No. 26-1461

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DON R. CLARK JR.; ADONIS H. CLARK; SHERRIE CLARK-TORRENCE; ASHLEY BOUREIMA MOUROU; A.C., A MINOR, BY AND THROUGH HER MOTHER AND NEXT FRIEND, NECOLE FISHER, INDIVIDUALLY AND AS THE SURVIVING CHILDREN OF DECEDENT, DON CLARK, SR.,

Plaintiffs-Appellants,

v.

CITY OF ST. LOUIS, MISSOURI; NICHOLAS MANASCO; THOMAS STRODE,

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Missouri, No. 4:21-cv-788-JMD,
Honorable Joshua M. Divine

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

On the night of February 21, 2017, a City of St. Louis SWAT team executed a no-knock search warrant at the home of Don Ray Clark, Sr.—a 63-year-old, partially blind, hard-of-hearing, disabled veteran with no criminal convictions. Within ten minutes of arriving on Mr. Clark's street, officers breached Mr. Clark's door, deployed a flash-bang diversionary device, and Defendant-Appellee Nicholas Manasco shot Mr. Clark seven to eight times in fewer than five seconds, killing Mr. Clark in his own home.

Mr. Clark's surviving children sued Defendant-Appellee Thomas Strode, who procured the warrant and authorized the SWAT entry; Officer Manasco, who fired the fatal shots; and Defendant-Appellee City of St. Louis, Missouri under 42 U.S.C. § 1983 and Missouri law. The district court granted summary judgment to Defendants-Appellees on all counts.

This appeal involves clearly established Fourth Amendment principles applied to disputed material facts the district court improperly resolved against the non-movants. Counsel therefore submits that oral argument would significantly aid the decision process. Fed. R. App. P. 34(a)(2). Counsel respectfully requests 20 minutes per side.

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JURISDICTIONAL STATEMENT

On June 30, 2021, Plaintiffs-Appellants Don R. Clark Jr.; Adonis H. Clark; Sherrie Clark-Torrence; Ashley Boureima Mourou; A.C., a minor, by and through her mother and next friend, Necole Fisher, individually and as the surviving children of decedent, Don Clark, Sr. ("Plaintiffs" or "Mr. Clark's children"), filed an action pursuant to 42 U.S.C. § 1983 against Defendants-Appellees Nicholas Manasco, Thomas Strode, and the City of St. Louis, Missouri ("Defendants") in the United States District Court for the Eastern District of Missouri. The district court had jurisdiction under 28 U.S.C. § 1331.

On February 13, 2026, the district court granted Defendants' motion for summary judgment under Federal Rule of Civil Procedure 56(a). On March 13, 2026, Mr. Clark's children timely appealed. This Court has jurisdiction under 28 U.S.C. § 1291.

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STATEMENT OF ISSUES

1. Whether the district court erred in granting summary judgment to Defendant Thomas Strode on Count I of Plaintiffs' Complaint, which alleged that Defendant Strode engaged in an unlawful search in violation of the Fourth Amendment.

- *Mueller v. Tinkham*, 162 F.3d 999 (8th Cir. 1998)
- *United States v. Clapp*, 46 F.3d 795 (8th Cir. 1995)
- *United States v. Real Property Located at 3234 Washington Ave. N., Minneapolis, Minnesota*, 480 F.3d 841 (8th Cir. 2007)
- *Richards v. Wisconsin*, 520 U.S. 385 (1997)

2. Whether the district court erred in granting summary judgment to Defendant Thomas Strode on Count III of Plaintiffs' Complaint, which alleged that Defendant Strode unlawfully authorized a SWAT team in violation of the Fourth Amendment.

- *Z.J. ex rel. Jones v. Kansas City Bd. of Police Comm'rs*, 931 F.3d 672 (8th Cir. 2019)
- *Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179 (10th Cir. 2001)
- *Est. of Smith v. Marasco*, 318 F.3d 497 (3d Cir. 2003)

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- *Alexander v. City & Cnty. of San Francisco*, 29 F.3d 1355 (9th Cir. 1994)

3. Whether the district court erred in granting summary judgment to Defendant Thomas Strode on Count VIII of Plaintiffs' Complaint, which alleged a wrongful death claim under Mo. Rev. Stat. § 537.080.

- *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443 (Mo. 1986)
- *State ex rel. Love v. Cunningham*, 689 S.W.3d 489 (Mo. 2024) (en banc)

4. Whether the district court erred in granting summary judgment to Defendant Nicholas Manasco on Count IV of Plaintiffs' Complaint, which alleged that Defendant Manasco used excessive force in violation of the Fourth Amendment.

- *Partridge v. City of Benton*, 70 F.4th 489 (8th Cir. 2023)
- *Loch v. City of Litchfield*, 689 F.3d 961 (8th Cir. 2012)

5. Whether the district court erred in granting summary judgment to Defendant City of St. Louis, Missouri on Count VI of Plaintiffs' Complaint, which alleged municipal liability for Defendant City of St. Louis's policy and custom of indiscriminately and unreasonably requesting SWAT to execute virtually every drug-related search warrant and failure to train and

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supervise its employees about the reasonable deployment of SWAT in executing search warrants.

- *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978)
- *Z.J. ex rel. Jones v. Kansas City Bd. of Police Comm'rs*, 931 F.3d 672 (8th Cir. 2019)

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STATEMENT OF THE CASE

On the night of February 21, 2017, a St. Louis Metropolitan Police Department SWAT team executed a no-knock search warrant at the home of Don Ray Clark, Sr., a 63-year-old, partially blind, hard-of-hearing, disabled veteran with no criminal convictions. App. 2275; R. Doc. 137-5; App. 2780; R. Doc. 137-58; App. 2418; R. Doc. 137-29, at 1. Defendant Detective Strode obtained the warrant based on an affidavit resting almost entirely on uncorroborated tips from paid confidential sources; no controlled buy was ever made at the residence. App. 2873; R. Doc. 137-76; App. 2467; R. Doc. 137-32, at 44. Within ten minutes of arriving on the street, the team breached Mr. Clark's door, deployed a flash-bang device, and Defendant Officer Manasco shot Mr. Clark seven or eight times in fewer than five seconds. App. 1847-48; R. Doc. 136-22, at 131-32.

I. Factual Background

A. Don Ray Clark, Sr.

Mr. Clark, born in 1953, was a veteran who previously owned a private security company. App. 2418; R. Doc. 137-29, at 1; App. 1502; R. Doc. 136-3, at 7. He had never been convicted of a crime. App. 2780; R. Doc. 137-58; App. 2812-29; R. Doc. 137-71.

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By 2017, Mr. Clark required significant care due to numerous ailments. He had arthritis in both shoulders and legs and diabetes that caused his limbs to swell, leaving him unable to lift his arm over his head, and he had used a cane for several years. App. 2418-19; R. Doc. 137-29, at 1-2; App. 2613; R. Doc. 137-33, at 1; App. 1699, 1701; R. Doc. 136-6, at 33, 35. Mr. Clark needed help to wash his laundry, could not lift laundry detergent, and could barely grip a steering wheel. App. 1702; R. Doc. 136-6, at 36; App. 2613; R. Doc. 137-33, at 1. His eyesight was so poor he "couldn't really make out who his grandkids were," App. 1773; R. Doc. 136-15, at 33, and his hearing so impaired that family had to "yell" to be heard and turn the television up to extreme volume. App. 1773; R. Doc. 136-15, at 33; App. 1700; R. Doc. 136-6, at 34; *see also* App. 1693-94; R. Doc. 136-5, at 9-10; App. 2778; R. Doc. 137-57, at 1. Four days before he was killed, his medical records reflected gait disturbance, joint swelling, muscle weakness, and back pain. App. 2263-66; R. Doc. 137-2, at 2-5. His homecare assessment found him totally dependent on others for housework and transportation, with two or more falls in the prior thirty days, an unsteady gait, and difficulty moving to a standing position. App. 2706-09; R. Doc. 137-48, at 4-7. His son Don Clark, Jr. visited

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"every day, or almost every day" as his caretaker. App. 2613; R. Doc. 137-33, at 1.

B. Mr. Clark's Home

Mr. Clark moved to the 4000 block of California Avenue in 2014. App. 2831; R. Doc. 137-72, at 2. His youngest daughter often stayed in the home and kept her own bedroom and toys there. App. 2333-36; R. Doc. 137-19, at 17-20; App. 2811; R. Doc. 137-70. He owned a dog that was frequently in the backyard. App. 2831; R. Doc. 137-72, at 2; App. 2336; R. Doc. 137-19, at 20.

Three witnesses with regular access to the home—Don Clark, Jr., landlord Robert Mirbaha (who collected rent monthly), and home health nurse Cathie Hazelwood (who visited weekly and had access to drawers and cabinets)—uniformly testified they never saw any visitors aside from family, the landlord, and the aide; never observed drug paraphernalia, illegal drugs, or the smell of marijuana; and never knew Mr. Clark to be involved with drugs. App. 2613, 2615; R. Doc. 137-33, at 1, 3; App. 2831-32; R. Doc. 137-72, at 2-3; App. 2418-20; R. Doc. 137-29, at 1-3.

Mr. Clark worried about his safety and the safety of visitors to his home. App. 2420-21; R. Doc. 137-29, at 3-4. Mr. Clark himself had called 911 to report neighborhood crime, App. 2701-02; R. Doc. 137-47 at 1-2, and posted

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a "No Trespassing" sign on his front porch. App. 2796; R. Doc. 137-61. He told others that he wanted to move to a different neighborhood, but he could not afford to do so. App. 2420; R. Doc. 137-29, at 3.

C. Strode's Investigation

Strode began investigating the 4000 block of California in May 2016. App. 2456-57; R. Doc. 137-32, at 33-34. He claims to have used two confidential informants and three confidential sources; the latter are undocumented, informal tipsters not subject to background checks. App. 2469; R. Doc. 137-32, at 46; App. 1832; R. Doc. 136-21, at 126. Strode and the commander of the City of St. Louis Metropolitan Police Department ("SLMPD") special operations unit acknowledged that it was "likely" that the informants used in this investigation were paid per individual they identified. App. 2477, 2479; R. Doc. 137-32, at 54, 56; App. 1763; R. Doc. 136-12, at 53.

No controlled buy was ever made at Mr. Clark's home—or anywhere on the 4000 block. App. 2467; R. Doc. 137-32, at 44. Strode received no information about Mr. Clark until November 2016, six months into the investigation. App. 2874; R. Doc. 137-76, at 2; App. 2462; R. Doc. 137-32, at 39. Of five to six weeks of intermittent surveillance, only during a single

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week in January 2017 did Strode allegedly observe any foot or vehicle traffic at Mr. Clark's home, and even then he saw nothing illicit. App. 2483-84, 2492-93, 2495; R. Doc. 137-32, at 60-61, 69-70, 72.

The language attributed to confidential sources in Strode's affidavit was that the sources were "aware" Mr. Clark sold marijuana and had seen him on the block—not that anyone had personally witnessed Mr. Clark buying, selling, or storing narcotics. App. 168; R. Doc. 127-1, at 16. Strode did not mention in the affidavit that Mr. Clark was disabled, walked with a cane, or had poor hearing and eyesight. App. 2497-98; R. Doc. 137-32, at 74-75. Strode asserted in the affidavit that "the targets of the investigation are known to be armed narcotic traffickers, many of whom have a violent history." App. 171; R. Doc. 127-1, at 19. Strode later admitted that he had "no information" that Mr. Clark was violent. App. 2455, 2524, 2528; R. Doc. 137-32, at 32, 101, 105.

Although Strode's affidavit in support of his eventual search warrant application recited a list of arrests reaching back to the 1970s, REJIS records show prosecutors refused to issue charges in each instance and that Mr. Clark's most recent arrest occurred in 2003—a fact Strode admitted he knew when he sought the warrant. App. 2812, 2818, 2820, 2822, 2824; R. Doc.

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137-71, at 1, 7, 9, 11, 13; App. 2780; R. Doc. 137-58; App. 2527-28; R. Doc. 137-32, at 104-05. Mr. Clark was the only individual listed in the affidavit without a mugshot and the only one without a criminal conviction. App. 2459, 2463-64; R. Doc. 137-32, at 36, 40-41; App. 2873; R. Doc. 137-76.

D. The Warrant Execution and Killing of Mr. Clark

Strode had no tactical background and was never on the SWAT team. App. 2431; R. Doc. 137-32, at 8. He nonetheless drafted the SWAT Operations Plan for Mr. Clark's home, omitting that Mr. Clark's daughter lived in the home, that Mr. Clark had a dog, and that Mr. Clark himself had called 911 to report neighborhood activities. App. 2275; R. Doc. 137-5; App. 2486-87, 2507-09; R. Doc. 137-32, at 63-64, 84-86; App. 2701-02; R. Doc. 137-47, at 1-2. SWAT executed warrants at two other addresses on the same block first, then re-stacked at Mr. Clark's home. App. 1821; R. Doc. 136-20, at 55. Records show the team's vans turned onto California Avenue at approximately 8:30 p.m. and the first 911 call about the shooting was placed at 8:40 p.m.—meaning SWAT exited the vans, executed two other warrants, restacked at Mr. Clark's home, breached the front door, and killed Mr. Clark in less than ten minutes. *Compare* App. 2293; R. Doc. 137-11, at 2 *with* App. 1882; R. Doc. 136-27.

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In their contemporaneous statements to the Force Investigations Unit, eleven SWAT officers in the stack stated that officers began to shout "POLICE" at the same time Officer Moore began to breach the door. App. 2299; R. Doc. 137-14, at 2 (Tesreau); App. 2294; R. Doc. 137-12, at 1 (Mueller); App. 2284; R. Doc. 137-7, at 1 (Becherer); App. 2287; R. Doc. 137-8, at 2 (Book); App. 2293; R. Doc. 137-11, at 2 (Jones); App. 2289; R. Doc. 137-9, at 2 (Busso); App. 2283; R. Doc. 137-6, at 2 (Allen); App. 2295; R. Doc. 137-13, at 2 (Seper); App. 2300; R. Doc. 137-15, at 1 (Wurm); App. 2302; R. Doc. 137-16, at 2 (Zwilling); App. 2291; R. Doc. 137-10, at 2 (Frigerio). Multiple officers confirmed in deposition that the announcement, breach, and flash-bang were essentially simultaneous. App. 1818, 1820-21; R. Doc. 136-20, at 52, 54-55; App. 1761; R. Doc. 136-12, at 24; App. 2431; R. Doc. 137-32, at 8; App. 1858-59; R. Doc. 136-24, at 92-93. The flash-bang—designed to impart a "concussive blast" that "stun[s]" occupants, App. 1277; R. Doc. 127-12, at 118—emits a bright light and a "really loud boom" that disorients people for five to ten seconds. App. 1834-36; R. Doc. 136-22, at 42-44.

Officer Becherer, third in the stack, testified that Defendant Manasco made the decision to enter Mr. Clark's home after he heard a shot—and that Manasco could have chosen not to enter. App. 1815, 1825-26; R. Doc. 136-20,

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at 49, 123-124. Defendants allege that Mr. Clark fired the shot. App. 150; R. Doc. 127 at 7. Officer Mueller, immediately behind Manasco, saw Mr. Clark and does not recall seeing Mr. Clark hold a gun; he explicitly stated he never saw Mr. Clark fire a gun. App. 1852-54; R. Doc. 136-23, at 32-34. Officer Moore likewise testified only that he "heard a pop"—not that he saw Mr. Clark fire. App. 1805; R. Doc. 136-18, at 77. Defendant Manasco fired seven or eight shots in fewer than five seconds, killing Mr. Clark. App. 1847-48; R. Doc. 136-22, at 131-32.[1]

E. The Compromised Scene

After Mr. Clark fell, Officer Becherer moved the gun he allegedly held—before any evidence technicians arrived, without photographing its location, and without anyone else documenting where it had been. App. 1812, 1814; R. Doc. 136-20, at 8, 10. Becherer could not recall a single other case in

[1] Mr. Clark's children's expert explained that the affidavit lacked any substantiated basis for a high-risk warrant at Mr. Clark's home; that SWAT should have reverted to a "tactical pause position" rather than entered upon hearing gunfire; and that officers should have considered a safer tactical solution such as a call-out or "breach and hold" given the prior executions on the same block had compromised any element of surprise. App. 1742, 1744-47, 1749; R. Doc. 136-9, at 4, 6-9, 11. He concluded that the SWAT team's tactical positioning was "outside of nationally recommended and generally acceptable practices." App. 1744; R. Doc. 136-9, at 6.

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which he moved a weapon before it was documented. App. 1828; R. Doc. 136-20, at 149. Multiple officers then handled the gun before it was placed in an unmarked paper bag, App. 2273; R. Doc. 137-4, at 1; App. 2899; R. Doc. 137-80, and the crime lab found "[n]o identifiable latent prints." App. 2759; R. Doc. 137-54, at 1. Sergeant Jones also collected a single shell cartridge from inside Mr. Clark's home and placed it in an unmarked paper bag on the front porch before the Force Investigations Unit ("FIU") or Evidence Technician Unit ("ETU") arrived. App. 2899; R. Doc. 137-80; App. 2273; R. Doc. 137-4. Strode himself admits he likely carried a box into Mr. Clark's home. App. 2428-29; R. Doc. 137-32, at 5-6.

The physical evidence contradicts Defendant Manasco's account. Manasco testified Mr. Clark held the gun in a standard two-handed shooting position with arms extended, App. 1845-46; R. Doc. 136-22, at 129-30, but Defendants' own ballistics expert, Julie Davis, testified the Glock recovered ejects cartridges "out to the right" and rear. App. 1781-82; R. Doc. 136-16, at 66-67. The one shell cartridge recovered was photographed in front of and to the left of Mr. Clark's head. App. 2805-06; R. Doc. 137-67, at 1-2. The medical examiner's toxicology screen on Mr. Clark came back completely negative. App. 2422; R. Doc. 137-30. Dispatch officials repeatedly failed to get SWAT

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to call out the FIU and ETU; as one dispatcher observed, "this was all like hush, hush … there was not much said on the air—at all." App. 1499; R. Doc. 136-1; App. 1881; R. Doc. 136-26; App. 1500; R. Doc. 136-2. A 2018 SLMPD internal audit specifically critiqued this scene, noting, among other things, that "SWAT for some reason seizes the gun" and that "Engelhardt only interviews the shooter, officer #1. Numerous other officers are in the home but they are never interviewed." App. 2273-74; R. Doc. 137-4, at 1-2.

F. The City's Pattern and Practice

SLMPD Special Order 8-02 requires SWAT to execute any warrant as "high risk" if any one of seven criteria is met, including "the mention of weapons … in the target residence" and "any other intelligence information received and/or situation … where the investigating unit feels that they cannot safely execute the search warrant." App. 1797; R. Doc. 136-17, at 13. The City's designee testified that any "search warrants involv[ing] drugs" automatically satisfies the policy: drug allegations alone "conclusively show the kind of danger that's sought to be responded to through this high-risk designation and the use of SWAT." App. 556, 558-59; R. Doc. 127-8, at 70, 72-73. Lt. Aubuchon concurred: "narcotics is an inherently violent profession[]

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… that would apply to every search warrant involving narcotics." App. 1764; R. Doc. 136-12, at 82.

In practice, SLMPD officers routinely ask SWAT to execute warrants. Strode himself testified that, after he learned about no-knock warrants, he requested no-knock execution as a matter of course. App. 2432-33; R. Doc. 137-32, at 9-10.

Plaintiffs-Appellants have identified at least 19 SLMPD warrants between 2015 and 2017, including those sought by Strode for this case, executed by SWAT as no-knock raids using rams and flash-bangs even though the affidavits did not request SWAT, no-knock, or high-risk treatment, alleged no illegal firearm possession, and contained no violent criminal history. *See, e.g.*, App. 2409; R. Doc. 137-27 & App. 2960; R. Doc. 137-86 (Robin); App. 2363; R. Doc. 137-23 & App. 2913; R. Doc. 137-82 (Osceola); App. 2356; R. Doc. 137-21 & App. 2900; R. Doc. 137-81 (S. 59th); App. 2385; R. Doc. 137-24 & App. 2923; R. Doc. 137-83 (Nebraska); App. 2397; R. Doc. 137-25 & App. 2933; R. Doc. 137-84 (Grand); App. 2403; R. Doc. 137-26 & App. 2940; R. Doc. 137-85 (Highland); App. 2363; R. Doc. 137-22 & App. 2834; R. Doc. 137-73 (Bamberger); App. 2764; R. Doc. 137-55 & App. 2770; R. Doc. 137-56 (St. Ferdinand); App. 2670; R. Doc. 137-43 (Clara); App. 2781; R.

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Doc. 137-59 & App. 2788; R. Doc. 137-60 (Kingshighway); App. 2981; R. Doc. 137-89 & App. 2986; R. Doc. 137-90 (Maffitt); App. 2968; R. Doc. 137-87 & App. 2973; R. Doc. 137-88 (Miami); App. 2733; R. Doc. 137-51 & App. 2749; R. Doc. 137-53 (Newhouse); App. 2727; R. Doc. 137-50 & App. 2739; R. Doc. 137-52 (21st Street); App. 2688; R. Doc. 137-45 & App. 2693; R. Doc. 137-46 (Minnesota); App. 1883; R. Doc. 155-29 & App. 2680; R. Doc. 137-44 (Keokuk); App. 2616; R. Doc. 137-34 & App. 2621; R. Doc. 137-35 (Ellis); App. 2847; R. Doc. 137-74 & App. 2853; R. Doc. 137-75 (E. Linton); App. 2651; R. Doc. 137-41 & App. 2656; R. Doc. 137-42 (Suburban Tracks).

SLMPD's own SWAT Unit Operational Manual requires that entry "be slow, safe, and in a methodical manner" using "flex tactics," with tactical entry as "the last course of action whe[n] all other means have been exhausted." App. 2892; R. Doc. 137-79, at 13. None of those directives was followed at Mr. Clark's home.

G. Procedural Background

Mr. Clark's children filed their 8-count Complaint against the City and 21 individual officers involved in the raid of Mr. Clark's home, including Defendants Manasco and Strode. App. 43; R. Doc. 1. After the district court's partial denial of Defendants' motions to dismiss in September 2022, App. 91;

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R. Doc. 71, the parties proceeded to discovery on Mr. Clark's children's remaining counts.

Defendants moved for summary judgment as to all claims under Federal Rule of Civil Procedure 56(a) and, on February 13, 2026, the district court granted Defendants' motion. On March 13, 2026, Mr. Clark's children timely appealed.

SUMMARY OF ARGUMENT

Don Ray Clark was a 63-year old father, grandfather, and veteran suffering from poor eyesight, hearing loss, and significant pain in his limbs. Mr. Clark's arms were consistently swollen such that he could barely raise his arms, and his condition required him to use a cane to walk. He rented a small, one-bedroom home on California Avenue in south St. Louis City where his young daughter would often spend the night. Given his condition, Mr. Clark's caretakers—his son, other family members, and his home healthcare provider—would visit him almost daily to offer care. Mr. Clark had seen crime in his neighborhood before, which had led him to call the police asking for help on multiple occasions.

In February 2017, Defendant Thomas Strode—a police officer and detective employed by Defendant City of St. Louis, Missouri—sought a

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search warrant for two neighboring houses on California Avenue, alleging the residents sold illegal drugs and stashed illegal drugs and firearms in their houses. Shortly after, Strode submitted a near identical warrant application adding Mr. Clark's residence. The allegations concerning Mr. Clark were vague assertions that he was involved in drug dealing, omitting critical details about Mr. Clark and his home. The warrants also dispensed with the knock-and-announce requirement. The day after a magistrate signed the warrants, Strode briefed and authorized a SWAT team to execute the no-knock raid. Late that evening, a stack of officers lined up outside Mr. Clark's home. After one officer broke down the door and another deployed a flash-bang diversionary device, Defendant Nicholas Manasco burst inside and shot Mr. Clark—who was not pointing a weapon and standing mere steps away from the bed where Mr. Clark slept so that his daughter could take the lone bedroom in the back of the house.

Together, these facts establish four independent violations of the U.S. Constitution or Missouri state law that the district court improperly resolved against Mr. Clark's children, the non-movants, on summary judgment.

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First, Strode violated long established precedent requiring "a warrant application to contain a truthful factual showing of probable cause." *Mueller v. Tinkham*, 162 F.3d 999, 1003 (8th Cir. 1998). Strode knowingly and recklessly recycled allegations against Mr. Clark's neighbors and included vague and false claims about Mr. Clark, demonstrating the lack of probable cause. With the false allegations removed, the warrant would not have issued—let alone a warrant dispensing with the knock-and-announce requirement under the separate and distinct standards outlined in *Richards v. Wisconsin*, 520 U.S. 385, 391 (1997) and this Court's clearly established precedent. *See United States v. Scroggins*, 361 F.3d 1075, 1081 (8th Cir. 2004). For these same reasons, Strode's conduct demonstrated bad faith such that the district court should have denied Strode's claim of official immunity against Plaintiffs-Appellants' wrongful death claim under Missouri law.

Second, Strode's decision to authorize SWAT to execute a no-knock warrant against an elderly man who Strode knew had no documented history of violence was an independent violation of the Fourth Amendment. As this Court confirmed in *Z.J. ex rel. Jones v. Kansas City Board of Police Commissioners*, a robust consensus of persuasive authority had long established by 2017 that "[i]t is *clear* the decision to send a SWAT team into

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a residence must be reasonable." 931 F.3d 672, 688 (8th Cir. 2019) (emphasis added) (citing *Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179, 1189–92 (10th Cir. 2001)). Here, with no individualized assessment of Mr. Clark's violence, Strode's decision was unreasonable and a clear violation of the Fourth Amendment.

Third, Manasco violated clearly established law that "[a] police officer may not seize an unarmed, nondangerous suspect by shooting him dead." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Plaintiffs offered evidence establishing a genuine dispute of material fact as to whether Mr. Clark pointed a gun at Manasco before the officer shot and killed him in his home without warning. Testimony from Defendants' own ballistics witness contradicts the self-serving testimony proffered by Defendants. The district court erred below by not allowing the question of whether Manasco exercised excessive force to go to the jury.

Fourth, the City of St. Louis is liable under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), for its policy and practice of authorizing SWAT deployments without conducting an individualized assessment of reasonableness. The City employs a blanket policy allowing authorization of SWAT without individualized

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reasonableness determinations and Appellees' own testimony demonstrates this ubiquitous custom. This policy and practice was the "moving force" behind the aforementioned constitutional violations resulting in the killing of Mr. Clark. *Snider v. City of Cape Girardeau*, 752 F.3d 1149, 1160 (8th Cir. 2014).

ARGUMENT

I. Standard of Review

This court reviews *de novo* the district court's grant of summary judgment, "viewing the record in the light most favorable to the plaintiff[s] and drawing all reasonable inferences in [their] favor." *Shannon v. Koehler*, 616 F.3d 855, 861–62 (8th Cir. 2010) (quoting *Langford v. Norris*, 614 F.3d 445, 459 (8th Cir. 2010)). Summary judgment must be denied unless the movant shows there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). Because the Court must view the facts in the light most favorable to the non-movant, Mr. Clark's children are entitled to the benefit of all factual inferences. *See Gilkerson v. Neb. Colocation Ctrs., LLC*, 859 F.3d 1115, 1118 (8th Cir. 2017). "Credibility determinations, the weighing of the evidence, and the drawing

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of legitimate inferences from the facts are jury functions," compelling denial of summary judgment where liability turns on such assessments. *Anderson*, 477 U.S. at 255. "Disputed factual issues and conflicting testimony should not be resolved by the district court." *Wealot v. Brooks*, 865 F.3d 1119, 1128 (8th Cir. 2017).

II. Qualified Immunity

"Qualified immunity is an affirmative defense for which the defendant carries the burden of proof." *Sparr v. Ward*, 306 F.3d 589, 593 (8th Cir. 2002). "Qualified immunity shields officials from civil liability in § 1983 actions when their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Morgan v. Robinson*, 920 F.3d 521, 523 (8th Cir. 2019) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). "A clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.'" *Id.* (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)).[2]

[2] The doctrine of qualified immunity is a-textual, unconstitutional, and should no longer be enforced by federal courts. *See generally Baxter v. Bracey*, 590 U.S. 1011, 1012–13 (2020) (Thomas, J., dissenting from the denial of certiorari). While Mr. Clark's children recognize that this Court lacks the

Plaintiffs must demonstrate that the law is clearly established, *Sparr*, 306 F.3d at 593, and can show such "fair warning" through citation to a Circuit-level case considering the same constitutional right under similar circumstances, *Kuessner v. Wooten*, 987 F.3d 752, 755–56 (8th Cir. 2021). "Absent a case that is controlling authority in [this] jurisdiction, [courts] look for 'a robust consensus of cases of persuasive authority.'" *De La Rosa v. White*, 852 F.3d 740, 745 (8th Cir. 2017) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). "[C]learly established law must be 'particularized' to the facts of the case," but "[t]here need not be a case 'directly on point.'" *Morgan*, 920 F.3d at 523-24 (citations omitted). "[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances." *Bonner v. Outlaw*, 552 F.3d 673, 679 (8th Cir. 2009) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)); *see also Taylor v. Riojas*, 592 U.S. 7, 9 (2020) (quoting *Hope*, 536 U.S. at 741 ("[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question.")).

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authority to disregard the Supreme Court precedent as to the doctrine, they reserve their right to address their argument that the doctrine should be overturned on appeal.

III. Mr. Clark's Children Demonstrated A Genuine Dispute of Material Fact As to Whether Defendant-Appellee Strode's Warrant Application Violated Clearly Established Fourth Amendment Precedent.

Strode falsely alleged in his no-knock warrant application that Mr. Clark was involved in the distribution and storage of narcotics at his home. "Clearly established Fourth Amendment law requires a warrant application to contain a truthful factual showing of probable cause—'truthful in the sense that the information put forth is 'believed or appropriately accepted by the affiant as true.'" *Mueller*, 162 F.3d at 1003 (quoting *Moody v. St. Charles Cnty.*, 23 F.3d 1410, 1412 (8th Cir. 1994)). Such a violation is demonstrated when the plaintiff shows: "1) that a false statement knowingly and intentionally, or with reckless disregard to the truth, was included in the affidavit, and 2) that the affidavit's remaining content is insufficient to provide probable cause." *Williams v. City of Alexander*, 772 F.3d 1307, 1311 (8th Cir. 2014); *see also Franks v. Delaware*, 438 U.S. 154, 155–56 (1978). "The test for determining whether an affiant's statements were made with reckless disregard for the truth is … whether, viewing all of the evidence, the affiant must have entertained serious doubts as to the truth of his

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statements or had obvious reasons to doubt the accuracy of the information he reported." *United States v. Clapp*, 46 F.3d 795, 801 & n.6 (8th Cir. 1995).

The warrant affidavit, on its face, demonstrates that Strode had no belief in its truth or, at a minimum, "had obvious reasons to doubt the accuracy of the information he reported." *Clapp*, 46 F.3d at 801. Mr. Clark's children also offered direct testimony below creating a genuine dispute as to whether Strode believed in these allegations. The district court erred in granting Strode summary judgment as to Mr. Clark's children's Fourth Amendment claim arising from his inclusion of false statements in his no-knock warrant application. With the false allegations removed, the warrant would not have issued—let alone a warrant dispensing with the knock-and-announce requirement under the separate and distinct standards outlined in *Richards*, 520 U.S. at 391, and this Court's clearly established precedent. *See Scroggins*, 361 F.3d at 1081.

A. A Reasonable Jury Could Determine That Strode Knowingly or With Reckless Disregard Included False Allegations in His Request for a No-Knock Warrant.

1. Strode's warrant application demonstrates that he could not have believed or "appropriately accepted" the allegations concerning Mr. Clark's involvement in narcotics activity. *Mueller*, 162 F.3d at 1003 (citation

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omitted). Strode submitted an almost identical affidavit mere days before the one concerning Mr. Clark for the two neighboring houses. App. 200-01; R. Doc. 127-2, at 29-30. Strode alleged that confidential sources had directly seen narcotics in one of the other homes. App. 168; R. Doc. 127-1, at 16. Strode discussed the controlled purchase of narcotics from one individual at one of the other homes by a confidential source. App. 161; R. Doc. 127-1, at 9. Strode listed the criminal history of the other targets, which ranged from convictions for possession of a controlled substance to burglary to convictions for assaulting an officer. The other targets were generally more than 20 years younger than Mr. Clark. App. 157, 159-60, 162-64, 166-68; R. Doc. 127-1, at 5, 7-8, 10-12, 14-16. Stripping the allegations concerning the other houses and their targets to the terms concerning Mr. Clark only, Strode's allegations were barebones at best.

For one target, for example, Strode alleged that the confidential informant observed the target "on the 4000 block of California numerous times in possession of crack cocaine," "observed [him] respond inside [the home] to store and retrieve crack cocaine in the past," and "observed individuals exit [the home] in the past armed with handguns and flourish individuals after being involved in arguments in the past." App. 168; R. Doc.

127-1, at 16. As to Mr. Clark, the source provided no such direct allegations, saying only that he/she "observed Don Clark on the 4000 block of California in the past" and that he/she was merely "aware" that Mr. Clark sold cannabis from his home and that his home was used to store narcotics. App. 168; R. Doc. 127-1, at 16.

Strode noted that he had investigated the street for a total of six weeks. Unlike one of the other individuals referenced in the affidavit, no controlled purchase was ever completed with Mr. Clark. App. 161; R. Doc. 127-1, at 9; App. 219; R. Doc. 127-2, at 48. Strode saw foot traffic demonstrating potential drug activity every week of his investigation for the other two homes. App. 169-70; R. Doc. 127-1, at 17-18. Strode provided significant detail of these observations, noting different vehicles that approached the other homes and highlighting when different groups would visit and the duration. For Mr. Clark, on just one week of that entire investigation, Strode added Mr. Clark's residence in a list with the others, with no distinct facts for Mr. Clark's residence. App. 170; R. Doc. 127-1, at 18.

As the district court noted, an officer's independent corroboration of an informant's tip can be relevant to establishing probable cause. *See* App.

2111-12; R. Doc. 236 at 7-8 (citing *Illinois v. Gates*, 462 U.S. 213, 241 (1983); *Turpin v. Cnty. of Rock*, 262 F.3d 779, 784 (8th Cir. 2001)). But here the confidential informants did not provide "a range of details relating not just to easily obtained facts and conditions" that supported a finding of probable cause in *Gates* or in *Turpin*. *Gates*, 462 U.S. at 245. In both cases, the informant provided information that predicted the whereabouts of the individual and the officer's subsequent investigation bore out that prediction. *Id.*; *Turpin*, 262 F.3d at 784 ("In response to the telephone call from the informant who reported seeing someone with flashlights proceeding toward an area where the informant had earlier discovered marijuana plants, [the officer] proceeded to the area and subsequently encountered [the plaintiffs]."). Here, the informant's barebones allegations of merely being "aware" of Mr. Clark engaging in selling cannabis and Strode's purported observation of foot traffic one week out of six is not the same level of detail and investigation.

Nor does the informants' status as known sources cure the deficiency. The district court emphasized that Strode's informants could be "assessed" for reputation and "held responsible if [their] allegations turn out to be fabricated." App. 2111; R. Doc. 236, at 7 (quoting *Florida v. J.L.*, 529 U.S.

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266, 270 (2000)). But the accountability rationale of *J.L.* presumes an informant has reported something specific enough to be verified or falsified—a particular transaction, a personal observation, a discrete event. That rationale could possibly apply to the informants' detailed reports about the other homes, where they described firsthand observation of narcotics being stored and retrieved and weapons being brandished. It does not meaningfully attach to what the same informants said about Mr. Clark: that they were generally "aware" he sold cannabis from his home. A vague awareness claim, untethered to any specific observation or interaction, cannot later be impeached. The reliability framework on which the district court relied therefore does not extend to the only allegations that mattered for Mr. Clark's warrant.

A reasonable juror could infer that Strode could not have believed in his allegations concerning Mr. Clark or had reason to doubt their truth. The allegations concerning Mr. Clark were drastically different from those alleged about the other targets. Mr. Clark had no criminal convictions; he was 20 to 30 years older and in his 60s; there were no allegations that the confidential sources or informants had any direct interactions with Mr. Clark, including a controlled buy, just that the confidential sources or

informants were merely "aware" of Mr. Clark selling cannabis; and Strode noticed in just one week over a 6-week period any traffic that could be attributed to drug activity.

At a minimum, the circumstantial evidence presented by Mr. Clark's children demonstrated circumstances evincing "obvious reasons to doubt the accuracy of the information" establishing that Strode acted with reckless disregard in including the allegations against Mr. Clark in his warrant affidavit. *Clapp*, 46 F.3d at 801 & n.6; *see also Mueller*, 162 F.3d at 1003 (recklessness shown where affiant did not "believe[] or appropriately accept[]" the information as true (citation omitted)). The district court's analysis effectively demanded that Mr. Clark's children produce direct evidence of Strode's intent—testimony from a confidential source recanting, or proof of personal animus. App. 2112-13; R. Doc. 236, at 8-9. But the Fourth Amendment does not require that showing. It requires only that the record permit a reasonable inference that the affiant entertained serious doubts or had obvious reasons to do so. The boilerplate carryover from the neighboring warrants, the absence of corroboration that Strode had developed for every other target, and the testimony of Mr. Clark's children's witnesses with daily access to the home together permit precisely that inference.

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2. Beyond the issues with the warrant itself, Mr. Clark's children submitted documentary evidence directly refuting the allegations in the affidavit. The warrant affidavit's allegations about Mr. Clark were barebones and general in nature, asserting mere "aware[ness]" of the sale and storage of narcotics and Strode's alleged witness of visitors. Mr. Clark's children's witnesses confirmed that they were in Mr. Clark's home "every day, or almost every day." App. 2613; R. Doc. 137-33, at 1; App. 2418, 2421; R. Doc. 137-29, at 1, 4. These witnesses confirmed that they also had access to the entirety of Mr. Clark's home. App. 2419; R. Doc. 137-29, at 2. The witnesses testified that there were never narcotic sales in the home, by Mr. Clark or otherwise. App. 2613-15; R. Doc. 137-33, at 1-3; App. 2419; R. Doc. 137-29, at 2. They testified that there were no narcotics stored in the home. Mr. Clark's children's witnesses also testified that Mr. Clark had no other visitors, App. 2613; R. Doc. 137-33, at 1, and that when they visited, they would stay for extended periods of time to help with chores or other caretaking, App. 2613; R. Doc. 137-33, at 1; App. 2418; R. Doc. 137-29, at 1. This testimony directly contradicts the evidence relied upon by Defendants. No confidential informants saw drugs stored in Mr. Clark's home, because his homecare provider and family members were in his home virtually every

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day and testified to the contrary. Strode did not see foot traffic consistent with drug sales because the only people who visited Mr. Clark testified that they would be with him for significant amounts of time to provide care—not visit for 5-10 minutes as Strode alleged. This evidence created a genuine dispute of material fact as to whether Strode appropriately accepted the allegations of Mr. Clark's selling and storing of narcotics as true, or whether Detective Strode simply added Mr. Clark's address out of a belief that every person in the neighborhood should be subject to a SWAT raid without knowing or caring if there was a real reason to do so.

This Court decision in *United States v. Real Property Located at 3234 Washington Ave. N., Minneapolis, Minnesota,* 480 F.3d 841 (8th Cir. 2007), is instructive. *Real Property* concerned a civil asset forfeiture claim in which the government produced several witnesses who stated they used or sold drugs inside a property, which the Court noted was "evidence [that], if credited by the finder of fact, would satisfy the government's burden to prove a 'substantial connection' between the [property] and violations of the federal drug laws." *Id.* at 843. The Court held, however, that summary judgment was not appropriate because the other side offered testimonial evidence from other individuals who stated they had been at the same

property and had not seen any drug use or drug-related transactions. *Id.* at 844. There, as here, testimony from individuals with firsthand knowledge directly refuting allegations of sales precluded summary judgment.

Mr. Clark's children's witnesses' testimony directly contradicts Strode's, distinguishing this case from *Moody v. St. Charles County*, 23 F.3d 1410 (8th Cir. 1994), referenced below by the district court. The *Moody* Court affirmed summary judgment because the plaintiff there did not ask his witnesses the questions necessary to contradict the officer—questions like "have you ever seen [the plaintiff] sell drugs?" or "on the night in question, did [the plaintiff] sell cocaine to [the accusing officer] in your presence?" *Id.* at 1412. Here, Mr. Clark's children elicited testimony directly on point. Mr. Clark's homecare provider and family members testified that they were in his home "every day, or almost every day," that they had access to the entirety of the home, that there were never narcotic sales in the home by Mr. Clark or anyone else, and that no narcotics were stored in the home. App. 2613-15; R. Doc. 137-33, at 1-3; App. 2418-19, 2421; R. Doc. 137-29, at 1-2, 4. They further testified that Mr. Clark had no other visitors and that their own visits lasted for extended periods devoted to caretaking—not the 5-10 minutes Strode described. App. 2613; R. Doc. 137-33, at 1; App. 2418; R. Doc.

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137-29, at 1. This Court's concern in *Moody*—that summary judgment cannot be defeated by leaving an officer's specific allegations unrefuted—is not implicated where, as here, the declarants squarely addressed and contradicted the very conduct alleged.

The district court elected to weigh the evidence below and in so doing usurped the jury's role. Strode's general allegations of confidential sources being "aware" of Mr. Clark selling cannabis and storing narcotics and of seeing foot traffic at his home are directly contradicted by Mr. Clark's children's witnesses who testified they were in the home "every day, or almost every day," that Mr. Clark did not have regular visitors, and that when Mr. Clark's children's witnesses visited it was not for short periods of time that Strode alleged he saw during one week of his six-week investigation. The district court determined that the jury would have no role because, in the district court's view, "[i]t is perfectly possible that Clark's declarants were wrong or, even if they were correct, that there was nonetheless enough evidence to satisfy the fairly low probable-cause threshold." App. 2116; R. Doc. 236, at 12. But there is more than enough evidence for a jury to disbelieve Strode altogether. That weighing of the evidence and credibility determination given Mr. Clark's children's contrary

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testimony evidence is not the purview of the district court at summary judgment.

B. A Reasonable Jury Could Find That Strode Did Not Have Grounds for Reasonable Suspicion for Seeking a Warrant Dispensing With the Knock-And-Announce Requirement.

Strode requested a warrant to search Mr. Clark's home that dispensed with the Fourth Amendment's requirement that officers "announce [their] presence and authority" before they "break open the doors of a dwelling" to execute a warrant. *Wilson v. Arkansas*, 514 U.S. 927, 929 (1995). In his warrant affidavit, Strode asserted that "the targets of the investigation are known to be armed narcotic traffickers, many of whom have a violent history." App. 171; R. Doc. 127-1, at 19. But, as to Mr. Clark, Strode lacked "a reasonable suspicion that knocking and announcing [the officers'] presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Richards*, 520 U.S. at 394.

Here, Strode knew that in 63 years, Mr. Clark had never been convicted of a crime. App. 2812-29; R. Doc. 137-71. In fact, the only history concerning Mr. Clark was of non-drug related arrests (which never resulted in criminal charges) from over 10 years before the warrant request. Strode

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also had no evidence that Mr. Clark was restricted from owning a firearm. Longstanding precedent forbids blanket exceptions to the knock-and-announce requirement based on the mere presence of a firearm during a drug-related search. *Richards*, 520 U.S. at 396 ("[W]e reject the blanket exception to the knock-and-announce requirement for felony drug investigations[.]"); *United States v. Marts*, 986 F.2d 1216, 1218 (8th Cir. 1993) ("The reasonable belief that firearms may have been within the residence, standing alone, is clearly insufficient."). Strode was not entitled to summary judgment.

The district court erred in holding that Strode had reasonable suspicion to seek a no-knock warrant. Despite recognizing this Court's precedent forbidding a finding of reasonable suspicion based on firearm ownership and drug activity alone, the district court held that a person having "a history of arrests for violent offenses" and living "on a high-crime street where several of [one's] immediate neighbors were involved in drug activity" is sufficient. App. 2123, R. Doc. 236, at 19. It is clearly established precedent in this Circuit, however, that "the age of [the target]'s convictions" can be "too remote in time to contribute to the officers' reasonable suspicion that [a target] was armed and dangerous." *United*

States v. Scott, 818 F.3d 424, 431 (8th Cir. 2016). *Scott* also specifically included "arrests" in its holding, noting that "the conclusions that can be drawn from a conviction or arrest are too attenuated to play a role in determining whether a [search or seizure] is justified." *Id.* And here, Mr. Clark's prior arrests were for uncharged, unrelated conduct from over a decade prior. Further, the district court's reasoning would impermissibly extend no-knock authority based on neighborhood characteristics rather than individualized suspicion. But the Supreme Court has been emphatic that the no-knock inquiry must be tied to "the particular circumstances" of the entry. *Richards*, 520 U.S. at 394. And the broader Fourth Amendment requirement of particularized suspicion does not give way merely because an individual lives near others suspected of criminal activity. *Cf. Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (presence "in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion").

The district court's reliance on *Doran v. Eckold*, 409 F.3d 958, 966 (8th Cir. 2005), is also inapposite. In *Doran*, this Court recounted the district court's factual findings, including that the targets of the no-knock warrant had no arrest history. *Id.* at 964. The Court did not discuss the import of the

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lack of arrest history, however, as other facts known to the officers provided probable cause. Specifically, there were allegations concerning a "clandestine methamphetamine lab" which an officer described as "highly deadly" and "combustible" and one inhabitant of the home targeted "had recently been arrested for possession of a sawed-off shotgun." *Id.* 966–67. The officers had also investigated the targets' trash and found drug residue. *Id.* at 960–61. None of these facts or anything analogous were present here. Strode did not allege that any narcotics harbored were particularly dangerous, such as methamphetamine present in *Doran*. This Court has long held that the presence of a firearm in and of itself is insufficient to dispense with the knock-and-announce requirement, *Marts*, 986 F.2d at 1218, but in *Doran* there was the presence of an illegal weapon—i.e., a sawed off shot gun—the presence of which this Court has since explained is alone sufficient to establish reasonable suspicion. *United States v. Stevens*, 439 F.3d 983, 988-89 (8th Cir. 2006) (affirming magistrate's conclusion that a no-knock search was "justified … based on the presence of the sawed-off shotgun"). Mr. Clark had no such illegal weapon in his possession.

Strode had no basis under these facts to suspect that Mr. Clark would be violent such that officers should not knock and announce their presence.

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As Strode recognized himself, at the time of his request for a no-knock warrant, he had no "information that suggest[ed] that Mr. Clark was a violent person." App. 276; R. Doc. 127-2, at 105. This Court should reverse the district court's grant of summary judgment.

C. Strode Is Not Entitled To Official Immunity On Mr. Clark's Children's Wrongful Death Claim.

Under Missouri law, an officer enjoys official immunity against state claims, including wrongful death, so long as those acts are not done in "bad faith" or with "malice." *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 446–47 (Mo. 1986) (collecting cases). "A defendant acts with malice when he wantonly does that which a man of reasonable intelligence would know to be contrary to his duty and which he intends to be prejudicial or injurious to another." *State ex rel. Love v. Cunningham*, 689 S.W.3d 489, 496–97 (Mo. 2024) (en banc) (citation omitted). As discussed above, the evidence construed in the light most favorable to Mr. Clark's children demonstrates that Strode knowingly included false information in his no-knock search warrant that was used to deploy the significant force of SLMPD SWAT against Mr. Clark. A jury could reasonably infer that the decision to fabricate lies about a disabled senior citizen for the purpose of exposing him to a forced home entry by numerous heavily armed officers was a dishonest and

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conscious wrongdoing, intended to be *prejudicial* or injurious such that Strode should not be entitled to official immunity for Mr. Clark's children's state wrongful death claim under Missouri law. *Torres v. City of St. Louis*, 39 F.4th 494, 508 (8th Cir. 2022).

IV. A Reasonable Jury Could Determine That Strode's Authorization of SWAT to Serve a No-Knock Warrant Was Unreasonable.

In *Z.J. ex rel. Jones v. Kansas City Board of Police Commissioners*, this Court held in a case considering the deployment of SWAT in 2010 that "[i]t is *clear* the decision to send a SWAT team into a residence must be reasonable." 931 F.3d at 685, 688 (emphasis added) (citing *Holland*, 268 F.3d at 1189). This Court cited *Holland*, a Tenth Circuit opinion, for this holding, which was but one case from the "robust consensus of persuasive authority" from sister circuits, *De La Rosa*, 852 F.3d at 745 (citation omitted), that had clearly established that the decision to deploy SWAT must be reasonable under the Fourth Amendment. *See Harte v. Bd. of Comm'rs of Cnty. of Johnson*, 864 F.3d 1154, 1164 (10th Cir. 2017) ("*Holland* clearly established that the decision to deploy a SWAT team in such circumstances is subject to a Fourth Amendment reasonableness analysis."); *Est. of Smith v. Marasco*, 318 F.3d 497, 516 (3d Cir. 2003) ("The ultimate question on review is whether the decision to activate [SWAT] and [SWAT's] subsequent actions were

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objectively reasonable responses to this situation. The [plaintiffs] have proffered sufficient evidence to make this a question appropriate for resolution by a jury."); *Alexander v. City & Cnty. of San Francisco*, 29 F.3d 1355, 1367 (9th Cir. 1994) ("If the jury were to find that the officers entered in order to help the inspectors inspect—as defendants contend on appeal—then the jury may also conclude that the force used (deployment of a SWAT team) was excessive in relation to the purpose for which it was used (ensuring the immediate execution of a forcible entry inspection warrant)."), *abrogation on other grounds recognized by Woodward v. City of Tucson*, 870 F.3d 1154 (9th Cir. 2017).

As the concurring opinions in *Z.J.* noted, the majority held "that an officer's decision to authorize a SWAT team to execute a search warrant can violate the Fourth Amendment under certain circumstances." 931 F.3d at 692 (Kelly, J., concurring in part and dissenting in part); *id.* (Gruender, J., concurring in part and dissenting in part) (recognizing "the court's conclusion that the decision to authorize a SWAT team to execute a search warrant can constitute excessive force and therefore an unreasonable search"). Yet this Court did not address whether the facts in *Z.J.* themselves demonstrated that the deployment of SWAT was unreasonable under

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clearly established law. The opinion explained that it was a "much different situation from" the typical case because it was not "a surprise, 'no-knock' raid by a SWAT team" where the officer "knows a significant amount of force will be used," but instead a case where the "detectives would have expected the SWAT team officers to knock and announce their presence — and presumably not use a flash-bang grenade without justification." *Z.J.*, 931 F.3d at 688.

Here, Strode's conduct fell within the confines of the robust consensus of authority clear as of February 2017 holding that authorization of SWAT can violate the Fourth Amendment. Strode sought a no-knock warrant and, because of his involvement in crafting the SWAT operations plan, was aware that significant force would be used, including the use of a battering ram and flash-bang device to disorient Mr. Clark. As discussed above, Strode had no reasonable basis to believe that the use of SWAT was reasonable here. Mr. Clark had no criminal convictions; his arrest history was more than ten years old; and there was no evidence that Mr. Clark had a history of violence or that he would be likely to engage violently with officers. The mere allegation of drug activity or that he may own a firearm is the kind of blanket exception

that the Supreme Court has long established as insufficient to establish reasonable suspicion for a search or seizure. *Richards*, 520 U.S. at 396.

The district court erred in holding that Detective "Strode did not violate a 'clearly established' right of [Mr.] Clark's by authorizing the use of SWAT." App. 2121; R. Doc. 236, at 17. The district court cited *Davis v. City of Little Rock*, 122 F.4th 326, 330 (8th Cir. 2024), a case implicitly overruling the *Z.J.* decision by characterizing *Z.J.'s* holding to be that "as of 2010, it was not clearly established that 'using a SWAT team to execute a search warrant,' without reason to believe a SWAT team was necessary, violated the Constitution." *Id.* (citation omitted).[3] But, as noted above, *Z.J.* recognized that "[i]t is *clear* the decision to send a SWAT team into a residence must be reasonable," 931 F.3d at 688 (emphasis added), citing to its sister circuit's 2001 *Holland* decision. Further, *Z.J.* held only that the

[3] In *Davis*, this Court held that the plaintiff did "not identify any law clearly establishing that as of September 2017, it was unreasonable to execute a no-knock warrant using a SWAT team." 122 F.4th at 330. Notably, unlike here, the plaintiff's appellate briefing only referenced *Z.J.* and did not assert that the conduct was clearly established under any additional caselaw. *See* Plaintiff-Appellant's Opening Appellate Brief at 16, *Davis v. Bell*, No. 23-1636 (8th Cir. July 20, 2023), 2023 WL 4849816; Plaintiff-Appellant's Appellate Reply Brief at 5–6, *Davis v. Bell*, No. 23-1636 (8th Cir. Oct. 11, 2023), 2023 WL 6931684 (citing a report on tactical breaching but not prior case law).

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plaintiff in that case had failed to identify any clearly established precedent as applied to the circumstances of that case, namely where the detectives were not involved in the planning of the execution, "[t]he warrant was … not a 'no-knock' warrant," and the detectives had no expectation that a "flash-bang grenade" would be used. *Id.* This Court follows the "prior panel rule" which "provides that one panel of this court has no authority to overrule an earlier decision of another panel." *Maxfield v. Cintas Corp., No. 2*, 487 F.3d 1132, 1135 (8th Cir. 2007). *Davis* should be read in light of *Z.J.*'s express holding that the plaintiffs in that appeal failed to show a clearly established violation for the deployment of SWAT where detectives did not request a no-knock warrant and were therefore not "involved in the planning of a surprise, 'no-knock' raid by a SWAT team and kn[ew] a significant amount of force will be used." 931 F.3d at 688. The facts here are on all fours with the robust consensus of persuasive authority noted above concerning instances when no-knock warrants were sought by detectives involved in the planning of the no-knock warrants' executions. Further, where, as here, a non-movant's evidence demonstrates that the officer had no individualized basis for determining that a warrant target would be a danger requiring the deployment of SWAT, the Court should find that Strode could "still be on

notice that [his] conduct violate[d] established law even in novel factual circumstances." *Hope*, 536 U.S. at 741.

V. A Reasonable Jury Could Find That Manasco Used Excessive Force.

When considering whether an officer used excessive force in violation of the Fourth Amendment in the context of deadly force cases, the Court asks whether the officer had "probable cause" to believe "the suspect poses 'an immediate threat of death or serious bodily injury' to others." *Cole Est. of Richards v. Hutchins*, 959 F.3d 1127, 1132 (8th Cir. 2020) (citation omitted). Mere possession of a firearm is insufficient; "the suspect must also point the firearm at another individual or take similar 'menacing action.'" *Id.* (citation omitted). "Before employing deadly force, an officer should give 'some warning' when it is 'feasible' to do so." *Loch v. City of Litchfield*, 689 F.3d 961, 967 (8th Cir. 2012) (citation omitted).

Here, record evidence demonstrates a genuine issue of material fact as to whether Mr. Clark was standing with a gun in his hands and his arms extended pointing toward the officers when officers entered his home unannounced as is necessary to demonstrate that Mr. Clark "pose[d] 'an immediate threat of death or serious bodily injury' to others" to justify Manasco's use of deadly force. *Cole*, 959 F.3d at 1132 (citation omitted). As

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noted above, Mr. Clark could barely grip a steering wheel and needed help to even load his laundry. Mr. Clark's children's witnesses will testify that it was unlikely that he had the strength to lift a firearm and have it pointed up at the officers as they entered. Ballistics evidence also demonstrates that Mr. Clark could not have been holding a gun as the officers described. Manasco states that he heard a gunshot as he entered Mr. Clark's home and immediately saw Mr. Clark in the corner of the room, "standing upright and he had a dark-colored pistol pointed right at me extended from his body." App. 785-86; R. Doc. 127-9 at 129–30. St. Louis Metropolitan Police Department's evidence technician testified that bullet casings from the handgun she examined eject behind and to the right (from the perspective of the shooter), App. 1782-83; R. Doc. 136-16, at 66-67, but photos show the bullet casing in front of and to the left of Clark's body. App. 2805-06; R. Doc. 137-67, at 1-2. Mr. Clark could not have just shot a gun and had it in his hand pointed at Manasco if the ballistics evidence is to be believed, as it must at summary judgment.

As this Court held in *Partridge v. City of Benton*, 70 F.4th 489 (8th Cir. 2023), "a lack of eyewitness testimony is not a lack of evidence." *Id.* at 491. In *Partridge*, a forensic expert found from an autopsy that it would be

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"anatomically possible" but "awkward" and "atypical" for a subject to have held a firearm as the officers asserted. *Id.* This Court held that "[a] jury must determine whether [the decedent] moved his gun into an 'anatomically possible' but 'very awkward, highly atypical' position before being shot." *Id.* The one shell cartridge found from the gun that Mr. Clark had allegedly just fired was photographed in front of his body and to the left. As in *Partridge*, the testimony on the scene demonstrates that, even if *possible*, it would be atypical for a man of Mr. Clark's age and infirmities to have shot a firearm in the timeline and position Manasco asserted. Whether to believe Manasco is a question best reserved for the jury.

VI. The District Court Erred in Granting Summary Judgment on Mr. Clark's Children's *Monell* Claims Against the City.

The City of St. Louis is liable for initiating a policy or custom of indiscriminately and unreasonably requesting SWAT to execute virtually every drug-related search warrant.

A. Legal Standards

A municipality such as the City can be liable under *Monell* for constitutional violations if the "violation resulted from (1) an official municipal policy, (2) an unofficial custom, or (3) a deliberately indifferent failure to train or supervise." *Leftwich Trustee of Statutory Class of Next of*

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Kin to Leftwich v. Cnty. of Dakota, 9 F.4th 966, 972 (8th Cir. 2021) (citations omitted).

An "[o]fficial policy involves a deliberate choice to follow a course of action made from among various alternatives by an official who is determined by state law to have the final authority to establish governmental policy." *Ware v. Jackson Cnty.*, 150 F.3d 873, 880 (8th Cir. 1998) (cleaned up). The policy must be the "moving force" behind the unconstitutional violation, *Monell*, 436 U.S. at 694, but where "a plaintiff claims that a particular municipal action itself violates federal law, or directs an employee to do so, resolving [the] issues of fault and causation is straightforward." *Szabla v. City of Brooklyn Park*, 486 F.3d 385, 389–90 (8th Cir. 2007) (quoting *Bd. of the Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404–05 (1997)). "To establish a constitutional violation, no evidence is needed other than a statement of the municipal policy and its exercise." *Id.* at 390. "To establish a claim for 'custom' liability," a party must demonstrate:

> 1) [t]he existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees; 2) [d]eliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and 3) [t]hat plaintiff was injured by acts pursuant to the governmental

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> entity's custom, i.e., that the custom was a moving force behind the constitutional violation.

Johnson v. Douglas Cnty. Med. Dep't, 725 F.3d 825, 828 (8th Cir. 2013) (citations omitted).

A municipality "can be liable under Section 1983 for constitutional violations resulting from its failure adequately to train its employees if the failure to train rises to the level of 'deliberate indifference' to the people's rights." *Larkin v. St. Louis Hous. Auth. Dev. Corp.*, 355 F.3d 1114, 1117 (8th Cir. 2004) (internal citations omitted). At summary judgment, a plaintiff "must provide evidence that the [municipality] was on notice that its training procedures 'were inadequate and likely to result in violation of constitutional rights.'" *Id.* (citation omitted). To establish notice, a plaintiff "may show that the failure to train 'is so likely to result in a violation of constitutional rights that the need for training is patently obvious,'" or that "a pattern of misconduct indicates that the [municipality]'s responses to a regularly recurring situation are insufficient to protect the [people's] constitutional rights." *Id.* (citation omitted).

This Court has held in the context of "failure to train" claims that a municipality cannot be held liable for a failure to train when a constitutional right was not clearly established. *Hollingsworth v. City of St. Ann*, 800 F.3d

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985, 992 (8th Cir. 2015) ("While a single constitutional violation arising out of a lack of safeguards or training may be sufficient to establish deliberate indifference where the need for such safeguards or training is 'obvious,' a municipality 'cannot exhibit fault rising to the level of *deliberate* indifference to a constitutional right when that right has not yet been clearly established.'" (quoting *Szabla*, 486 F.3d at 393)). Below, the district court misread this holding to include "custom" claims, but even the cases cited by the district court did not apply the "clearly established" requirement. *See, e.g.*, *Cartia v. Beeman*, 122 F.4th 1036, 1045 (8th Cir. 2024) (affirming in part based on failure to identify a "custom"), *cert. denied*, 145 S. Ct. 2777 (2025); *Johnson*, 725 F.3d at 829 (affirming given lack of evidence establishing municipality's notice). This Court has made no such determination and should refuse to do so now.

Importing the qualified immunity analysis onto a municipal custom claim is not supported by caselaw, and in fact contradicts this court's precedent. *E.g.*, *Thurmond v. Andrews*, 972 F.3d 1007, 1013 (8th Cir. 2020) (holding that because "municipalities do not enjoy qualified immunity[,]" and thus the "determination of [municipal] liability does not 'flow ineluctably from a resolution of the qualified-immunity issue'" (citation omitted)).

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Moreover, even if this Court finds that Strode is entitled to qualified immunity given a lack of clearly established law, it does not follow that the City itself may be immunized for its own unconstitutional policies or customs.

B. The City's Official Policy Authorizing Blanket SWAT Deployments Is Facially Unconstitutional.

The City's official policy for execution of search warrants is codified in Special Order 8-02. That order mandates the use of SWAT for any warrant where the target may possess a firearm, regardless of the legality of the possession, or when a search involves narcotics. SLMPD interprets the order such that the use of SWAT and the no-knock method of entry are interchangeable. Such blanket policies, eschewing the Fourth Amendment's totality of the circumstances inquiry, violate the Constitution. *See, e.g.*, *Z.J.*, 931 F.3d at 688 ("It is clear the decision to send a SWAT team into a residence must be reasonable."); *Marts*, 986 F.2d at 1218 ("The reasonable belief that firearms may have been within the residence, standing alone, is clearly insufficient" to justify the execution of a no-knock warrant.). And here that violation resulted in the killing of Mr. Clark as Strode, Manasco, and all officers involved followed the policy in seeking the no-knock search warrant that led to Mr. Clark's death.

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The unconstitutionality of Special Order 8-02 is clear from its plain terms. The order details SLMPD guidelines for a variety of searches including, as relevant here, the preparation and service of search warrants. App. 1797; R. Doc. 136-17, at 13. Special Order No. 8-02 dictates that if "one or more of the following criteria is met, SWAT *will* be utilized to execute the high-risk search warrant." App. 1797; R. Doc. 136-17, at 13. One criterion that, if satisfied, mandates the deployment of SWAT, is any "mention of weapons in the offender's possession." App. 1797; R. Doc. 136-17, at 13. Another criterion that, if satisfied, mandates SWAT, is a catch-all provision, and provides that SWAT must be deployed when the officer receives "any other intelligence information" such that "the investigating unit feels they cannot safely execute the warrant." App. 1797; R. Doc. 136-17, at 13. During the City's 30(b)(6) deposition, the City's designee testified that Special Order 8-02 "does not explicitly mention drugs, but in practice and understanding and in every practical way there's no controversy that the high risk of danger and violence associated with search warrants or the conduct that leads to search warrants involve drugs." App. 1727; R. Doc. 136-7 at 70. Accordingly, any information about "narcotics" in the warrant implicated Special Order 8-02's catch-all criteria. App. 1727; R. Doc. 136-7 at 70:1-5.

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The Supreme Court and this Circuit have long established that blanket policies dispensing with the Fourth Amendment's totality of the circumstances inquiry are in violation of the Constitution. Though the Fourth Amendment is silent on the "formalities in exercising a warrant's authorization," the Supreme Court has clarified that a "reasonable execution" is determined "case by case, largely avoiding categories and protocols for searches." *United States v. Banks*, 540 U.S. 31, 35–36 (2003). Accordingly, in *Richards*, the Supreme Court rejected the defendant's contention that "drug culture" was inherently dangerous and thus required a total dispensing of the knock-and-announce requirement, explaining that a blanket policy was subject to "considerable overgeneralization" and thus contravened the requirement that reasonable searches are fact-dependent and assessed on a case-by-case basis. 520 U.S. at 387–88, 392–93. This Court too has held that "[a]lthough drug investigations frequently pose unique threats to officer safety and the effective preservation of evidence, the Fourth Amendment forbids a blanket exception to the knock-and-announce requirement in drug cases." *Scroggins*, 361 F.3d at 1081. Here, officers testified that SLMPD interpreted SLMPD Order 8-02 such that an officer's request of SWAT and an officer's request of a no-knock warrant were

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interchangeable. As SLMPD Lieutenant Scott Aubuchon explained, for "any search warrant where [the officers] anticipate[d] forcing a door— … SWAT was doing it." App. 1762; R. Doc. 136-12, at 47. Because Special Order 8-02, in its plain terms and as interpreted by SLMPD officers, mandates the deployment of SWAT in each instance involving possession of firearms *or* the presence of narcotics, the order is facially unconstitutional under longstanding Fourth Amendment precedent.

The district court erred in granting the City's motion for summary judgment on Mr. Clark's children's claim that Special Order 8-02 was facially unconstitutional.

First, the district court improperly interpreted Special Order 8-02 to not mandate the use of SWAT for drug-related warrants, holding that the City's catchall provision concerning officer safety "d[id] nothing other than to allow officers to make the individualized assessments that the Fourth Amendment requires." App. 2135; R. Doc. 236, at 31. Whether a law is facially unconstitutional is a question of law to be disposed of by the court. *See, e.g.*, *United States v. Veasley*, 98 F.4th 906, 908 (8th Cir. 2024) (determining the constitutionality of 18 U.S.C. § 922(g)(3)). The district court, however, failed to consider the City's 30(b)(6) designee's express

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testimony that "in practice and understanding and in every practical way there's no controversy that the high risk of danger and violence" associated with the execution of drug-related warrants. This was not merely the designee's "thought[s]" about SLMPD's practice of implementing Special Order 8-02, but the City's own "understanding" of what kind of criteria could be singularly present to trigger Special Order 8-02's requirement that SWAT be deployed. App. 1797; R. Doc. 136-17, at 13. Because the City's "understanding" was that narcotics meant officers "[could not] safely execute the warrant," it follows that Special Order 8-02 created a blanket policy for the deployment of SWAT for drug-related warrants. App. 1797; R. Doc. 136-17, at 13.

Second, the district court rejected Special Order 8-02's mandatory and express language requiring SWAT deployment for any warrant where a target possessed a firearm.

The district court first looked to the City's Special Order 5-18. App. 452; R. Doc. 127-6, at 8. In the preamble of that order, it describes the "Policy" as "serv[ing] as a basic guide for the deployment of the Special Weapons and Tactics (SWAT) team)." App. 452; R. Doc. 127-6, at 8. Further, the "Policy" preamble notes that "[t]he unique circumstances that can

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constitute each individual situation [can] make it impractical to set specific, detailed guidelines to be employed during a tactical operation" such that "[t]he totality of these unique circumstances will determine what actions will be initiated to resolve the incident in as peaceful a manner as possible." App. 452; R. Doc. 127-6, at 8. The order also lists a number of "situations [that] could justify a SWAT response," including, among others, "[b]arricade situations," "[h]ostage situations," "[s]niper situations," and "[h]igh risk warrant service situations." App. 452; R. Doc. 127-6, at 8. The district court inexplicably read these terms as "at most stat[ing] that a search target possessing a weapon can make a warrant situation 'high risk' and that a SWAT team 'could' be used in that situation if, in the judgment of the lead officer, the totality of the circumstances justifies it." App. 2136; R. Doc. 236, at 32. Courts regularly interpret a specific law in the context of neighboring laws. *See generally Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme."). The district court's interpretation of Special Order 5-18 as making the use of SWAT for high-risk situations optional does not follow from a plain reading of the order. At most the use of "could"

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merely describes the various types of situations for which SWAT is deployed, not an assertion of some discretion in Special Order 8-02, which is notably not referenced in that section of Special Order 5-18. The district court's reading also does not grapple with the mandatory language of Special Order 8-02, such that the interpretation would nullify the plain language of Special Order 8-02. *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (recognizing that "shall" is "mandatory" and "normally creates an obligation impervious to judicial discretion").

The district court's interpretation of Special Order 8-02 "in isolation" also lacks support in the plain terms of the policy. The order states that "[t]he primary investigator in conjunction with the SWAT Commander will make the determination if a search warrant is considered high risk," but that the Commander of Support Operations will make the final determination. App. 1797; R. Doc. 136-17, at 13. The district court determined that this language "vests discretion" because of the recognition of the "possibility of disagreement between officers" which the district court determined was "consistent with a case-by-case analysis of whether, even if one of the criteria is met, a warrant is in fact 'high risk' enough to require use of a SWAT team." App. 2136; R. Doc. 236, at 32 (quoting App. 1797; R. Doc. 136-

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17, at 13). This interpretation again stretches the terms of the City's policies beyond their plain meanings. Special Order 8-02 mandates deployment of SWAT when there is, for example, a target who possesses a firearm. Officers may disagree as to whether the available evidence demonstrates that the target has such possession, but once that determination is made under the policy, Special Order 8-02 requires SWAT to be deployed.

Finally, the district court improperly faulted Mr. Clark's children for purportedly conflating the use of no-knock searches with the deployment of SWAT when citing Supreme Court and Eighth Circuit precedent forbidding blanket policies authorizing no-knock warrants based on the presence of drugs and firearms alone. As a practical matter, the City's policies construed as interchangeable an officer's request of SWAT with an officer's request of a no-knock warrant, not Mr. Clark's children. As SLMPD Lieutenant Scott Aubuchon testified, for "any search warrant where [the officers] anticipate[d] forcing a door – … SWAT was doing it." App. 1762; R. Doc. 136-12, at 47. More importantly, cases such as *Richards*, *Scroggins*, and *Marts* all explain that the Fourth Amendment's reasonableness inquiry cannot be met with blanket policies or protocols. Because "[i]t is *clear* the decision to send a SWAT team into a residence must be reasonable," *Z.J.*, 931 F.3d at

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688 (emphasis added), these cases apply just as well to SWAT deployment as to the use of no-knock warrants when determining the constitutionality of Special Order 8-02.

C. The City Violated the Fourth Amendment Through a Custom of Indiscriminately Deploying SWAT to Execute Drug-related Searches.

Even assuming Special Order 8-02 was not facially unconstitutional, Mr. Clark's children demonstrated sufficient evidence of officer misconduct to establish an unconstitutional custom under *Monell*.

Strode testified that after learning about no-knock warrants, his practice was to request a no-knock warrant and thus the deployment of SWAT for every warrant and had only failed to do so on a "couple" occasions. App. 1512; R. Doc. 136-4, at 10. Review of other affidavits resulting in SWAT-executed searches shows that Strode was acting pursuant to widespread and persistent practice where SLMPD officers sought SWAT execution of warrants despite the lack of any "high-risk" criteria outlined in Special Order 8-02, namely the warrants failed to allege the subject illegally possessed weapons, had any violent felony offenses, or was otherwise violent. Mr. Clark's children identified 19 such examples in which SWAT was deployed to execute warrants for drug-related crimes even in situations

where, as with Mr. Clark, there was no allegation that the presence of a handgun was illegal or posed a threat to the officers, had any criminal convictions, or posed any risk of violence to himself or the officers. *See supra* at pp. 15-16 (collecting examples). Despite the warrants containing no mention of weapons or violent criminal history, the full force of SWAT was deployed to execute these warrants. As with Mr. Clark, in each of these incidents, SLMPD requested SWAT to execute the warrant simply because it was a narcotics related investigation, without allegations of illegal weapon possession or allegations of the subject being violent.

In short, the City had a pervasive custom of requesting and deploying SWAT despite the warrants not establishing any reasonable need for such a show of force. Having a practice where every SLMPD officer relies on the supposed general danger of drug culture writ large to justify force has been unequivocally rejected by this Court. *United States v. Lucht*, 18 F.3d 541, 551 (8th Cir. 1994) ("However, a decision to force entry cannot rest on an assumption… . [The officer in *Lucht*] knew that there was a likelihood that there were weapons in the house, but he had no information indicating that [the subject] was considered dangerous or violent or might be inclined to use the weapons against them.").

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D. The City Violated the Fourth Amendment Through A Failure to Train Officers Resulting in Indiscriminately Deploying SWAT to Execute Drug-related Searches.

The Court should also find that the City failed to train their officers on particularized reasonable suspicion to justify the use of SWAT. Special Order No. 8-02 provides a blanket requirement to deploy SWAT for drug-related cases. As discussed above, this policy is a clear violation of longstanding precedent prohibiting blanket approaches in lieu of individualized reasonableness determinations. Because the likelihood of constitutional violations under such a policy makes "the need for training … patently obvious," the City was on notice of its need to train. *Larkin*, 355 F.3d at 1117. Further, SLMPD Officers testified, consistent with Special Order No. 8-02's directive, that they simply assumed a set of factors would be present to require SWAT deployment for all narcotics-related investigations. Mr. Clark's children identified at least 19 examples of warrants requested based simply on the potential presence of narcotics rather than a fulsome reasonableness analysis considering whether the warrant's target was dangerous or that the use of SWAT was actually needed. *See supra* at pp. 15-16. This "pattern of misconduct" indicates the City was on notice that its current training of its employees was "insufficient

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to protect the [people's] constitutional rights." *Larkin*, 355 F.3d at 1117 (citation omitted).

CONCLUSION

For the reasons discussed above, the decision below should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) because this brief contains 12,984 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief was prepared using Microsoft Word for Office 365 in 14-point Century Expanded LT Standard font.

3. Pursuant to Eighth Circuit Local Rule 28A(h), undersigned counsel hereby certifies that the brief has been scanned for viruses and that the brief is virus free.

/s/ Ian Heath Gershengorn

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2026, I electronically filed the foregoing brief with the Clerk of the Court using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

/s/ Ian Heath Gershengorn