23-11902

United States Court of Appeals

for the

Eleventh Circuit

VERONICA BAXTER, as Personal Representative of the Estate of Angelo J. Crooms, Deceased,

Plaintiff/Counter Defendant/Appellant,

AL-QUAN PIERCE, as Personal Representative of the Estate of Sincere Pierce, Deceased,

Plaintiff/Appellant,

– v. –

JAFET SANTIAGO-MIRANDA, individually and as an agent of Brevard County Sheriff's Office,

Defendant/Counter Claimant,

CARSON HENDREN, individually and as an agent of Brevard County Sheriff's Office, SHERIFF, BREVARD COUNTY FLORIDA, EVELYN MIRANDA, as Personal Representative of the Estate of Jafet Santiago-Miranda,

Defendants/Counter Claimants/Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
CASE NO: 6:21-cv-00718-CEM-LHP
(Hon. Carlos Eduardo Mendoza)

INITIAL BRIEF OF APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel certifies that the following persons may have an interest in the outcome of this case:

Veronica Baxter (Administrator of Plaintiff-Appellant Estate of Crooms)

Estate of Angelo J. Crooms (Decedent/Plaintiff-Appellant)

Ben Crump (Attorney for Plaintiffs-Appellants)

Brian Eldridge (Attorney for Plaintiffs-Appellants)

Cynthia Green (Great Aunt of Decedent Sincere Pierce)

Steven Hart (Attorney for Plaintiffs-Appellants)

Robert Holborn (Attorneys for Defendants-Appellees)

Wayne Ivey (Brevard County Sheriff/(Official Capacity) Defendant-Appellee)

Natalie Jackson (Attorney for Plaintiffs-Appellants)

John Marrese (Attorney for Plaintiffs-Appellants)

Evelyn Miranda (Administrator of Defendant-Appellee Estate of Jafet Santiago Miranda)

Al-Quan Pierce (Administrator of Plaintiff-Appellant Estate of Pierce)

Estate of Sincere Pierce (Decedent/Plaintiff-Appellant)

Quasheda Pierce (Mother of Decedent Sincere Pierce)

Thomas Poulton (Attorney for Defendants-Appellees)

Estate of Jafet Santiago Miranda (Defendant-Appellee)

Eric Smith (Father of Decedent Angelo J. Crooms)

Tasha Strachan (Mother of Decedent Angelo J. Crooms)

George Taylor (Father of Decedent Sincere Pierce)

Undersigned counsel further certifies that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

STATEMENT REGARDING ORAL ARGUMENT

Appellants respectfully requests oral argument pursuant to Federal Rule of Appellate Procedure 34(a)(1) and Rule 28-1(c) of the Eleventh Circuit Rules. Oral argument would elucidate facts supporting Appellants' Fourth Amendment-excessive force claims and offer the opportunity to expound on the significance of factual disputes between Appellants and Appellees relevant to this appeal.

TABLE OF CONTENTS

Page

TABLE OF CITATIONS

Cases

Statutes

Rules

Other Authorities

STATEMENT OF JURISDICTION

Jurisdiction for this 42 U.S.C. § 1983 proceeding was proper in the United States District Court for the Middle District of Florida under 28 U.S.C. § 1331, because Appellants' claims arise under the U.S. Constitution and the laws of the United States. The District Court also had supplemental jurisdiction over Appellants' state law claims, pursuant to 28 U.S.C. § 1367(a), which are related to and which form part of the same controversy created by Appellees' violations of the U.S. Constitution and laws of the United States. Further, Appellants' claims do not involve a novel or complex interpretation of state law, nor do they predominate over Appellants' federal claims. 28 U.S.C. § 1367(c).

The District Court entered final judgment against Appellants as to all claims on May 9, 2023. (Dkt. ##116, 118.) Appellants timely filed a notice of appeal on June 6, 2023. (Dkt. #120.) Jurisdiction in this Court is proper under 28 U.SC. § 1291.

STATEMENT OF THE ISSUES

Did the district court err by failing to view the evidence in the light most favorable to Appellants when it concluded as a matter of law that Deputy Santiago reasonably feared serious bodily harm or death from Appellants' vehicle and justifiably fired 10 shots into the vehicle killing A.J. Crooms and Sincere Pierce?

INTRODUCTION

On November 13, 2020, Brevard County Sheriff's Deputy Jafet Santiago-Miranda ("Deputy Santiago") fired 10 bullets into a Volkswagen Passat driving slowly away from him. He killed the driver, 16-year-old Angelo J. ("A.J.") Crooms, and back-seat passenger, 18-year-old Sincere Pierce. The estates of the two teenagers, Appellants here, filed suit for excessive force in violation of the Fourth Amendment and battery, among other claims.

Deputy Santiago claimed that he believed the Passat was stolen (it wasn't) and that the Passat posed an immediate threat to him. However, the Passat never posed any such threat. The record below establishes that Deputy Santiago-Miranda was *never* in the path of the vehicle; he anticipated that the Passat was driving away from him as any reasonable officer would have because, before moving, the Passat had turned its tires completely to its right away from Deputy Santiago; and Deputy Santiago did not react to the vehicle in fear but, just the opposite, anticipated its movement and actively stepped toward the vehicle and tracked it with his body and firearm, pulling the trigger 10 times as the vehicle slowly drove away. Notably, despite the fact that Deputy Santiago stepped with the vehicle, it never struck him or even came close to striking him.

That record is established by several important sources, most prominently: (a) Deputy Santiago's dash camera, which shows part of the incident from a fixed perspective; (b) three eyewitnesses to the entirety of the shooting—including Deputy Carson Hendren, Santiago's on-scene partner, who did not fire her weapon; Jaquan Kimbrough-Rucker, the Passat's front-seat passenger who survived the incident; and Cynthia Green, great-aunt and caretaker to Sincere Pierce, who was standing merely 10 feet behind and to the left of Deputy Santiago as he shot into the vehicle; (c) Dr. Jeremy Bauer, Plaintiffs' retained expert in biomechanics and human performance, whose forensic examination of the incident demonstrates that Deputy Santiago was not reasonably responding to the threat of the vehicle as a matter of both body movement and the timing of his response; and (d) Scott Defoe, Plaintiffs' police practices expert, who opines that Deputy Santiago did not reasonably use lethal force under the circumstances.

The district court failed view the above evidence in the light most favorable to Appellants. Instead, the court ignored evidence and drew impermissible conclusions favorable to the deputy, ruling as a matter of law that the threat from the Passat justified Deputy Santiago's shooting and killing A.J. Crooms and Sincere Pierce.

As discussed below, when viewed in the light most favorable to Appellants, as it must be, the estates of A.J. Crooms and Sincere Pierce have

put forth a triable case under *Tennessee v. Garner*, 471 U.S. 1 (1985), and its progeny. Appellants respectfully ask this Court to reverse the district court's judgment and permit a jury to decide this tragic case.

STATEMENT OF THE CASE

The Operative Complaint

Appellants' operative complaint alleges claims for excessive force under the Fourth Amendment of the U.S. Constitution and common law battery under Florida law against the Estate of Jafet Santiago-Miranda, a former law enforcement officer with the Brevard County Sheriff's Office. (Dkt. #45, Amended Complaint, Counts 1, 2, 6, 7.)[1] The judgment on these claims is at the heart of Appellants' challenge here.

Appellants also brought claims for *Monell* liability against the Brevard County Sheriff in his official capacity. (Dkt. #45, Counts 4, 5, 9, 10.) The district court entered judgment against Appellants on these claims as well given its ruling that there was no underlying constitutional violation by Deputy Santiago. (Dkt. #116, at 18.) The claims originally pled against Deputy Hendren are dismissed with prejudice and not at issue in this appeal.

[1] Deputy Santiago-Miranda passed away during the pendency of this case.

Statement of Material Facts

I. The Incident / Dash Cam Video

At 10:00 a.m., on a sunny morning, on November 13, 2020, A.J. Crooms, Sincere Pierce, and Jaquan Kimbrough-Rucker were driving in Cocoa, Florida, in a grey Volkswagen Passat, Florida license plate number NWE G04 (the "Passat"). A.J. Crooms was driving the Passat and Mr. Kimbrough-Rucker was seated in the front passenger seat. (Dkt. #72, Kimbrough-Rucker ("Rucker") Dep. Tr. 20:11-13.) They stopped at Sincere Pierce's home near the intersection of Exeter and Ivy Drive in Cocoa, Florida, to pick Sincere up. (Non-Electronic Exhibit: Inv-13 Green Ring Video.[2]) Sincere entered the rear seat of the Passat and sat behind A.J. (driver seat). (*Id.*; *see also* Dkt. #72, Rucker Dep. 64:17-65:6.)

Mr. Crooms then took a left-hand turn from Exeter Drive onto Ivy Drive, heading west toward the intersection of Stetson Drive South. (Non-Electronic Exhibit: Deputy Santiago In Car Video.) A Brevard County Sheriff police cruiser, driven by Deputy Carson Hendren, started following them. (Dkt #84, Hendren Dep. 97:1-15.) A.J. was not speeding, was driving within

[2] "Non-Electronic Exhibit" refers to video or audio exhibits submitted to the district court by hand. (Dkt. ##102, 107.) To identify them, Appellants use the name under which the video or audio was saved when produced. Appellants are arranging for transfer of such exhibits from the district court to this Court in conjunction with preparing and filing the Appendix.

his lane of traffic, and obeying road signals. (Non-Electronic Exhibit: Deputy Santiago In Car Video; *see also* Dkt. #84, Hendren Dep. 132:23-133:15.)

Earlier that morning, BCSO Deputy Ezra Dominguez had attempted to stop a vehicle due to suspicion of illegal window tint, but the vehicle sped-off. (Dkt. #83, Dominguez Dep. 47:24-48:4; Non-Electronic Exhibit: Stolen Vehicle Traffic Stop Attempt (*i.e.*, Dominguez Dash Cam).) Deputy Dominguez radioed the vehicle's description—a gray, VW Passat with Florida license plate number NWEG 22—to the radio channel to which Deputy Santiago and Deputy Hendren were tuned. (Dkt. #83, Dominguez Dep. 48:16-20, 60:16; 83:17-21; Dkt. #62-2, E-Book, CAD Log Narrative at 11/13/20 at 10:17:01.)

Deputy Hendren followed A.J. Crooms' Passat because, she claimed, she believed it matched the description of the fleeing vehicle with suspected unlawful window tint radioed by Deputy Dominguez. (Dkt. #84, Hendren Dep. 73:24-74:8.) Deputy Hendren did not suspect A.J. Crooms' Passat as possibly stolen (and indeed it was not stolen). (*Id.* at 78:5-8.)

When A.J. Crooms, still on Ivy Drive, approached the stop sign at the intersection of Stetson Drive South, he stopped the Passat properly, signaling a left-hand turn onto Stetson. (Non-Electronic Exhibit: Deputy Santiago In Car Video.) Deputy Hendren continued to follow behind. (*Id.*)

A.J. turned left onto Stetson Drive South and turned right into the driveway of a home at 1302 Stetson Drive South. (*Id.*)

Deputy Santiago-Miranda was close behind Deputy Hendren at this point. (*Id.*) Neither Deputy Hendren nor Deputy Santiago had activated their BSCO vehicle's warning lights or sirens. (*Id.*; *see also* Dkt. #84, Hendren Dep. 63:1-14.) Neither had yet given any verbal indication that they planned to perform a traffic stop. Indeed, as A.J. Crooms was pulling into the driveway of 1302 Stetson Drive South, neither deputy had given A.J. or his fellow passengers any indication whatsoever that they would attempt a traffic stop. (Dkt. #84, Hendren Dep. 63:1-14; Dkt. #72, Rucker Dep. 60:24-64:1; Non-Electronic Exhibit: Deputy Santiago In Car Video.)

Instead, Deputy Hendren took a left onto Stetson Drive South, stopping her BCSO vehicle at the southwest corner of Stetson and Ivy, facing south, and jumped out of her vehicle with her firearm drawn. (Non-Electronic Exhibit: Deputy Santiago In Car Video.) Despite having the complete license plate of the vehicle she was supposed to be looking for (NWE G22), she did not confirm the license plate before jumping out with her gun drawn. (Dkt. #84, Hendren Dep. 84:5-86:1.) Had she done so (and had Deputy Santiago done so), they would have been aware that they were attempting to stop the wrong vehicle—A.J. Crooms' with license plate NWE G04.

At best, Deputy Hendren's exiting her vehicle with her firearm drawn would have been the first indication to A.J. Crooms or anyone else in his vehicle that the officer was attempting to seize them. (Dkt. #72, Rucker Dep. 60:24-64:1.) Deputy Hendren admitted that she violated both BCSO protocol and good police practices by attempting to conduct the traffic stop that way. (Dkt. #84, Hendren Dep. 64:9-23.) Deputy Hendren never activated her dash camera either, which she admitted was a violation of protocol. (*Id.* at 81:6-82:24.)

Deputy Santiago arrived at the intersection of Ivy and Stetson in his BCSO SUV around the time Deputy Hendren exited her vehicle. (Non-Electronic Exhibit: Deputy Santiago In Car Video.) Deputy Santiago's lights or sirens were not activated on his vehicle yet. He stopped his vehicle at the southeast corner of Stetson and Ivy (on Stetson, facing south) and as he exited his cruiser with his firearm drawn, he turned the warning lights of his vehicle on, but no sirens. (Dkt. #62-2, E-Book, at p.5 of Law Enforcement Interviews ("Deputy Santiago activated his emergency lights before he exited his vehicle."); Dkt. #70, Defoe Dep. 36:21-37:4.) At this point, A.J. Crooms was slowly backing out of the driveway of 1302 Stetson. (Non-Electronic Exhibit: Deputy Santiago In Car Video.)

Deputy Santiago issued commands to stop the vehicle with his firearm pointed at the Passat, repeating the command several times. (Non-Electronic

Exhibit: Deputy Santiago In Car Video.) During this time, A.J. Crooms slowly repositioned his vehicle to turn it away from the deputies to flee. (Non-Electronic Exhibit: Deputy Santiago In Car Video) Specifically, he pulled forward slightly; then he backed up and turned his vehicle toward the front yard of the home at 1301 Stetson Drive South (on the southeast corner), which provided a large gap through the yard back to Ivy Drive. (*Id.*) As Crooms repositioned the Passat to drive through the yard, Deputy Santiago stepped forward pointing his firearm at the vehicle. (*Id.*)

A.J. Crooms turned the vehicle farther to his right, toward 1301 Stetson, and turned the vehicle completely in that direction as he began to drive. (*Id.*) Even before A.J. Crooms began driving, Deputy Santiago took a short, deliberate step to his right and then moved back to the left in unison with the vehicle as it began to move and he began firing his weapon. (*Id.*) Deputy Santiago fired his weapon 10 times in total. (Dkt. #67-1, Bauer Report ¶ 14.) Despite Deputy Santiago's moving in the same direction as the Passat (to his left as the Passat moved to the right), Deputy Santiago was never struck by the Passat. The Passat crashed into the home at 1301 Stetson, which is at an extreme right angle consistent with the tires being turned all the way to the right. At no time prior to firing did Deputy Santiago give a verbal warning that he would fire his weapon. (Dkt. #72, Rucker Dep. 75:11-20; Dkt. #70, Defoe Dep. 73:20-74:5.)

Sincere Pierce was mostly likely killed by the first bullet, or one of the first few bullets, fired by Deputy Santiago through the windshield, striking him once just to the right of his centerline in his chest, near his clavicle bone. (Dkt. #74-1, Arden Report at 4; Dkt. #67-1, Bauer Report ¶¶ 16-17 & Figure 10.)

A.J. Crooms was likely killed by one of the seventh, eighth, or ninth shots fired by Deputy Santiago, striking him three times with a head shot killing him. (Dkt. #74-1, Arden Report at 4.) All of the bullets striking/entering A.J. Crooms had a trajectory from left to right. (*Id.*) Deputy Santiago was to the side of the vehicle and slightly behind A.J. Crooms when he fired the shot that struck and killed A.J. in the back of the head. (*Id.* at 5 ("[T]he gunshot wound to the left-rear of his head is consistent with Mr. Crooms sitting in the driver's seat, facing and looking forward as he was driving, with the shooter being to his left and behind him to create the trajectory demonstrated at autopsy that was from left to right with a more substantial forward component."); *see also* Dkt. #67-1, Bauer Report ¶¶ 16-17 & Figure 11; Dkt. #73, Bauer Dep. 58:15-59:4.)

II. Eyewitness Testimony

There are three surviving eyewitnesses to the entirety of the shooting: Cynthia Green, Jaquan Kimbrough-Rucker, and Deputy Carson Hendren. Cynthia Green was Sincere Pierce's great aunt and caretaker from an early

age. (Dkt. #69, Green Dep. 6:14-17.) Ms. Green watched Sincere get into A.J. Crooms' Passat at her and Sincere's home. (Non-Electronic Exhibit: Inv-13 Green Ring Video.) When she saw a BCSO vehicle (Deputy Hendren's) follow the Passat, she got in her car and followed because her experience has been that the "Brevard County Sheriff . . . harass[es] these children." (Dkt. #69, Green Dep. 31:20-32:7, 75:23-76:8.)

Ms. Green drove west down Ivy Drive and made a U-turn to park facing back east, on the south side of Ivy, behind Deputy Santiago's SUV. (*Id.* at 37:25-38:1.) As Ms. Green stepped out of her vehicle, the Passat was backing out of the driveway at 1302 Stetson. (*Id.* at 37:16-38:9.) Ms. Green was standing roughly 10 feet behind and 10 feet to the left of Deputy Santiago throughout the incident. (*Id.* at 78:12-25.) Ms. Green had a clear, unobstructed view of the entire shooting. (*Id.* at 77:14-16.)

After she stepped out of her vehicle, the first thing she heard was Deputy Santiago yelling, "stop the goddamned car." (*Id.* at 38:18-24.) She then saw Deputy Santiago step towards the vehicle and begin firing his weapon at the vehicle as he walked along with the vehicle. (*Id.* at 79:1-17, 80:3-81:5.) Ms. Green further testified that Deputy Santiago "had nothing but room. He had plenty of room" to move even farther away from the vehicle than he already was. (*Id.* at 81:6-18.) Ms. Green testified that Deputy Santiago never appeared to be in fear of the vehicle and that, to the contrary, he

appeared unafraid because he was walking towards and with the vehicle while he shot at it. (*Id.* 82:15-83:4.) Ms. Green and Deputy Santiago looked at each other at one point and she described his look as that of a "crazed man…. He looked like he wanted to kill somebody." (*Id.* at 81:20-82:14.)

The Passat's front-seat passenger, Jaquan Kimbrough-Rucker, survived the incident without any injuries and was a front-seat witness to the entire incident. (Dkt. #72, Rucker Dep. 20:11-13.) He described the ample space available to drive through the front yard of the home at the corner of Stetson and Ivy. (*Id.* at 69:15-23.) Mr. Rucker described how before Deputy Santiago began shooting, A.J. "turned his wheel all the way to the right" and, "[a]s we were turning, the officer was coming up. It was almost like to get a better aim at the driver [Crooms]." (*Id.* at 69:23-70:3.) In turn, Mr. Rucker described that after A.J. had turned his tires to the right and began driving, A.J. "was going at least, probably, like 3 miles an hour pulling into the driveway" of the home on the corner at 1302 Stetson. (*Id.*)

Mr. Rucker testified that it should have been observable by Deputy Santiago that A.J. "was trying to avoid the officers" because of A.J.'s "hesitation on the gas pedal, like he wasn't going but like 2 miles an hour." (*Id.* at 45:22-46:1.) AJ moved to the right and forward "very slowly" and never revved the engine of the vehicle, contrary to what Deputy Santiago claimed in his statement. (*Id.* at 71:13-19, 72:2-8; Non-Electronic Exhibit: Inv-

4 Deputy Jafet Santiago Miranda.mp3 (i.e., Audio Interview) at 9:08.) Mr. Rucker testified that AJ was "just trying to avoid" the deputies. (*Id.* at 71:5-11.)

Mr. Rucker further testified that Deputy Santiago did not appear to be afraid of the vehicle because "he was – he was moving towards us like." (*Id.* at 70:5-11.). Mr. Rucker further testified that, as the Passat moved toward the house on the corner, the deputy moved with the vehicle, never backward. (*Id.* at 74:8-75:9.) He further testified that Deputy Santiago could have moved further away, in the opposite direction of their vehicle (to Deputy Santiago's right), rather than moving with it (to his left) as he did. (*Id.* at 78:6-79:9.).

Deputy Carson Hendren provided additional, essential testimony from her eyewitness perspective. She testified that Deputy Santiago could have obtained cover where he was situated (Dkt. #72, Hendren Dep. 144:13-23), but that he never put himself in a position of cover and never attempted to take cover near a tree, contrary to what Santiago claimed when interviewed by investigators. (Dkt. #72, Hendren Dep. 144:13-23, 122:16-18 & 123:16-18; Non-Electronic Exhibit: Inv-4 Deputy Jafet Santiago Miranda.mp3 (i.e., Audio Interview), at 32:24.) Nor could Deputy Santiago have reasonably believed he was seeking the cover of a tree because the only tree was *37 feet* behind him. (Dkt. #67-1, Bauer Report ¶ 24.)

There are other aspects of Deputy Santiago's statement to FDLE which are demonstrably wrong, such as his claims that he heard the Passat's engine revving or that he saw the vehicle rocking before it began moving. (Manual Exhibit: Inv-4 Deputy Jafet Santiago Miranda.mp3, at 24:15-24:50.) The dash cam video, which includes sound, demonstrates no such revving occurred and that no such rocking occurred. Mr. Rucker confirmed the same, that A.J. Crooms never revved the vehicle. (Dkt. #72, Rucker Dep. 72:2-8.) Dr. Bauer also explained that the only potential "rocking" that occurred was as the vehicle was already moving over the driveway of the home at 1302 Stetson. (Dkt. #67-1, Bauer Report ¶ 24.) Such aspects should not be credited to support Deputy Santiago's claim that he fired because he feared the threat of the vehicle.

Deputy Hendren conceded that deputies are trained to obtain cover when they perceive a threat and to maintain that position throughout their perception of the threat. (Dkt. #84, Hendren Dep. 35:8-39:3.) Indeed, the deputies' training dictates that if there is no threat, there is no need to seek cover. (*Id.* at 35:14-19 & 36:5-10.) Notably, Deputy Hendren agreed that while Deputy Santiago fired at the vehicle, he never sought cover. (*Id.* at 125:11-15.)

Importantly, Deputy Hendren also testified that if she perceived someone other than herself in danger of imminent bodily harm or death, she

would use lethal force to stop the threat. (*Id.* at 40:20-24.) Here, Deputy Hendren did not fire her weapon at the Passat, despite the fact that she could have and had a clear shot without any concern of crossfire on Deputy Santiago. (*Id.* at 44:19-20, 45:14-16, 46:13-16, 46:24-47:2.) This demonstrates that her perception on scene was that Deputy Santiago was not in danger of imminent bodily harm or death.

When asked in a post-incident interview as to why she did not fire her weapon, Deputy Hendren stated that part of the reason she didn't shoot was because of her view that the vehicle might be fleeing through the yard of the home on the corner. (*Id.* at 150:11-152:18; Non-Electronic Exhibit: INV-2 Interview of Carson Hendren REDACTED.mp3, at 37:05.) Further, Deputy Hendren conceded that Deputy Santiago moved to his left in the direction the Passat was moving while he was shooting at it. (*Id.* at 125:17-24, 130:3-20.)

In turn, Deputy Hendren agreed that a reasonable officer does not move towards a vehicle that he feels might strike him. (*Id.* at 131:18-21.) Deputy Hendren also agreed that a reasonable officer moves away from a vehicle he fears might strike him. (*Id.* at 131:23-132:2.) Deputy Hendren conceded that the side of the vehicle, into which Santiago continued shooting, never posed a threat to Deputy Santiago. (*Id.* at 127:10-19.) Hendren agreed it is not reasonable to move at a moving vehicle and attempt

to use the vehicle's movement as a basis to use lethal force. (*Id.* at 146:21-147:5.)

III. Plaintiffs' Expert Analysis

A. Expert Jeremy Bauer, Ph.D. (Biomechanics/Human Performance)

Plaintiffs' retained expert, Dr. Jeremy Bauer, has a Ph.D. in Human Performance, with a Biomechanics Concentration, and an extensive pedigree of certifications and experience in police shooting reconstruction. (Dkt. #67-1, Bauer Report ¶¶ 2-3.) Dr. Bauer reviewed the record in this matter exhaustively and performed a forensic examination of the shooting incident and ballistics to rebut Defendants' experts' opinions in this matter. (*Id.* ¶¶ 4-27.)

Specifically, Dr. Bauer's forensic examination of the physical and video evidence demonstrates that: (1) Deputy Santiago was *never* in the path of the Passat given the angle of the front tires and the path of the vehicle; and (2) Deputy Santiago's behavior, from a human performance perspective, demonstrates that from the firing of his first bullet through his tenth and final bullet, he was *not* — at any point — responding to the threat of the vehicle. (Dkt. #67-1, Bauer Report ¶¶ 19-27.)

Furthermore, Dr. Bauer examined and calculated the timing of certain of Deputy Santiago's actions in this case, which similarly demonstrate and reinforce that Deputy Santiago's behavior cannot be characterized as

responding to any threat from the Passat. Specifically, using forensic video analysis software (Axon Investigate v. 3.1.0), Dr. Bauer compared the timing of the Passat's movement to the timing of Deputy Santiago's first shot and last shot. (Dkt. #67-1, Bauer Report ¶ 19.) On the one hand, Dr. Bauer's examination shows that Deputy Santiago initially stepped to his right (opposite of the direction the Passat's front tires were steering) just 0.200 seconds after the vehicle moved to his left toward the yard of 1302 Stetson. (*Id.*) This was as fast as the fastest reaction time recorded by Seymour *et al.* (1995), a study which timed law enforcement officer reactions to threat stimuli. (*Id.*) On the other hand, Dr. Bauer's forensic examination shows that Deputy Santiago fired his first round 1.3 seconds after he took the initial step to his right. (*Id.*) The 1.3 seconds is slower than the slowest response reported in the same study. (*Id.*)

Dr. Bauer's forensic observations demonstrate that Deputy Santiago did not move in reaction to the vehicle, but rather in anticipation of it moving (*i.e.*, because he moved within 0.200 seconds of the vehicle moving, his movement was not in reaction to the movement of the vehicle but rather in anticipation of it). Nor did Deputy Santiago shoot in reaction to the moving vehicle (*i.e.*, the delay of 1.3 seconds after that step before firing is slower than the slowest reaction time of law enforcement officers tested under applicable circumstances). (*Id.*; *see also* Dkt. #73, Bauer Dep. 46:13-22

(characterizing the timing of Santiago's reaction to the Passat, as well as the nature of his movements, as inconsistent with responding to the vehicle as a threat).) As Dr. Bauer further explained in his report:

> Once Deputy [Santiago] decided to respond to the initial vehicle motion by firing his weapon, the bullet evidence in the vehicle demonstrates that Deputy Miranda tracked the vehicle as it drove past him. This tracking behavior demonstrates that Deputy [Santiago] anticipated the motion of the vehicle and that he was not simply reacting to an unexpected motion of the vehicle once the vehicle started moving.
>
> Deputy [Santiago] anticipated the motion of the vehicle in much the same way skeet shooters follow clay targets in the air, quarterbacks lead receivers when throwing a pass in football, or tennis players and batters anticipate the path of the ball. Deputy [Santiago]'s actions in moving in the opposite direction of the vehicle as it steered away from him clearly demonstrates a phenomenon in the human performance world known as 'Perceptual Anticipation,' . . . [which] has been defined as, 'the cognitive process of predicting or judging future events by using a part of, or knowing about, this motion information….' . . .
>
> Deputy [Santiago]'s anticipation of the future movement of the vehicle demonstrates that he did not anticipate that the vehicle was going to drive toward him. . . . [Further] there were several visual cues, in Deputy [Santiago]'s field-of-view that the vehicle was not going to strike him. First, he would have seen Mr. Crooms turning the steering wheel sharply to the right (clearly recorded by Deputy [Santiago]'s dash cam). Second, Deputy [Santiago] stated that he saw the front tires on the vehicle steering to the right (away from Deputy [Santiago]). Third, the initial motion of the vehicle was to the right (Deputy [Santiago]'s left). As a result of those visual cues, Deputy [Santiago] then anticipated the future motion of the vehicle which enabled him to track the vehicle as it drove by him.

(Bauer Report ¶ 23.)

Finally, Dr. Bauer's forensic examination of the evidence demonstrates that Deputy Santiago's claim in a post-incident interview that he stopped firing when he "no longer felt the threat" is inaccurate; rather, "[t]he physical evidence demonstrates that Deputy Miranda stopped firing when the car was no longer in a position that would allow a bullet from his gun to strike the driver of the vehicle." (Dkt. #67-1, Bauer Report ¶ 23.) Indeed, as Dr. Bauer reconstructs:

> Based on the direction of the last shot, Deputy Miranda was behind and to the side of the car when he fired his last shot. . . . It took Deputy Miranda 1.103 seconds to fire the last five shots. Given the timing, if Deputy Miranda indeed stopped firing when he no longer felt threatened by the Volkswagen, then he is saying he felt threatened by the vehicle when he was on the side of the vehicle as it was driving past and away from him.

(*Id.* ¶ 19.)

B. Scott Defoe (Police Practices)

Scott Defoe is a retired law enforcement officer with 28 years of tactical experience working in all manner of roles in law enforcement, including as a SWAT Team officer, supervisor, and trainer in the Los Angeles Police Department. (Dkt. #70-2, DeFoe CV.) His law enforcement experience and expertise is extensive. (Dkt. #70-1, Defoe Report at 27-32.) Mr. Defoe has been shot in the line of duty. (Dkt. #70, Defoe Dep. 61:11-12.) Mr. Defoe authored an expert report in this matter for Plaintiffs. (Dkt. #70-1, Defoe

Report.) After an exhaustive review of the record, Mr. Defoe opined on several matters, including in pertinent part here that:

(1) Deputy Santiago and Hendren failed to conduct a safe and effective traffic stop (Dkt. #70, Defoe Dep. 17:22-18:25 ("In this particular case specifically, there is plenty of time [to coordinate a safe plan of action prior to initiating a traffic stop]. If the vehicle drives away – they drive away… you can simply pull behind it. If it fails to obviously pull over, you can obviously pursue if you find that would be reasonable under a totality of the circumstances."); *see id.* at 26:4-20 (explaining that the deputies had time to coordinate a plan, confirm the license plate and identity of the vehicle, and concluding "There was no rush. There was no crime in progress that necessitated either of the deputies getting out of the vehicle in the manner in which they did with their guns drawn…"); *id.* at 37:20-25 (criticizing the failure to use the public address system to communicate with the Passat); *id.* at 50:25-52:5 (explaining how Deputy Santiago should have approached vehicle); *see also* Dkt. #70-1, Defoe Report at 8-16.)

(2) A.J. Crooms' driving immediately preceding the incident was done at slow speeds, in a manner attempting to avert deputies, and his vehicle was not pointed at Deputy Santiago in a manner suggesting it was aiming to hit him (Dkt. #70, Defoe Dep. 23:15-25:1; *see also id.* at 47:5-48:17 (opining that the dash cam shows that the vehicle was averting Deputy Santiago and

that the vehicle does not appear "in any way [to be] trying to strike Deputy Santiago prior to the shooting").)

(3) Deputy Santiago's actions were inappropriate for a reasonable law enforcement officer because they were over-confident and over-aggressive. (Dkt. #70, Defoe Dep. 43:18-44:17 (opining that Deputy Santiago's actions showed a confident and aggressive attitude, given he chose not to take cover even though he could have and that his use of lethal force was "overaggressive and unreasonable based on the totality of circumstances"); *see also* Dkt. #70-1, Defoe Report, Opinion No. 7 (p. 21).)

(4) A reasonable law enforcement officer would not have used lethal force on the Passat; Deputy Santiago was not presented with an immediate threat of great bodily injury or harm. (Dkt. #70, Defoe Dep. 63:13-20; *id.* at 76:17:20; *see also id.* at 66:4-18 (testifying that Deputy Santiago's moving left with the vehicle as he is shooting "doesn't make sense"); Dkt. #70-1, Defoe Report, Opinion No. 5 (p. 17); Opinion No. 8 (p. 23.)

(5) Deputy Santiago failed to give a verbal warning that he would fire his weapon before doing so, despite the fact that it was feasible. (Dkt. #70, Defoe Dep. 73:20-75:21; *see also* Dkt. #70-1, Defoe Report, Opinion No. 6 (p. 20).)

Proceedings Below

On April 22, 2021, Plaintiffs-Appellants filed their original Complaint. (Dkt. #1.) On August 8, 2022, Appellants filed an Amended Complaint (simply to substitute the Estate of Deputy Santiago after his passing). (Dkt. #45.) Discovery was completed by December 2022. On January 3, 2023, Defendants-Appellees filed their motion for summary judgment as to all claims, and briefing was completed by February 28, 2023. (Dkt. ##62, 96, 108.) The parties also filed respective *Daubert* motions. (Dkt. ##67, 68.)

On May 9, 2023, the district court granted Appellees' motion for summary judgment in entirety and entered judgment for Appellees the same day. (Dkt. ##116, 118.) As discussed in the Argument section below, in granting summary judgment to Deputy Santiago's estate, the district court found that the record dictated that "it was reasonable for Santiago Miranda to conclude that his life was in peril" from the Passat and, therefore, his use of force was constitutional under *Tennessee v. Garner*, 471 U.S. 1 (1985) and its progeny. (Dkt. #116, at 13.)

For much the same reason, the district court found that Appellants' battery claim under Florida law failed as well. (*Id.* at 15-16.) Finally, because the court found that there was no constitutional violation by Deputy Santiago, it found that Appellants' *Monell* claims against the Sheriff-

employer must be dismissed as well. (*Id.* at 17-18.) In conjunction, the Court denied the parties' respective *Daubert* motions as moot. (*Id.* at 18.)

Standard of Review

The Court reviews the grant or denial of qualified immunity and state-law immunity at summary judgment *de novo*, viewing the facts in the light most favorable to the non-moving party. *E.g.*, *Tillis v. Brown*, 12 F.4th 1291, 1296 (11th Cir. 2021).

SUMMARY OF ARGUMENT

The district court erred in entering judgment against Appellants with respect to their Fourth Amendment and battery claims against the Estate of Deputy Santiago-Miranda. In ruling that Deputy Santiago reasonably perceived A.J. Crooms' and Sincere Pierce's vehicle as a threat justifying lethal force, the Court failed to view the evidence in the light most favorable to Appellants, namely, by ignoring eyewitness and expert evidence demonstrating that the vehicle posed no such threat and by drawing conclusions which contradicted such evidence.

When viewed in the proper light, the record shows that Appellants have presented a triable issue as to whether Deputy Santiago reasonably perceived the vehicle as a threat. Appellants' evidence shows that A.J. Crooms' and Sincere Pierce's vehicle was driving slowly away from Deputy Santiago when he shot at them 10 times, and that any reasonable officer

would have appreciated that the vehicle did not pose the requisite threat. Indeed, the record shows that Deputy Santiago did not perceive the vehicle as a threat to him, but rather anticipated its slow movement away from him and aggressed and shot at it as it drove away from him. For that reason, Appellants have presented evidence of triable Fourth Amendment and battery claims, and the judgment below should be reversed.

ARGUMENT

I. The district court erred when it granted summary judgment to Defendant Santiago-Miranda on Plaintiff's Fourth Amendment excessive force claim.

In *Tennessee v. Garner*, the U.S. Supreme Court held that a police officer may use deadly force to seize a fleeing felony suspect only when the officer: (1) "has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others" or "that he has committed a crime involving the infliction or threatened infliction of serious physical harm;" (2) reasonably believes that the use of deadly force was necessary to prevent escape; *and* (3) has given some warning about the possible use of deadly force, if feasible. *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

Since *Tennessee v. Garner*, cases like this one, where an officer has justified his use of lethal force based on fear of a suspect's moving vehicle, are commonplace. The Eleventh Circuit has on the one hand "upheld an officer's use of deadly force . . . 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). On the other hand, the Eleventh Circuit has disapproved of lethal force where the subject vehicle did not "present[] an immediate threat of serious harm" but rather was simply operated to "avoid capture." *Vaughn v. Cox*, 343 F.3d 1323, 1330 (11th Cir. 2003). Viewed in the light most favorable to Appellants, this is the latter case.

The district court did not agree, finding that a reasonable officer would have perceived A.J. Crooms and Sincere Pierce's Passat as a lethal threat. (Dkt. #116, at 10-15.) This was error. Appellants presented evidence demonstrating that a reasonable officer would not have perceived the Passat as a threat, but rather would have perceived it as it was: a vehicle slowly driving away from him. In concluding otherwise, the district court failed to view the evidence in the light most favorable to Plaintiff. For that reason, the Court should reverse the decision below and reinstate Appellants' Fourth Amendment and battery claims against Deputy Santiago's estate.

A. Appellants presented abundant evidence that a reasonable officer would not have viewed the Passat as a threat justifying lethal force.

Appellants presented abundant evidence demonstrating that a reasonable officer would not have perceived the Passat as a threat justifying lethal force.

The Passat slowly positioned itself toward the large front yard of 1301 Stetson, directed away from the deputies. The Passat moved slowly at all times, and in a manner telegraphing that it was driving slowly away from the deputies. The dash camera shows that the Passat, in painstaking fashion, backed out of the driveway at 1302 Stetson Drive South and then engaged in a series of stops and reversals, all orienting itself toward the front yard of 1301 Stetson, which provided a path back to Ivy Drive. Though it is not visible in the dash camera video, the large front-yard path back to Ivy Drive and away from the deputies was visible to obvious to everyone on scene. (Dkt. #72, Rucker Dep. 69:15-23.) At the final moment before A.J. Crooms drove toward the yard at 1301 Stetson, he rotated his tires completely to his right, away from Deputy Santiago, and only then began to move to the front yard. When he moved, he did so at a slow speed away from Deputy Santiago. (*Id.* at 71:13-19, 72:2-8)

Deputy Santiago was never in the vehicle's path and actively aggressed the vehicle as it moved. Dr. Bauer's analysis shows that Deputy Santiago was never in the vehicle's path and, rather than reacting to the vehicle as a threat, anticipated and tracked its movements as he shot. (Dkt. #67-1, Bauer Report ¶¶ 19-27.) Dr. Bauer's report and testimony establishes that Deputy Santiago had numerous indicators that the vehicle planned to, and of course did, drive away from him at slow speeds—most prominently,

the constant orienting and ultimate turning of the tires away from him. Any reasonable officer would appreciate such information. Indeed, the record shows that Deputy Santiago appreciated this information, moving in a fashion Dr. Bauer demonstrates was anticipating and tracking the vehicle's movement as he fired at it. An officer who reasonably fears a vehicle does not move toward and with the vehicle.

Eyewitnesses establish that a reasonable officer would not have perceived the Passat as a threat. Eyewitness testimony from Cynthia Green, Jaquan Kimbrough-Rucker, and even Deputy Santiago's partner, Deputy Hendren, further demonstrates that a reasonable officer would not have viewed the Passat as a threat justifying lethal force. Deputy Hendren conceded that Deputy Santiago moved in the same direction as the vehicle while firing (Dkt. #84, Hendren Dep. 146:11-19) and that such behavior is not the kind a reasonable officer in fear of a vehicle would exhibit (*id.* at 131:18-132:2). All three eyewitnesses establish that Deputy Santiago had plenty of room to move *further* away from the vehicle (he need not have moved at all since he was never in its path); he was not an officer trapped in any fashion. (Dkt. #84, Hendren Dep. 144:13-23; Dkt. #72, Rucker Dep. 78:6-79:9; Dkt. #69, Green Dep. 81:6-18.) A jury should decide whether a reasonable officer would step towards and with a vehicle he reasonably feared was going to run him over.

Deputy Hendren had a clear shot on the Passat but did not take it. Deputy Hendren admitted that she would fire her weapon if she believed that her fellow deputy faced a threat. (Dkt. #84, Hendren Dep. 40:20-24.) However, Deputy Hendren did not fire her weapon here despite conceding that she had a clear shot to do so. (*Id.* at 44:19-20, 45:14-16, 46:13-16, 46:24-47:2.) Appellants should be permitted to argue to a jury that Deputy Hendren's decision not to shoot shows that she did not perceive her partner Santiago to be in danger—further evidence of what a reasonable officer on-scene would have perceived. Indeed, Deputy Hendren told authorities under oath after the incident that it appeared to her that the Passat was trying to flee through the front yard of 1301 Stetson. (*Id.* at 150:11-152:18; Non-Electronic Exhibit: INV-2 Interview of Carson Hendren REDACTED.mp3, at 37:05.) Additionally, Appellants' police practices expert, Scott Defoe, testified that there was no immediate threat justifying a lethal use of force and no reasonable officer would have perceived one.

Events preceding the shooting involve a relatively low-priority stolen vehicle report. When Deputy Santiago engaged the Passat, he knew that this was a run-of-the-mill stolen vehicle report (albeit not for A.J. Crooms' vehicle), as shown in the CAD log narrative and radio traffic. The dispatcher reported that the caller reporting the vehicle stolen typically leaves her keys

in her car and, after learning it was stolen, ran to the 7-11 to grab a cup of coffee. (Dkt. #62-2, E-Book, CAD Log Narrative at 11/13/20 at 10:31:50.)

Furthermore, prior to the incident, A.J. Crooms drove the Passat at normal speeds, in its lane of traffic, obeying traffic signs, and signaling turns—all visible on Deputy Santiago's dash camera. The Passat displayed no concerning signs prior to deputies drawing their firearms on it without warning. In other words, A.J. Crooms' attempt at flight toward 1301 Stetson did not come out of nowhere or in response to normal and proper police tactics; it came in response to officers jumping out of their vehicles waving firearms without warning. Scott Defoe's expert report and deposition testimony attest to this.

Deputy Santiago's reaction times demonstrate that he was not responding to the vehicle as a threat, but rather was anticipating and tracking it. As discussed at length by Dr. Bauer, Deputy Santiago's reaction times demonstrate that he did not react in response to the vehicle's movements, but rather anticipated and tracked them. (Dkt. #67-1, Bauer Report ¶¶ 19-27.) This is still further support for the fact that a reasonable officer would not have perceived the vehicle as a threat.

In sum, Appellants introduced abundant, competent, and admissible evidence demonstrating that a reasonable officer would not have perceived

the vehicle as a deadly threat. The district court failed to give due credit to such evidence, as described below.

B. The district court failed to view the record in the light most favorable to Plaintiff.

1. The Supreme Court has emphasized the importance of drawing inferences in favor of the non-movant on summary judgment.

On summary judgment, the evidence must be viewed in the light most favorable to the non-movant. *Tillis*, 12 F.4th at 1296. As part of such review, the U.S. Supreme Court has emphasized the "importance," when assessing qualified immunity, "of drawing inferences in favor of the non-movant[.]" *Tolan v. Cotton*, 572 U.S. 650, 657 (2014). Such rules are essential to ensuring the jury's factfinding role, as the Supreme Court has explained:

> The witnesses on both sides come to this case with their own perceptions, recollections, and even potential biases. It is in part for that reason that genuine disputes are generally resolved by juries in our adversarial system. By weighing the evidence and reaching factual inferences contrary to [the non-movant]'s competent evidence, the court below neglected to adhere to the fundamental principle that at the summary judgment stage, reasonable inferences should be drawn in favor of the nonmoving party.

Id. at 660.

2. The district court failed to view the evidence in the light most favorable to Appellants, by ignoring evidence, failing to draw reasonable inferences in Appellants' favor, and reaching conclusions incompatible with Appellants' competent evidence.

The district court failed to view the record in the light most favorable to Appellants in several, material respects.

The court failed to credit evidence that Deputy Santiago was never in the path of the vehicle. While the district court noted that Appellants had presented evidence both that Deputy Santiago was not in the path of the vehicle and anticipated the path of the vehicle away from him, the court concluded that such evidence "merely indicates that it could have been possible for Santiago Miranda to move out of the path of danger." (Dkt. #116, at 11.) The court's conclusion does not follow from the premise. The fact that the deputy was *never* in the path of the vehicle and *anticipated* that it was driving away from him means that he was never in "the path of danger." Therefore, the court's conclusion directly contradicts Appellants' competent evidence. Properly credited, such evidence would permit Appellants to argue to the jury that the deputy's not being in a path of danger and anticipating the vehicle's path away from him means that he did not reasonably fear the vehicle striking him.

The court improperly concluded that the import of eyewitness testimony was merely that the deputy could have moved out of harm's way.

The district court characterized the eyewitness testimony as only having expressed that Santiago "could have safely moved out of the vehicle's way." (Dkt. #116, at 11.) According to the district court, such testimony "merely indicates that it could have been possible for [the deputy] to move out of the path of danger." (*Id.*) The court's characterization of the witness' testimony is unfair; it is in a light favorable to Defendants and not in the light most favorable to Appellants.

Indeed, the import of surviving passenger Rucker's testimony is that the vehicle was pointed away from the deputy, was always moving away from the deputy, and that the deputy appeared to appreciate that and, rather than move *further* away (he was not in the vehicle's path), the deputy moved towards and with the vehicle as he shot it. The same is true of Cynthia Green's testimony. Similarly, as discussed above, the reasonable inference from Deputy Hendren's testimony is that a reasonable officer would not have viewed the vehicle as a threat but rather as simply fleeing the scene. Viewed in the light most favorable, each of those eyewitnesses — standing alone — presents a triable case that Deputy Santiago did not reasonably fear the vehicle.

The court improperly ignored eyewitness testimony, finding that it does not impact the "perspective of the [shooting] officer." Separately, the Court noted, "Plaintiffs also point to evidence that, from the perspective of

other witnesses, it looked like Crooms was attempting to flee, not to cause harm to Santiago Miranda. [citation omitted] Again this evidence does not address the question at issue, which must be considered from the perspective of the officer." (Dkt. #116, at 11-12.) In so concluding, the Court improperly discounted the key eyewitness testimony of Rucker, Green, and Hendren. Contrary to the district court's conclusion, that these three eyewitnesses were not Deputy Santiago himself does not mean, as the court concluded, that consideration of such testimony ignores the "perspective of the officer."

In fact, these three eyewitnesses — experiencing and observing the same event, in real time on scene, within mere feet of Deputy Santiago — shed arguably the most crucial light on what the officer would have or should have reasonably perceived. It is such discrepancies — three eyewitnesses' testimony supporting the fact that the officer could not reasonably have feared the vehicle and Deputy Santiago's statement that he shot because he feared the vehicle — that a jury must consider and reconcile. *See Tolan*, 572 U.S. at 660 ("The witnesses on both sides come to this case with their own perceptions, recollections, and even potential biases. It is in part for that reason that genuine disputes are generally resolved by juries in our adversarial system."); *see also Underwood v. City of Bessemer*, 11 F.4th 1317, 1327 (11th Cir. 2021) ("A genuine dispute of material fact exists 'if the

evidence is such that a reasonable jury could return a verdict for the non-moving party.'") (quoting *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1358 (11th Cir. 1999)); *Robinson v. Rankin*, 815 Fed.Appx. 330, 338 (11th Cir. 2020) ("We will not assume the jury's role and simply credit [the officer]'s story over the rest of the evidence; rather, on summary judgment, we are required to assume facts in the light most favorable to the [non-movant/plaintiff].").

The district court's conclusions about the positioning and movement of the vehicle ignored important evidence for Appellants. The district court concluded that "the Passat was facing Santiago Miranda approximately ten feet away and accelerated forward. At that point, it was reasonable for Santiago Miranda to conclude that his life was in peril." (Dkt. #116, at 12-13.) The court's conclusion in that respect omits numerous, key details supporting Appellants' claim, namely, that the car positioned itself and turned its tires away from the deputy and toward the large, obvious exit path through the front yard of the home next to it and that when the car began moving "forward," as the court described it, the car was driving *away* from the deputy at a slow speed, not toward the deputy. Plaintiff's expert, Jeremy Bauer, testified about this in detail, as did the eyewitnesses.

The district court ignored Plaintiff's competent expert testimony when it concluded that Deputy Santiago had no time to appreciate where the

vehicle was heading. In support of its finding for Deputy Santiago, the district court concluded that "Santiago Miranda 'certainly did not have time to calculate angles and trajectories to determine whether he was a few feet out of harm's way.'" (Dkt. #116, at 13 (*quoting Tillis*, 12 F.4th at 1299).) That conclusion contradicts the conclusions of Appellants' expert. Dr. Jeremy Bauer evaluated Deputy Santiago's reaction times based on studies of reaction times of law enforcement officers to threat stimuli and concluded that they demonstrated that the deputy did indeed have time to appreciate the vehicle's movements; he anticipated them and tracked them. (Dkt. #67-1, Bauer Report ¶¶ 19, 23; Dkt. #73, Bauer Dep. 46:13-22.) The district court's conclusion cannot be squared with Dr. Bauer's testimony (or any of the other evidence for Appellants discussed above, including eyewitness testimony).

At bottom, the district court ignored important evidence for Appellants and drew conclusions irreconcilable with such evidence in several respects. The facts and conclusions favorable to Appellants, which were ignored, are essential to this inquiry because "the hazy border between permissible and forbidden force is marked by a multifactored, case-by-case balancing test, [which] requires weighing of all the circumstances and sloshing 'through the factbound morass of reasonableness.'" *Gaillard v. Commins*, 562 Fed. Appx. 870, 875 (11th Cir. 2014) (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)) (other internal quotations and citations omitted). When

Appellants' evidence is properly considered and viewed in the light most favorable, Appellants presented a triable case for the jury.

C. When properly viewed in the light most favorable to Appellants, Appellants have presented a triable case.

1. Deputy Santiago violated the Fourth Amendment.

a. This case bears no resemblance to those relied upon by the district court.

In granting summary judgment, the district court relied on a line of Eleventh Circuit cases, which "have consistently upheld an officer's use of deadly force … where the officer reasonably believed his life was endangered by a suspect who used or threatened to use his car as a weapon." (Dkt. #116, at 10 (citing *McCullough v. Antolini*, 559 F.3d 1201, 1207 (11th Cir. 2009).) The district court likened this matter to two cases in particular — *Tillis v. Brown*, 12 F.4th 1291 (11th Cir. 2021) and *Singletary v. Vargas*, 804 F.3d 1174 (11th Cir. 2015). (Dkt. #116, at 12-13.) However, when Appellants' evidence is credited as it must be, their case is distinguishable in dispositive respects.

In *Tillis*, police began searching for the suspect vehicle after receiving information that it had been stolen by someone just out of prison and who had been in jail three times in the last year. 12 F.4th at 1294. When police spotted the vehicle and turned on their warning lights to initiate a traffic stop, the driver "smashed the gas" and took police on a wild, high-speed

chase. The driver raced recklessly down residential and commercial streets, across state lines, reaching speeds of 107 miles per hour, blowing through stop signs, driving the wrong way down a one-way street, locking the brakes to make screeching turns at high speeds, and ultimately crashing after a 13 minute, 40 second, chase stretching nearly 15 miles. *Id.* at 1295.

Soon after crashing and after the defendant officer approached the rear of the vehicle, the vehicle immediately reversed toward the officer, prompting the officer to fire out of fear of the vehicle. *Id.* In finding that the officer's shooting was reasonable, the Eleventh Circuit emphasized the "hot pursuit" that had just occurred as important context for the shooting. *Id.* at 1299-1300. The facts here bear no resemblance to *Tillis*. Prior to the incident, Appellants were driving properly — traveling the speed limit, stopping at stop signs, and signaling turns. There was no high-speed chase, no dangerous maneuvering putting other citizens at risk, and none of the "hot pursuit" relevant to the officer's shooting in *Tillis*. (Appellants were not even the suspects the deputies were supposed to be searching for, after all.) In fact, there was only a run-of-the-mill stolen vehicle report, with officers aware that the reporting party had left her keys in the vehicle and left to grab a cup of coffee before calling the police. Moreover, unlike the Passat here, which evidence shows was driving away from the deputies, the vehicle in *Tillis* drove directly back toward the officer, who had a reasonable concern

he would be "crushed" as he was standing between his open car door and his police cruiser. *Id.* at 1299.

Such facts similarly distinguish Appellants' case from other decisions justifying officers' use of force on moving vehicles. For example, in *Davis v. Waller*, the plaintiff had been taken hostage by a fleeing felon — one who while on methamphetamines had shot his pregnant girlfriend, taken his grandmother hostage, and shot at police officers, before forcing the plaintiff to drive his 84,000-pound logging truck to help the felon escape. 44 F.4th 1305, 1310 (11th Cir. 2022). Eventually, with officers nearby, the plaintiff was forced to drive the logging truck smashing into police vehicles — with the felon shooting out the window of the logging truck as part of threatening that the plaintiff do it. Officers heard the shots, taking cover behind their vehicles. The 11th Circuit described what happened next in harrowing terms:

> . . . Davis continued to drive toward the officers and their parked vehicles. As the logging truck began to knock the police vehicles out of the way, the officers bailed out from behind their vehicles and began firing their weapons at the moving truck. Officer Browder, who was only five feet away, fired his semi-automatic rifle at least two times and Waller fired his shotgun two or three times.

Id. at 1311. In short, officers in *Davis* were pursuing an attempted murderer who had shot at them and, at the time they fired their weapons, were

jumping out of the way as an 84,000-pound logging truck came crashing at them. The facts have nothing to do with this case.

Similarly, viewed properly, Appellants' case lacks any of the exigent circumstances and dangers present in other cases justifying lethal force. *See Terrell v. Smith*, 668 F.3d 1244, 1254 (11th Cir. 2012) (moving vehicle actually struck the officer and "[a]ny misstep by [the officer] could have caused him to fall and be crushed by the weight of the moving vehicle"); *McCullough v. Antolini*, 559 F.3d 1201, 1207-08 (11th Cir. 2009) (suspect truck took police on a high-speed chase, fishtailing feet away from police cruiser and after cruiser collided with truck, driver sped toward officer requiring that officer jump on the hood of his cruiser to avoid being struck); *Long v. Slaton*, 508 F.3d 576, 581-82 (11th Cir. 2007) (mentally unstable man evaded arrest by stealing the officer's police cruiser, which justified the officer's shooting due to potential harm to third parties/the public); *Robinson v. Arrugueta*, 415 F.3d 1252, 1253-54 (11th Cir. 2005) (officer with Atlanta's High-Intensity Drug Trafficking Task Force involved in drug bust discharged firearm two to four feet from vehicle coming straight at him as he was wedged against another vehicle and suspect disobeyed warning to stop); *Pace v. Capobianco*, 283 F.3d 1275, 1277-78 (11th Cir. 2002) (after being pepper sprayed through the front driver window, suspect took police on a wild, high-speed chase where he intentionally drove and swerved at police cars trying to apprehend him,

almost killed an elderly driver as he drove the wrong way down the road, drove 50-60 miles per hour through a front yard causing an officer to fear he could hurt the people seen inside the home, and after coming to a stop accelerated forward toward officers at the same time they shot at him).

The Eleventh Circuit decision in *Singletary* does not help Appellees' cause either. There, as a police officer approached a vehicle as part of a drug bust, the vehicle suddenly accelerated towards him causing him to fall to the ground and to fire shots in response. 804 F.3d at 1178. The officer claimed that he was struck by the vehicle. *Id.* Unlike here, it was undisputed in *Singletary* that the officer was in the path of the vehicle. Indeed, surveillance video "conclusively rebut[ted]" the plaintiff's claim that the officer was not in the path of the vehicle, as the video "show[ed] the car's right front headlight beam shining directly on [the officer]'s left pants leg [and] [a]s the car accelerates, the headlight beam moves *up* Defendant's pants leg until Defendant begins falling to the ground…." *Id.* at 1183 (emphasis added). Eyewitness testimony and Plaintiff's expert Dr. Bauer establish just the opposite—that Deputy Santiago here was never in the path of the vehicle and was not reasonably in fear of it.

b. Viewed in the proper light, Appellants' case is even stronger than *Vaughn v. Cox*.

Viewed in the light most favorable to Appellants, the record here comports with *Vaughn v. Cox*. There, sheriff's deputies suspected that the

truck in which plaintiff was riding as a passenger was possibly stolen and tracked the vehicle on an interstate. *Vaughn*, 343 F.3d at 1326. Deputies decided to use a "rolling roadblock" to stop the truck, which involved officers blocking the suspect vehicle with their police cruisers and reducing their speed, in the hope the suspect would slow down as well. *Id.* Deputies positioned themselves in such a manner that it was clear to plaintiff's truck that they were attempting to stop him. *Id.* When one of the deputies' vehicles got in front of the truck and slowed down, plaintiff's truck "rammed into the back" of the deputy's vehicle; the deputy claimed that this caused him to momentarily lose control of the vehicle, whereas plaintiff claimed the impact was "accidental" and insufficient to cause the officer to lose control. *Id.*

Nonetheless, the plaintiff's truck did not heed the officer's command but rather accelerated forward in the same lane of traffic, accelerating to 80-85 miles per hour after one of the deputies caught up alongside the truck and turned on his warning lights. *Id.* at 1327. A short time later, the deputy fired three rounds into the vehicle, paralyzing the plaintiff. *Id.* The parties disputed why he fired his weapon: the deputy claimed he fired because the truck swerved at his vehicle as if to smash him, whereas the plaintiff denied this. *Id.*

The Eleventh Circuit held that, viewing the facts in the light most favorable to plaintiff, the deputy's use of force was unconstitutional because

a reasonable jury could conclude that plaintiff's flight in the truck did not "present[] an immediate threat of serious harm to" the deputy or others, but rather that the deputy "simply faced two suspects who were evading arrest and who had accelerated to eighty to eighty-five miles per hour . . . in an attempt to avoid capture." *Id.* at 1330.

Appellants' case is stronger than *Vaughn*. Appellants partook in none of the high-speed highway impacts involved in *Vaughn*. Appellants had not rammed a police vehicle traveling at highway speeds. Their Passat maneuvered slowly on a residential street, repeatedly stopping and orienting itself to show that it was driving away from the deputies. Accordingly, under *Vaughn*, Plaintiffs' record is sufficient to present to the jury. *See also Underwood v. City of Bessemer*, 11 F.4th 1317, 1331-32 (11th Cir. 2021) (officer violated Fourth Amendment where plaintiff's version of events demonstrated that he was out of the vehicle's path but stepped in front of it and shot when the vehicle was moving at "coasting" speed toward him).

Importantly, *Vaughn* emphasized the dispute between certain facts relevant to the reasonableness of the use of force at issue, noting that such a dispute was one for the jury, not summary judgment, because of the court's obligation to view "all of the evidence in the light most favorable to [plaintiff]":

> . . . The issue is one for the jury. Deputy Cox disputes much of [plaintiff] Vaughan's version of the events leading up to the shooting; for example, Cox maintains that the suspects rammed his vehicle, causing him to lose control momentarily, and swerved at him before he fired his weapon. A jury accepting Cox's assertions could conclude that Vaughan and [the driver] Rayson presented a serious threat to Cox or others on the road, or that Cox had probable cause to believe that Vaughan and Rayson, in ramming Cox's cruiser and swerving towards him, had "committed a crime involving the infliction or threatened infliction of serious physical harm," that the use of deadly force was necessary to prevent escape, and that it was not feasible for Cox to warn Vaughan and Rayson. *Garner*, 471 U.S. at 11–12. Nonetheless, our obligation at this stage of the proceedings is to view all of the evidence in the light most favorable to Vaughan.

Id. at 1331-32. Similarly here, the parties presented a material factual dispute on the central question of whether a reasonable officer would have feared serious bodily harm from the Passat. That is why the case should go to a jury.

2. Deputy Santiago is not entitled to qualified immunity.

In assessing whether Deputy Santiago-Miranda is entitled to qualified immunity, the Court must determine whether it would have been clear to an objectively reasonable officer that Deputy Santiago's conduct was unlawful. *Vaughn*, 343 F.3d at 1332. A constitutional right is "clearly established" if its contours are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987); *Vaughn*, 343 F.3d at 1332.

In making such a determination, the court must "examine cases that announce general constitutional rules and cases that apply those rules to

factual circumstances to determine if a reasonable public official, who is charged with knowledge of such decisions, would have understood the constitutional implications of his conduct." *Vaughn*, 343 F.3d at 1332. "With regard to this inquiry, the Supreme Court in *Hope* cautioned that we should not be unduly rigid in requiring factual similarity between prior cases and the case under consideration. The 'salient question" . . . is whether the state of the law gave the defendants 'fair warning' that their alleged conduct was unconstitutional." *Id.* (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)).

Here, taking the facts in the light most favorable to Plaintiffs, Deputy Santiago's firing at the Passat when it posed no threat of immediate, serious bodily harm was clearly unconstitutional at the time of the event. As discussed above, under *Tennessee v. Garner*, decided in 1985, an officer "can use deadly force to prevent the escape of a fleeing, non-violent felony suspect only when the suspect poses an immediate threat of serious harm to police officers or others." *Vaughn*, 343 F.3d at 1332.

For that reason, the Eleventh Circuit in *Vaughn v. Cox* denied qualified immunity to the officers at issue, where the facts permitted a reasonable jury to find that the officer fired when no such immediate threat was present. *See Vaughn*, 343 F.d at 1332 (denying qualified immunity under *Garner* because "the danger presented by [plaintiff's] continued flight was the risk of an accident during the pursuit," not immediate harm to the officer); *see also*

Gaillard, 562 Fed.Appx. at 876 ("… *Garner* does clearly establish the law, even in a car chase scenario, where the suspect 'did not use or did not threaten to use his car as a weapon.'") (quoting *Morton v. Kirkwood*, 707 F.3d 1276, 1283 (11th Cir. 2013). For those reasons, Deputy Santiago is not entitled to qualified immunity.

II. Appellants have adduced evidence in support of a triable battery claim under Florida law for the same reasons discussed above.

For the same reasons the Court should reverse the judgment on Appellants' Fourth Amendment claims against Deputy Santiago, Appellants' battery claims under Florida law should be revived. *E.g.*, *Lloyd v. Tassell*, 384 F. App'x 960, 964 (11th Cir. 2010) ("If excessive force is used in an arrest, the ordinarily protected use of force by a police officer is transformed into a battery.") (citing Fla. Stat. § 776.05(1); *City of Miami v. Sanders*, 672 So.2d 46, 47 (Fla.3d Dist.Ct.App.1996)).

III. Deputy Santiago's shooting A.J. Crooms in the back of the head as the vehicle continued traveling away from him violated clearly established Fourth Amendment jurisprudence.

Deputy Santiago killed A.J. Crooms with a bullet to the back of his head as he was to the side of the vehicle and slightly behind A.J., firing his seventh, eighth, and ninth shots respectively. (Dkt. #74-1, Arden Report at 4-5; Dkt. #80, Qaiser Dep. 91:14-16; Dkt. #67-1, Bauer Report ¶ 17.) Dr. Bauer's report demonstrates that Deputy Santiago's continuing to shoot into the vehicle is not explainable as a reaction to threat stimuli — it would have

ended sooner if that was the case. (Dkt. #67-1, Bauer Report ¶¶ 23, 19.) Under such circumstances, *Vaughn* dictates with even greater force that Appellant Crooms' claims be revived and decided at trial. *Vaughn*, 343 F.3d at 1330; *see also Hunter v. City of Leeds*, 941 F.3d 1265, 1280 (11th Cir. 2019) ("[W]hile the use of force may initially be justified, the level of force that is reasonable may change during the course of a police encounter.") (citing *Glasscox v. City of Argo*, 903 F.3d 1207, 1214 (11th Cir. 2018)).

Other circuit courts have consistently denied summary judgment to officers where the evidence would reasonably permit a jury to conclude that the officer used lethal force after the threat of a vehicle had passed, even where the vehicle had driven directly at an officer (unlike here) and everything had occurred within seconds. *See Reavis v. Frost*, 967 F.3d 978, 987-89 (10th Cir. 2020) (affirming denial of summary judgment to an officer who had shot and killed the plaintiff as his truck was passing the officer, despite the fact that the truck drove directly at the officer and came within "mere inches" of the officer); *Jefferson v. Lias*, 21 F.4th 74, 79 (3d Cir. 2021) (denying qualified immunity to an officer who had shot plaintiff through plaintiff's driver-side window as having occurred after any threat justifying such force had already passed); *Lytle v. Bexar County*, 560 F.3d 404, 407-08 (5th Cir. 2009) (denying qualified immunity to officer who allegedly fired on a fleeing motorist from a distance standing to the rear and no bystanders

were in the path of the vehicle); *Smith v. Cupp*, 430 F.3d 766, 774 (6th Cir. 2005) (denying qualified immunity to officer, where victim stole officer's police cruiser, maneuvered the cruiser such that he was driving toward officer and another person but officer moved out of the way and shot four times into the side of the vehicle as it passed him).

Here, the Court should find that a reasonable jury could conclude Deputy Santiago's continued shooting into the side of the vehicle, killing A.J. Crooms with a headshot to the back of his head, was excessive force under the Fourth Amendment. Importantly, Dr. Bauer has timed Deputy Santiago's shooting response and found that Deputy Santiago would have been expected to stop far earlier than his seventh shot into the vehicle if he were truly responding to the threat of the vehicle. (Dkt. #67-1, Bauer Report ¶ 22.)

CONCLUSION

The judgment of the district court should be reversed with respect to judgment on Appellants' Fourth Amendment and battery claims against the estate of Deputy Santiago, as well as the *Monell* claims against the Sheriff in his official capacity.

Dated: August 30, 2023

Respectfully submitted,

/s/ *John Marrese*

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CERTIFICATE OF COMPLIANCE

On behalf of Appellants, I certify pursuant to Federal Rule of Appellate Procedure 32(g)(1) that the attached brief is proportionally spaced, has typeface of 14 points or more, and contains 11,207 words.

Dated: August 30, 2023

/s/ *John Marrese*
John Marrese

CERTIFICATE OF SERVICE

I, John Marrese, counsel for Appellants and a member of the Bar of this Court, certify that, on August 30, 2023, a copy of the foregoing was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

Dated: August 30, 2023 /s/ *John Marrese*
John Marrese