

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

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MICHAEL DAVIDSON,

Plaintiff,

vs.

CITY OF OPELIKA, ALABAMA,  
PHILLIP HANCOCK, and  
JOHN MCEACHERN

Defendants.

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No. 3:14-cv-00323

**ORDER**

The Plaintiff, Michael Davidson, bought this action on May 2, 2014, claiming violations of the United States Constitution, the Civil Rights Act, and Alabama state law in six counts. In Count 1, the Plaintiff asserts that Phillip Hancock, an Opelika Police Officer, acted under the color of law and used excessive force to subject him to an unreasonable seizure, in violation of the Fourth Amendment and 42 U.S.C. § 1983. Based on the same incident, Count II states that the City of Opelika, Phillip Hancock, and John McEachern, are liable for assault and battery pursuant to Alabama Code § 11-47-190. Count III makes a failure to train allegation against the City of Opelika and John McEachern under 42 U.S.C. § 1983. Count IV alleges negligence by the City of Opelika and Phillip Hancock. Similarly, Count V alleges wantonness against Phillip Hancock. The Plaintiff's final §1983 claim, found in Count VI, alleges that John McEachern failed to address an purported problem of excessive force within the Opelika Police Department.

This matter comes before the Court pursuant to the Defendants' July 16, 2015 motion for summary judgment under Federal Rule of Civil Procedure 56. [Dkt. No. 65]. The Plaintiff resisted the motion on August 17, 2015. [Dkt. No. 86]. The Plaintiff's resistance also included a *pro tanto* motion to dismiss several claims from the Amended Complaint. The Defendants filed their final reply on August 31, 2015. [Dkt. No. 91]. The Plaintiff filed a surreply on September 8, 2015. [Dkt. No. 92]. For the reasons that follow, the Defendants' motion for summary judgment is **GRANTED**.

### I. STATEMENT OF UNDISPUTED FACTS

Three defendants are joined in the present case: the City of Opelika, Alabama, Phillip Hancock, and John McEachern. The City of Opelika is a municipal corporation in the State of Alabama. Phillip Hancock (“Officer Hancock”) is a police officer who began working with the Opelika Police Department in 2006. Officer Hancock graduated from the Police Academy and completed an eight week Field Training Officer program through the Opelika Police Department. John McEachern (“Chief McEachern”) is the Chief of Police for the Opelika Police Department. Chief McEachern has a degree in criminal justice from Auburn University, and after school, first worked for the Opelika Police Department before joining the Federal Bureau of Investigation. After retiring from the FBI in 2012, he returned to the Opelika Police Department becoming the Chief of Police. Upon his return, he attended the Montgomery Police Academy. Chief McEachern has also completed 240 hours of training at the Southwest Alabama Police Academy.

On March 6, 2014, the Opelika Police Department Dispatch Center received calls reporting an SUV being driven erratically on Interstate 85. Officer Phillip Hancock, who was on patrol in the area, responded to the call driving a fully marked Opelika Police Department car. Directly prior to Officer Hancock reaching the reported SUV, the SUV collided with an 18-wheel tractor trailer truck. When Officer Hancock arrived on the scene, he observed Davidson’s SUV parked on the shoulder of Interstate 85 behind the 18 wheeler. While pulling up to the accident and parking, Officer Hancock turned on his siren and blue flashing lights, left his headlights on, and shined his spotlight towards the SUV. As Officer Hancock began to exit his vehicle, he observed Davidson attempting to exit his SUV. Because of the way Davidson’s SUV was leaning downhill, his door kept closing as he tried to open it, so it took several attempts before he was fully out of the vehicle.

As Davidson exited the SUV, he reached his right arm back behind him. His right shoulder was elevated. Seeing this movement, Officer Hancock put a hand on his weapon. Davidson’s right hand began to move forward, rising up with a black object in its grasp. At this point, Officer Hancock grabbed his weapon to unsnap it and gave the command, “show me your hands” to Davidson. Officer Hancock stated that he gave the command believing he was in danger. Davidson immediately dropped his left hand down to meet his right hand, and clasped the black object in both hands. Officer Hancock commanded, “show me your hands” for the second time. Officer Hancock did not warn Davidson about the possible use of deadly force.

Davidson persisted in holding the black object in both hands with his fingers extended and pointed towards Officer Hancock. Officer Hancock then fired two shots at Davidson, one shot hit Davidson and the other shot hit the ground. Davidson was then transported to the hospital for treatment. At the scene of the incident, empty packets of Spice, a synthetic drug, were found inside Davidson's SUV. The Alabama Department of Forensic Sciences ran a toxicology report showing that Spice was in Davidson's system at the time of the incident.

## II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56 provides that the "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In making this determination, the Court looks to "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." *Phillips v. Am. Honda Motor Co.*, 438 F.2d 1328, 1336 (S.D. Ala. 2006) (quoting Fed. R. Civ. P. 56(c)) (internal quotation marks omitted). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[T]he substantive law will identify which facts are material," and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

If the moving party establishes that there is no genuine issue of material fact, "the non-moving party 'must make a sufficient showing to establish the existence of each essential element to that party's case, and on which that party will bear the burden of proof at trial.'" *Phillips*, 438 F. Supp. 2d at 1337 (quoting *Howard v. BP Oil Co.*, 32 F.3d 520, 524 (11th Cir. 1994)); see also *Anderson*, 477 U.S. at 247 ("[P]laintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment."). "The mere existence of some evidence to support the non-moving party is not sufficient for denial of summary judgment; there must be 'sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.'" *Phillips*, 438 F. Supp. 2d at 1336 (quoting *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002)). "A mere 'scintilla' of evidence" is not enough, and "if the

evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 1336–37 (citations omitted). However, “[i]f reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment.” *Id.* at 1337 (quoting *Miranda v. B&B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992)). In ruling on a motion for summary judgment, “the court must view all evidence in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in its favor.” *Id.* (citing *Burton v. City of Belle Glade*, 178 F.3d 1175, 1187 (11th Cir. 1999)).

### III. ANALYSIS

#### A. *Pro Tanto* Motion to Dismiss

“When a plaintiff sues a municipal officer in the officer's individual capacity for alleged civil rights violations, the plaintiff seeks money damages directly from the individual officer.” *Busby v. City of Orlando*, 931 F.2d 764, 771 (11th Cir. 1991) (internal citation omitted). “If sued ‘individually,’ a municipal officer may raise an affirmative defense of good faith, or ‘qualified,’ immunity.” *Id.* (internal citation omitted). “Official-capacity suits, in contrast, ‘generally represent only another way of pleading an action against an entity of which an officer is an agent.’ ” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690 n.55 (1978)). “As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity.” *Id.*

The Defendants claim that the Plaintiff cannot maintain claims against the individual defendants in their official capacities. They assert that “[b]ecause Plaintiff brings a § 1983 claim against the City here, the official capacity claims against individuals are due to be dismissed.” The Plaintiff responded by moving the Court to dismiss the following claims from his Amended Complaint:

1. In Count II, all claims against the City of Opelika and John McEachern and the claims against Phillip Hancock in his official capacity only;
2. All of the claims stated in Count IV;
3. All claims stated in Count V for wantonness;
4. All of the claims stated in Count VI;
5. All claims made on the basis of a violation of Michael Davidson’s Fourteenth Amendment rights; and
6. All claims against any Defendant in his official capacity.

[Dkt. No. 86 Pg. 1–2]. The Court grants the Plaintiff’s *Pro Tanto* Motion to Dismiss Claims.

**B. § 1983 Claim Against Officer Hancock**

Count I of the Plaintiff’s Amended Complaint makes a claim against Phillip Hancock in his individual capacity under 42 U.S.C. § 1983. The United States Supreme Court has found that 42 U.S.C. § 1983 “is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979)). “In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force.” *Id.* at 394. Davidson alleges that he was subjected to an unreasonable seizure through Officer Hancock’s use of excessive force in violation of his rights under the Fourth Amendment. [Dkt. No. 44-1 Pg. 8–9].

Qualified immunity can be invoked to protect officers who are “acting within the scope of discretionary authority when the allegedly wrongful acts occurred.” *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002). A two-step analysis is applied to determine whether an officer is entitled to qualified immunity. First, the Court must “decide whether the defendant’ acts violated the Constitution.” *Garrett v. Athens-Clarke County, Ga.*, 378 F.3d 1274, 1278 (11th Cir. 2004). Second, the court must “ask whether, at the time of the incident, every objectively reasonable police officer would have realized the acts violated already clearly established federal law.” *Id.* at 1279–80.

That Officer Hancock was acting within the scope of his discretionary authority is undisputed. [Dkt. No. 86 Pg. 30]. To determine whether Officer Hancock’s acts violated the Constitution, namely that excessive force was used during the course of a police seizure, the “reasonableness” standard of the Fourth Amendment must be used. *Graham v. Connor*, 490 U.S. 386, 395 (1989). “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” *Id.* at 396. Proper application of this balancing test “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest.” *Id.* Analyzing whether Officer Hancock used

excessive force means “determining whether ‘the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Garrett*, 378 F.3d at 1279 (quoting *Graham v. Connor*, 490 U.S. 382, 397 (1989)). Officers’ actions are judged,

from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

*Id.* (internal citation omitted). Here, the opposing parties have told two different stories of the situation that unfolded on the night of the incident, and so the Court will “review[] the facts in the light depicted by the videotape.” *Scott v. Harris*, 550 U.S. 372, 380–81 (2007).<sup>1</sup>

The dash cam footage from the incident shows that up until the 1:31 mark on the video, Davidson was inside of his SUV that was parked on the side of Interstate 85. At 1:31, Davidson opened the door and attempted to get out of the SUV. From 1:31 to 1:33, only Davidson’s left hand was visible, and it was clutching the interior door handle as he attempted to get out of the SUV. At 1:34, Davidson reaches his arm behind his back. Davidson’s right hand becomes visible for the first time at 1:35, as he quickly moves his right arm from behind his back, extending his right hand out to meet his left hand. Officer Hancock first yells to Davidson “let me see your hands” from 1:34–1:35.



<sup>1</sup> The videotape of the incident has been included in the Defendants’ Motion for Summary Judgment as Exhibit F-1 and in the Plaintiff’s Resistance as Exhibit 1.

**1:34– Davidson’s arm reaching behind him as Officer Hancock first yells, “Let me see your hands.”**

From 1:34 to 1:36 Davidson is seen stepping out of the SUV, holding a black object between both hands, and pointing his hands at Officer Hancock. Officer Hancock again commands “let me see your hands” from 1:35-1:36.



**1:35- Davidson’s position as Officer Hancock begins to yell, “Let me see your hands” for the second time.**

Officer Hancock fires the first shot at 1:36, which hits the ground. At 1:36, Davidson’s hands are briefly spread apart with his arms raised. Officer Hancock fires the second shot at 1:37. Davidson falls backwards and hits the ground at 1:37. Again, Davidson clasps his hands around a black object, and extends them in front of him pointing at Officer Hancock from 1:39-1:40, prompting Officer Hancock to command “let me see your hands” for a third time.

“[T]he purpose of the qualified immunity doctrine is to give meaning to the proposition that government officials are not required to err on the side of caution when it comes to avoiding constitutional violations.” *Crosby v. Monroe County*, 394 F.3d 1328, 1334 (11th Cir. 2004) (internal quotations and alterations omitted). Davidson argues that on the night of the incident, a “routine traffic stop” took place in which he reached behind his back to retrieve his wallet, and that his hands were “clearly holding his wallet” when Officer Hancock fired two shots at him.

[Dkt. No. 86 Pg. 7–9]. In the course of making a “spilt-second decision[] in [a] tough and tense situation[]” Officer Hancock was not required to accept the innocent explanation of the situation that Davidson depicts. *Morton v. Kirkwood*, 707 F.3d 1276, 1281 (11th Cir. 2013). An objectively reasonable officer at the scene that night would have believed that Davidson posed an immediate threat to his safety and the safety of others. After reaching behind himself in a motion akin to upholstering a weapon, Davidson stood clutching a black object with both hands, pointing towards Officer Hancock as though he was preparing to shoot. Officer Hancock had “probable cause to believe that [Davidson] pose[d] a threat of serious physical harm,” and given the rapid rate at which the scene unfolded, that the “use of deadly force was necessary to prevent escape.” *Id.* The speed of the events also precludes a finding that it was feasible to give “some warning about the possible use of deadly force.” *Id.* Officer Hancock twice warned Davidson to let him see his hands before firing, and given that Davidson maintained the posture of someone ready to shoot, there was not time to spare to warn Davidson as Officer Hancock reasonably believed his life was in danger.

The qualified immunity doctrine provides that “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “Unless a government agent’s act is so obviously wrong, in the light of preexisting law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing, the government actor has immunity from suit.” *Braddy v. Florida Dept. of Labor and Emp’t Sec.*, 133 F.3d 797, 802 n.12 (11th Cir. 1998). Davidson cited the Court to two cases he believes are materially similar to this case and that qualify as clearly established precedent: *Vaughan v. Cox*, 343 F.3d 1323 (11th Cir. 2003) and *Jones v. City of Atlanta*, 192 Fed. App’x 894 (11<sup>th</sup> Cir. 2006).

In *Vaughan*, a police officer’s bullet struck a passenger in a speeding vehicle as the officer was attempting to stop the vehicle by implementing a rolling roadblock. The police officer stated that he used deadly force because the vehicle sped up and swerved as if it was trying to hit the police car. The facts of this case are distinguished from the present case in almost every way, namely that unlike the situation Officer Hancock faced, the police officer in *Vaughan* did not believe the driver of the vehicle to be armed and pointing a gun at him at the



time he decided to use deadly force. The Eleventh Circuit Court of Appeals concluded that the officer was not due summary judgment on the basis of qualified immunity because there was genuine issue of material fact. Specifically, there was contradictory testimony from Vaughan, the passenger, and Cox, the police officer. The Court concluded that “[b]ased on Vaughan’s version of events, it is not clear that Cox had probable cause to believe that [the deputy] or Cox were in immediate danger from the suspects at the time of the shooting.” *Vaughan*, 343 F.3d at 1330.

In *Jones*, police officers arrived at the scene of an accident where a vehicle had recently crashed into a guard rail while attempting to turn onto an interstate entrance ramp. The officers parked behind the vehicle, exited their own, and ordered the driver out of the vehicle. When the driver did not exit, the officers fired weapons into the vehicle, and one of the shots killed the driver, Jones. Like in *Vaughan*, the facts of the interaction between the officers and Jones were disputed. The officers said that Jones acknowledged their commands to exit the vehicle and attempted to run over them with the vehicle. This version of facts was supported by several eyewitnesses. However, the plaintiffs (the Estate of Jones), contended that the officers were not in danger of bodily harm, and that Jones began moving the vehicle to escape the officers’ gunfire. There were also several eyewitnesses supporting the plaintiffs’ version of the facts. Therefore, a genuine issue of material fact existed as to whether the officers were acting in self-defense and whether Jones’ Fourth Amendment right was violated.

Neither *Vaughan* nor *Jones* is capable of serving as clearly established precedent for the purposes of this qualified immunity analysis. The two cases do not address a situation that is materially similar to the one at issue—one where an officer shot an individual he mistakenly believed to be armed. The law Davidson has cited to would not make it clear to a reasonable officer in Officer Hancock’s position that his actions were unlawful in the situation he confronted, and “[i]f the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate.” *Saucier v. Katz*, 533 U.S. 194, 202 (2001). The two cases also differ from Davidson’s case because there was no videotape footage available in *Vaughan* or *Jones*, rather there was contradictory evidence presented by the plaintiffs and the defendants in each case. In contrast, this case is one with contradicting testimony, but importantly, one where videotape footage is available to resolve discrepancies in testimony. To the extent that the videotape contradicts [the plaintiff’s] version of the facts, [the Court] must accept the videotape as accurate and reject [the plaintiff’s] contrary

statements. *Brimms v. Barlow*, 441 Fed. App'x 674, 677 (11th Cir. 2011). Therefore, there is no genuine issue of material fact in this case, unlike *Vaughan* and *Jones*.

The Court has reviewed the video of this event countless times. It has watched it in slow motion and at regular speed. The Court's only hesitation stems from the speed at which these events transpired. The plaintiff was shot very soon after he got out of his vehicle. But Davidson controlled the pace of the events and Officer Hancock simply had to react at Davidson's pace.

After considering all of Davidson's arguments, the Court concludes that, as a matter of law, Officer Hancock did not violate Davidson's Fourth Amendment right to be free from excessive force. "Even so, out of an abundance of caution," the Court also concludes that qualified immunity applies as there was no clearly established law making it so that an "objectively reasonable officer, facing the circumstances, would have known that the acts violated pre-existing federal law." *Garrett v. Athens-Clarke County, Ga.*, 378 F.3d 1274, 1281 (11th Cir. 2004).

### **C. Assault and Battery Claim Against Officer Hancock**

Following the dismissal of several claims from Plaintiff's Amended Complaint, all that remains from Count II of the Plaintiff's Amended Complaint is an assault and battery claim against Phillip Hancock in his individual capacity. Under Alabama law, Officer Hancock has "immunity from tort liability arising out of his [] conduct in performance of any discretionary function within the line and scope of his [] law enforcement duties." ALA. CODE § 6-5-338. As addressed above, that Officer Hancock was acting within the scope of his discretionary authority is undisputed. [Dkt. No. 86 Pg. 30]. Upon the showing that Officer Hancock's performance was within the scope of his discretionary function, the burden shifts to Davidson to establish that Officer Hancock "acted fraudulently, in bad faith, or with malice or willfulness, in order to deny the defendants the immunity from suit otherwise provided them by § 6-5-338." *Moore v. Adams*, 754 So.2d 630, 632 (Ala. 1999).

Davidson states that "the facts conclusively show that Hancock's use of deadly force against Michael Davidson was 'so egregious as to amount to willful or malicious conduct or conduct engaged in in bad faith.'" [Dkt. No. 86 Pg. 53]. Davidson argues that the same facts demonstrating a violation of his Fourth Amendment rights apply to defeat Officer Hancock's state agent immunity defense. *Id.* Davidson's allegations that Officer Hancock acted maliciously and in bad faith is conclusory are nothing more than conclusory statements and do not defeat

Officer Hancock's state agent immunity under Alabama Law. *Brivik v. Law*, 545 Fed. App'x 804, 807 (11th Cir. 2013).

**D. Failure to Train Claim Against the City of Opelika and Chief McEachern**

Count III of the Plaintiff's Amended Complaint makes a failure to train claim against the City of Opelika and John McEachern in his individual capacity. The claim against John McEachern in his official capacity has been dismissed. Davidson alleges that the City of Opelika and Chief McEachern violated his Fourth Amendment rights by failing to adequately train their police officers with regard to the use of deadly force. [Dkt. No. 44-1 Pg. 16]. The United States Supreme Court has held "that if a city employee violates another's constitutional rights, the city may be liable if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 123 (1992). In *Monell v. New York Dep't of Social Services*, "the Court made it clear that municipalities may not be held liable 'unless action pursuant to official municipal policy of some nature caused a constitutional tort.'" *Id.* at 120-121 (quoting *Monell v. New York Dep't of Social Services*, 436 U.S. 658, 691 (1978)). "[A]n inquiry into a governmental entity's custom or policy is relevant only when a constitutional deprivation has occurred." *Rooney v. Watson*, 101 F.3d 1378, 1381 (11th Cir. 1996). Since the Court has determined that Officer Hancock's conduct did not result in a violation of Davidson's constitutional rights, there is no need to inquire into the City of Opelika's police and custom relating to officer training on the use of deadly force, and the City of Opelika is entitled to summary judgment in its favor. *See id.* at 1381-82.

"Supervisors are liable under section 1983 either when the supervisor personally participates in the alleged constitutional violation or when there is a casual connection between actions of the supervising official and the alleged constitutional violation." *Myers v. Bowman*, 713 F.3d 1319, 1328 (11<sup>th</sup> Cir. 2013) (internal alterations omitted) (quoting *Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2010)). "[A] supervisor may not be held liable under section 1983 unless the supervised official committed an underlying violation of a constitutional right." *Id.* Because Officer Hancock did not violate Davidson's constitutional rights, Chief McEachern could not have participated in or caused the violation of the constitutional rights of Davidson, and he is entitled to summary judgment in his favor. *See id.* at 1329.

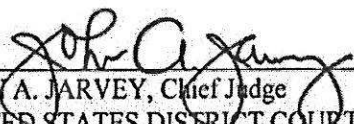
#### IV. CONCLUSION

The Court finds that Officer Hancock's actions on the night of March 6, 2014 were objectively reasonable in light of the facts and circumstances and were not in violation of Davidson's Fourth Amendment right to be free from excessive force during a police seizure. The Court grants Officer Hancock qualified immunity as no clearly established law at the time of the incident prohibited the actions taken. Further, regarding Davidson's claim for assault and battery against Officer Hancock, Officer Hancock is entitled to state agent immunity pursuant to Alabama Code § 6-5-338. Finally, because there was no underlying constitutional violation by Officer Hancock, Davidson's § 1983 failure to train claim against the City of Opelika and Chief McEachern cannot stand.

Upon the foregoing,

**IT IS ORDERED** that the Plaintiff's *Pro Tanto* Motion to Dismiss Claims from the Amended Complaint is **GRANTED** and the Defendants' motion for summary judgment is **GRANTED**.

**DATED** this 4th day of February, 2016.

  
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JOHN A. JARVEY, Chief Judge  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

SITTING BY DESIGNATION

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 16-10857  
Non-Argument Calendar

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D.C. Docket No. 3:14-cv-00323-JAJ-TFM

MICHAEL DAVIDSON,

Plaintiff - Appellant,

versus

CITY OF OPELIKA, ALABAMA,  
PHILLIP HANCOCK,  
JOHN MCEACHERN,

Defendants - Appellees.

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Appeal from the United States District Court  
for the Middle District of Alabama

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(January 17, 2017)

Before WILSON, ROSENBAUM and JILL PRYOR, Circuit Judges.

PER CURIAM:

Michael Davidson was shot by Opelika, Alabama police officer Phillip Hancock just after exiting his vehicle alongside the highway. Davidson was unarmed. He survived the incident but was grievously injured. Davidson subsequently sued Hancock, Opelika Chief of Police John McEachern, and the City of Opelika for claims arising from the shooting. The shooting was undeniably a tragedy, but it resulted from the unique and lamentable position of Davidson's hands holding his wallet the moment before the shooting. After careful consideration and review of a video recording of the shooting, viewing the evidence in the light most favorable to Davidson, we conclude that a reasonable officer in Hancock's position would have feared for his life. Accordingly, we affirm the district court's grant of summary judgment based on qualified immunity in favor of Hancock on all claims.

## I. FACTUAL BACKGROUND

After a caller reported an erratic driver on Interstate 85 near Opelika, Hancock, who was on patrol that night, was dispatched to the scene.<sup>1</sup> The driver was Davidson, an active duty member of the United States Air Force, who was travelling in his sport utility vehicle on his way to Johnson-Seymour Air Force Base in North Carolina. Just before Hancock caught up with Davidson,

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<sup>1</sup> On appeal from the district court's summary judgment rulings, we view the evidence related to those claims in the light most favorable to Davidson, the non-movant. *See Valderrama v. Rousseau*, 780 F.3d 1108, 1110 n.1 (11th Cir. 2015).

Davidson's vehicle had collided with an 18 wheel truck. When Hancock arrived, both the truck driver and Davidson had pulled off the road and were stopping their vehicles. The video reflects that after Davidson's vehicle came to a stop, its rear lights flashed, indicating that he had placed it in park.

Hancock parked his police cruiser close to the left-rear bumper of Davidson's vehicle, about a car length behind it, and trained his spotlight on the driver-side front door. Hancock then exited his cruiser with his gun drawn.<sup>2</sup> Davidson attempted to exit his vehicle but had some trouble with the door pressing back against him because he was parked at an angle with the passenger side downhill off the side of the road. What happened over the course of the next three seconds is the focus of this case.

As Davidson pushed his way out, he withdrew his wallet from his pocket. Just as Davidson managed to exit the vehicle, Hancock yelled, "Let me see your hands!" Hancock yelled again, "Let me see your hands!" Simultaneously, Davidson brought his hands together and then extended them outward toward Hancock. Davidson's wallet was visible over the top of his clasped hands. Hancock fired two shots in rapid succession as he finished his second command to Davidson. One shot hit the ground while the other hit Davidson. As Hancock

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<sup>2</sup> The district court appears to have accepted Hancock's assertion that he did not unholster his weapon until after warning Davidson to show his hands. There is a witness statement to the contrary in the record, however, and we are bound to view all facts and draw all reasonable inferences in Davidson's favor.

fired his first shot, Davidson's hands moved apart, outward, and then above his shoulders.

The shot that hit Davidson entered his lower abdomen, transected his colon and internal iliac artery, and punctured his small intestine. Davidson subsequently sued Hancock, Chief McEachern, and the City of Opelika in federal district court for claims arising out of the shooting. He asserted claims under 42 U.S.C. § 1983 against Hancock for excessive force and against McEachern and City of Opelika for failing to train Davidson. He also brought state-law assault and battery claims against Hancock. The district court granted summary judgment to the defendants. It concluded that with respect to the § 1983 excessive force claim Hancock was entitled to qualified immunity because even viewing the evidence in the light most favorable to Davidson there was no constitutional violation. The court rejected the § 1983 failure to train claim because there was no constitutional violation. And it ruled that the state law claims failed because Hancock was entitled to immunity. This appeal followed.

## II. STANDARD OF REVIEW

“This court reviews a district court’s grant of summary judgment *de novo*, applying the same legal standards used by the district court.” *Galvez v. Bruce*, 552 F.3d 1238, 1241 (11th Cir. 2008). We view the facts in the light most favorable to the nonmoving party. *See id.* We must also draw “all reasonable inferences in



favor of the party opposing summary judgment.” *Whatley v. CNA Ins. Cos.*, 189 F.3d 1310, 1313 (11th Cir. 1999). Summary judgment is appropriate when there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Mere speculation is insufficient to create a genuine issue of material fact. *See Cordoba v. Dillard’s Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

### III. DISCUSSION

Davidson argues that the district court erred in granting summary judgment to the defendants because the court failed to view the evidence and draw all reasonable inferences in his favor, and that when the evidence is viewed in the light most favorable to him, there are disputed issues of material fact making summary judgment inappropriate. We conclude that the district court correctly granted summary judgment in the defendants’ favor. The video evidence in this case is conclusive. Although we do view the facts and draw reasonable inferences in Davidson’s favor, the Supreme Court has instructed us that when there is a reliable video recording of disputed events, we are to view facts “in the light depicted by the video[.]” *Scott v. Harris*, 550 U.S. 372, 381 (2007). Here, that video proves that a reasonable officer in Hancock’s position would fear for his life because of the unique way in which Davidson extended his wallet in his clasped hands.

**A. The Section 1983 Excessive Force Claim against Hancock**

Davidson argues that the district court erred in granting qualified immunity to Hancock because the evidence viewed in the light most favorable to him shows that Hancock used excessive force. “Title 42 U.S.C. § 1983 provides a cause of action against ‘[e]very person who, under color of any statute of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws’ of the United States. *Wyatt v. Cole*, 504 U.S. 158, 161 (1992) (alterations in original) (quoting 42 U.S.C. § 1983). But qualified immunity “offers complete protection for government officials sued in their individual capacities if their conduct ‘does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “The purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation . . . .” *Lee v. Ferraro*, 284 F.3d 1188, 1194 (11th Cir. 2002).

To be entitled to qualified immunity, a government official “bears the initial burden of showing he was acting within his discretionary authority.” *Valderrama v. Rousseau*, 780 F.3d 1108, 1112 (11th Cir. 2015) (internal quotation marks omitted). The parties agreed that Hancock was engaged in a discretionary

function. The burden thus shifted to Davidson to show that “(1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation.” *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004).

Davidson argues that Hancock used excessive force when the officer shot him as Davidson was exiting his vehicle, violating his Fourth Amendment right to be free from unreasonable seizure. *See Penley v. Eslinger*, 605 F.3d 843, 849 (11th Cir. 2010). We analyze a claim of excessive force under the Fourth Amendment’s “objective reasonableness” standard. *Salvato v. Miley*, 790 F.3d 1286, 1293 (11th Cir. 2015). In determining whether the use of force was “objectively reasonable,” we carefully balance “the nature and quality of the intrusion on the individual’s Fourth Amendment interests[] against the countervailing governmental interests at stake under the facts of the particular case.” *Id.* (internal quotation marks omitted). “To satisfy the objective reasonableness standard imposed by the Fourth Amendment, [Hancock] must establish that the countervailing government interest was great.” *Penley*, 605 F.3d 843, 850 (11th Cir. 2010). “[A]nalysis of this balancing test is governed by (1) the severity of the crime at issue; (2) whether [Davidson] posed an immediate threat to [Hancock] or others; and (3) whether he actively resisted arrest.” *Id.* at 850–51. Taking the evidence in the light most favorable to Davidson to the extent supported by the record, these factors lead to

the conclusion that Hancock did not violate Davidson's Fourth Amendment rights by using an objectively unreasonable amount of force.

Under the circumstances, Hancock could not reasonably have suspected that Davidson was guilty of any violent crime, so the first factor weighs against Hancock. At most, the reports of Davidson's erratic driving gave Hancock arguable probable cause to believe that Davidson was driving under the influence of alcohol or a controlled substance. There was no reason to suspect that he might be armed or violent.

Nor, skipping ahead, does the third factor support Hancock. When he arrived at Davidson's vehicle, it was already coming to a stop by the side of the highway behind an 18 wheel truck that had also pulled off the road. After the vehicle came to a stop, its rear lights flashed, indicating that the driver had placed it in park. The reasonable inference to be drawn from these facts was that Davidson pulled off the road after an accident with the truck to exchange information with its driver. There was no reason whatsoever to believe that Davidson was resisting Hancock.

But the second factor—whether Davidson posed an immediate threat to Hancock—decides this case. “[T]he second factor can be reduced to a single question: whether, given the circumstances, [the suspect] would have appeared to reasonable police officers to have been gravely dangerous.” *Penley*, 605 F.3d at

851 (second alteration in original) (internal quotation marks omitted). The district court determined that Davidson presented such a threat because “[a]fter reaching behind himself in a motion akin to upholstering [sic] a weapon, Davidson stood clutching a black object with both hands, pointing towards Officer Hancock as though he was preparing to shoot.” Order Granting Def.’s Mot. for Summ. J. 8 (Doc. 104).<sup>3</sup> The positions of the object and Davidson’s hands—established by the video—are key. To be clear, Davidson exiting his vehicle, reaching behind himself, and holding an unidentified object would not have been sufficient to make Hancock’s use of deadly force reasonable under the circumstances. But the unusual position of the dark object in Davidson’s outstretched and clasped hands would have led a reasonable officer to believe that Davidson was pointing a gun at him. For that reason, we concur with the district court that Davidson objectively posed a grave and immediate threat to Hancock.

Davidson argues that Hancock used excessive force because he posed no threat to the officer. He contends that his hands were not in a shooting position. Rather, he stretched out his hands to comply with Hancock’s command, “Let me see your hands!” And he maintains that Hancock should have expected a driver preparing to exchange information after an accident to retrieve his wallet from his

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<sup>3</sup> Citations to “Doc.” refer to docket entries in the district court record in this case.

pocket. Davidson disputes that there was any rapidly developing, uncertain, and tense situation until Hancock created one.

But these arguments are unavailing. “[T]he Supreme Court has cautioned that [t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Penley*, 605 F.3d at 850 (second alteration in original) (internal quotation marks omitted). We share the district court’s concern that Davidson was shot so soon after he exited his vehicle. Further, we agree with Davidson that Hancock’s imprecise language contributed to the uncertain nature of the situation. But when we evaluate Hancock’s conduct “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,” we conclude that the force used was not excessive. *Id.* (internal quotation marks omitted).

Davidson has failed to establish that Hancock violated his constitutional rights, so we need not examine whether those rights were clearly established. The district court properly granted summary judgment in favor of Hancock on the basis of qualified immunity.<sup>4</sup>

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<sup>4</sup> Accordingly, we also uphold the district court’s grant of summary judgment in favor of the City of Opelika and McEachern because “a supervisor may not be held liable under section

**B. The State Law Assault and Battery Claim against Hancock**

Davidson also sued Hancock for committing assault and battery under Alabama law. The district court granted summary judgment in favor of Hancock based on the Alabama statute granting state agents immunity from civil liability for acts “arising out of his or her conduct in performance of any discretionary function within the line and scope of his or her law enforcement duties.” Ala. Code. § 6-5-338(a). The parties agree that Hancock acted discretionarily and within the scope of his law enforcement duties. Davidson, however, points to Alabama case law holding that “a police officer loses this immunity when he ‘acts willfully, maliciously, fraudulently, in bad faith, beyond his . . . authority or under a mistaken interpretation of the law.’” *Morton v. Kirkwood*, 707 F.3d 1276, 1285 (11th Cir. 2013) (alteration in original) (quoting *Ex parte Butts*, 775 So. 2d 173, 178 (Ala. 2000)).

Davidson argues that “Hancock’s use of deadly force against [him] was ‘so egregious as to amount to willful or malicious conduct or conduct engaged in in bad faith.’” Appellant’s Br. at 56 (quoting *Couch v. City of Sheffield*, 708 So. 2d 144, 153 (Ala. 1998)). But the only case Davidson cites in support of this argument, *Brown v. City of Huntsville*, 608 F.3d 724 (11th Cir. 2010), is

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1983 unless the supervised official committed an underlying violation of a constitutional right.” *Myers v. Bowman*, 713 F.3d 1319, 1328 (11th Cir. 2013).

inapposite. In *Brown*, we held that an officer's use of pepper spray against an unarmed and compliant driver "was done intentionally, gratuitously, and in violation of [the victim's] clearly established constitutional rights, supporting an inference that [the officer] acted willfully and in bad faith." *Id.* at 742. Here, by contrast, video evidence demonstrates that Hancock's actions were neither gratuitous nor in violation of Davidson's clearly established constitutional rights. Considered in the light most favorable to Davidson, the evidence does not give rise to an inference that Hancock acted in bad faith. We therefore affirm the district court's grant of summary judgment on Davidson's assault and battery claim.

#### IV. CONCLUSION

With all facts, as supported by video evidence, viewed in a light favorable to Davidson, Hancock's use of force was objectively reasonable. In so holding, we do not want to understate the suffering Davidson endured as the result of Hancock's disastrous mistake. But the positions of Davidson's wallet and hands the moment before the shooting mean that mistake did not violate Davidson's constitutional rights. The district court's grant of summary judgment was proper.

For these reasons, the judgment of the district court is **AFFIRMED**.