

No. 23-10762-H

**In the United States Court of Appeals
for the Eleventh Circuit**

H.M., INDIVIDUALLY AND AS GUARDIAN FOR H.S. AN
UNEMANCIPATED MINOR,

Plaintiff-Appellant

v.

DEPUTY SHERIFF NICHOLAS VINCENT CASTORO, IN HIS
INDIVIDUAL CAPACITY,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida, Fort Pierce Division
Case No. 2:21-cv-14319, Hon. Aileen M. Cannon

APPELLANT'S INITIAL BRIEF

Samuel Alexander
Alexander Appellate Law P.A.
120 S Woodland Blvd Suite 200
DeLand, FL 32720
(407) 907-4305
samuel@alexanderappeals.com
*Counsel for H.M., individually
and as Guardian for H.S. an
Unemancipated Minor*

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel of record for H.M., individually and as Guardian for H.S. an Unemancipated Minor certifies that, to the best of his knowledge, the following is a complete list of the trial judge(s), all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the case or this petition, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

I. Certificate of Interested Persons

1. Alexander Appellate Law P.A. – Appellate counsel for Plaintiff-Appellant;
2. Alexander, Samuel, Esq. – Appellate counsel for Plaintiff-Appellant;
3. Barranco, Summer Marie – Trial counsel for Defendant-Appellee;
4. Cannon, Hon. Aileen M. – United States District Judge;
5. Castoro, Nicholas – Defendant-Appellee;

6. H.M., individually and as Guardian for H.S. an Unemancipated Minor – Plaintiff-Appellant;
7. McCabe, Hon. Ryon M. – United States Magistrate Judge;
8. Norbraten, Todd Martin – Trial counsel for Plaintiff-Appellant;
9. Purdy, Jolly, Giuffreda, Barranco & Jisa, P.A. – Trial counsel for Defendant-Appellee
10. Rubin, Guy Bennet – Trial counsel for Plaintiff-Appellant;
11. Rubin and Rubin – Trial counsel for Plaintiff-Appellant.

May 18, 2023

/s/ Samuel Alexander
Samuel Alexander

STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant believes oral argument will assist the Court in its decision. The decision in this case will necessarily be fact-bound, and Plaintiff-Appellant would appreciate the opportunity to present argument and clarify any questions the Court may have about the details of the case or the caselaw cited within this brief.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT	C-1
STATEMENT REGARDING ORAL ARGUMENT.....	i
TABLE OF CONTENTS	ii
TABLE OF CITATIONS	iii
STATEMENT OF JURISDICTION.....	v
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF ARGUMENT.....	11
STANDARD OF REVIEW	13
ARGUMENT.....	14
I. Deputy Castoro Was Not Entitled to Qualified Immunity, Because He Used Excessive Force in Violation of Clearly Established Law When He Body-Slammed 13-Year-Old H.S. Face-First Into the Pavement.....	14
CONCLUSION	31
CERTIFICATE OF COMPLIANCE	32
CERTIFICATE OF SERVICE	33

TABLE OF CITATIONS

Cases

Adams v. Metiva,
31 F.3d 375 (6th Cir. 1994) 21

Amy v. Carnival Corp.,
961 F.3d 1303 (11th Cir. 2020) 13

Atkins v. Twp. of Flint,
94 Fed. App’x 342 (6th Cir. 2004)..... 20

Brown v. Nocco,
788 Fed. App’x 669 (11th Cir. 2019)..... 18

Crenshaw v. Lister,
556 F.3d 1283 (11th Cir. 2009) 17, 18

Fils v. City of Aventura,
647 F.3d 1272 (11th Cir. 2011) 16, 24, 28

Gilmore v. Hodges,
738 F.3d 266 (11th Cir. 2013) 13

**Graham v. Connor*,
490 U.S. 386, 395 (1989) 15, 16, 17, 18

Hawkins v. Carmean,
562 Fed. App’x 740 (11th Cir. 2014)..... 21

**Hinson v. Bias*,
927 F.3d 1103 (11th Cir. 2019) 14, 15, 18, 19

**Howard v. Hudson*,
613 Fed. App’x 866 (11th Cir. 2015)..... passim

Ingram v. Kubik,
30 F.4th 1241 (11th Cir. 2022)..... 28

Lee v. Ferraro,
284 F.3d 1188 (11th Cir. 2002) 23

McWilliams v. Dinapoli,
40 F.4th 1118 (10th Cir. 2022)..... 20

Mercado v. City of Orlando,
407 F.3d 1152 (11th Cir. 2005) 23, 28, 29

Patel v. City of Madison, Alabama,
 959 F.3d 1330 (11th Cir. 2020) 22, 23, 25

Perez v. Suszczyński,
 809 F.3d 1213 (11th Cir. 2016) 13

**Richmond v. Badia*,
 47 F.4th 1172 (11th Cir. 2022)..... passim

Saunders v. Duke,
 766 F.3d 1262 (11th Cir. 2014) 15, 27

Stryker v. City of Homewood,
 978 F.3d 769 (11th Cir. 2020) 16, 28

United States v. Moran,
 57 F.4th 977 (11th Cir. 2023)..... 27

United States v. U.S. Gypsum Co.,
 438 U.S. 422 (1978) 27

Willingham v. Loughnan,
 321 F.3d 1299 (11th Cir. 2003) 28

Statutes

28 U.S.C. § 1291 v

28 U.S.C. § 1331 v

42 U.S.C. § 1983 v

Fla. Stat. § 790.001(13) (2018) 17

STATEMENT OF JURISDICTION

The District Court had jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1331, because H.M. on behalf of H.S. filed a suit for deprivation of H.S.'s Fourth Amendment right to be free from excessive use of force against a government official acting under color of state law.

This Court has appellate jurisdiction under 28 U.S.C. § 1291 because H.M. on behalf of H.S. has timely appealed a final decision of a district court.

STATEMENT OF THE ISSUES

Whether the District Court erred in ruling that Deputy Nicholas Castoro was entitled to qualified immunity, when Deputy Castoro body-slammed 13-year-old H.S face-first into the pavement—breaking his skull, sinus bones, jawbone, shoulder blade, collar bone, and ribs—based on H.S.’s brief and nonviolent resistance to Deputy Castoro’s sudden, forceful, and unannounced attempt to arrest H.S., who was suspected of committing a nonviolent misdemeanor.

STATEMENT OF THE CASE AND FACTS

Because H.S. was the non-moving party on summary judgment, this statement of the case and facts is presented in the light most favorable to H.S. All reasonable disputes of fact, inferences, and credibility determinations have been resolved in his favor.

At around 4:00 p.m., on January 4, 2019, H.S. and his friend R.S. were walking around their residential neighborhood, Beau Rivage, in Martin County. R.S. was twelve years old, and H.S. had just turned thirteen. Doc. 1 at 3; Doc. 44-3 at 16; Doc. 44-5 at 52; Doc. 54 at 1-2. The boys walked past the house of Kelly Bledsoe, the house directly behind R.S.'s house, while Ms. Bledsoe and her children were out in her front yard. Doc. 44-3 at 19; Doc. 45-1 at 11.

Across the street from Ms. Bledsoe's house, a basketball or kickball had been left in a ditch. Doc. 44-3 at 19. H.S. picked up the ball and started to play with it. Doc. 44-3 at 19. Ms. Bledsoe became angry and told the boys it was her ball and that they needed to return it. Doc. 44-3 at 18-20; Doc. 44-5 at 52. H.S. called Ms. Bledsoe a dirty word, showed her his middle finger, then threw the ball in her direction. Doc. 41-3 at 21-22. The boys continued wandering down the street. Doc. 41-3 at 22.

Ms. Bledsoe called the police to report two boys taking items from people's yards. Doc. 44-1 at 202-03. Deputy Sheriff Nicholas Castoro responded to the call. Doc. 44-1 at 202-03. He parked his cruiser on the side of the road near the boys, got out of the car, and approached the boys. Doc. 44-1 at 32. He explained the reason he was there, then asked the boys for their names. Doc. 44-1 at 34-35.

While R.S. provided his name, H.S. calmly refused to provide his name. Doc. 44-3 at 23-25. Deputy Castoro repeated his request, but H.S. repeatedly refused to provide his name. Doc. 44-3 at 23-25. H.S. kept calmly refusing to provide his name, while Deputy Castoro began asking in a more aggressive tone. Doc. 44-3 at 23-25.

H.S. had placed his hands in the large front pocket of his hoodie, and Deputy Castoro asked him to remove his hands from his pocket. Doc. 44-3 at 26-27. H.S. repeatedly declined to remove his hands from his pocket, while Deputy Castoro repeatedly asked him to remove them without explaining why it was necessary. Doc. 44-3 at 26-27.

Eventually, Deputy Castoro's face turned red, then he lunged toward H.S. to try and wrench H.S.'s hands from the pocket himself. Doc. 44-2 at 5; Doc. 44-6 at 61; Doc. 44-3 at 28. Once H.S.'s hands were out of

his pocket, Deputy Castoro tried to put them behind H.S.'s back. Doc. 44-5 at 53-54. Deputy Castoro never told H.S. to put his hands behind his back. Doc. 44-5 at 62. Deputy Castoro never told H.S. he was being arrested. Doc. 44-5 at 53. H.S. struggled, at first, because he "didn't know [he] was getting arrested." Then, he said, he "felt like [he] shouldn't be getting arrested." Doc. 44-5 at 53.

At the time, Deputy Castoro was a fit and "muscular" man. Doc. 45-1 at 18. A former offensive and defensive linebacker who still went to the gym, he was five foot ten inches tall and weighed 250 pounds. Doc. 44-1 at 7-8; Doc. 42 at 3. He was less than three years out of the police academy. Doc. 44-1 at 8. H.S., by contrast, had just turned thirteen a few weeks before. Doc. 54 at 1. He was five foot eight inches tall and weighed 120 pounds, less than half of what Deputy Castoro weighed. Doc. 44-4 at 2.

In response to H.S.'s brief resistance to his hands being forced behind his back, the enraged Deputy Castoro grabbed H.S. by the waist, lifted him up into the air with his feet dangling, turned his body "like a wrestling move," then body-slammed H.S. face-first into the street pavement. Doc. 44-3 at 31; Doc. 44-5 at 63; Doc. 54 at 4. The body-slam

broke the bones in H.S.'s face, including the right side of his skull, the base of his skull, his jaw, and various other facial bones, including his sinuses. Doc. 44-7. The impact also broke H.S.'s collar bone, his right shoulder blade, and three ribs. Doc. 44-7. He suffered a subdural hematoma, also known as a brain bleed. Doc. 44-7.

When H.S. hit the ground, a pocket knife either fell out of his hoodie or was removed by Deputy Castoro. Doc. 44-5 at 64. Deputy Castoro picked it up and said, "Did you try to pull that on me, you little shit?" Doc. 44-5 at 102. Deputy Castoro handcuffed H.S. then called an ambulance. Doc. 44-1 at 67; Doc. 45-1 at 9.

Deputy Castoro called for emergency medical services about three minutes after he made initial contact with the boys. Doc. 43-1 at 2.

After the incident, two deputies came to R.S.'s house to request a written statement from R.S. This first statement was simple: R.S. explained that Deputy Castoro asked H.S. to take his hands out of his pockets, and when H.S. refused, Deputy Castoro "tackled him." Doc. 44-3 at 36, 41-42. The deputies took the statement and left. The statement did not mention a knife. Doc. 44-3 at 36, 41-42.

In Deputy Castoro's report from that day, he wrote that it looked like H.S. was grabbing an object in his pocket, which Deputy Castoro believed was a weapon. Doc. 44-2 at 5. Deputy Castoro approached H.S., but H.S. pulled a pocket knife out of his hoodie and "brandished" it. Doc. 44-2 at 5. Deputy Castoro ordered H.S. to drop the knife, but H.S. shouted "No!" Doc. 44-2 at 5. According to the report, Deputy Castoro attempted to disarm H.S. Doc. 44-2 at 5. They fought over the knife, but H.S. held onto it so strongly that he was lifted into the air as Deputy Castoro tried to remove it. Doc. 44-2 at 5.¹ Deputy Castoro moved H.S. off the road onto the grassy area and tried "bring him towards the ground," but because of H.S.'s flailing, H.S. fell and hit his head on the pavement. Doc. 44-2 at 5.

Later that evening, at around midnight, the two deputies returned to R.S.'s house. Doc. 44-3 at 36-37; Doc. 45-1 at 12. In the presence of R.S.'s mother, they told R.S. to change the wording of his statement. They wanted him to use the phrase "take down to the ground" instead of the word "tackle." Doc. 44-3 at 36-37; Doc. 45-1 at 12, 37-38. They also asked him to "clarify" his statement. Doc. 45-1 at 12. R.S.'s mother understood

¹ Despite stating in his written report that H.S. "brandished" the knife, in his deposition Deputy Castoro testified that the pocket knife was never opened during the encounter. Doc. 44-1 at 58.

this to mean that they wanted R.S. to write down that H.S. had pulled a knife on Deputy Castoro, because that is what the police told her had happened. Doc. 45-1 at 13-15. R.S. later testified that the officers told him to “make it clear that [H.S.] had the knife.” Doc. 44-3 at 43. R.S. wrote a new version of the statement, based on what the police told him to write: that H.S. pulled a knife, there was a fight over the knife, the knife was lifted in the air, after which Deputy Castoro “put [H.S.] on the ground.” Doc. 44-3 at 42.

R.S. and his mother both later testified that the second statement was a lie. Doc. 44-3 at 42-43, 46, 53-54; Doc. 45-1 at 12-16. R.S. never saw the knife until it was Deputy Castoro’s hands, after the body slam. Doc. 44-3 at 53. In his deposition, R.S. clarified that H.S. “did not attempt to pull the knife out of his pocket,” and Deputy Castoro did not “put” H.S. on the ground—he “picked him up by the waist and slammed him down.” Doc. 44-3 at 46-47. He explained that Deputy Castoro did not explain to H.S. why he should remove his hands from his pockets, that H.S. never took his hands out of his pockets, and that H.S. did not engage in any threatening behavior. Doc. 44-3 at 51-53.

In retrospect, R.S.'s mother testified, it was "not right" to write down the false version of events. Doc. 45-1 at 16. But that is what the police had told her had happened, and it was what she understood R.S. was being told by the police to write. Doc. 45-1 at 37-38. When asked by Deputy Castoro's attorney what the officers' intentions were in asking R.S. to change his statement, she said she did not know. But she offered, "I can speculate." Doc. 45-1 at 39-40.

H.S. spent five days in the ICU. Doc. 44-6 at 67. He could not eat and kept vomiting while his mother held a pink basin by his head. Doc. 44-6 at 66. The doctors later told H.S. and his mother that they almost had to drill a hole in H.S.'s head to relieve the pressure from the bleeding in his brain. Doc. 44-5 at 77; Doc. 44-6 at 64.

Based on Deputy Castoro's report and R.S. second statement, H.S. was charged with (1) aggravated assault on a law enforcement officer with a deadly weapon and (2) resisting arrest with violence with a weapon. Doc. 41-4 at 1. After a trial, in which R.S. admitted that his second written statement was falsified, the judge found H.S. (1) *not guilty* of aggravated assault on a law enforcement officer with a deadly weapon, (2) *not guilty* of resisting arrest with violence with a weapon, but instead

(3) delinquent on a lesser-included charge of resisting arrest *without* violence. Doc. 54 at 5; Doc. 44-3 at 53-54. H.S. was never charged with trespassing or theft. Doc. 41-4 at 1.

H.S. suffered permanent brain injuries from the body-slam, which R.S. said was “like a wrestling move.” Doc. 44-3 at 31; Doc. 44-6 at 36-37. Since the incident, H.S. has suffered frequent headaches, memory problems, and behavioral issues. Doc. 44-5 at 77-82. His mother testified that he has never been “the same person,” and doctors have told her that this is likely the result of his brain injury. Doc. 44-3 at 36-37. They used to play word games, like Scrabble, but he no longer has the ability. Doc. 44-6 at 71. He has permanent injuries from his fractures. Doc. 44-6 at 38. Doctors have informed H.S.’s mother that because of his fractured sinus cavity, he will always experience pain when flying or diving. Doc. 44-6 at 38.

H.S. sued Deputy Castoro under 42 U.S.C. § 1983, for violating his Fourth Amendment right to be free from the excessive use of force. Doc. 1 at 1-8. Deputy Castoro moved for summary judgment, arguing that he was entitled to qualified immunity and that he did not violate H.S.’s rights. Doc. 40 at 1-7.

In its report and recommendation, the magistrate judge recommended that Deputy Castoro be entitled to qualified immunity and to summary judgment on the merits of the § 1983 claim. Doc. 54. He found that Deputy Castoro reasonably believed based on his experience that a noncompliant suspect who refuses to remove hands from pockets could pose a safety risk. Doc. 54 at 8. The judge found that Deputy Castoro’s alleged belief—that H.S. was attempting to grab something in his pocket—“later proved to be true” because a pocket knife was discovered. Doc. 54 at 8. The magistrate also reasoned that Deputy Castoro was not on notice that he would have been violating H.S.’s rights by “taking him to the ground” in a single movement when H.S. was resisting arrest. Doc. 54 at 9.

The magistrate judge found that *Graham* factors two through five “weigh[ed]” heavily in favor of Deputy Castoro’s use of force, because (2) H.S.’s noncompliance posed a safety risk, (3) H.S. resisted arrest, therefore (4) force needed to be applied, and (5) the amount of force was reasonable. Doc. 54 at 8-9. The magistrate judge found that *Graham* factors one and six weighed in favor of excessive force because (1) the

suspected crimes—trespassing and theft—were not severe and (6) H.S. was severely injured. Doc. 54 at 10.

H.S. objected to the judge’s findings and ruling on the merits, on qualified immunity, and on the presentation of the facts. Doc. 55 at 1-6.

The District Court performed a de novo review of the magistrate’s entire report, then adopted it, ruling that (1) Deputy Castoro was entitled to qualified immunity and (2) Deputy Castoro did not violate H.S.’s Fourth Amendment right to be free from excessive force, because no reasonable jury could find the force excessive. Doc. 57 at 1-3. Final judgment issued on February 8, 2003, and H.S. timely appealed. Docs. 58, 59.

SUMMARY OF ARGUMENT

Deputy Castoro was not entitled to qualified immunity, because he used excessive force in violation of clearly established law against H.S. Any reasonable officer would know that it would be unreasonable to body-slam a child face-first into the pavement—breaking the child’s skull, sinus bone, jawbone, shoulder blade, collar bone, and ribs—based only on the child’s brief and nonviolent resistance to an unannounced,

unexpected, and unprovoked attempt to forcibly handcuff the child for a nonviolent misdemeanor.

H.S., who was suspected of temporarily taking a ball from a ditch and swearing at a neighbor, was never told to put his hands behind his back, was never told he was under arrest, and did not engage in any threatening behavior. Instead, Deputy Castoro lunged at H.S. without any verbal warning in order to forcibly remove H.S.'s hands from his pockets, then to arrest him. Under those circumstances, H.S.'s brief resistance did not justify anything but the *de minimis* force necessary to handcuff H.S. A reasonable jury could find that a 250-pound former linebacker acted unreasonably in responding to H.S.'s brief resistance by picking the 120-pound child up by the waist then forcibly slamming him face-first down into the pavement, especially in light of the minor nature of the crimes H.S. was suspected of committing.

The District Court erred in its analysis of the *Graham* factors, erred in retroactively justifying Deputy Castoro's conduct because a pocket knife was recovered after the body-slam, and erred in unconditionally crediting Deputy Castoro's claim that he believed H.S. was grabbing for

something in his pocket. This Court should reverse and remand for further proceedings.

STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment de novo, "viewing all the evidence, and drawing all reasonable factual inferences, in favor of the nonmoving party." *Richmond v. Badia*, 47 F.4th 1172, 1179 (11th Cir. 2022) (quoting *Amy v. Carnival Corp.*, 961 F.3d 1303, 1308 (11th Cir. 2020)). To the extent that the parties disagree over the facts, this Court must apply the law to the non-moving party's "version of the facts." *Perez v. Suszczynski*, 809 F.3d 1213, 1218 (11th Cir. 2016).

This Court also reviews de novo a District Court's own de novo review and adoption of a magistrate judge's report and recommendation on summary judgment. *Gilmore v. Hodges*, 738 F.3d 266, 272 (11th Cir. 2013).

ARGUMENT

I. **Deputy Castoro Was Not Entitled to Qualified Immunity, Because He Used Excessive Force in Violation of Clearly Established Law When He Body-Slammed 13-Year-Old H.S. Face-First Into the Pavement**

Deputy Castoro used excessive force when he lifted H.S. off the ground by his waist, then forcibly slammed him face-first into the street pavement, breaking H.S.'s skull, sinus bones, jawbone, shoulder blade, collar bone, and ribs—based only on H.S.'s brief and nonviolent resistance to Deputy Castoro's unexpected use of force. Deputy Castoro's conduct violated H.S.'s clearly established rights, such that Deputy Castoro was not entitled to qualified immunity.

Qualified immunity protects government officials acting in their discretionary authority from being sued in their individual capacity, so long as their conduct does not violate clearly established statutory or constitutional rights. *Hinson v. Bias*, 927 F.3d 1103, 1116 (11th Cir. 2019). Once a government official sued in his or her individual capacity establishes that he or she was acting within the scope of discretionary authority, the burden shifts to the plaintiff to demonstrate that qualified immunity is inappropriate. *Id.* A plaintiff can overcome this burden by showing that (1) the official's conduct violated a constitutional right, and

(2) the right was clearly established. *Id.* The parties in this case do not dispute that Deputy Castoro was acting within his discretionary authority.

The Fourth Amendment guarantees the right to be free from the excessive use of force in the context of an arrest or investigatory stop. *Richmond v. Badia*, 47 F.4th 1172, 1183–84 (11th Cir. 2022). An officer’s use of force in this context is reviewed under the Fourth Amendment’s reasonableness standard. This Court has enumerated six factors that should be considered: (1) the severity of the suspected crime, (2) whether the suspect posed an immediate threat to the safety of officers or the public, (3) whether the suspect actively resisted arrest or attempted to flee, (4) the justification for the use of force, (5) the relationship between the justification and the amount of force used, and (6) the extent of the injury inflicted. *Id.*; *Graham v. Connor*, 490 U.S. 386, 395 (1989); *Saunders v. Duke*, 766 F.3d 1262, 1267 (11th Cir. 2014).

Here, every factor weighs in favor of the unreasonableness of Deputy Castoro’s conduct. **First**, the alleged crimes were minor or non-existent. There is no law against taking a ball out of a roadway ditch, swearing at someone, or throwing a ball in his or her direction. Deputy

Castoro responded to a call-in which Ms. Bledsoe reported that two boys had taken something out of her yard then swore at her. Doc. 44-2 at 5. This was the full extent of the evidence of criminal conduct in this case.

Even if Ms. Bledsoe's call created probable cause to believe the boys had committed trespass and theft, these crimes are minor and nonviolent. This Court has repeatedly held that less force is appropriate when the crime at issue is a misdemeanor, even when the misdemeanor is violent. *Richmond*, 47 F.4th at 1183. For example, misdemeanor battery—a violent crime—is still a minor crime for purposes of *Graham* analysis. *Id.* Criminal obstruction, disorderly conduct, the refusal to obey orders, resisting arrest without force—none of these “connote a level of dangerousness that would justify a greater use of force.” *Stryker v. City of Homewood*, 978 F.3d 769, 774 (11th Cir. 2020) (quoting *Fils v. City of Aventura*, 647 F.3d 1272, 1288 (11th Cir. 2011)).

Because the suspected crimes in this case were minor and nonviolent, the level of force employed—beginning with Deputy Castoro's sudden and unannounced lunge to forcibly wrench H.S.'s hands from his pockets, and ending with a face-first body slam onto the pavement—was disproportional to the circumstances.

Second, viewed in the light most favorable to H.S., his actions did not pose an immediate threat to the safety of Deputy Castoro or anyone else. As an initial matter, the District Court erred in concluding that Deputy Castoro’s alleged belief—that H.S. was grabbing something—was justified because a pocket knife was recovered afterward. Reasonableness here is not judged with the benefit of hindsight. *Crenshaw v. Lister*, 556 F.3d 1283, 1291 (11th Cir. 2009) (quoting *Graham*, 490 U.S. at 396).

Even if Deputy Castoro did believe that H.S. was grabbing something in his pocket, he could not have known what the object was until after he body-slammed H.S. There is no reason to believe that a child in a low-crime residential area, suspected of taking an item out of a yard in broad daylight, would have a weapon or would attempt to use a weapon under the circumstances. In any case, a closed pocket knife is not a weapon under Florida law. Fla. Stat. § 790.001(13) (2018) (excluding pocket knives, butter knives, and plastic knives from the definition of “weapon”).

Taken in the light most favorable to H.S., the evidence showed that when Deputy Castoro lifted H.S. to body-slam him, he still had no idea what was in H.S.’s pocket. The fact that a closed pocket knife fell out of

H.S.'s pocket when he hit the ground does not retroactively justify Deputy Castoro's use of force. The District Court's reasoning in that regard is unsound. *Crenshaw*, 556 F.3d at 1291 (11th Cir. 2009) (quoting *Graham*, 490 U.S. at 396).

The District Court also erred in unconditionally crediting Deputy Castoro's version of events. Although neither H.S. nor R.S. can "personally rebut" Deputy Castoro's claim that he saw H.S. grabbing something in his pocket, under these specific circumstances a jury is free to disbelieve the claim. *Brown v. Nocco*, 788 Fed. App'x 669, 674–75 (11th Cir. 2019). As this Court has repeatedly held, in determining whether to credit an officer's story for purposes of qualified immunity, the story must be reviewed for consistency "with other known facts." *Hinson*, 927 F.3d at 1118. If other evidence "tend[s] to discredit the police officer's story," a court is not required to "simply accept the officer's account." *Id.*

Here, the testimony of H.S. and R.S. tends to discredit the bulk of Deputy Castoro's story. According to the boys, H.S. never pulled a knife, Deputy Castoro never told H.S. to drop the knife, H.S. never shouted "No!" in response, there was no fight over a knife, and Deputy Castoro

did not try to “put” H.S. onto the ground as he dangled from Deputy Castoro’s hand clinging to his knife.

Instead, the testimony of H.S. and R.S. shows that Deputy Castoro became enraged when H.S. refused to remove his hands from his pockets, tried to take them out himself, then when H.S. struggled against Deputy Castoro’s attempts to wrench his hands behind his back, Deputy Castoro lifted H.S. up by the waist and forcibly slammed him face-first down into the pavement. Only then did a closed pocket knife tumble out of H.S.’s front pocket. Doc. 44-2 at 5; Doc. 44-6 at 61; Doc. 44-3 at 28, 31; Doc. 44-5 at 53, 63.

Because Deputy Castoro’s testimony directly conflicts with the other evidence on key points, a jury is free to believe or not believe his version of the facts—including his testimony that he thought H.S. was grabbing something in his pocket and therefore approached him to begin a disarming procedure. *Hinson*, 927 F.3d at 1118.

Third, there is no evidence that H.S. attempted to flee, and his brief resistance to Deputy Castoro’s surprising and unprovoked use of force does not justify the extreme level of force Deputy Castoro used against him. While there may be a trend in the caselaw showing that a greater

level of force is permissible against a suspect resisting arrest, cases also hold that a high level of force is not warranted against a struggling suspect if the suspect has not been informed that he or she is under arrest. For example, this Court in *Howard v. Hudson*, 613 Fed. App'x 866, 869 (11th Cir. 2015), held that a police chief used excessive force in dragging an adult woman through a police station in his attempt to arrest her, even though she “struggled” against his attempts to restrain her. As an initial matter, this Court reasoned that there was no need to “drag her around roughly to detain her for a minor offense.” A key factor in the finding of excessiveness, however, was that the officer attempted to restrain the suspect “before telling her that she was under arrest.” *Id.* Under those circumstances, this Court reasoned, the suspect’s struggle was “arguably to avoid the unlawful force unleashed on her.” *Id.*

Other circuits have employed the same reasoning. *See, e.g., McWilliams v. Dinapoli*, 40 F.4th 1118, 1128–29 (10th Cir. 2022) (“[A] reasonable officer ‘should, at a minimum, have ordered [the plaintiff] to submit to an arrest or used minimal force to grab him while informing him that he was under arrest’ before using greater force.”); *Atkins v. Twp. of Flint*, 94 Fed. App'x 342, 349 (6th Cir. 2004) (upholding denial of

qualified immunity against excessive-force claim when “(1) [the plaintiff] was not told that he was under arrest, (2) he did not start the physical altercation, and (3) there was no reason not to tell him he was under arrest.”); *Adams v. Metiva*, 31 F.3d 375, 382 (6th Cir. 1994) (denial of qualified immunity claim based in part on dispute over question “whether defendant was told he was under arrest”); *Hawkins v. Carmean*, 562 Fed. App’x 740, 744 (11th Cir. 2014) (“Carmean’s use of force was sudden, surprising, and unprovoked. . . . We reiterate that Hawkins was never told that she was under arrest . . .”).

Here, in the light most favorable to H.S., Deputy Castoro repeatedly told H.S. to remove his hands from his pockets, and when he repeatedly refused, Deputy Castoro grabbed him without warning and attempted to wrench his H.S.’s hands behind his back. This use of force was “sudden, surprising, and unprovoked,” because H.S. “was never told that [he] was under arrest.” *Hawkins*, 562 Fed. App’x at 744. Like in *Flint, supra*, H.S. was not told he was under arrest, he did not start the physical altercation, and there was no reason not to tell him he was under arrest. Under these circumstances, H.S.’s brief struggle was “arguably to avoid the unlawful force unleashed on [him].” *Hudson*, 613 Fed. App’x at 866;

see also Patel v. City of Madison, Alabama, 959 F.3d 1330, 1340 (11th Cir. 2020) (“[E]ven if we assume that it was reasonable for Parker to interpret Patel’s slight movements as resistance or flight, those minor transgressions do not mean that the force allegedly used was a constitutionally permissible response, or that Parker is entitled to qualified immunity.”).

Fourth, for similar reasons, there was no justification for employing force at all. At worst, both children were suspected of nonviolent misdemeanors—trespassing or theft of yard items in broad daylight. Deputy Castoro apparently did not intend to arrest the children for these alleged crimes, as shown by the fact that R.S. was never arrested. From the testimony of H.S. and R.S., a reasonable juror could conclude that Deputy Castoro’s sole reason for grabbing H.S. was that H.S. refused to remove his hands from his pockets, angering Deputy Castoro, whose face had turned red. *See, e.g., Hudson*, 613 Fed. App’x at 868 (“Howard provided a first-hand account that Hudson became irate, twisted Howard’s arm, and ‘drug’ her through the office . . . before telling her she was under arrest.”). The sole justification for body-slammng H.S. was that H.S. resisted his hands being wrenched behind his back. But the

record shows that Deputy Castoro never told H.S. to put his hands behind his back, and never told H.S. that he was being placed under arrest. As this Court reasoned in *Hudson* and *Patel*, a suspect's resistance does not necessarily mean that the force used "was a constitutionally permissible response." *Patel*, 959 F.3d at 1340.

A reasonable jury could infer that Deputy Castoro's use of extreme force went well beyond what was reasonably necessary to handcuff H.S., and that it was instead intended to punish H.S. for his disobedience. In other words, a reasonable jury could infer that there was no legitimate law enforcement purpose for the extreme use of force. *Mercado v. City of Orlando*, 407 F.3d 1152, 1158–61 (11th Cir. 2005) (citing *Lee v. Ferraro*, 284 F.3d 1188, 1198 (11th Cir. 2002)).

Fifth, the relationship between the justification for the force and the force employed was out of proportion. The boys were suspected of minor, nonviolent misdemeanors. Deputy Castoro below did not deny that Ms. Bledsoe had merely asked the police to "scare" the boys. Doc. 56 at 3. These alleged minor crimes, moreover, were perpetrated by children. Deputy Castoro asked them to call their parents. Presumably, that would have been the end of it, had Deputy Castoro not lost his

temper at H.S.'s childish obstinacy. It is not reasonable for adults to respond to refractory children by assaulting them to the extent that they suffer broken bones and brain damage.

As in *Hudson*, where this Court reasoned that there was no need for an “irate” police chief to “contort [the suspect’s] arm or drag her around roughly to detain her for a minor offense,” here there was no need for an enraged Deputy Castoro to grab H.S. by his waist, lift him up in the air, then forcibly body slam him face-first into the street pavement—all simply to “detain [him] for a minor offense.” *Id.* Such force is especially disproportionate when, like in *Hudson*, H.S. was never even informed that he was under arrest. *Hudson*, 613 Fed. App’x at 866; *see also Fils*, 647 F.3d at 1288 (“[R]esisting arrest without force does not connote a level of dangerousness that would justify a greater use of force.”).

Here, there is an even further distance between the use of force and its justification than in *Hudson*: the difference between the ages and builds of H.S. and Deputy Castoro. Deputy Castoro was powerful man just a few years out of police academy training. At five foot ten inches, he weighed 250 pounds. He was a former offensive and defensive linebacker who still went to the gym. Doc. 44-1 at 7-8; Doc. 42 at 3. He was described

by R.S.'s mother as fit and muscular. Doc. 45-1 at 18. H.S. by contrast, was a skinny five foot eight inches, weighing 120 pounds. Doc. 44-4 at 2. He had just turned thirteen years old. Doc. 44-6 at 24.

These facts tend to show that Deputy Castoro's use of force was disproportionate to the need. A reasonable jury could find that a fit, muscular, 250-pound former linebacker does not reasonably need to employ a bone-breaking body-slam to subdue a 120-pound, 13-year-old child suspected of a nonviolent misdemeanor. *See, e.g., Richmond*, 47 F.4th at 1183 ("We further note that Richmond was just thirteen years old, considerably smaller than Badia, and standing in a middle school lobby with his mother."); *Patel*, 959 F.3d at 1335 ("At the time of the incident, Patel weighed about 115 pounds, and [Officer] Parker weighed roughly 150 pounds."). Thus, a reasonable jury could find that the purpose of the body-slam was not simply to subdue H.S., but to punish him for his disobedience. Such a finding would mean that Deputy Castoro's conduct was not reasonably in furtherance of a legitimate law enforcement objective. *Richmond*, 47 F.4th at 11

Sixth, the severity of the injury is also grossly disproportionate to the crimes alleged. The body-slam broke bones in H.S.'s face, the right

side of his skull, the base of his skull, his jaw, and his sinuses. Doc. 44-7. The impact also broke H.S.'s collar bone, his right shoulder blade, and three ribs. He suffered a subdural hematoma or a brain bleed. Doc. 44-7. H.S. has suffered permanent brain injuries from the body-slam, which R.S. said was "like a wrestling move." Doc. 44-3 at 31. Since the incident, H.S. has suffered frequent headaches, memory problems, and behavioral issues. Doc. 44-5 at 77-82. His mother testified that he has never been "the same person," and doctors have told her that this is likely the result of his brain injury. Doc. 44-3 at 36-37. He has permanent injuries from his fractures. Doc. 44-6 at 38. Doctors have informed H.S.'s mother that because of his fractured sinus cavity, he will always experience pain when flying or diving. Doc. 44-6 at 38.

Here, Deputy Castoro did not merely use his far-superior strength to handcuff, armbar, or leg sweep H.S. In other words, he did not use *de minimis* force to detain a child suspected of minor nonviolent misdemeanors. Instead, he lifted H.S. up into the air by his waist, then forcibly slammed him face-first down into the pavement. Taken in the light most favorable to H.S., Deputy Castoro did exactly as he intended to do, and that intent encompasses the injuries that were reasonably

certain to result from the conduct. *United States v. Moran*, 57 F.4th 977, 981 (11th Cir. 2023) (“[A] person who acts . . . intends a result of his act . . . when he knows that the result is practically certain to follow from his conduct, whatever his desire may be as to that result.” (quoting *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 445 (1978))). As this Court has reasoned, “The human skull is a relatively hearty vessel for the brain, but it will generally not fare well in a contest with hardened cement.” *Saunders*, 766 F.3d at 1269. A jury could find that Deputy Castoro intended the injuries as much he intended as the body-slam that caused them.

Thus, all six factors weigh in favor of a finding that Deputy Castoro’s force was excessive, disproportionate, and not reasonably in furtherance of a legitimate law enforcement objective.

But Deputy Castoro’s force was not merely excessive. It violated clearly established law, such that no reasonable officer in Deputy Castoro’s position would have employed the same level of force. A plaintiff can demonstrate this prong in one of three ways. First, by pointing to a materially similar case that has already decided the same exact issue. Second, by showing that broad but clearly established

principles control the novel facts of the situation. Or third, by establishing that the officer's conduct was obviously prohibited by the Fourth Amendment, such that no reasonable officer would have believed the force to be lawful. *Ingram v. Kubik*, 30 F.4th 1241, 1252 (11th Cir. 2022); *Richmond*, 47 F.4th at 1185.

Deputy Castoro's use of force violated clearly established laws under the second and third prongs: his conduct was governed by clearly established principles, and his conduct was "so far beyond the hazy border between excessive and acceptable force that [Deputy Castoro] had to know he was violating the Constitution even without caselaw on point." *Mercado*, 407 F.3d at 1161 (quoting *Willingham v. Loughnan*, 321 F.3d 1299, 1303 (11th Cir. 2003)).

Clearly established principles prohibited Deputy Castoro's conduct. For example, this Court has "repeatedly held that less force is appropriate when the crime at issue is a misdemeanor, and the suspect does not pose a threat or attempt to flee." *Richmond*, 47 F.4th at 1183. This Court has also repeatedly held that "resisting arrest without force does not connote a level of dangerousness that would justify a greater use of force." *Stryker*, 978 F.3d at 774 (quoting *Fils*, 647 F.3d at 1288). This

Court has also reasoned that a plaintiff may be justified in struggling against the use of force when the plaintiff has not been told that he or she is under arrest. *Hudson*, 613 Fed. App'x at 868. Each of these cases provides a clearly established principle demonstrating that Deputy Castoro's use of extreme force was disproportionate.

In any event, Deputy Castoro's actions were so disproportionate that they were obviously prohibited by the Fourth Amendment. It would have been clear to any reasonable officer in Deputy Castoro's position that body slamming a child onto the pavement—for briefly resisting a sudden, surprising, and unannounced use of force—went “well beyond the hazy border between excessive and acceptable force.” *Mercado*, 407 F.3d at 1161. Taken in the light most favorable to H.S., Deputy Castoro's use of force went well beyond what was required to detain H.S. Instead, the level of force employed—smashing the child's face into the pavement and breaking his skull, face, neck, ribs, and shoulder—could reasonably be viewed as punishment for H.S.'s disobedience, rather than conduct in furtherance of a legitimate law enforcement goal. As this Court has held, “The obvious clarity test may be met when an officer's conduct is over-

reactive and disproportionate relative to the response of the apprehended person.” *Richmond*, 47 F.4th at 1185.

Finally, viewing the record in the light most favorable to H.S., it can be inferred that Deputy Castoro himself, and two other deputies, did in fact conclude that his use of force was patently unreasonable, such that they felt the need to create a pretext for it. Resolving every issue of credibility in favor of H.S., a jury could conclude that Deputy Castoro falsified his version of the incident, after which two other deputies bullied R.S. into falsifying his written statement to corroborate Deputy Castoro’s account. For example, in R.S.’s second statement, Deputy Castoro did not “tackle” H.S. Instead, he “put [H.S.] on the ground.” Doc. 44-3 at 42. This new wording is similar to the language in Deputy Castoro’s report, in which he claimed to have “escor[t]ed [H.S.] to the ground.” Doc. 44-2 at 5. And in R.S.’s second statement, he wrote that H.S. pulled a knife and that there was a fight over the knife. But R.S. and his mother later made clear that the second statement was a lie based on the police’s version of events. Thus, it appears that at least three deputies believed that if no knife was pulled and there was no knife fight, then Deputy Castoro’s

bone-breaking body-slam was a patently unreasonable response to a child's willfulness.

Deputy Castoro acted unreasonably in body-slammng H.S. into the pavement so hard that he broke bones throughout the entire upper half of H.S.'s body, simply because H.S. briefly resisted Deputy Castoro's sudden and unannounced attempt to wrench H.S.'s hands from his pocket and place them behind his back. No *reasonable* officer would have employed such an extreme use of force under those circumstances. Therefore, Deputy Castoro was not entitled to qualified immunity.

CONCLUSION

This Court should reverse and remand for further proceedings.

May 18, 2023

/s/ Samuel Alexander

Samuel Alexander
Fla. Bar No. 1007757
Alexander Appellate Law P.A.
120 S Woodland Blvd Suite 200
DeLand, FL 3274
(407) 907-4305
samuel@alexanderappeals.com

CERTIFICATE OF COMPLIANCE

1. Type-Volume

This document complies with the word limit of Federal Rule of Appellate Procedure 32(A)(7)(b), because, excluding the parts of the document exempted by Rule 32(f), this document contains 6,450 words.

2. Typeface and Type-Style

This document complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word's 14-point font Century Schoolbook.

May 18, 2023

Samuel Alexander
Alexander Appellate Law P.A.
120 S Woodland Blvd Suite 200
DeLand, FL 3274
(407) 907-4305
samuel@alexanderappeals.com
Fla. Bar No. 1007757
*Attorneys for AM Grand Court
Lakes LLC and AM 280 Sierra
Drive LLC*

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2023, I filed the original of this brief with the clerk of the court via CM/ECF and U.S. priority mail.

I further certify that on May 18, 2023, I served Appellee, through CM/ECF and U.S. priority mail at:

Summer M. Barranco
PURDY, JOLLY, GIUFFREDA, BARRANCO & JISA, P.A.
2455 E Sunrise Blvd, St. 1216
Ft. Lauderdale, FL 3330
summer@purdylaw.com
isabella@purdylaw.com

May 18, 2023

/s/ Samuel Alexander

Samuel Alexander
Alexander Appellate Law P.A.
120 S Woodland Blvd Suite 200
DeLand, FL 3274
(407) 907-4305
samuel@alexanderappeals.com
*Counsel for H.M., individually
and as Guardian for H.S. an
Unemancipated Minor*