Doc. 74-1] at 14-17; Pl.'s Resp. Br. in Opp'n to Defs.' Mot. for Summ. J. ("Pl.'s Opp'n") [Doc. 85-1] at 15 n.1; see also Garrett v. Athens–Clarke Cnty., 378 F.3d 1274, 1279 n.11 (11th Cir. 2004) ("All claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest . . . should be

pursuant to 42 U.S.C. § 1983. Compl. ¶¶ 81-88 (Count I).[10] In addition, Bolton asserts a supervisory liability claim against Wood in his official capacity pursuant to 42 U.S.C. § 1983. Id. ¶¶ 90-100 (Count II). Bolton also brings state law claims for assault and battery against Deputies Collins, Spinks, and House. Id. ¶¶ 102-114 (Count III).[11] Finally, Bolton brings a claim for punitive damages against all Defendants. Id. ¶¶ 116-117 (Count IV).

II. LEGAL STANDARDS

A. Summary Judgment

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A party seeking summary judgment has the burden of informing

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analyzed under the Fourth Amendment and its 'reasonableness' standard[.]") (quoting Graham v. Connor, 490 U.S. 386, 395 (1989)). Because pre-arrest excessive force claims are analyzed under the Fourth Amendment, the Court will consider Count I as alleging Fourth Amendment claims.

[10] The Complaint does not specify if the excessive force claims are brought against Defendants in their individual capacities, official capacities, or both. Because the Complaint's caption indicates that these three deputies are sued both in their individual and official capacities, id. at 1, the Court will assume Count I is asserted against the deputies in both capacities.

[11] The Compliant does not specify whether the state law assault and battery claims are brought against the deputies in their individual capacities, official capacities, or both. The Court will assume both for the reasons discussed above.

the district court of the basis for its motion and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions," and cannot be made by the district court in considering whether to grant summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); see also Graham v. State Farm Mut. Ins. Co., 193 F.3d 1274, 1282 (11th Cir. 1999).

If a movant meets its burden, the party opposing summary judgment must present evidence demonstrating a genuine issue of material fact or that the movant is not entitled to judgment as a matter of law. Celotex, 477 U.S. at 324. In determining whether a genuine issue of material fact exists, the evidence is viewed in the light most favorable to the party opposing summary judgment, "and all justifiable inferences are to be drawn" in favor of that opposing party. Anderson, 477 U.S. at 255; see also Herzog v. Castle Rock Entm't, 193 F.3d 1241, 1246 (11th Cir. 1999). A fact is "material" only if it can affect the outcome of the lawsuit under the governing legal principles. Anderson, 477 U.S. at 248. A factual dispute is "genuine" if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Anderson, 477 U.S. at 248. "If the record presents factual

issues, the court must not decide them; it must deny the motion and proceed to trial." Herzog, 193 F.3d at 1246. But, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party," summary judgment for the moving party is proper. Matsushita, 475 U.S. at 587.

B. 42 U.S.C. § 1983 and Qualified Immunity

"It is well established that [42 U.S.C. §] 1983 itself creates no substantive rights; it merely provides a remedy for deprivations of federal rights established elsewhere." Wideman v. Shallowford Cmty. Hosp., Inc., 826 F.2d 1030, 1032 (11th Cir. 1987) (citing City of Okla. City v. Tuttle, 471 U.S. 808, 816 (1985)). To sustain a cause of action based on § 1983, a litigant must establish two elements: (1) that he suffered a deprivation of a right, privilege, or immunity protected by the U.S. Constitution or federal law, and (2) that the act or omission causing the deprivation was committed by a person acting under color of state law. Livadas v. Bradshaw, 512 U.S. 107, 132 (1994); Arrington v. Cobb Cnty., 139 F.3d 865, 872 (11th Cir. 1998). "[S]ection 1983 imposes liability only 'for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law.'" Wideman, 826 F.2d at 1032 (quoting Baker v. McCollan, 443 U.S. 137, 146 (1979)). Accordingly, "[i]n any § 1983 action, a court must determine 'whether the Plaintiff has been deprived of a right secured by the Constitution and

laws of the United States.'" Glenn v. Brumby, 663 F.3d 1312, 1315 (11th Cir. 2011) (quoting Baker, 443 U.S. at 146). "Absent the existence of an underlying constitutional right, no section 1983 claim will lie." Wideman, 826 F.2d at 1032.

To avoid individual liability in a claim under § 1983, law enforcement officers may invoke the defense of qualified immunity, which "offers complete protection for individual public officials performing discretionary functions 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Sherrod v. Johnson, 667 F.3d 1359, 1363 (11th Cir. 2012) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). To claim qualified immunity, a defendant must first show he or she was performing a discretionary function. Moreno v. Turner, 572 F. App'x 852, 855 (11th Cir. 2014) (citing Whittier v. Kobayashi, 581 F.3d 1304, 1308 (11th Cir. 2009)).

> Instead of focusing on whether the acts in question involved the exercise of actual discretion, we assess whether they are of a type that fell within the employee's job responsibilities. Our inquiry is two-fold. We ask whether the government employee was (a) performing a legitimate job-related function (that is, pursuing a job-related goal), (b) through means that were within his power to utilize.

Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1265-66 (11th Cir. 2004) (citation omitted).

"Once discretionary authority is established, the burden then shifts to the plaintiff to show that qualified immunity should not apply." Edwards v. Shanley, 666 F.3d 1289, 1294 (11th Cir. 2012) (quoting Lewis v. City of W. Palm Beach, 561 F.3d 1288, 1291 (11th Cir. 2009)). A plaintiff demonstrates that qualified immunity does not apply by showing: "(1) the defendant violated a constitutional right, and (2) the right was clearly established at the time of the alleged violation." Whittier, 581 F.3d at 1308.

C. Excessive Force

"The Fourth Amendment's freedom from unreasonable searches and seizures encompasses the right to be free from excessive force during the course of a criminal apprehension." Oliver v. Fiorino, 586 F.3d 898, 905 (11th Cir. 2009) (citations omitted). "[A]ll claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." Graham, 490 U.S. at 395. Whether the force was "reasonable" "requires balancing of the individual's Fourth Amendment interests against the relevant government interests." Cnty. of Los Angeles v. Mendez, 581 U.S. 420, 427 (2017) (citing Graham, 490 U.S. at 396). The operative question in excessive force cases is "whether the officers' actions [were]

'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Graham, 490 U.S. at 397. "Though the facts must be taken in the light most favorable to [the plaintiff], the determination of reasonableness must be made from the perspective of the officer." Robinson v. Arrugueta, 415 F.3d 1252, 1255 (11th Cir. 2005). As the Supreme Court explained in Mendez,

> The reasonableness of the use of force is evaluated under an objective inquiry that pays careful attention to the facts and circumstances of each particular case. And 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. Excessive force claims . . . are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred. That inquiry is dispositive: When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim.

Mendez, 581 U.S. at 428 (citations and quotations omitted). The inquiry into reasonableness requires courts to "slosh [their] way through the fact bound morass of 'reasonableness.'" Scott v. Harris, 550 U.S. 372, 383 (2007). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. Graham, 490 U.S. at 396-97.

Some of the facts and circumstances courts in consider "[i]n deciding whether a police officer used excessive force," include "'the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.'" Morton v. Kirkwood, 707 F.3d 1276, 1281 (11th Cir. 2013) (citing Graham, 490 U.S. at 396).

"As to deadly force, a police officer may use such force to dispel a threat of serious physical harm to either the officer or others, or to prevent the escape of a suspect who threatens this harm." Hammett v. Paulding Cnty., 875 F.3d 1036, 1048 (11th Cir. 2017) (citation and internal quotations omitted); see also Singletary v. Vargas, 804 F.3d 1174, 1181 (11th Cir. 2015) (citing Robinson, 415 F.3d at 1256) ("We have held that it is reasonable, and therefore constitutionally permissible, for an officer to use deadly force when he has 'probable cause to believe that his own life is in peril.'"); Carr v. Tatangelo, 338 F.3d 1259, 1268 (11th Cir. 2003) (citation and quotation omitted) ("[I]t is constitutionally permissible for an officer to use deadly force when the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.").

> For that reason, we have "consistently upheld" an officer's use of deadly force in cases where the officer reasonably believed his life was

> endangered by a suspect who "used or threatened to use his car as a weapon." McCullough v. Antolini, 559 F.3d 1201, 1207 (11th Cir. 2009); see also Terrell v. Smith, 668 F.3d 1244, 1255 (11th Cir. 2012) (granting qualified immunity where "an objectively reasonable law enforcement officer could well have perceived that [a] moving vehicle was being used as a deadly weapon").

Singletary, 804 F.3d at 1181-82; see also Carr, 338 F.3d at 1269 ("A reasonable but mistaken belief that probable cause exists for using deadly force is not actionable under § 1983.").

III. DISCUSSION

A. Bolton's Fourth Amendment Excessive Force Individual Capacity Claims Against Deputies Collins, Spinks, and House are Without Merit.

Defendants contend that the use of force by Deputies Collins and Spinks was objectively reasonable and that Deputy House is not liable for a failure to intervene, so there was no constitutional violation under the Fourth Amendment for excessive force. Defs.' Mem. at 17-25. Moreover, even if there was a constitutional violation, Defendants assert that the deputies are protected by qualified immunity. Id. at 26-29. Bolton contends that Defendants violated clearly established law and CCSO policies during their stop, pursuit, and shooting of Bolton and have no qualified immunity for their actions. Pl.'s Opp'n at 18-27.

The parties do not dispute Defendants were acting within the scope of their discretionary authority with respect to the actions taken on June 30, 2019. Defs.'

Mem. at 26; Pl.'s Opp'n at 18. See Cottam v. City of Wildwood, 750 F. App'x 791, 793 (11th Cir. 2018) (finding that the officer "was acting within the scope of his discretionary authority when he stopped and arrested" the plaintiff). Once it is established that the police officers were acting within their discretionary authority, the burden shifts to Plaintiff to show both that (1) the facts alleges show that the officers violated Plaintiff's constitutional right, and (2) the right was clearly established at the time of the alleged misconduct. This Court may consider these two prongs in any order, but "an official is entitled to qualified immunity if the plaintiff fails to establish either." Piazza v. Jefferson Cnty., 923 F.3d 947, 951 (11th Cir. 2019). As discussed below, the Court finds that the facts in this case, taken in the light most favorable to Bolton, establish that the actions taken by Deputies Collins, Spinks, and House did not violate Bolton's Fourth Amendment Right to be free from excessive force.

1. Deputy Collins

Bolton's excessive force claim against Deputy Collins is based on the allegation that Deputy Collins "shot Mr. Bolton in the head, without warning, when Mr. Bolton posed no objectively reasonable threat to Defendants Collins, Spinks, or House." Compl. ¶ 82. Bolton contends that Deputy Collins's use of deadly force was unnecessary, excessive, and not justified because "the deputies

created a situation that was only dangerous to Bolton, falsely alleged that his immobilized vehicle was imminently dangerous, and shot Bolton in the head before he had any opportunity to follow an instruction to turn off his engine." Pl.'s Opp'n at 25-26.[12] Rather than attempting to justify his position based upon legal

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[12] Bolton also argues that several events preceding the shooting were the proximate cause of the shooting and "culminated in an unjustified, dangerous vehicle pursuit and a bullet in Bolton's brain." Id. at 18-25. More specifically, although Bolton admits the initial investigatory stop of Bolton was lawful, he argues the way the investigation was carried out was unlawful, the vehicle chase was in violation of CCSO policy, and the PIT maneuver was unnecessary and a violation of CCSO policy. Id.; see also Pl.'s Resp. to Defs.' SMF ¶ 67 (admitting that Deputy Collins had articulable reasonable suspicion that Bolton was loitering or prowling). In terms of analyzing Bolton's excessive force claim based solely on the shooting, these arguments are irrelevant. See Vincente v. City of Rome, Ga., No. CIV.A. 4:03-CV-0060H, 2005 WL 6032876, at *19 (N.D. Ga. June 28, 2005) (noting that a number of courts have concluded that the conduct prior to the moment that force is used is not relevant in determining the reasonableness of the force, and therefore excluding evidence that allegedly showed unreasonableness of acts prior to the use of force as not relevant); Linder v. Richmond Cnty., Ga., 844 F. Supp. 764, 767 (S.D. Ga.), aff'd, 38 F.3d 574 (11th Cir. 1994) (finding that the alleged unreasonableness of an officer's actions prior to the shooting "have no bearing on the reasonableness" of the officer's actions "at the time he was forced to make the decision whether to shoot" the plaintiff); Btesh v. City of Maitland, Fla., No. 6:10-CV-71-ORL-19DAB, 2011 WL 3269647, at *23 (M.D. Fla. July 29, 2011), aff'd sub nom. Btesh v. City of Maitland, Fla., 471 F. App'x 883 (11th Cir. 2012) (quoting Graham, 490 U.S. at 396, and citing Livermore ex rel Rohm v. Lubelan, 476 F.3d 397, 407 (6th Cir. 2007)) ("Plaintiff does not cite, and the Court does not find, any authority that Scott's opinions about Officer Denicolas actions prior to the shooting of Btesh create a genuine issue of material fact regarding the reasonableness of Officer Denicola's use of deadly force on Btesh. When judging the use of deadly force by a police officer, a 'standard of reasonableness *at the moment* applies.'"); Crutcher v. Athens Police Dep't, No. CV-10-S-1176-NE, 2014 WL 5521944, at *4 (N.D. Ala. Oct. 31, 2014) ("Events that occurred prior to that

precedent, Bolton relies on two expert reports that opine that the force Collins used was "unnecessary and excessive" because Bolton was not an immediate threat to Collins or others. Id. (citing reports of Andrew J. Scott, III (June 10, 2022) [Doc 40] and Curtis Marshall (June 30, 2022) [Doc. 43-1]). However, "whether the force that [Deputy Collins] used was excessive is a pure question of law" and "is not a matter subject to expert testimony." Myers v. Bowman, 713 F.3d 1319, 1328 (11th Cir. 2013) (rejecting the plaintiffs' position that there was a genuine issue of material fact because their expert testified that the force used was excessive) (internal citation and quotation omitted); see also Bolander v. Taser Int'l, Inc., No. 07-CV-80789, 2009 WL 2004379, at *12 (S.D. Fla. July 9, 2009) (declining to consider expert opinion on whether force used was excessive as "the issue of whether the officers used excessive force based on the undisputed facts in the light most favorable to the Plaintiffs is a question of law for the Court."). Accordingly, Bolton has failed to carry his burden to allege facts which establish that Deputy Collins's use of deadly force was unreasonable given the facts and circumstances that confronted him at the time of the shooting.

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moment, though perhaps giving factual context to the use of force, are not probative of the reasonableness of the decision to use force.") (citations omitted).

The undisputed facts known to Deputy Collins at the time he shot Bolton demonstrate that Bolton failed to obey the deputies' lawful requests to open the car door no fewer than four times, never handed his ID to the deputies despite Deputy Collins's request for his ID no fewer than three times, failed to obey police officers' lawful requests to exit the Tahoe no fewer than seven times, and instead moved to the driver's seat of his Tahoe and turned on the car. Bolton then refused three commands to turn off the car's engine and fled the scene, nearly hitting a police officer in the process of driving away.[13] Bolton then led officers in a vehicular police chase where the two patrol vehicles tailing him had their sirens and lights engaged, and Bolton drove through two stop signs without stopping and in an erratic fashion in the lane meant for oncoming traffic. The car chase ended

[13] Bolton contends that the Tahoe did not strike Deputy House on the hip. Pl.'s Resp. to Defs.' SMF ¶ 65. As previously stated, it is not clear from the bodycam footage whether or not contact was made. However, the Court will adopt Bolton's version of the facts and assume the Tahoe did not make contact with Deputy House. See, e.g., Baltimore v. City of Albany, Ga., 183 F. App'x 891, 895 (11th Cir. 2006) ("[W]hen the district court considers the record in the light most favorable to the plaintiff, as it must, it necessarily eliminates all issues of fact and proceeds with the plaintiff's best case before it.") (internal citation and quotations omitted); Williams v. Hudson, No. 1:11-CV-3542-SCJ, 2013 WL 11927707, at *16 (N.D. Ga. Aug. 12, 2013) ("In the excessive force context, the Court accepts the plaintiff's version of the facts and then answers the legal question of whether the defendants are entitled to qualified immunity under that version of the facts.") (internal quotations and citations omitted and alterations accepted).

only after the officers performed a PIT maneuver to stop the Tahoe. Once the officers were able to end the chase and box in the Tahoe with their own patrol vehicles, Bolton continued to engage the Tahoe's accelerator, causing the vehicle's tires to squeal and indicating to the deputies that Bolton was still attempting to move the Tahoe. In fact, after the Tahoe spun around, the Tahoe moved forward and made contact with Deputy Collins's patrol vehicle. At this point, the officers exited their vehicle with their guns drawn and Deputy House commanded Bolton to turn off his car a final time in the moments prior to Deputy Collins firing a single shot at Bolton. These undisputed facts are sufficient as a matter of law to give a law enforcement officer in Collins's position a reasonable belief that Bolton (1) was still attempting to flee, (2) was using his vehicle as a deadly weapon[14], (3) posed a threat of serious physical harm to himself and other officers on the scene, including Deputy House, (4) had violated multiple traffic laws[15], and (5) had

[14] See Thomas v. State, 255 Ga. App. 777, 778 (2002) (upholding a jury verdict finding the plaintiff guilty of aggravated assault with a deadly weapon based on testimony that the plaintiff drove his car toward an officer at a high rate of speed); Payne v. State, 195 Ga. App. 523, 524 (1990) (determining that quickly cutting a vehicle in front of a state trooper's patrol car during a vehicular chase was sufficient evidence of use of an automobile as a deadly weapon).

[15] See O.C.G.A. § 40-6-40 (making it unlawful to drive on the left half of a roadway); O.C.G.A. § 40-6-72 (requiring vehicles to stop at stop signs).

committed the offenses of obstruction or hindering an investigation[16], fleeing or eluding a law enforcement officer[17], and aggravated assault on a public safety officer[18]. It was reasonable for Deputy Collins to use deadly force under these circumstances.

The Eleventh Circuit has "consistently upheld an officer's use of force and granted qualified immunity in cases where the decedent used or threatened to use his car as a weapon to endanger officers or civilians immediately preceding the officer's use of deadly force." McCullough, 559 F.3d at 1207-08 (11th Cir. 2009) ("McCullough used his vehicle in a dangerous and aggressive manner which provided the officers with probable cause to believe that McCullough, while

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[16] See O.C.G.A. § 16-10-24 (a) (making it unlawful to obstruct or hinder a law enforcement officer in the discharge of his official duties).

[17] See O.C.G.A. § 40-6-395 ("It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop.").

[18] See O.C.G.A. § 16-5-21 (defining aggravated assault upon a public safety officer to include the use of a deadly weapon against a public safety officer while he is engaged in the performance of his official duties in a manner that is likely to or actually does result in serious bodily injury); see also Webb v. State, 256 Ga. App. 653, 654 (2002) ("[O]ne who aims a motor vehicle at another person may be convicted of aggravated assault regardless of whether the victim sustained any injuries or was even touched by the vehicle.").

driving his truck, posed a threat of serious physical harm or death to the officers, or other passersby, especially in light of the speed with which the incident unfolded."); see also Spencer v. City of Orlando, 725 F. App'x 928, 932 (11th Cir. 2018) (finding the officers faced immediate threat of harm sufficient to warrant deadly force because the plaintiff had used and threatened to use his car as a weapon immediately preceding the officers' use of force by backing his car in the direction of an officer and hitting the officer's car as he tried to flee); Singletary, 804 F.3d at 1183 (finding that the officer's use of deadly force was reasonable and did not constitute excessive force because a reasonable officer could have perceived that the suspect was using the car as a deadly weapon and was in imminent danger of being run over when he was in the path of the car as it accelerated); Terrell, 668 F.3d at 1252-54 (collecting cases showing that the Eleventh Circuit has consistently found the use of deadly force against a suspect using a vehicle as a deadly weapon to be reasonable); Pace v. Capobianco, 283 F.3d 1275, 1281-82 (11th Cir. 2002) (finding an officer's use of deadly force in shooting the plaintiff to be reasonable where the officer shot "a very few seconds" after a vehicular car chase ended and "the fleeing suspect appeared to be dangerous by virtue of his hazardous driving" during the chase he and "remained in his automobile with the engine running, even when almost surrounded by officers"

because a reasonable officer could believe the car was a deadly weapon and could have believed the chase was not over); Small v. Glynn Cnty., 77 F. Supp. 3d 1271, 1280 (S.D. Ga. 2014), aff'd sub nom. McGehee v. Glynn Cnty., 598 F. App'x 752 (11th Cir. 2015) (recognizing the risk that a plaintiff who is evading arrest, fleeing, and driving aggressively can be a threat to an officer inside of his patrol car, and noting that the officer(s) in the patrol car feared being hit by the plaintiff's car).

The Eleventh Circuit, in addressing a case involving facts similar to the facts here, found an officer's use of deadly force to be constitutional. In Robinson, the defendant officer stood in front of a car, pointed his gun at the suspect who was sitting somewhere between the passenger seat and the driver's seat, and told the suspect to put his hands up. Robinson, 415 F.3d at 1254. Instead of complying, the suspect grinned at the officer as the car began slowly moving forward at a speed of approximately one to two miles per hour, and, as the officer attempted to get out of the way of the moving car, he shot the driver through the windshield. Id. The Eleventh Circuit determined that the officer "had to make a split-second decision of whether he could escape before he got crushed," it was reasonable for the officer to believe that the driver posed a threat of serious physical harm, and concluded that it was reasonable for the officer to use deadly force, so the officer was entitled to qualified immunity under the first prong of that analysis. Id. at

1256-57. The Eleventh Circuit noted that, under Georgia law, "a car driven in a threatening manner can be considered a deadly weapon." Id. at 1255-56 (citing Webb, 256 Ga. App. at 654 ("[O]ne who aims a motor vehicle at another person may be convicted of aggravated assault regardless of whether the victim sustained any injuries or was even touched by the vehicle.")). "Even if in hindsight the facts show that [the officer] perhaps could have escaped unharmed, we conclude that a reasonable officer could have perceived that [the suspect] was using the [vehicle] as a deadly weapon." Id. at 1256.

Even if the Tahoe was immobilized, as Bolton suggests, see Pl.'s Opp'n at 2, 9, 25, 33, it is undisputed that Bolton's foot remained on the accelerator and the tires were squealing. As such, a reasonable officer could have therefore assumed the car was still functional and able to be used as a deadly weapon. Therefore, "it was not unreasonable for the officers to conclude that [Bolton] remained an 'immediate' threat to their safety at the time [Collins] opened fire." Spencer, 725 F. App'x at 932 (finding it was not unreasonable for the officers to shoot even assuming that the plaintiff's car was disabled because it was undisputed that the plaintiff attempted to restart the engine so that he could continue fleeing). "To be clear, the officers were not required to wait until [the suspect] successfully restarted the car and drove toward them before they defended themselves." Id.; see

also Long, 508 F.3d at 581 (footnote omitted) ("Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect."); Pace, 283 F.3d at 1282 (concluding there was no excessive force despite the fact the court accepted the facts that the suspect did not try and run over the officers, nor did the suspect aim his vehicle at the officers).

Bolton also argues that he lost control of his vehicle during the PIT maneuver. Pl.'s Opp'n at 9. Even if Bolton was, in fact, unable to control the vehicle, it was reasonable for Deputy Collins to believe Bolton was in control based on his position at the controls as the tires squealed. "[T]he necessarily fact-specific inquiry takes into account facts as they reasonably appeared to the police officer. If an officer reasonably, but mistakenly, believes that one of the factors relevant to the merits of the constitutional excessive-force claim is present, the officer is justified in using more force than in fact was needed." Williams v. Deal, 659 F. App'x 580, 597-98 (11th Cir. 2016).

Viewing the evidence in a light most favorable to Bolton and construing all reasonable inferences in his favor, but from the perspective of a reasonable officer in Deputy Collins's position on the scene at that moment in time, a reasonable

officer could have concluded that the Bolton posed an imminent threat of harm based on the use of his vehicle as a deadly weapon. The Court therefore finds that Deputy Collins did not violate the Fourth Amendment when he shot Bolton.

Because Collins did not violate Bolton's Fourth Amendment rights, the Court need not reach the second prong of the qualified immunity analysis. Crenshaw v. Lister, 556 F.3d 1283, 1293 (11th Cir. 2009) ("[B]ecause there was no constitutional violation, we need not address whether the constitutional right at issue was clearly established."). However, even assuming *arguendo* that Collins did violate Bolton's Fourth Amendment rights, Bolton fails to cite any legal precedent or even raise an argument demonstrating that any alleged constitutional violation was clearly established at the time Deputy Collins shot Bolton. See Pace, 283 F.3d at 1283 (holding that even if the officers violated the plaintiff's constitutional right, they were still entitled to qualified immunity because the plaintiff "identified no case demonstrating a clearly established rule prohibiting police officers from using deadly force in circumstances like those in this case").

Accordingly, Deputy Collins is entitled to qualified immunity, and the Court **GRANTS** Defendants' Motion for Summary Judgment as to Count I against Deputy Collins in his individual capacity.

2. Deputy Spinks

Bolton brings an excessive force claim against Deputy Spinks for "handcuffing Mr. Bolton's wrists behind his back and kneeling on Mr. Bolton's back and neck, pinning him to the concrete for an excessive period of time" and "continuing to kneel on Mr. Bolton's back and neck while Mr. Bolton was handcuffed with his hands behind his back, after being shot in the head, while he was not resisting in any way." Compl. ¶¶ 83-84. Without citing any legal authority supporting the proposition that the alleged acts constitute excessive force, Bolton states in conclusory fashion that "Deputy Spinks obviously used excessive force against Bolton." Pl.'s Opp'n at 26. Bolton argues that he was not a threat, he was injured and twitching on the ground due to his gunshot wound, yet Deputy Spinks yelled at him to stop moving as he put his foot and knee on Bolton's back and neck to handcuff him. Id.

The Court finds that Deputy Spinks used what Eleventh Circuit precedent considers to be "de minimis," as opposed to excessive, force. See Nolin v. Isbell, 207 F.3d 1253, 1257 (11th Cir. 2000) ("[T]he application of de minimis force, without more, will not support a claim for excessive force in violation of the Fourth Amendment.").

> Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it

> the right to use some degree of physical coercion or threat thereof to effect it. This circuit has made clear that some use of force by a police officer when making a custodial arrest is necessary and altogether lawful, regardless of the severity of the alleged offense. Because a police officer is entitled to use some force to arrest a suspect, the application of de minimis force, without more, will not support a claim for excessive force in violation of the Fourth Amendment.

Myers, 713 F.3d at 1327 (quotations and citations omitted). "For even minor offenses, permissible force includes physical restraint, use of handcuffs, and pushing into walls." Brown v. City of Huntsville, 608 F.3d 724, 740 (11th Cir. 2010); see also Rodriguez v. Farrell, 280 F.3d 1341, 1351 (11th Cir. 2002) (finding no excessive force as a matter of law where, in the course of an arrest, the officer handcuffed the plaintiff in a manner that caused him injury and pain); Nolin, 207 F.3d at 1255, 1258 & n. 4 (finding no excessive force as a matter of law when, during the course of an arrest, the officer grabbed the plaintiff and shoved him against a van, kneed him in the back, pushed his head against the van, searched his groin area, and then handcuffed him); Lockhart v. Lebron, No. 19-CV-60326, 2019 WL 1996016, at *4 (S.D. Fla. Apr. 17, 2019), R&R adopted, 2019 WL 1992993 (S.D. Fla. May 6, 2019) (finding allegations that the officer drew his gun and then placed the plaintiff in a chokehold, forcing him to the ground, and causing injury were not sufficient to support a claim for excessive force).

Viewing the evidence in a light most favorable to Bolton, that Deputy Spinks's knee was on Bolton's back for twenty seconds, the court concludes this was not excessive force. See Croom v. Balkwill, 645 F.3d 1240, 1245-52 (11th Cir. 2011) (finding that even if force was unnecessary, there was no constitutional violation based on its application because the force was de minimis where an officer placed his foot on the plaintiff's back and held her to the ground for up to ten minutes). Even if Deputy Spinks placed his foot and/or knee on Bolton's neck as well as his back,[19] this would still not rise above de minimis force because the Eleventh Circuit has upheld similar (and much more severe) acts as de minimis and not violative of the Fourth Amendment. See, e.g., Post v. City of Fort Lauderdale, 7 F.3d 1552, 1559 (11th Cir. 1993), modified, 14 F.3d 583 (11th Cir. 1994) (finding that an officer who pushed a plaintiff against a wall and placed the plaintiff in a choke-hold prior to placing her in handcuffs was not excessive force

[19] Defendants argue the record does not show Deputy Spinks put his foot and/or knee on Bolton's neck. Defs.' Reply Br. in Supp. of Def.' Mot. for Summ. J. [Doc. 90] at 9. Bolton cites only to Deputy Spinks's Bodycam and Deputy House's Bodycam, omitting any time stamp, for the proposition that Deputy Spinks put his foot or knee on Bolton's neck. Pl.'s Opp'n at 26 (citing House Bodycam and Spinks Bodycam). Yet a review of the video footage contained in these two body cameras does not show that there is any contact made by Deputy Spinks to Bolton's neck. See Spinks Bodycam at 5:26-6:10; House Bodycam at 8:28-8:46. Accordingly, Bolton has not presented evidence that shows that Deputy Spinks made contact with Bolton's neck.

despite the fact that the plaintiff did not resist); Nolin, 207 F.3d at 1255 (finding the officer only applied de minimis force even though he pushed the plaintiff's head into the side of a van); Myers, 713 F.3d at 1325-27 (finding that the officer only applied de minimis force despite the fact that the arrestee suffered injury to his head and neck). Accordingly, Bolton has failed to meet his burden of showing that Deputy Spinks violated his Fourth Amendment rights.

Even assuming *arguendo* that it could be contended that Deputy Spinks violated Bolton's Fourth Amendment rights, Bolton again fails to cite any case law or raise any argument that Deputy Spinks violated a constitutional right that was clearly established. Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment as to Count I against Deputy Spinks in his individual capacity.

3. Deputy House

Bolton brings an excessive force claim against Deputy House for failing to intervene "to prevent Defendant Collins or Defendant Spinks from exerting excessive force in violation of Mr. Bolton's" constitutional rights. Compl. ¶ 85. "An officer who is present and in a position to intervene to prevent another officer from violating the constitutional rights of an arrestee can be held liable for his inaction." Quick v. Geddie, 763 F. App'x 909, 915 (11th Cir. 2019) (citing Crenshaw, 556 F.3d at 1293-94). The officer "must have been in a position to

intervene." Terry v. Bailer, 376 F. App'x 894, 896 (11th Cir. 2010) (citing Ensley v. Soper, 142 F.3d 1402, 1407 (11th Cir. 1998)); see also Velazquez v. City of Hialeah, 484 F.3d 1340, 1341 (11th Cir. 2007) ("The law of this circuit is that 'an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance.'") (quoting Skrtich v. Thornton, 280 F.3d 1295, 1302 (11th Cir. 2002)).

In his brief, Bolton acknowledges that there must be a constitutional violation that takes place in front of the offending officer to support a claim for a failure to intervene. Pl.'s Opp'n at 26 (noting that a failure to intervene cause of action occurs "when a constitutional violation . . . takes place" in an officer's presence). Here, no such constitutional violation has taken place as the Court has found that Deputies Collins and Spinks did not violate Bolton's Fourth Amendment rights, so Deputy House "had no attendant obligation to intervene." See, e.g., Crenshaw, 556 F.3d at 1294 (finding that the district court erred in denying the police officer summary judgment on the plaintiff's failure to intervene claim against one deputy where the other deputy did not violate the plaintiff's right to be free from excessive force); see also Hall v. McGhee, 762 F. App'x 837, 840 (11th Cir. 2019) ("Although legally distinct, the outcome of Mr. Hall and Mr.

Reuben's failure to intervene claim is closely linked to the excessive force claims because the duty to intervene only arises when another officer uses excessive force.").

Because Bolton fails to demonstrate a constitutional violation on the part of Deputy House, the Court need not reach the second prong of the qualified immunity analysis, Crenshaw, 556 F.3d at 1293. However, Bolton has again failed raise any argument that the alleged violation of his constitutional right was clearly established at the time of the alleged violation. The Court **GRANTS** Defendants' Motion for Summary Judgment as to Count I against Deputy House in his individual capacity.[20]

B. Bolton's Fourth Amendment Excessive Force Official Capacity Claims are Without Merit.

The claims against Deputies Collins, Spinks, and House in their official capacity fail for two reasons. First, because the Court has concluded that the excessive force claims brought against those deputies in their individual capacities

[20] Although Bolton himself acknowledged that the qualified immunity analysis is an objective one, "without regard to [the officers'] underlying intent or motivation," Pl.'s Opp'n at 17, he nevertheless includes a lengthy argument that the deputies made misrepresentations that demonstrate they intentionally violated Bolton's civil rights. Id. at 28-35. Because intent is immaterial to the qualified immunity analysis, this argument does not change the Court's conclusion that qualified immunity applies.

fail as a matter of law because they did not violate Bolton's constitutional rights, the claims against them in their official capacities also fail as a matter of law. Mann v. Taser Int'l, Inc., 588 F.3d 1291, 1309 (11th Cir. 2009) (holding that there was "no basis and no support for the similar claims made against" a Whitefield County Sheriff and five deputies in their official capacities because "we have found no support for any of the federal claims being made against [them] in their individual capacities"); Hazelton v. DeKalb Cnty., Ga., No. 1:09-CV-00026-JOF, 2011 WL 13183220, at *11 (N.D. Ga. Mar. 8, 2011), aff'd sub nom. Hazelton v. DeKalb Cnty., Ga., 496 F. App'x 931 (11th Cir. 2012) ("As there is no support for claims against any of the Defendants in their individual capacities, none of the Defendants may be held liable in their official capacity[.]").

Second, the claims against the deputies in their official capacities also are barred by Eleventh Amendment immunity.[21] Bolton's claims against Deputies Collins, Spinks, and House in their official capacities actually are claims against the Coweta County Sheriff's Office. Graham, 473 U.S. at 165-66; see also

[21] Although Defendants recognize and raise an argument that Sheriff Wood is protected by the Eleventh Amendment with respect to Count II, Defs.' Mem. at 31, they fail to make any such argument with respect to Count I. Nevertheless, for completeness, the Court includes an explanation of why the Eleventh Amendment also bars this claim.

Brandon v. Holt, 469 U.S. 464, 471 (1985) ("[A] judgment against a public servant 'in his official capacity' imposes liability on the entity that he [or she] represents . . . ."); Manders v. Lee, 338 F.3d 1304, 1308 (11th Cir. 2003) (citations omitted) (stating that sheriff's deputies in Georgia are "are employees of the sheriff and not the county") (en banc); Lake v. Skelton, 840 F.3d 1334, 1339 (11th Cir. 2016) (citing Grech v. Clayton Cnty., Ga., 335 F.3d 1326, 1347 (11th Cir. 2003)) ("Georgia caselaw recognizes that deputies are employees of the sheriff and not the county."), reh'g denied, 871 F.3d 1340; O.C.G.A. § 15-16-23 ("Sheriffs are authorized in their discretion to appoint one or more deputies.").

"[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983." Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). States and state officials acting in official capacities are immune from suit brought pursuant to Section 1983 under the Eleventh Amendment, which "protects a State from being sued in federal court without the State's consent." Manders, 338 F.3d at 1308. The State of Georgia has not waived its Eleventh Amendment immunity from suits in federal court under § 1983. See Clarke v. McNurry, 763 F. App'x 899, 900 (11th Cir. 2019); GA. CONST. art. I, § 2, IX(f) ("No waiver of sovereign immunity . . . shall be construed as a waiver of any immunity provided to the state or its . . . officers, or employees by the United States Constitution.");

O.C.G.A. § 50-21-23(b) ("The state does not waive any immunity with respect to actions brought in the courts of the United States."). In addition, Congress has not abrogated Eleventh Amendment immunity in § 1983 cases. Brown v. Fla. Dep't of Revenue Off. of Child Support Enf't., 697 F. App'x 692, 693 (5th Cir. 2017) (citation omitted).

Eleventh Amendment immunity from suit applies equally to lawsuits against the state as well as "arms of the state." Id. The Eleventh Circuit delineated the test for whether an individual was an "arm of the state" in Manders, where the court emphasized that the determination "must be assessed in light of the particular function in which the defendant was engaged when taking the actions out of which liability is asserted to arise." Manders, 338 F.3d at 1308. The Manders Court examined four factors in its analysis of whether an entity is an "arm of the State" in carrying out a particular function: "(1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity." Id. at 1309.

The Complaint asserts that liability arises from: (1) Deputy Collins shooting of Bolton, (2) Deputy Spinks's conduct in handcuffing Bolton, and (3) Deputy House's alleged failure to intervene. Compl. ¶¶ 82-85. The Court finds that the deputies were performing state law enforcement duties and therefore acted as an

arm of the state at the time of the events underlying this case. See Murdock v. Cobb Cnty. Ga., No. 1:12-CV-1743-RWS, 2013 WL 2155465, at *1, 4 (N.D. Ga. May 17, 2013) (citing Grech, 335 F.3d at 1333, 1336, 1348) (finding that a deputy who allegedly shot a suspect during a traffic stop was acting as an arm of the state and was entitled to Eleventh Amendment immunity); Townsend v. Coffee Cnty., Ga., 854 F. Supp. 2d 1345, 1352 (S.D. Ga. 2011) ("Investigatory stops and arrests fall squarely within the traditional law-enforcement responsibilities of a sheriff and his deputies); Williams v. Keenan, No. 5:06 CV 290, 2007 WL 81823, at *3 (M.D. Ga. Jan. 8, 2007) ("[T]he Court finds in this case that, based on the rationale of Manders, Defendant acted as an 'arm of the State' in 'causing or effecting' Plaintiff's arrest."); see also King v. King, No. 5:17-CV-24 (MTT), 2017 WL 4018857, at *4 (M.D. Ga. Sept. 12, 2017) (citing Moon v. Rockdale Cnty., 188 F. Supp. 3d 1369, 1378-79 (N.D. Ga. 2016)) ("District courts deciding the issue have determined that a sheriff and employees performing law enforcement functions act as an 'arm of the state,' not the county."); Lawrence v. W. Publ'g Corp., No. 1:15-CV-3341-MHC, 2016 WL 4257741, at *11 (N.D. Ga. June 17, 2016) (citing Grech, 335 F.3d at 1348) ("With respect to Plaintiff's section 1983 official capacity claims against the individual Defendants, there is Eleventh Circuit

precedent supporting the position that they were effectively an 'arm of the state' when they performed law enforcement activities.").

Thus, as an "arm of the state," Deputies Collins, Spinks, and House, acting in their official capacities, are entitled to Eleventh Amendment immunity from Bolton's federal claims. See Morgan v. Fulton Cnty. Sheriff's Dep't, No. 1:05-CV-1576- JOF, 2007 WL 1810217, at *5 (N.D. Ga. June 21, 2007) ("In a line of cases interpreting Manders, the courts in this circuit have determined that when a sheriff is acting as an arm of the state, his deputies are also entitled to Eleventh Amendment immunity from suits for money damages in their official capacities."). Accordingly, Defendants' Motion for Summary Judgment is **GRANTED** as to Count I against Deputies Collins, Spinks, and House in their official capacities.

B. Bolton's Fourteenth Amendment Claims Against Sheriff Wood in his Official Capacity is Without Merit.

Bolton brings a claim of supervisory liability under Section 1983 against Sheriff Wood for maintaining a custom or policy of permitting deputies to use punitive force against uncooperative arrestees, which resulted in "a culture of systematic abuse of arrestees and deliberate indifference to those arrestees' constitutional rights." Compl. ¶¶ 90-92. Defendants argue that Sheriff Wood cannot be sued in his official capacity under § 1983 and the Eleventh Amendment precludes such a suit against him. Defs.' Mem. at 30-31. In response, Bolton

argues, in conclusory fashion and without citation to any authority, that "[q]uite simply, a county sheriff is not 'an agent of the State' for purposes of a § 1983 claim." Pl.'s Opp'n at 36.

As previously discussed with respect to the official capacity claims brought against the sheriff's deputies, sheriffs engaged in their law enforcement duties are acting an arm of the state and are protected from suit in their official capacities based on the Eleventh Amendment. Manders, 338 F.3d at 1320-22; Grech, 335 F.3d at 1347; see also Morgan, 2007 WL 1810217, at *5 ("With regard to the Plaintiff's excessive force claim, under Manders, when establishing and implementing force policies, the Fulton County Sheriff and therefore his deputies, act as arms of the state and are entitled to Eleventh Amendment immunity."); Temple v. McIntosh Cnty., Georgia, No. 2:18-CV-91, 2019 WL 287482, at *4 n.9 (S.D. Ga. Jan. 22, 2019) ("Any claims against Jessup in his official capacity under this count for any alleged policy or supervision related to excessive force still involve a law enforcement function, and thus, he is still considered an arm of the State under Manders. . . . If the Eleventh Circuit found that the sheriff in Manders was an arm of the state based on the factors described above for use of force policy in a jail, then it stands to reason that Sheriff Jessup in this case is an arm of the State for any alleged policy decisions or discipline for his deputies regarding

excessive force in arrests."). Thus, as an arm of the state, Sheriff Wood is entitled to Eleventh Amendment immunity from Plaintiff's Section 1983 claim.

While the Court has established that Sheriff Wood was an arm of the state in conducting law enforcement functions, the Court briefly notes that even if Sheriff Wood acted as an agent of Coweta County, and Bolton was intending to assert a claim against Coweta County under Monell v. Dep't of Soc. Servs. of the City of New York, 436 U.S. 658 (1978), that claim would also fail. See, e.g., Storey v. Effingham Cnty., No. CV415-149, 2022 WL 303247, at *7 (S.D. Ga. Feb. 1, 2022) (noting that the plaintiff's official capacity claim against the sheriff involving law enforcement functions against is really a suit against the State of Georgia, rather than the county, but noting that even if the sheriff was an agent of the county, the claim would still fail). A plaintiff seeking to hold a local government such as Coweta County liable under § 1983 cannot rely upon the theory of *respondeat superior*; instead, liability must stem from the "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy . . . ." Monell, 436 U.S. at 694; see also Denno ex rel. Denno v. School Bd. of Volusia Cnty., 218 F.3d 1267, 1276 (11th Cir. 2000) (citing Monell, 436 U.S. at 694). Because a county is "liable under section 1983 only for acts for which the [county] is actually responsible," Marsh v.

Butler Cnty., 268 F.3d 1014, 1027 (11th Cir. 2001) (en banc), Bolton "must identify a [county] policy or custom that caused . . . injury." Grech, 335 F.3d at 1329 (citation and internal punctuation omitted).

> To establish a policy or custom, it is generally necessary to show a persistent and wide-spread practice. Moreover, actual or constructive knowledge of such customs must be attributed to the governing body of the municipality. Normally random acts or isolated incidents are insufficient to establish a custom or policy.

Depew v. City of St. Marys, 787 F.2d 1496, 1499 (11th Cir. 1986). A plaintiff must show that the county's custom or practice is "the moving force behind the constitutional violation." City of Canton v. Harris, 489 U.S. 378, 389 (1989) (internal punctuation and citation omitted).

A plaintiff "has two methods by which to establish a county's policy: identify either (1) an officially promulgated county policy or (2) an unofficial custom or practice of the county shown through the repeated acts of a final policymaker for the county." Grech, 335 F.3d at 1329 (citing Monell, 436 U.S. at 690-91). To prove § 1983 liability based on custom, a plaintiff must establish a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well-settled as to constitute a custom or usage with the force of law. St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988). In other words, a longstanding and widespread practice is deemed authorized by the

policymaking officials because they must have known about it but failed to stop it. Brown v. City of Fort Lauderdale, 923 F.2d 1474, 1479 (11th Cir. 1991).

There is no evidence that Sheriff Wood was personally involved in the deputies' encounter with Bolton or his shooting. Moreover, Bolton fails to articulate any policy or custom that Sheriff Wood ratified, a history of widespread abuse, or a custom or policy that resulted in a deliberate indifference to Bolton's constitutional rights. Finally, even if there was a violation of one or more CCSO policies during the encounter between law enforcement officers and Bolton on June 30, 2019, that would not state a Monell claim based on custom: "A pattern of similar constitutional violations . . . is ordinarily necessary, because a single violation is not so pervasive as to amount to a custom." Gurrera v. Palm Beach Cnty. Sheriff's Off., 657 F. App'x 886, 892-93 (11th Cir. 2016) (citing Craig v. Floyd Cnty., 643 F.3d 1306, 1310 (11th Cir. 2011) and Grech, 335 F.3d at 1330).[22] Therefore, even if Sheriff Wood was not protected by the Eleventh Amendment (which he is), this claim would still fail.

The Court therefore **GRANTS** Defendants' Motion for Summary Judgment as to Count II against Sheriff Wood in his official capacity.

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[22] Bolton only raises a single other allegedly comparable incident that occurred after the underlying incident. See Pl.'s Opp'n at 38 (citing Affidavit of Emmanuel Onyeka ("Onyeka Affidavit") [Doc. 85-14]).

D. Bolton's State Law Claims for Assault and Battery are Without Merit.

Defendants argue, in relevant part, that summary judgment should be granted in their favor on all of Bolton's state law claims based on official and sovereign immunity. Defs.' Mem. at 33-35.

1. Individual Capacity Claims

In relevant part, the Georgia Constitution provides:

> [A]ll officers and employees of the state or its departments and agencies may be subject to suit and may be liable for injuries and damages caused by the negligent performance of, or negligent failure to perform, their ministerial functions and may be liable for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions. Except as provided in this subparagraph, officers . . . shall not be subject to suit or liability, and no judgment shall be entered against them, for the performance or non performance of their official functions.

GA. CONST., art. I, § 2, ¶ IX(d). "Stated succinctly, a public officer or employee may be personally liable only for ministerial acts negligently performed or acts performed with malice or an intent to injure." Graham v. Cobb Cnty., 316 Ga. App. 738, 742 (2012).

The parties do not dispute that Defendants' acts in this case were discretionary as opposed to ministerial. See Hart v. Logan, 664 F. App'x 857, 863 (11th Cir. 2016) ("Under Georgia law, a law enforcement official's decision to use force while on duty falls squarely within his discretionary authority.").

Consequently, Defendants are entitled to official immunity unless Bolton demonstrates actual malice or intent to cause injury.

> Actual malice requires a deliberate intention to do wrong and express malice or malice in fact. Actual malice does not include implied malice or the reckless disregard for the rights and safety of others. A deliberate intention to do wrong such as to constitute the actual malice necessary to overcome official immunity must be the intent to cause the harm suffered by the plaintiffs. Likewise, "[t]he phrase 'actual intent to cause injury' has been defined in a tort context to mean an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury. This definition of intent contains aspects of malice, perhaps a wicked or evil motive."

Selvy v. Morrison, 292 Ga. App. 702, 704-05 (2008) (emphasis added) (quoting Kidd v. Coates, 271 Ga. 33, 33-34 (1999)); see also Adams v. Hazelwood, 271 Ga. 414, 415 (1999) ("Actual malice requires more than harboring bad feelings about another. While ill will may be an element of actual malice in many factual situations, its presence alone cannot pierce official immunity; rather, ill will must also be combined with the intent to do something wrongful or illegal."). "Unlike qualified immunity under federal law, we must inquire into [the public agent's] subjective intent to determine whether he has official immunity under Georgia law." Jordan v. Mosley, 487 F.3d 1350, 1357 (11th Cir. 2007). As explained by the Eleventh Circuit, "malice in this context means badness, a true desire to do something wrong." Peterson v. Baker, 504 F.3d 1331, 1339 (11th Cir. 2007). In addition, "actual intent to cause injury" means "an actual intent to cause harm to

the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury." Id.; see also Murphy v. Bajjani, 282 Ga. 197, 203 (2007) (quoting Merrow v. Hawkins, 266 Ga. 390, 391-92 (1996)) ("Actual malice" refers to "a deliberate intention to do wrong," which is more than simply "reckless disregard for the rights or safety of others.").

Without citing any supporting authority, Bolton argues in conclusory fashion that the actions of the deputies during the initial encounter, the pursuit, the PIT maneuver, the shooting, and the removal of Bolton from the vehicle demonstrate the existence of actual malice. Pl.'s Opp'n at 39. With respect to the shooting, the Court found Deputy Collins's action to be objectively reasonable based in part on the threat that Bolton posed, and concluded that Deputy Collins did not violate Bolton's Fourth Amendment rights. Bolton has failed to show the necessary malice or intent sufficient to deny official immunity. See Hart, 664 F. App'x at 864 (internal citation and quotation omitted) ("Accordingly, an officer who, in the performance of his official duties, shoots another in self-defense is shielded from tort liability by the doctrine of official immunity."); id. ("[T]his Court has noted that Georgia's actual malice standard is higher than what is required to make out a Fourth Amendment violation."); see also Miller v. City of Atlanta, Ga., No. 1:21-CV-03752-SDG, 2022 WL 4587848, at *10 (N.D. Ga. Sept. 29, 2022), appeal

dismissed, No. 22-13445-GG, 2023 WL 2847543 (11th Cir. Jan. 13, 2023) (finding that an officer was entitled to official immunity because none of the factual allegations suggested that the officer's "use of deadly force—reasonable or not—was with the intent to do anything other than to stop [the plaintiff's] flight while in possession of a weapon that could be used to cause serious injury.").

This Court also found Deputy Spinks's actions while handcuffing Bolton to be objectively reasonable. Specifically, the Court found that Deputy Spinks used only de minimis force and "[i]n light of the de minimis use of force, the court does not find any evidence of actual malice to defeat official immunity under Georgia law." Hankins v. Davis, No. 1:13-CV-01365-RWS, 2015 WL 71437, at *7 (N.D. Ga. Jan. 5, 2015). Bolton fails to cite any evidence of Deputy Spinks's subjective intent, nor does he otherwise show Deputy Spinks acted with "a deliberate intention to do a wrongful act." Hart, 664 F. App'x at 836 (internal citation and quotation omitted); see also Baker v. Clements, No. 1:16-CV-2378-LMM, 2018 WL 11214862, at *8 (N.D. Ga. May 30, 2018), aff'd, 760 F. App'x 954 (11th Cir. 2019) (finding no actual malice where the plaintiff failed to present evidence of the officers' subjective intent).

Finally, with respect to the deputies' conduct in the initial encounter, pursuit, and PIT maneuver, Bolton cites no authority where similar actions have been held

to demonstrate actual malice which falls short of the "demanding standard of showing that the defendant officers acted with actual malice." McMullen v. City of Port Wentworth Georgia, No. CV417-067, 2019 WL 4733081, at *10 (S.D. Ga. Sept. 26, 2019). While Bolton argues that he was "intimidated and frightened" by the deputies "ignoring his driver's license[23], statements, and questions while refusing to give him a reason to step out of his vehicle," Pl.'s Opp'n at 39, "[i]ll will alone is insufficient to establish actual malice; [Bolton] must show that [the deputies] acted with the deliberate intent to commit a wrongful act or with the deliberate intent to harm [him]." Anderson v. Cobb, 258 Ga. App. 159, 160 (2002). Bolton has provided no evidence that the deputies intended to commit a wrongful act or intended to harm him. Kidd, 271 Ga. at 33 (noting that the definition of actual intent to cause injury "contains aspect of malice, perhaps a wicked or evil motive") (internal quotations and citations omitted). Moreover, even if the deputies' actions in the initial encounter, pursuit, and PIT maneuver could be considered conduct giving rise to a Fourth Amendment violation, any such conduct would not support an inference of actual malice. See Bashir v. Rockdale Cnty, Ga., 445 F.3d 1323, 1333 (11th Cir. 2006) ("Although . . . the

[23] The Court also briefly notes that it is undisputed that Bolton did not hand the deputies his driver's license. Pl.'s Resp. to Defs.' SMF ¶ 55.

record supports the conclusion the deputies acted unreasonably and violated [the plaintiff's] Fourth Amendment rights, [the plaintiff] has not sustained his burden of demonstrating the existence of a genuine issue of fact that the deputies possessed 'a deliberate intention to do wrong' sufficient to satisfy the actual malice standard.").

Because Deputies Collins, Sparks, and House are entitled to official immunity under Georgia law, Defendants' Motion for Summary Judgment as to the state law claim for assault and battery against Defendants in their individual capacities in Count III is **GRANTED**. See Baker, 760 F. App'x at 959 (affirming the grant of summary judgment to defendant officers on the plaintiff's claim for battery because the evidence did not show the officers acted with actual malice).

2. Official Capacity Claims

In addition, the state law official capacity claims against the deputies are barred by sovereign immunity. GA. CONST. art. I, § 2, ¶ IX(e). Bolton's failure to respond to Defendants' argument that sovereign immunity applies renders this argument unopposed. See Kramer v. Gwinnett Cnty., 306 F. Supp. 2d 1219, 1221 (N.D. Ga. 2004) ("[A] party's failure to respond to any portion or claim in a motion indicates such portion, claim or defense is unopposed"); LR 7.1B, NDGa

("Failure to file a response shall indicate that there is no opposition to the motion.").

"Under the Georgia Constitution, the protection of sovereign immunity extends to the state and all of its departments, including counties, and thus protects county employees who are sued in their official capacities unless sovereign immunity has been waived." Jobling v. Shelton, 334 Ga. App. 483, 486 (2015) (internal quotation marks and citation omitted). "Any waiver of sovereign immunity must be established by the party benefitting from such waiver." Holt v. Floyd Cnty, Ga., No. 4:18-CV-0112-HLM, 2018 WL 8966814, at *9 (N.D. Ga. Aug. 17, 2018) (alterations accepted) (quoting Maxwell v. Cronan, 241 Ga. App. 491, 492 (1999)). "While Georgia has waived sovereign immunity in certain circumstances, '[t]he state does not waive any immunity with respect to actions brought in the courts of the United States.'" Laster v. Ga., No. 1:20-CV-81 (LAG), 2020 WL 9348259, at *3 (M.D. Ga. July 1, 2020) (quoting O.C.G.A. § 50-21-23).

Accordingly, the Defendants' Motion for Summary Judgment as to Count III against Deputies Collins, Sparks, and House in their official capacity is **GRANTED**.[24]

E. Punitive Damages

Without any substantive claims against Defendants remaining after summary judgment, Bolton's derivative claim for punitive damages (Count IV) fails as a matter of law. See Stephen A. Wheat Tr. v. Sparks, 325 Ga. App. 673, 682 (2014) ("An award of attorney fees, costs, or punitive damages is derivative of a plaintiff's substantive claims."); J. Kinson Cook of Ga., Inc. v. Heery/Mitchell, 284 Ga. App. 552, 561 (2007) (same). Accordingly, Defendants' Motion for Summary Judgment as to punitive damages is **GRANTED**.

F. Defendants' Objections to Bolton's Exhibits

Bolton attached several Exhibits to its opposition brief [Docs. 85-1 to 85-17]. Defendants filed objections to certain of these Exhibits. Defs. Wood, Collins, Spinks, and House's Objs. to Pl.'s Exhibits [Doc. 88] ("Defs.' Objs."). Specifically, Defendants object to the use of photographs taken from the officers

[24] Because Defendants' immunity arguments are successful, the Court need not consider Defendants' alternative argument that the battery claims fails as a matter of law. Defs.' Mem. at 32-33.

body cameras as unauthenticated. Id. at 2 (objecting to Exhibits 9-13[25]). Next, Defendants object to Exhibits 6-8, which are transcripts from the body camera footage, arguing they are improperly prepared, unofficial transcripts and the best evidence is the video itself. Id. at 3-6. Because the record contains the original body camera footage that is the source of the photographs and the transcripts, and the video controls, the Court relies on the body camera footage not the transcripts or derivative photographs, and therefore these objections are **DENIED AS MOOT**. See Kraus v. Martin Cnty. Sheriff's Off., 753 F. App'x 668, 673 (11th Cir. 2018) ("[W]hen a video recording exists of the pertinent events—as in this case—we view the facts in the light depicted by the videotape.") (internal citation and quotation omitted and alterations accepted); The Lamar Co. v. City of Marietta, 538 F. Supp. 2d 1366, 1376 (N.D. Ga. 2008) ("The court denies Defendants' Motion to Strike as moot with respect to the Reese Declaration, because the court did not rely on the challenged portions of that declaration in ruling on the Summary Judgment Motions."); Hinson v. Bias, 927 F.3d 1103, 1108 n.1 (11th Cir. 2019) (declining to consider an affidavit based on video footage in

[25] Defendants erroneously refer to Exhibits 5 and 15 as photographs as well, but they are not photographs, which is also implicitly acknowledged by Bolton in his response [Doc. 91], indicating that he only attached five photographs as exhibits.

part because "the video footage itself provides the best evidence of what is on the video footage").

Finally, Defendants argue that the Court should not consider the Onyeka Affidavit regarding an incident that occurred after the facts alleged in this case because a single incident cannot prove a causal connection and it did not occur before the shooting. Defs.' Objs. at 6-7. Defendant has filed a notice of objection, which is the proper method of objecting to the admissibility of an affidavit in support for summary judgment. Schaaf v. SmithKline Beecham Corp., No. 1:04-CV-2346-GET-CCH, 2007 WL 9676952, at *1 (N.D. Ga. July 20, 2007). Bolton relies on Onyeka's Affidavit in support of his claim against Sheriff Wood in his official capacity. Pl.'s Opp'n at 38. Because the Court granted summary judgment to Defendants on this claim based on immunity, it need not consider the substantive claim and any related evidence. Accordingly, this objection is also **DENIED AS MOOT**, given the fact that the official capacity claim against Sheriff Wood fails as a matter of law on other grounds. The Lamar Co., 538 F. Supp. 2d at 1376.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Defendants Lenn Wood, John Taylor Collins, Christian Spinks, and Jon House's Motion for Summary Judgment [Doc. 74] is **GRANTED**.

The Clerk is **DIRECTED** to close this case.

IT IS SO ORDERED this 18th day of July, 2023.

MARK H. COHEN
United States District Judge

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12752

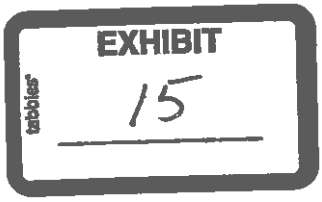
NICHOLAS S. BOLTON,

Plaintiff-Appellant,

versus

SHERIFF OF COWETA COUNTY, GA,
JOHN TAYLOR COLLINS,
Individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia,
CHRISTIAN SPINKS,
individually and in his official capacity as a Deputy Sheriff of Coweta County, Georgia,
JON HOUSE,
individually and in his official capacity as a former Deputy Sheriff for Coweta County, Georgia,

Defendants-Appellees.



Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-02279-MHC

Before WILLIAM PRYOR, Chief Judge, ABUDU, Circuit Judge, and CONWAY,* District Judge.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether three deputies and a sheriff are immune from a complaint of excessive force. Nicholas Bolton fled in his sport utility vehicle after Deputies John Collins and Jon House asked him to produce identification. The deputies pursued Bolton, performed a pursuit intervention technique to stop his vehicle, and then pinned his vehicle between several police cars. As Bolton continued to accelerate, Deputy Collins fired a single shot, which struck Bolton in the eye. Deputy Christian Spinks then removed Bolton from the vehicle, placed him on the ground, and handcuffed him while pressing a knee on Bolton's back. Bolton sued the deputies for excessive force under the Fourth Amendment, *see* 42 U.S.C. § 1983, and the sheriff for supervisory liability, and he sued the deputies for assault and battery under state law. The district court granted summary judgment for the defendants. Because the deputies did not violate Bolton's constitutional rights

* The Honorable Anne C. Conway, United States District Judge for the Middle District of Florida, sitting by designation.

or act with malice, and the sheriff enjoys sovereign immunity, we affirm.

I. BACKGROUND

We recount the events as depicted in the officers' undisputed bodycam videos. *See Scott v. Harris*, 550 U.S. 372, 380–81 (2007). Where the videos are unclear, we view the evidence in the light most favorable to Bolton as the nonmovant. *See Baxter v. Santiago-Miranda*, 121 F.4th 873, 878 (11th Cir. 2024).

On June 30, 2019, at around 2:30 a.m., Nicholas Bolton was in the backseat of his Tahoe vehicle in the parking lot of a shopping center. Deputy John Collins of the Coweta County Sheriff's Office approached the vehicle, identified himself, and asked for Bolton's identification. Bolton repeatedly questioned why he needed to provide his identification. Deputy Collins told Bolton that he was suspected of loitering and instructed him to produce identification and step out of the vehicle.

Deputy Jon House arrived on the scene and gave Bolton the same instruction. The deputies asked Bolton to step out of his vehicle at least seven times. During the exchange, Bolton moved from the backseat to the driver's seat holding what appeared to be a driver's license. But he did not present his license through the cracked window, roll the window down to allow the deputies to take his license, or step out of the vehicle as directed.

Instead, Bolton suddenly started the ignition of his vehicle. In response, Deputy Collins and Deputy House drew their guns, pointed them at Bolton's vehicle, and commanded him to turn off

from the vehicle and placed him on the ground. Deputy Spinks placed his knee on Bolton's back, handcuffed him, and placed him on his side to await medical assistance. Bolton alleges that Deputy Spinks also placed his knee on Bolton's neck, but there is no evidence in the bodycam videos or otherwise to support that assertion.

Bolton sued Sheriff Lenn Wood and Deputies Collins, House, and Spinks. Bolton alleged excessive force claims against Deputy Collins for shooting him, against Deputy Spinks for pressing his knee against him and pinning him to the ground to handcuff him, and against Deputy House for failing to intervene. He alleged supervisory liability against Sheriff Wood. He also alleged assault and battery claims against the three deputies under Georgia law.

The district court granted summary judgment for the sheriff and the deputies. It ruled that Deputy Collins was entitled to qualified immunity because the shooting was a reasonable use of force to the perceived threat of Bolton's vehicle, and it was not clearly established that the use of force violated the Fourth Amendment. It ruled that Deputy Spinks was entitled to qualified immunity because he only used *de minimis* force, and it was not clearly established that such a use of force violated the Fourth Amendment. And it ruled that Deputy House was not constitutionally required to intervene because Deputy Collins's shooting was not an excessive use of force, and it was not clearly established that Deputy House was required to intervene. It ruled that Sheriff Wood was entitled to sovereign immunity on the supervisory liability claim

because he acted as an arm of the state. And it ruled that the deputies were entitled to official immunity on the state law claims because Bolton did not show that they acted with actual malice.

II. STANDARD OF REVIEW

We review a summary judgment *de novo*. *Owens v. Governor's Off. of Student Achievement*, 52 F.4th 1327, 1333 (11th Cir. 2022).

III. DISCUSSION

Qualified immunity shields law enforcement officers acting within their discretionary authority unless a plaintiff establishes that "the officer violated a constitutional right" that "was clearly established." *Stryker v. City of Homewood*, 978 F.3d 769, 773 (11th Cir. 2020) (citation and internal quotation marks omitted). "Both elements must be satisfied for an official to lose qualified immunity," and the two elements "do not have to be analyzed sequentially." *Fils v. City of Aventura*, 647 F.3d 1272, 1287 (11th Cir. 2011) (citation and internal quotations marks omitted). We need not decide if there was a constitutional violation if the law was not clearly established, but "we are permitted to do so." *Id.*

The district court concluded that any violation of the Fourth Amendment was not clearly established for each of Bolton's excessive force claims against the deputies. When a judgment is "based on multiple, independent grounds, an appellant must convince us that every stated ground for the judgment against him is incorrect." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014). Bolton fails to explain how any violation of his rights was clearly established. So he has arguably abandoned any challenge of

that ground, and the judgment against his excessive force claims is "due to be affirmed" for this reason alone. *Id.* In any event, Bolton has not established that the deputies violated his constitutional rights.

We divide our discussion in five parts. First, we explain that Deputy Collins is entitled to qualified immunity because his actions were objectively reasonable. Second, we explain that Deputy Spinks is entitled to qualified immunity because his use of force was *de minimis*. Third, we explain that Deputy House is entitled to qualified immunity because he had no duty to intervene. Fourth, we explain that Sheriff Wood is entitled to sovereign immunity. Finally, we explain that the deputies are entitled to official immunity under state law because there is no evidence that they acted with malice.

A. Deputy Collins Is Entitled to Qualified Immunity Because His Actions Were Objectively Reasonable.

When we review the use of force under the Fourth Amendment, we ask "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." *Graham v. Connor*, 490 U.S. 386, 397 (1989). "We have . . . consistently upheld an officer's use of force and granted qualified immunity in cases where the [suspect] used or threatened to use his car as a weapon to endanger officers or civilians immediately preceding the officer's use of deadly force." *McCullough v. Antolini*, 559 F.3d 1201, 1207 (11th Cir. 2009).

In *Pace v. Capobianco*, for example, we held it was a reasonable use of force to fire multiple rounds at a suspect in a stationary car immediately after a pursuit because "reasonable police officers could have believed that the chase was not over" when the suspect's car "was stopped for, at most, a very few seconds when shots were fired." 283 F.3d 1275, 1278, 1282 (11th Cir. 2002). That the suspect did not try to run over the deputies and that he was "effectively blocked in" by three police cars and a curb did not make the use of deadly force unreasonable. *Id.* at 1277–78, 1282.

Similarly, in *Robinson v. Arrugueta*, we held an officer's shooting was objectively reasonable when the suspect was driving toward the officer "at a likely speed of around one to two miles per hour" because the officer was standing a few feet from the suspect's vehicle and had only seconds to react. 415 F.3d 1252, 1254, 1256 (11th Cir. 2005). And recently, in *Settle v. Collier*, we held an officer's use of deadly force was reasonable when the suspect "started the truck and moved the gear shift" because those actions suggested the suspect's "intent to drive the truck and so convert it into a deadly weapon." 160 F.4th 1282, 1289 (11th Cir. 2025).

Bolton argues that Deputy Collins's use of force was not objectively reasonable because his vehicle was immobilized between the three deputies' cars and no longer posed a threat of harm. Yet, it was reasonable for Deputy Collins to believe that Bolton still posed an immediate threat. "[A]ll that a reasonable police officer could have concluded was that [Bolton] was intent on resuming his flight" even though his car was pinned by three police cars because

he "was obviously pushing down on the accelerator . . . [and] the car's wheels were spinning." *Plumhoff v. Rickard*, 572 U.S. 765, 776–77 (2014). Bolton's foot continued to engage the accelerator so heavily that his tires audibly squealed as his vehicle pushed into Deputy Collins's car. It is hard to imagine clearer evidence of Bolton's "intent to drive the truck." *Settle*, 160 F.4th at 1289. Deputy Collins could have reasonably believed that Bolton's vehicle could break free or push Deputy Collins's vehicle out of the way, endangering both Deputies Collins and House, who were standing only a few feet away from the vehicle. *See Robinson*, 415 F.3d at 1256. It was reasonable for Deputy Collins to believe that these possibilities created a need to use force. And it was not excessive for him to fire one round to stop Bolton from pressing the accelerator. *Cf. Pace*, 283 F.3d at 1278 (officer fired into the car five times).

Bolton advances two additional arguments, neither of which persuades. First, he argues that the initial stop was "intentionally conducted in an unlawful, threatening, and confusing manner." But Bolton did not bring a separate claim that his initial stop was unlawful. Second, Bolton argues that the deputies violated departmental policies by chasing him and hitting his vehicle. But "[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." *Davis v. Scherer*, 468 U.S. 183, 194 (1984). And Bolton does not explain how Deputy Collins violated the Fourth Amendment by immobilizing Bolton's vehicle after he drove toward the highway through two stop signs and on the wrong side of the road.

B. Deputy Spinks Is Entitled to Qualified Immunity Because His Use of Force Was De Minimis.

Officers are permitted to use some force to effectuate an arrest. *Durruthy v. Pastor*, 351 F.3d 1080, 1094 (11th Cir. 2003). The use of *de minimis* force does not violate the Fourth Amendment. *Nolin v. Isbell*, 207 F.3d 1253, 1257 (11th Cir. 2000). "For even minor offenses, permissible force includes physical restraint, use of handcuffs, and pushing into walls." *Brown v. City of Huntsville*, 608 F.3d 724, 740 (11th Cir. 2010).

Deputy Spinks used *de minimis* force to effectuate Bolton's arrest when he removed Bolton from his vehicle, laid him on the ground, put his knee on his back, and handcuffed his hands behind his back. *See, e.g.*, *id.* (finding *de minimis* force when an officer pulled a suspect out of her car); *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002) (finding *de minimis* force when an officer grabbed a suspect's arm, twisted it around his back, jerked it up high to the shoulder, and then handcuffed him). Even if Deputy Spinks applied force to Bolton's neck, the force was not excessive. *See Post v. City of Fort Lauderdale*, 7 F.3d 1552, 1556, 1559 (11th Cir. 1993) (no excessive force when an officer put suspect in a choke hold after the suspect put his hands up), *modified by*, 14 F.3d 583 (11th Cir. 1994); *Myers v. Bowman*, 713 F.3d 1319, 1325, 1328 (11th Cir. 2013) (finding *de minimis* force when an officer injured a non-resisting suspect's neck after forcing him to the ground and placing him in handcuffs).

Bolton argues that Deputy Spinks's use of force was excessive because Bolton was injured and was not resisting arrest. Bolton might not have been actively resisting arrest at that moment, but he had resisted arrest minutes earlier by leading the deputies on a dangerous car chase and by pressing on his accelerator without regard for their safety. Even though Bolton was injured, a reasonable officer could believe that he still posed an immediate threat because he was moving erratically. The minimal amount of force Deputy Spinks used to restrain Bolton was reasonable.

C. Deputy House Is Entitled to Qualified Immunity Because He Had No Duty to Intervene.

"An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force . . . can be held liable for his nonfeasance." *Crenshaw v. Lister*, 556 F.3d 1283, 1293–94 (11th Cir. 2009) (citation and internal quotation marks omitted). Liability "only arises when the officer is in a position to intervene and fails to do so." *Helm v. Rainbow City*, 989 F.3d 1265, 1272 (11th Cir. 2021) (citation and internal quotation marks omitted). An officer cannot fail to intervene when there is no constitutional violation to thwart. *See Crenshaw*, 556 F.3d at 1294.

Bolton concedes that "[n]obody could have intervened to prevent the [s]hooting within the four . . . seconds it took" after Deputy Collins exited his vehicle. Instead, he argues that Deputy House "failed to intervene several times before the [s]hooting," such as when he did not "explain[] to Bolton that he needed to exit

the vehicle for 'officer safety'; confirm[] Bolton's identity; inquir[e] why Bolton was sleeping in his vehicle in the parking lot; [or] advis[e] Deputy Collins not to pursue [Bolton's vehicle] . . . and[] . . . not to perform an unauthorized [pursuit intervention technique]." None of these alleged failures to intervene involve a constitutional violation. And Deputy Collins did not use excessive force when he shot Bolton. There was no requirement for Deputy House to intervene.

D. Sheriff Wood Is Entitled to Sovereign Immunity Because He Acted as an Arm of the State.

Sovereign immunity "bars suits brought in federal court when the [s]tate itself is sued and when an arm of the [s]tate is sued." *Manders v. Lee*, 338 F.3d 1304, 1308 (11th Cir. 2003) (en banc) (citation and internal quotation marks omitted). Bolton argues, without citing any authority, that Sheriff Wood is an agent of the county and not the state. But this Court has consistently held that Georgia sheriffs engaging in law enforcement duties are "arm[s] of the state" based on the governmental structure of the sheriff's office in Georgia. *See, e.g.*, *id.* at 1326–28; *Lake v. Skelton*, 840 F.3d 1334, 1339 (11th Cir. 2016); *Grech v. Clayton County*, 335 F.3d 1326, 1347 (11th Cir. 2003). Sheriff Wood is entitled to sovereign immunity.

E. The Deputies Are Entitled to Official Immunity on the State Law Claims Because There Is No Evidence That They Acted with Malice.

Under Georgia law, an officer may be personally liable only if he "act[s] with actual malice or with actual intent to cause injury." GA. CONST. art. I, § II, ¶ IX(d). Malice requires "actual intent to cause harm . . . , not merely an intent to do the act purportedly resulting in the claimed injury." *Selvy v. Morrison*, 665 S.E. 2d 401, 405 (Ga. Ct. App. 2008) (citation omitted). We "inquire into [a defendant's] subjective intent to determine whether he has official immunity under Georgia law." *Jordan v. Mosley*, 487 F.3d 1350, 1357 (11th Cir. 2007).

Bolton argues that the deputies were not entitled to official immunity because their actions intimidated and frightened him throughout the entire incident—the loitering investigation, car chase, pursuit intervention technique, shooting, and arrest. But Bolton points to no evidence that the deputies acted with the subjective intent to cause him harm at any point. The deputies are entitled to official immunity on the state law claims of assault and battery.

IV. CONCLUSION

We **AFFIRM** the summary judgment in favor of the deputies and the sheriff.