

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RONALD JOSEPH MITCHELL, as
Personal Representative of the Estate of
TIMOTHY JOSEPH MITCHELL, deceased,

Plaintiff,

v.

Case No. 2:15-CV-16
HON. TIMOTHY P. GREELEY

JUSTIN SCHLABACH,

Defendant.

OPINION & ORDER

Plaintiff Ronald Joseph Mitchell (the personal representative of Timothy Mitchell's estate) initiated this suit against Officer Schlabach on January 28, 2015, claiming that Schlabach used excessive force in violation of the Fourth Amendment. ECF No. 1. On June 9, 2015, Schlabach filed a motion for summary judgment, arguing that qualified immunity insulates Officer Schlabach from any liability in this suit. ECF No. 19. On July 7, 2015, Plaintiff responded to Schlabach's motion for summary judgment. ECF No. 21. On July 22, 2015, Schlabach filed his reply to Plaintiff's response. ECF No. 28. Four days later, District Court Judge R. Allan Edgar reserved ruling on Schlabach's motion for summary judgment in order to allow more time for the parties to conduct additional discovery. ECF No. 29.¹ During this time, the Court asked the parties to brief the impact of the recently decided Sixth Circuit case *Mullins v. Cyranek*, 805 F.3d 760 (6th Cir. 2015) on this case. ECF No. 40. On December 9, 2015, Schlabach filed a brief addressing how *Mullins* affects this case. ECF No. 42. On December 24, 2015, Plaintiff filed a response. ECF No.

¹ The parties have since consented to proceed before a United States magistrate judge. ECF No. 38.

43. Schlabach filed a reply on January 4, 2016. ECF No. 44. The issue of qualified immunity is now ready for a decision.

In deciding this motion, the Court must determine the relevant facts. Ordinarily, for purposes of qualified immunity, courts adopt the plaintiff's version of the facts. *Scott v. Harris*, 550 U.S. 372, 381 (2007). However, when a videotape captures all of the genuinely disputed facts, *Standifer v. Lacon*, 587 F. App'x 919, 921 (6th Cir. 2014), as it does in this case, courts "view[] the facts in the light depicted by the videotape." *Scott*, 550 U.S. at 379; *Rudlaff v. Gillispie*, 791 F.3d 638, 639 (6th Cir. 2015). Therefore, to the extent the video contradicts Plaintiff's version of the facts, this Court will adopt the version portrayed in the video.

On a wet and rainy afternoon in July of 2014, Munising Police Officer Justin Schlabach was the only police officer on duty. Alger County Dispatch radioed Schlabach that a "pretty intoxicated" "Tim Mitchell" was involved in a "verbal altercation with a couple of subjects [in Christmas, Michigan]," and was headed toward Munising in a maroon-colored, four-door, Ford Taurus that had a missing mirror on the passenger side. PageID.92, 94. After receiving this call, Schlabach drove to Christmas, Michigan, and found the suspect's vehicle heading towards Munising. The vehicle stopped in a parking lot and Schlabach followed it into the lot. Once both vehicles were stopped, Schlabach activated his emergency lights. PageID.349. From this point on, Schlabach's dashboard camera recorded the events that followed.

Seconds after Mitchell stopped his car in the parking lot, Mitchell exited the lot in his vehicle and turned onto Highway 28. DashCam 16:31:05-33. Schlabach followed Mitchell, first onto Highway 28, and then through a residential neighborhood. In the neighborhood, Mitchell drove at speeds of nearly 60 miles per hour and ran multiple stop signs, including one in front of an

elementary school. The chase then continued down Highway 28 into the Hiawatha National Forest, reaching speeds in excess of 100 mph. At one point, Mitchell slammed on his brakes and swerved, causing Schlabach to decelerate to under 30 miles per hour. DashCam16:39:15-19. Throughout the chase, multiple attempts were made to contact surrounding law enforcement agencies so that Schlabach could be assisted in this chase. PageID.96-103.

The car chase ended approximately ten minutes (twelve miles) after it started, when Mitchell went into a ditch located in a remote portion of the Hiawatha National Forest. DashCam 16:40:54. When Schlabach arrived at the scene moments later, he parked on the road behind and to the left of Mitchell's car. At this time, Mitchell exited his vehicle, closed the car door, took a couple steps away from his vehicle, stood still for five or six seconds, and then hiked up his pants. While Mitchell was standing, Schlabach exited his vehicle, drew his service weapon, and walked toward Mitchell (who was still in the ditch). As Schlabach was walking towards Mitchell, Mitchell (who was faced away from Schlabach) bent down to the ground momentarily, and then stood upright. Mitchell then took a step away from Schlabach before turning to face him. At that moment, the parties were a little more than a car length away from each other.

In the moment that Mitchell was turning to face Schlabach, the video clearly shows that Mitchell did not drop to the ground or put his hands in the air upon seeing Schlabach in his uniform with his service weapon drawn; instead, Mitchell started walking quickly in Schlabach's direction. As Mitchell was walking quickly toward Schlabach, Schlabach kept his weapon drawn and simultaneously took five or six quick steps backward. Notably, the video does not show that Mitchell had a weapon, but it does show that Mitchell was physically larger than Schlabach. While Mitchell continued to walk towards Schlabach, Schlabach fired once at Mitchell and hit him.

Despite being shot, Mitchell continued to move toward Schlabach, so Schlabach took another step backward. As he was moving backward, Schlabach fired another shot at Mitchell, hitting him a second time. After this second shot, Mitchell turned around, took five or six aimless steps away from Schlabach, and collapsed to the ground. Approximately one and a half minutes after Schlabach fired his second shot, backup arrived. DashCam 16:43:05.

Once Mitchell was on the ground, and before backup had arrived, Schlabach approached Mitchell, holstered his weapon, and placed Mitchell in handcuffs. During this time, Schlabach reported to dispatch: “This is (inaudible), shots fired, he came right at me!” PageID.104. In addition, Schlabach told dispatch to send an EMS, and that the subject was “alert . . . conscious . . . breathing . . . [and had] a pulse.” PageID.104. Once backup officers arrived, they placed Schlabach in their squad car. Mitchell was subsequently pronounced dead at the scene.

The events of that day in July of 2014 were a tragedy for Mitchell’s family and friends, and it has undoubtedly had a profound impact on them. Similarly, this event has likely impacted Officer Schlabach’s life significantly. Unfortunately for both parties, the outcome of this lawsuit cannot change what happened that day. With that being said, Schlabach’s motion for summary judgment shall now be addressed.

Summary judgment is appropriate when the record reveals that there are no genuine issues as to any material fact in dispute and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Kocak v. Comty. Health Partners of Ohio, Inc.*, 400 F.3d 466, 468 (6th Cir. 2005). The standard for determining whether summary judgment is appropriate is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *State Farm Fire & Cas. Co. v. McGowan*, 421

F.3d 433, 436 (6th Cir. 2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). The court must consider all pleadings, depositions, affidavits, and admissions on file, and draw all justifiable inferences in favor of the party opposing the motion. See *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Twin City Fire Ins. Co. v. Adkins*, 400 F.3d 293, 296 (6th Cir. 2005).

Moreover, a genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate.” *Monette v. Elec. Data Sys. Corp.*, 90 F.3d 1173, 1177 (6th Cir. 1996); see also *Bradley v. Wal-Mart Stores E., LP*, 587 F. App'x 863, 865-66 (6th Cir. 2014). For example, it is not sufficient for Mitchell to allege mere speculation in an attempt to defeat a motion for summary judgment. See *Matsushita Elec. Indus. Co.*, 475 U.S. at 585–87 (noting the nonmoving party must present proof showing a “genuine dispute as to any material fact.”); see *Monette*, 90 F.3d at 1177 (“[T]he mere existence of a colorable factual dispute will not defeat a properly supported motion for summary judgment. A genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate.”); see also *Bradley*, 587 F. App'x at 865-66. In addition, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott*, 550 U.S. at 380.

Notably, when a government official raises the defense of qualified immunity in a summary judgment motion, it is Plaintiff’s burden to show that the government Defendant is not entitled to this immunity. *Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009); *Untalan v. City of Lorain*, 430 F.3d 312, 314 (6th Cir. 2005). In general, qualified immunity allows

Police officers [to be] immune from civil liability unless in the course of performing their discretionary functions, they violate the plaintiff's clearly established constitutional rights. *Messerschmidt v. Millender*, ___ U.S. ___, 132 S.Ct. 1235, 1244, 182 L.Ed. 2d 47 (2012). Qualified immunity provides police officers "breathing room to make reasonable but mistaken judgments and protects all but the plainly incompetent or those who knowingly violate the law." *Stanton v. Sims*, ___ U.S. ___, 134 S.Ct. 3, 5, 187 L.Ed 2d 341 (2013) (per curiam) (citations and quotation marks omitted). In a civil suit arising from the use of deadly force, immunity should be recognized "if officers of reasonable competence could disagree on the issue." *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L.Ed. 2d 271 (1986).

To determine whether an officer is entitled to qualified immunity, we apply a well-established two-prong test: (1) whether the facts, when taken in the light most favorable to the party asserting the injury, show the officer's conduct violated a constitutional right; and (2) whether the right violated was clearly established such "that a reasonable official would understand that what he is doing violates that right." See *Saucier v. Katz*, 533 U.S. 194, 201-02, 121 S.Ct. 2151, 150 L.Ed 2d 272 (2001) (citation omitted). The order in which we analyze these two prongs is left to our "sound discretion." *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S.Ct. 808, 172 L.Ed. 2d 565 (2009).

Mullins v. Cyranek, 805 F.3d 760, 765 (6th Cir. 2015).

Here, Plaintiff alleges that Schlabach violated Mitchell's Fourth Amendment constitutional right to be free from excessive force when Schlabach shot Mitchell. In deciding a similar case, the Sixth Circuit recently stated that

[I]t is axiomatic that individuals have a clearly established right not to be shot absent "probable cause to believe that [they] pose[] a threat of serious physical harm, either to the officer or to others." *Sample v. Bailey*, 409 F.3d 689, 698 (6th Cir. 2005) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S.Ct. 1694, 85 L.Ed 2d 1 (1985)),

[therefore,] we must determine whether, in light of the facts and circumstances of this case, Cyranek's use of deadly force violated Mullin's Fourth Amendment right to be free from excessive force. In answering whether Cyranek violated Mullin's constitutional rights, we must determine whether his use of deadly force was reasonable under the Fourth Amendment. *See Plumhoff v. Rickard*, ___ U.S. ___, 134 S.Ct. 2012, 2020, 188 L.Ed. 2d 1056 (2014). In prior cases we have employed a non-exhaustive list of three factors to evaluate whether an officer's actions are reasonable: "(1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight." *Sigley v. City of Parma Heights*, 437 F.3d 527, 534 (6th Cir.2006). These factors help inform our ultimate inquiry, which must always be "whether the totality of the circumstances" justified the use of force. *Livermore v. Lubelan*, 476 F.3d 397, 404 (6th Cir.2007). We must judge the reasonableness of the use of force from the perspective of a reasonable officer on the scene and not through the lens of 20/20 hindsight, allowing for the fact "that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); *see also Saucier*, 533 U.S. at 206, 121 S.Ct. 2151 (nothing that qualified immunity serves to "protect officers from the sometimes hazy border between. In making this judgment, we must be careful not to substitute "our personal notions of proper police procedure for the instantaneous decision of the officer at the scene." *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir.1992). Rather, we must adopt a "built-in measure of deference to the officer's on-the-spot judgment about the level of force necessary in light of the circumstances of the particular case." *Burchett v. Kiefer*, 310 F.3d 937, 944 (6th Cir.2002). After all, "[w]hat constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Dickerson v. McClellan*, 101 F.3d 1151, 1163 (6th Cir. 1996) (citation omitted).

Mullins, 805 F.3d at 765-66. With these ideas in mind, the Court now must determine the first prong

of this qualified immunity claim—whether a constitutional violation occurred when Schlabach shot Mitchell in July of 2014.

Plaintiff argues that that Schlabach violated Mitchell’s constitutional rights because: (1) Mitchell did not pose a threat of serious physical harm to Schlabach at the time Mitchell was shot, (2) the distance between Mitchell and Schlabach at the time of the shooting was “far greater” than the “reactionary gap” used to justify use of deadly force, and (3) Schlabach improperly violated police policy before shooting Mitchell. *See* PageID.324-326.²

To begin, despite Plaintiff’s first contention, a reasonable officer in Schlabach’s position *could* conclude that Mitchell posed a threat of serious physical harm to Schlabach in the moments before the shooting. *See Tennessee v. Garner*, 471 U.S. 1, 11 (1985); *Kirby v. Duva*, 530 F.3d 475, 482 (6th Cir. 2008). For example, the high speed chase led by Mitchell through residential neighborhoods and a school zone, in which the parties reached speeds in excess of 100 mph, shows that Mitchell disregarded the risk of harm to his life, the life of those living in the residential neighborhoods, and Schlabach’s life. Moreover, during this chase, Mitchell was swerving in and out of his lane, and he even slammed on his breaks at one point—an occurrence that could make a reasonable officer conclude that Mitchell was trying to get Schlabach to rear-end him, potentially causing both parties to suffer serious harm.

Furthermore, even after the chase ended (when Mitchell went into a ditch), a reasonable officer could conclude that Mitchell posed a serious risk of harm to Schlabach since Schlabach’s dashboard video shows Mitchell refusing to comply with Schlabach’s attempts to

²Notably, Plaintiff’s characterization of events is often exaggerated or unclear. For example, Plaintiff states that Schlabach may have shot Mitchell when Mitchell was in the ditch. However, the facts and video evidence clearly show that Mitchell was shot twice—both times occurring when Mitchell was on the road and moving toward Schlabach.

conduct an arrest. For instance, after Mitchell and Schlabach were out of their cars, and Mitchell began walking toward Schlabach, the video clearly shows that Mitchell did not put his hands in the air or get on the ground—actions which would show a person’s compliance with an officer’s attempt to conduct an arrest.³ Moreover, Schlabach was clothed in police attire at the time of the shooting and was brandishing a weapon—two visual signs that are often used to signal that an officer is attempting to obtain compliance. Despite these signs, however, Mitchell continued walking toward Schlabach. While Plaintiff argues that Mitchell could not have posed a serious threat of harm to Schlabach because Mitchell did not have a weapon on him, this argument is not persuasive since Schlabach had no way of knowing whether Mitchell was concealing a weapon on his person or not. Consequently, even when viewing the facts in the light most favorable to Plaintiff, the video clearly portrays a situation in which a reasonable officer would believe Mitchell was capable of inflicting serious physical harm to himself or others, thereby justifying Schlabach’s use of force.

In regard to Plaintiff’s second argument, that the distance between Mitchell and Schlabach was not enough to justify the use of deadly force, this assertion is also not persuasive. Plaintiff claims that, after doing “simple math,” the distance between Mitchell and Schlabach during the shooting ranged from between 31.7 feet and 36.7 feet—a distance “far greater” than the reactionary gap used by Schlabach to justify his use of force. PageID.324. However, Plaintiff’s distances were calculated based on the distances between the spent casings and bloody spots that were left after the shooting occurred (PageID.324), and do not take into consideration the fact that shell casings travel backwards after being ejected from a pistol. Therefore, the distance between

³Schlabach claims that he repeatedly told Mitchell to “get down on the ground.” (PageID.122), and that Mitchell had said, while walking toward Schlabach, that “[y]ou’re going to have to f–king shoot [or kill] me” in response (PageID.123). Since the video does not include sound, and Mitchell is unable to refute these statements given his tragic death, they will not be considered for purposes of this motion.

Mitchell and Schlabach was likely closer than Plaintiff's proposed distances. As a result, Plaintiff has not demonstrated that the distance between the parties at the time of the shooting was "too far" to justify the use of deadly force.

Finally, in regard to Plaintiff's third assertion, Plaintiff has not demonstrated that Schlabach's failure to follow police policy resulted in an unconstitutional use of force against Mitchell. Plaintiff points to the police policy indicating that when the high speed chase stopped, Schlabach was required to "stop his vehicle a safe distance from Mr. Mitchell's vehicle, exit and use his vehicle as cover, check on the location of back-up, draw and present his firearm and use the public address system to give commands, attempting to achieve compliance." PageID.326. Plaintiff states that since Schlabach did not follow this policy, he was not justified in using deadly force against Mitchell.

Despite Plaintiff's accurate recitation of the procedure Schlabach should have taken before the events leading up to the shooting, this Court is required to consider only those facts surrounding the officer's ultimate confrontation with Mitchell for purposes of analyzing excessive use of force. *See Claybrook v. Birchwell*, 274 F.3d 1098, 1105 (6th Cir. 2001) (finding irrelevant to the use of deadly force analysis the fact that officers had violated police department policy by approaching suspect out of uniform and in an unmarked car and demanding that he drop his weapon without identifying themselves as police officers); *Boyd v. Baeppler*, 215 F.3d 594, 597 (6th Cir. 2000) (finding that whether suspect was running from officers in an attempt to escape, actually fired his weapon as reported, and whether he committed any crime was irrelevant to the officers' ultimate confrontation); *Dickerson v. McClellan*, 101 F.3d 1151, 1161 (6th Cir. 1996) (finding that whether or not officers illegally entered suspect's home was immaterial to use of deadly force); *Drewitt v.*

Pratt, 999 F.2d 774, 778 (4th Cir. 1993) (“Officer Pratt’s actions prior to the shooting, such as whether he properly identified himself as a police officer or whether he was in a position to jump out of the way of the plaintiff’s rapidly accelerating vehicle, relate only to the issue of whether Pratt’s arrest procedures were proper or improper. Those actions are not material to Officer Pratt’s subsequent decision to shoot the plaintiff in light of the severe threat of physical harm to himself after being thrown on the hood of plaintiff’s vehicle.”). Regardless, whether or not Schlabach violated police policy and procedures is not determinative. *See Mullins*, 805 F.3d at 768 (“Whether or not an officer is following police procedures is certainly relevant to the question of reasonableness in excessive force cases, but it is not necessarily conclusive proof that the Constitution has been violated. Rather, the key inquiry is whether a reasonable officer in the same circumstances would have used the same amount of force.”). Moreover, Schlabach’s decision to go against policy may have been justified given the unique set of circumstances he was in: located in the middle of a national forest, unsure when backup would arrive, and faced with a potential physical altercation with (a larger) Mitchell in the coming seconds.

Based on this information, it is clear that Plaintiff has not shown that Schlabach violated Mitchell’s Fourth Amendment right to be free from excessive force when Schlabach shot Mitchell in July of 2014. *Chappell*, 585 F.3d at 907 (noting it is plaintiff’s burden to show an officer is not entitled to qualified immunity); *see also Graham v. Connor*, 490 U.S. 386, 396–97 (1989) (“split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”). However, even if Plaintiff had shown that a constitutional violation under the Fourth Amendment occurred, Schlabach is entitled to qualified immunity because, at the time this shooting occurred, it was not clearly established that

Schlabach's actions violated the Fourth Amendment. *Mullenix v. Luna*, 136 S. Ct. 305, 312, (2015).

In determining whether a constitutional right was clearly established, a recent decision of the Sixth Circuit provides guidance:

The Supreme Court has “repeatedly told courts ... not to define clearly established law at a high level of generality.” *Mullenix*, 136 S.Ct. at 308 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 131 S.Ct. 2074, 2084 (2011)). The dispositive question is “whether the violative nature of particular conduct is clearly established.” *Id.* “Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.” *Mullenix*, 136 S.Ct. at 308 (internal quotation marks and citation omitted). In *Mullenix*, the Supreme Court recently rejected the Fifth Circuit's use of the general rule that a police officer “may not use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others” as being at too high a level of generality. *Id.* at 311 (quotation marks omitted). And in *Brosseau v. Haugen*, 543 U.S. 194 (2004) (per curiam), the Court summarily reversed the Ninth Circuit's decision to use the rule that “deadly force is only permissible where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.” *Mullenix*, 136 S.Ct. at 309 (quoting *Haugen v. Brosseau*, 339 F.3d 857, 873 (9th Cir.2003)). The Court held that the use of such a “general” test for excessive force was “mistaken.” *Brosseau*, 543 U.S. at 199.

Despite this clear direction from the Supreme Court, the district court primarily relied on the general rule that deadly force is unreasonable “where the suspect poses no immediate threat to the officer and no threat to others.” *Rush*, 2015 WL 632321, at *8 (quoting *Garner*, 471 U.S. at 12). It also noted “the right of people who pose no safety risk to the police to be free from gratuitous violence during arrest.” *Id.* (quoting *Shreve v. Jessamine Cty. Fiscal Court*, 453 F.3d 681, 688 (6th Cir.2006)). Finally, the district court cited one of our unpublished decisions for the proposition that it is

illegal for officers to use “non-lethal, temporarily incapacitating force [] on a handcuffed suspect who no longer poses a safety threat, flight risk, and/or is not resisting arrest.” *Id.* (quoting *Wells v. City of Dearborn Heights*, 538 F. App’x 631, 638 (6th Cir.2013)).

As the Supreme Court reiterated in *Mullenix*, “[t]he general principle that deadly force requires a sufficient threat hardly settles this matter.” 136 S.Ct. at 309, 312. The cases cited by the district court and *Rush* provide only general rules—rules just like the ones the Supreme Court has rejected in per curiam, summary reversals. *See, e.g., Mullenix*, 136 S.Ct. at 311; *Brosseau*, 543 U.S. at 199. Moreover, the right here was not clearly established in light of the many cases, including cases in our circuit, where courts have held that it was not unreasonable for officers to continue using deadly force—even mistakenly—when the officer had been faced with a severe threat in a rapidly-changing situation seconds before and the circumstances did not indicate that the threat had abated. *See, e.g., Mullins*, 805 F.3d at 767 (collecting cases).² Absent controlling authority, we require “a robust consensus of cases of persuasive authority” to constitute clearly established law. *al-Kidd*, 131 S.Ct. at 2084 (internal quotation marks and citation omitted). We lack controlling authority here, and any robust consensus of cases is manufactured at too high a level of generality. Accordingly, we hold that Rendon did not violate a clearly established constitutional right.

Rush v. City of Lansing, No. 15-1225, 2016 WL 787891, *9 (6th Cir. Feb. 29, 2016) (footnote omitted). As the *Rush* court recently concluded, absent a “robust consensus of cases of persuasive authority” showing that an officer’s actions were clearly improper, the officer has not violated clearly established law. *Id.* at *9 (citing *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2084 (2011)). Given the lack of case law on this issue to guide Schlachach’s actions, Schlachach did not violate any clearly established laws when shooting Mitchell in July of 2014.

Ultimately, I have struggled with this motion for weeks, and have spent a considerable amount of time reflecting on the question presented. Officer Schlachach did not have

these luxuries; rather, he had only seconds to react. I conclude that Officer Schlabach's actions, as depicted in the video, are entitled to qualified immunity. *Chappell*, 585 F.3d at 907; *Untalan*, 430 F.3d at 314.

For the reasons stated above, Defendant's motion for summary judgment based on qualified immunity is **GRANTED** (ECF No. 19), and the case will be dismissed in its entirety.

A judgment consistent with this order will be entered.

IT IS SO ORDERED.

Dated: March 28, 2016

/s/ TIMOTHY P. GREELEY
Timothy P. Greeley
United States Magistrate Judge