

CASE NO. 24-1934

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

TED ACORD, as Administrator of the Estate of Michal Acord,
APPELLANT,

v.

CHAD STILLEY,
APPELLEE.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF VIRGINIA

CORRECTED OPENING BRIEF OF APPELLANT

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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No. 24-1934 Caption: TED ACORD V. CHAD STILLEY

Pursuant to FRAP 26.1 and Local Rule 26.1,

TED ACORD

(name of party/amicus)

who is APPELLANT, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
2. Does party/amicus have any parent corporations? ☐ YES ☒ NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? ☐ YES ☒ NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /S/ SETH CARROLLDate: 10/11/2024Counsel for: TED ACORD

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**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**No. 24-1934
(7:22-cv-00284-EKD)**

**TED ACORD, as Administrator of
The Estate of Michael Acord,**

Plaintiff-Appellant,

v.

CHAD STILLEY,

Defendant-Appellee.

I. JURISDICTIONAL STATEMENT

Given that the district court’s summary judgment ruling disposed of all underlying claims in the litigation, this Court has jurisdiction to adjudicate this appeal pursuant to 28 U.S.C. § 1291.

II. STATEMENT OF THE ISSUES

1. Whether the district court erred in granting Officer Chad Stilley (“Stilley”) qualified immunity to the Fourth Amendment excessive force claim arising out of Stilley’s use of deadly force on July 24, 2020.

2. Whether the district court erred in granting Stilley good faith immunity to the state law battery claim arising out of his use of deadly force on July 24, 2020.

III. STATEMENT OF THE CASE

Plaintiff Ted Acord (“Appellant”), as administrator of the estate of his son, Michael Acord (“Michael”), brought this civil rights suit pursuant to 42 U.S.C. § 1983, asserting violations of Michael’s Fourth Amendment rights through the use of excessive force by Stilley. (J.A.000007-12). Appellant also brought a state-law battery claim, alleging Stilley’s conduct constituted an unlawful use of force under Virginia law. (J.A.000011). The events underlying both claims stem from a high-speed pursuit that occurred on July 24, 2020, during which Michael, driving a motorcycle, collided with Stilley’s police cruiser and suffered fatal injuries. (J.A.000008-9). Stilley, who intentionally positioned his vehicle in the roadway approximately two seconds before Michael crossed his path, created a roadblock that amounted to the use of deadly force that took Michael’s life. (J.A.000008-11).

The primary issues on appeal concern whether Stilley is entitled to: (i) qualified immunity under federal law in relation to the Fourth Amendment excessive force claim and (ii) good faith immunity under Virginia law in relation to the battery claim. In the underlying action, Stilley filed a motion for summary judgment, asserting that his actions did not violate Michael’s Fourth Amendment rights or, alternatively, that he was entitled to qualified immunity due to a lack of clearly

established law prohibiting his conduct. (J.A.000004, J.A.000550). Stilley further argued that he was protected by state-law good faith immunity with respect to the battery claim. (J.A.000004, J.A.000550).

On September 20, 2024, the district court granted Stilley's motion for summary judgment on all claims. (J.A.000573). The district court found that Stilley's use of force did not violate clearly established law and thus concluded that Stilley was entitled to qualified immunity on the excessive force claim. (J.A.000571). Similarly, the district court determined that Stilley was entitled to state-law good faith immunity on the battery claim, reasoning that the good faith immunity analysis was duplicative of its qualified immunity analysis. (J.A.000572).

IV. STATEMENT OF THE FACTS

At approximately 10 p.m. on July 24, 2020, Michael was riding his motorcycle westbound along Route 460 near Narrows, Virginia, when he passed Officer Vinson, who was traveling east on patrol for the Pearisburg Police Department. (J.A.000430). Vinson's radar detected Michael moving at 80 miles per hour in a zone with a 65 mile-per-hour limit and, as he passed Michael, Vinson's rear radar indicated he was going as fast as 89 miles per hour. (J.A.000430). Vinson turned his vehicle around and activated his vehicle's lights, followed by his siren. (J.A.000430). Nevertheless, Michael continued operating the motorcycle at speeds well exceeding the speed limit. (J.A.000430). The pursuit continued for about three minutes and eventually

entered the town of Narrows. (J.A.000551). The chase concluded when Stilley pulled his unmarked police vehicle in front of Michael and caused a collision, resulting in Michael's death on impact. (J.A.000284-285, J.A.000550).

Stilley, who served with the Narrows Police Department (NPD) and was on duty at the time, overheard the report of a speeding motorcyclist over the radio, realized he was nearby, and offered his assistance. (J.A.000183, J.A.000430).¹ At the time, Stilley was positioned at a Marathon gas station on the northwest corner of the intersection at Route 460 and 3rd Street. (J.A.000551-52). This intersection is depicted in the image below:



¹ Notably, Vinson never requested assistance from anyone during the pursuit. (see generally J.A.000227). Nor did dispatch request assistance from available officers in the area Stilley's involvement was purely a product of his unilateral decision making.

The collision took place on Route 460, which features two lanes for each direction separated by a narrow, unraised center median. (J.A.000551-552). The road is partially lit, straight, and level. (J.A.000363, J.A.000461). On the night of the incident, there were no adverse weather conditions or road moisture present at the time that would have made a loss of control likely. (J.A.000363). At the intersection where the collision occurred, there is no turn lane, so eastbound drivers may cross over westbound lanes to turn onto 3rd Street. (J.A.000552). The Marathon gas station and its convenience store, marked by a large awning and building, sit prominently at the intersection's northwest corner. (J.A.000552).

Upon receiving Stilley's transmission offering to help, Vinson responded, "Ah, **I don't know what you can do, I'm on him pretty good.** He's not really leaving me. At 100 [miles per hour] right now." (J.A.000421, J.A.000427, J.A.000227 at 10:00:03) (emphasis added).² Yet, having listened the pursuit before this communication, Stilley had already positioned his vehicle at the intersection with 3rd Street, perpendicular to Route 460 and just off the road and in the path of the pursuit. (J.A.000552, J.A.000227 at 10:00:03). After hearing a location update, Stilley inched his vehicle forward into the right westbound lane, turning on his blue

² It is unclear whether Vinson's remark was stating that he was going 100 miles per hour, Michael was going 100 miles per hour, or both of them were. For example, in pursuing Michael, Vinson would have needed to drive at speeds faster than those by Michael to close the gap between them. (J.A.000026, J.A.000272).

lights about 38 seconds before the crash. (J.A.000553, J.A.000227 at 10:00:19 - 10:00:38). This move caused traffic in the right westbound lane to stop, and three civilian vehicles remained stationary in that lane when the collision occurred. (J.A.000250-51, J.A.000553). At roughly the same time, Vinson radioed that the chase was entering a 40 mile-per-hour zone marking the town limits at a speed of 103 miles per hour, placing Michael approximately a half-mile from Stilley. (J.A.000553, J.A.000227 at 10:00:55-58). In response to Vinson's transmission, Stilley stated, "I'm stopping traffic, see if that'll slow him down some." (J.A.000553, J.A.000227 at 10:01:00). This occurred approximately fourteen seconds before the collision. (J.A.000553, J.A.000227 at 10:01:00).

Michael, in fact, did lower his speed after entering the 40 mile per hour zone. (J.A.000227 at 10:01:07) (showing that Michael was applying his brakes approximately eight seconds before Stilley pulled in front of him); (J.A.000187) (noting that Michael had crossed the 40 mile per hour marker traveling at a speed of 100 miles per hour, but that his average rate of speed from that marker to the point of collision was just under 78.5 miles per hour); (J.A.000190, J.A.000315) (calculating Michael's rate of speed prior to braking in response to Officer Stilley lurching forward to be 75 miles per hour). Notably, Stilley activated his blue lights and inched his vehicle forward to block traffic in order to create a makeshift traffic

barrier to slow Michael down, because **he believed the best course of action was to allow Michael to pass by unhindered.** (J.A.000039, J.A.000174).

From his location (which was not then in the direct trajectory of Michael's approaching motorcycle), Stilley was able to see the pursuit coming towards him. (J.A.000110). Without any change to the existing danger to either Stilley or others at the scene (in fact, the danger was lessening as Michael was slowing down), Stilley suddenly accelerated forward moments before Michael reached his location, blocking Michael's path and causing Michael to collide with the side of Stilley's vehicle. (J.A.000138-140). The final maneuver of Stilley's vehicle occurred about two seconds before Michael struck the front driver's side of Stilley's vehicle (J.A.000312).³ Michael sustained fatal injuries from the impact. (J.A.000361). Had

³ In the proceedings below, Stilley contended that his final maneuver was a change in his original plan to allow Michael and Vinson to simply pass by, which he made upon seeing Michael "wobbling" and allegedly losing control of the motorcycle. (J.A.000041-42). Stilley testified that, upon observing this alleged wobbling, he felt it necessary to pull his vehicle out in front of Michael to protect a nearby van—driven by a bystander named Paul Pitzer—asserting that he moved forward to absorb the impact and shield the van from collision. (J.A.000042). However, the district court correctly concluded that Stilley cannot avail himself of those contentions in seeking summary judgment, because the facts are disputed and could only be accepted by viewing the record in the light most favorable Stilley. (J.A.000554-555). As to Michael's alleged loss of control, Stilley's written statement given the day after the use of the roadblock makes no mention of the motorcycle wobbling as it approached Stilley's position. (J.A.000183-184, J.A.000423-424). Additionally, Appellant designated expert testimony affirmatively establishing that any loss of control of the motorcycle occurred only *after* Stilley lurched forward to block the vehicle's path. (J.A.000318-319, J.A.000322). Moreover, as to the protection of Pitzer, the district court correctly found a genuine dispute of material fact concerning

Stilley not made this last-second movement, Michael would have continued past Officer Stilley's vehicle without impact. (J.A.000312, J.A.000322). This is because there had been sufficient room to allow Michael to maneuver around Stilley and continue down the road. (J.A.000312, J.A.000322). Prior to using the roadblock maneuver, Stilley had no information available to him to suggest that Michael was operating the motorcycle in a way that posed an increased danger to other motorists on the highway other than the general risk posed by speeding (i.e., there was no information that Michael was swerving, driving in the wrong lanes of traffic, or engaging in maneuvers that ran other motorists off the road). (J.A.000265, J.A.000293, see generally J.A.000227).⁴

At the time of this incident, Stilley was aware that using a roadblock constituted the use of deadly force and was familiar with the NPD's Policy Manual,

whether Stilley was even aware of the Pitzer's van at the time he made his final forward movement. (J.A.000554-55). Specifically, the district court observed potential inconsistencies in Stilley's statements, noting that his initial account given shortly after the incident omitted any mention of the van and suggested his vehicle moved unintentionally. (J.A.000554). By contrast, Stilley's subsequent explanation, developed during litigation, described an intentional movement aimed at protecting the van; the inconsistency of which raises questions regarding the credibility of his asserted intent. (J.A.000422-431, J.A.000554). Given these conflicting accounts, the district court determined that a reasonable jury could conclude that Stilley was either unaware of the van or did not move to protect it and, thus, for purposes of summary judgment, the court treated Stilley as unaware of the van's presence. (J.A.000554-55)

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⁴ And, in fact, Michael was not engaged in any such maneuvers. (J.A.000265, J.A.000293).

which governed his use of force in such situations. (J.A.000336-350, J.A.000359, J.A.000372-393) (acknowledging receipt of the policy manual and documenting Stilley’s training, which took place on June 19, 2018, as to “department policy regarding use of a patrol vehicle as a barrier to assist in apprehending a [s]uspect.”)). Specifically, the NPD Policy Manual described the establishment of a roadblock as a use of deadly force and restricted the use of roadblocks to situations involving suspected or fleeing felons who pose a life-threatening danger. It further mandated that only the Chief of Police or the Lieutenant (in the absence of the Chief of Police) may authorize a roadblock:

*Only in the case of suspected **fleeing felons whose escape poses a danger to life** may officers set up a roadblock. The decision to erect a roadblock shall only be made by the Chief of Police or, in his absence, the Lieutenant. A decision to erect a roadblock **is a decision to use deadly force.***

(J.A.000345) (emphasis added).

This same edict is reiterated elsewhere in the NPD Policy Manual, with additional emphasis being placed on the narrow circumstances under which an officer may employ a roadblock **as a matter of last resort**—i.e., only to prevent the escape of a **fleeing violent felon**:

*A roadblock must be clearly visible at a distance sufficient to enable approaching vehicles to stop safely. The officer in charge of the roadblock shall notify the dispatcher of its precise location. **The Department stresses that***

roadblocks constitute a last resort in stopping a fleeing violent felon.

(J.A.000347) (emphasis added).

Despite his knowledge of these NPD policies, Stilley did not seek permission from either the NPD Chief of Police or the Lieutenant before utilizing his vehicle as a roadblock against Michael. (J.A.000144-146). Nor did Stilley have any information available to him to suggest that Michael was a “fleeing violent felon,” and that this was an opportunity of “last resort” to end the pursuit. In short, Stilley plainly violated his own training with respect to the use of roadblocks—training which expressly informed him that the use of a roadblock constituted the use of deadly force.

V. SUMMARY OF ARGUMENT

The district court erred in granting Stilley qualified immunity on the Fourth Amendment excessive force claim and good faith immunity on the state-law battery claim. As to the former, the district court incorrectly concluded that Stilley’s use of a deadly roadblock did not violate clearly established law, disregarding key factual disputes about whether Michael posed an immediate threat of serious harm at the time of the collision and erroneously reasoning that Stilley could not have violated clearly established law without a more factually analogous case holding his tact unlawful by either the Supreme Court, this Court, or a consensus of authority among the other federal circuits. (J.A.000568). As to the latter, the court misapplied

Virginia's good faith immunity defense by conflating it with the federal qualified immunity doctrine, failing to recognize that good faith immunity requires both a showing of subjective belief in the lawfulness of the officer's actions *and* the objective reasonableness of that belief. (J.A.000571-572). To that point, Stilley's disregard of his training and departmental policy in establishing the roadblock raises genuine issues of material fact as to whether he acted in good faith. Moreover, any such belief would not have been objectively reasonable given the evidence in the record indicating that Michael did not pose an immediate threat of serious harm to officers or others at the scene. Viewed in the light most favorable to Appellant, the record demonstrates that a reasonable jury could find Stilley's conduct violated clearly established constitutional and state law standards, warranting reversal of the district court's summary judgment ruling as to both claims.

VI. STANDARD OF REVIEW

This Court reviews a grant of summary judgment on the basis of qualified immunity *de novo*. Aleman v. City of Charlotte, 80 F.4th 264, 283 (4th Cir. 2023). Summary judgment is appropriate when “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* (quoting Fed. R. Civ. P. 56(a)). “A fact is material if it ‘might affect the outcome of the suit under the governing law,’ and a genuine dispute exists ‘if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” *Id.* (quoting Anderson v.

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). “The party moving for summary judgment discharges its burden by showing that there is an absence of evidence to support the nonmoving party’s case.” Humphreys & Partners Architects, L.P. v. Lessard Design, Inc., 790 F.3d 532, 540 (4th Cir. 2015) (cleaned up). “To create a genuine issue for trial, the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence.” Id. (cleaned up). However, in evaluating whether the record demonstrates a genuine issue of material fact, this Court views the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in its favor. Harris v. Pittman, 927 F.3d 266, 272 (4th Cir. 2019). The Court does not weigh the evidence or make credibility determinations. Id.

VII. ARGUMENT

1. The District Court Erred in Granting Stilley Qualified Immunity.

a. General Principles of Qualified Immunity in Fourth Amendment Excessive Force Cases.

The determination of whether an officer is entitled to qualified immunity involves a two-pronged analysis. Saucier v. Katz, 533 U.S. 194, 201 (2001). The first prong examines whether the plaintiff has established that “a constitutional violation occurred.” Melgar ex rel. Melgar v. Greene, 593 F.3d 348, 353 (4th Cir. 2010). The second prong assesses whether the right allegedly violated was “clearly established”

at the time of the events in question. Stanton v. Elliott, 25 F.4th 227, 233 (4th Cir. 2022). The plaintiff bears the burden of proof as to the first prong of the analysis and the official seeking immunity bears the burden as to the second prong of the analysis. Rambert v. City of Greenville, 107 F.4th 388, 398 (4th Cir. 2024).

As to the first prong, the standards governing the merits of a Fourth Amendment excessive force claim are familiar and well-settled. Whether a law enforcement officer employed excessive force while effectuating a seizure is analyzed under the Fourth Amendment's "objective reasonableness" standard. Henry v. Purnell, 652 F.3d 524, 531 (4th Cir. 2011) (en banc). Namely, an officer's particular use of force will not be deemed "excessive" if the use of force was "'objectively reasonable' in light of the facts and circumstances confronting [him], without regard to [his] underlying intent or motivation." Graham v. Connor, 490 U.S. 386, 397 (1989). An assessment of the objective reasonableness of an officer's use of deadly force is "based on the totality of the circumstances[.]" Hensley ex rel. North Carolina v. Price, 876 F.3d 573, 582 (4th Cir. 2017) (citing Yates v. Terry, 817 F.3d 877, 883 (4th Cir. 2016)). Such an analysis requires the Court to "view [the use of force] in full context, with an eye toward the proportionality of the force in light of all the circumstances." Waterman v. Batton, 393 F.3d 471, 481 (4th Cir. 2005) (internal quotation marks omitted). To assess whether a use of force is disproportionate to the attendant circumstances, the Court relies upon the three

analytical guideposts articulated in Graham—i.e., “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 or attempting to evade arrest by flight.” Graham, 490 U.S. at 396. In addition to these factors, the Court’s totality of the circumstances analysis takes into account the severity of the plaintiff’s injuries that were caused by the challenged use of force. Jones v. Buchanan, 325 F.3d 520, 530-31 (4th Cir. 2003).

This Court has recognized that “[i]n excessive force cases where an officer uses deadly force, the *second Graham* factor”—whether the suspect posed an immediate threat to the safety of the officers or others—“is particularly important.” Caraway v. City of Pineville, 111 F.4th 369, 382 (4th Cir. 2024) (citations omitted). In such cases, this Court considers whether a reasonable officer on the scene would have had probable cause to believe that the suspect posed an immediate threat of serious physical harm, either to the officer or to others. Franklin v. City of Charlotte, 64 F.4th 519, 531 (4th Cir. 2023). The inquiry of whether an officer possessed probable cause to use deadly force takes into account only “the information available to the [officer] ‘immediately prior to and at the very moment’” the officer used the force in question. Hensley, 876 F.3d at 582 (quoting Greenidge v. Ruffin, 927 F.2d 789, 792 (4th Cir. 1991)).

As to the second prong of the qualified immunity analysis, the right allegedly violated is considered “clearly established” if “[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.” Anderson v. Creighton, 483 U.S. 635, 640 (1987). Analyzing “clearly established” in this sense considers if the unlawfulness of the act in question is apparent “in the light of pre-existing law.” Id. To resolve that question, this Court first looks to cases from the Supreme Court, its own published decisions, or the highest court of the state in which the action arose. Owens ex rel. Owens v. Lott, 372 F.3d 267, 279 (4th Cir. 2004). While an existing precedential decision holding the identical conduct of the officer to unlawful is most useful, “the exact conduct at issue need not have been held unlawful for the law governing an officer’s actions to be clearly established.” Amaechi v. West, 237 F.3d 356, 362 (4th Cir. 2001). To the contrary, a right may be “clearly established” even if “the very action in question” has not previously been held unlawful. Wilson v. Layne, 526 U.S. 603 (1999). In the absence of “directly on-point, binding authority,” the right in question may still be established “based on general constitutional principles or a consensus of persuasive authority.” Booker v. S.C. Dep’t of Corr., 855 F.3d 533, 543 (4th Cir. 2017). Thus, in examining existing law, the Court considers “not only already specifically adjudicated rights, but those manifestly included within more general applications

of the core constitutional principle invoked.” Amaechi, 237 F.3d at 362-63 (internal quotation marks omitted).

The Court’s inquiry into whether a right was clearly established “is an objective one, dependent not on the subjective beliefs of the particular officer at the scene, but instead on what a hypothetical, reasonable officer would have thought in those circumstances.” Wilson v. Kittoe, 337 F.3d 392, 402 (4th Cir. 2003). This analysis “**need not—and should not—assume that government officials are incapable of drawing logical inferences, reasoning by analogy, or exercising common sense.**” Williams v. Strickland, 917 F.3d 763, 770 (4th Cir. 2019) (emphasis added). Accordingly, “[i]n some cases, **government officials can be expected to know that if X is illegal, then Y is also illegal, despite factual differences between the two.**” Id. (emphasis added).

b. The Record Viewed in the Light Most Favorable to Appellant Establishes that Stilley’s Use of Deadly Force Violated the Fourth Amendment.

The record before the Court demonstrates that Stilley’s use of deadly force against Michael violated the Fourth Amendment.⁵ As noted above, an assessment of whether Appellant demonstrated a violation of Michael’s Fourth Amendment right

⁵ The district court performed an analysis of the Graham factors in the context of the “clearly established” prong of Saucier, but did not actually resolve the merits prong of the Saucier analysis in its opinion. (J.A.000571). It found the merits issue to be a “close factual” question, but ultimately rested its ruling upon the second prong of the Saucier analysis. (J.A.000560-571).

to be free of unreasonable seizures involves an analysis of the Graham factors. However, because this case involves the use of *deadly force*, the reasonableness analysis largely collapses into the second element—i.e., whether Michael posed an immediate threat of death or serious injury to the safety of the officers or others. Caraway, 111 F.4th at 382 (citations omitted).⁶

i. While Michael’s Conduct Admittedly Posed a Generalized Danger, No Probable Cause Existed that Michael Posed an Immediate Risk of Serious Physical Harm to Officers or Others.

At the outset, it is acknowledged that Michael’s conduct posed a general danger concomitant with high-speed driving while eluding the police, which creates a higher risk to officers or other motorists on the roadway that would not be present if the suspect drove the speed limit or pulled over. That much cannot reasonably be disputed.

⁶ As to the other Graham factors, they can be addressed with relative ease. With respect to the first Graham factor—i.e., the seriousness of the offense—the district court found that the record permitted a finding that Michael’s conduct rose only to a misdemeanor. (J.A.000569). Assuming the correctness of that conclusion, the first Graham factor weighs in favor of Appellant and the district court acknowledged as much. (J.A.000569). However, even if this Court were to find that Michael’s conduct amounted to a felony, the misdemeanor/felony distinction would not in itself change the analytical outcome in this particular case, because the commission of a felony does not justify the use of deadly force *unless* the suspect poses the requisite immediate danger of death or serious injury to the officers or others at the scene. Williams, 917 F.3d at 769 (quoting Tennessee v. Garner, 471 U.S. 1, 3, 11 (1985)). With respect to the third Graham factor, this factor admittedly favors Stilley’s position. Finally, the severity of the injury suffered by Michael clearly favors a finding of excessive force. However, the district court did not consider the severity of the injury in performing its Graham analysis. (J.A.000568-571).

But the generalized danger posed by driving at high speeds to evade officers—without more—cannot ipso facto be sufficient justification for officers to employ deadly force against the suspect. To reach a contrary conclusion would be to judicially elevate the crime of misdemeanor eluding (and perhaps even speeding in general) to a capital offense. Indeed, prior to the events at issue in this case, Stilley himself had been involved in two high-speed pursuits which were simply discontinued without making arrests. (J.A.000172). Consequently, Stilley's own prior course of conduct dispels any factual basis for concluding that high-speed pursuits intrinsically and automatically pose an immediate danger of death or serious injury to other motorists on the roadway such that they necessitate the fleeing suspect be stopped at all costs. Further, the NPD Policy Manual expressly instructs officers that completely abandoning a pursuit may be the safest course of action in some instances. (J.A.000347) (“Under some conditions, abandoning a pursuit may prove the most intelligent decision the officer can make.”).

At the time that Stilley pulled his vehicle directly into Michael's trajectory, Stilley knew only that (1) Michael was speeding and (2) Michael was failing to pull over. Consequently, Stilley was aware of information that would have caused a reasonable officer in his position to conclude that Michael was engaged in conduct that created some level of danger to officers or others. However, the critical question here is not whether Michael's conduct posed *some* degree of theoretical danger to

officers or others on the scene, but whether it posed **an immediate danger of serious physical harm** to officers or others on the scene. Williams, 917 F.3d at 769 (quoting Garner, 471 U.S. at 3, 11) (emphasis added). Viewing the record in the light most favorable to Appellant, a reasonable officer in Stilley's position and aware of the facts known to Stilley would not have had probable cause to believe that Michael's conduct posed an immediate and serious danger justifying the use of deadly force. Numerous facts in the record mandate this conclusion.

In particular, the conduct of the pursuing officer, Vinson, is very telling.⁷ Vinson's rejection of Stilley's offer of assistance is incredibly probative as to whether a reasonable officer on the scene would have viewed Michael's conduct as posing an immediate risk of death or serious injury to others present on the roadway. Namely, when Stilley specifically asked Vinson if there was anything Stilley could do to aid in the situation, Vinson declined the offer for aid and noted the situation to be under control. Specifically, Vinson replied, "Ah, I don't know what you can do, I'm on him pretty good. He's not really leaving me. At 100 [miles per hour] right

⁷ This Court has recognized that the conduct of other officers on the scene is probative evidence of what a reasonable officer would perceive or do. Orem v. Rephann, 523 F.3d 442, 448-49 (4th Cir. 2008) (recognizing that the conduct of other officers on the scene provided evidence of whether a reasonable officer would have believed a given use of force was lawful under the circumstances sufficient to create a jury issue on the question); Sawyer v. Asbury, 537 F. App'x 283, 297 (4th Cir. 2013) (finding that "the conduct of the two [other] deputies [at the scene] is a powerful indicator that a need to deploy violent force was not apparent to a reasonable officer.").

now.” (J.A.000421, J.A.000427, J.A. 000552, J.A.000227 at 10:00:03). Further, the record demonstrates that Vinson was not simply communicating to Stilley uncertainty about what action he wanted Stilley to take, because Vinson never requested assistance from **anyone** in the first place.

Thus, Vinson’s rejection of Stilley’s offer of assistance is not a communication that a reasonable officer in Stilley’s position would have understood as implying that Michael’s conduct was putting either Vinson’s life or the lives of others in imminent danger. And, importantly, Stilley knew that this feedback was coming from the officer actually observing Michael’s driving and one in a superior position to assess the situational danger. A reasonable jury could find that reasonable officer in Stilley’s position would have understood that if the officer with the superior vantage point—i.e., Vinson—perceived some risk he believed could have been mitigated by Stilley’s intervention, then Vinson would have communicated as much. Here, much to the contrary, Vinson never requested any assistance and specifically communicated that he could not think of anything Stilley could do to either aid in the pursuit or decrease risk.

Moreover, other actions—or the lack thereof—by Vinson, only further illustrate that the general degree of danger posed by Michael’s conduct was neither immediate nor substantial. For example, Vinson never made any radio transmission expressing any sort of general concern for either himself or other motorists on the

road. Vinson certainly did not make any transmission indicating that Michael had done or presently was doing anything dangerous other than speeding and failing to pull over. That is to say, he never stated or implied that Michael was operating the motorcycle in a way that posed a more immediate danger to other motorists on the highway (i.e., swerving, driving in the wrong lanes of traffic, or engaging in maneuvers that ran other motorists off the road). To that end, Vinson never attempted any maneuver to physically halt or otherwise force Michael off the road; he never called for backup or any other intervention; and even the tone of his voice throughout his radio communication lacks any indication of urgency. (see generally J.A.000227). If Vinson, observing Michael's driving directly, did not see fit to escalate his response to such an extent, it follows that a reasonable officer relying on Vinson's assessment would similarly have concluded that Michael's driving did not pose an imminent risk of death or serious injury to others.

Stilley's own perceptions and conduct at the scene are equally powerful evidence speaking to the level of danger posed by Michael's operation of the motorcycle. For example, it is noteworthy that Stilley admitted in his sworn interrogatory answers that, upon receiving Vinson's transmission, **he believed the best course of action was to simply let the pursuit go by.** (J.A.000063). Stilley's perspective of the facts at the time is evidence directly speaking to the level of danger a reasonable officer in Stilley's position would have perceived given what was

known about Michael’s driving and the surrounding traffic conditions—i.e., one that, though real, did not justify the use of deadly force. United States v. Hill, 649 F.3d 258, 263 n.1 (4th Cir. 2011) (noting that officer’s subjective perceptions of the known objective facts was “evidence of a reasonable reading of the objective facts from an experienced officer’s perspective”); see also Rowland v. Perry, 41 F.3d 167, 173 (4th Cir. 1994) (noting that although an officer’s subjective motivations for using the force in question are not relevant to the qualified immunity analysis, his subjective perceptions of the objective facts at the time of the incident are relevant to the analysis).

In addition, Stilley’s own inactions and actions after receiving Vinson’s transmission further speak to the absence of immediate danger otherwise required for an officer to lawfully use deadly force under these circumstances. Upon receiving Vinson’s communication, Stilley **did not** initiate communications with his supervisors to request approval to use his vehicle as a roadblock (as required by the NPD Policy Manual)—something he ostensibly would have done if Michael’s conduct posed an imminent danger of death or serious injury to others at the scene or elsewhere on the roadway. (J.A.000345). Instead, he decided to activate his lights and sirens and deliberately slow traffic in the area as a way of slowing Michael’s speed down.

The evidentiary significance of that choice cannot be overstated. Stilley **intentionally** caused civilian vehicles to pool in the immediate vicinity of the pursuit, something he was never asked nor authorized to do. This decision effectively conscripted unsuspecting motorists as roadway barriers intended to restrict Michael's progress. If Stilley genuinely believed that Michael's driving posed an imminent and severe danger to those nearby, his decision to intentionally gather motorists in proximity to the oncoming pursuit and purposely use them to slow Michael down defies logic. Phrased another way, a jury could find from this evidence that Stilley engaged in such a tactic because he, in fact, perceived that Michael's approach *did not* pose an immediate and serious risk to those drivers. **And—taking the view of the evidence that does not lend credibility to Stilley's disputed claims that Michael lost control of the motorcycle or Stilley's purported awareness of Pitzer's van—the danger presented by Michael's approach never increased from the time of that decision (if anything, it *decreased* given Michael was slowing down).**⁸ Yet, absent any legal justification for doing so, Stilley

⁸ In fact, a jury could find that Stilley invented the claims about the motorcycle starting to lose control and his concern for Pitzer's van after the fact, because Stilley knew at the time or subsequently realized after the fact that he lacked sufficient justification for the use of deadly force. Aleman v. City of Charlotte, 80 F.4th 264, 293 (4th Cir. 2023) (noting that where the contemporaneous evidence either contradicts or fails to corroborate an officer's later developed account of events to justify the use of deadly force, a reasonable jury could find the officer fabricated the account because he or she knew that the real facts showed that the use of deadly force was not justified). If Stilley was worried about Michael losing control, the best

unreasonably changed tactics at the last second, choosing to employ deadly force rather than let Michael pass unhindered.

It is also worth noting that the inferences flowing from Stilley's perspective and conduct at the scene become more persuasive when taking into consideration the repeated directives set forth in the NPD Policy Manual—of which Stilley was aware at the time—that forbid the use of roadblocks on anyone other **than a fleeing violent felon whose escape would pose a danger to the lives of others.** (J.A.000345-347).⁹ These directives expressly and specifically speak to both the character and magnitude of danger an objectively reasonable officer would view as being adequate justification to employ a roadblock at all, much less the deadly type of roadblock used by Stilley—thresholds that were not met based on the information known to Stilley at the time. That is to say, Stilley certainly had no information that allowed him to reasonably conclude that Michael was a fleeing violent felon whose escape would endanger the lives of others. Consequently, the language of NPD Policy Manual also informs that an objectively reasonable officer confronted with the information known to Stilley would not have believed that Michael's conduct

thing he could have done was get out of the way and allow the traffic he had pooled in the area to move.

⁹ Additionally, the policy requires that law enforcement consider the “risk of physical injury to the occupants of the pursued vehicle...” and further directs that a “roadblock must be clearly visible at a distance sufficient to allow approaching vehicles to stop safely.” (J.A.000347)

posed the degree of immediate danger required to justify the use of a deadly roadblock under the circumstances.

In short, while neither Vinson's nor Stilley's conduct and subjective perceptions of the facts are conclusive to the question of what a reasonable officer on the scene would have perceived, they are undoubtedly probative evidence on the subject. And, viewing all of the evidence above in the light most favorable to Appellant, a reasonable jury could find that neither Vinson nor Stilley perceived Michael's driving as presenting an immediate danger of serious physical harm that warranted the use of deadly force and, consequently, neither would a reasonable officer in Stilley's position.

ii. Other Evidence Informing to the Totality of the Circumstances Further Warrants Concluding that Stilley Violated the Fourth Amendment.

The absence of probable cause to believe Michael posed an immediate and substantial danger of serious harm to officers or others at the scene already forecloses the possibility that Stilley's use of deadly force was reasonable under the Fourth Amendment. However, other factors bearing upon the totality of the circumstances analysis further reinforce this conclusion.

For example, the fact that Stilley's actions were contrary to the policies of NPD and his training further reinforces their unreasonableness under the Fourth Amendment. Boyle v. Azzari, 107 F.4th 298, 303 (4th Cir. 2024) (noting that

discovery concerning the officer's training could "provide additional color regarding whether th[e] use of force was reasonable"); Aleman v. City of Charlotte, 80 F.4th 264, 292 (4th Cir. 2023) (considering officer's failure to follow training with respect to interacting with non-English speaking and mentally-ill suspects in reasonableness analysis); Franklin v. City of Charlotte, 64 F.4th 519, 527, 533 (4th Cir. 2023) (considering officer's failure to follow training with respect to issuing commands in reasonableness analysis); Hupp v. Cook, 931 F.3d 307, 323 (4th Cir. 2019) (considering the officer's training in assessing the totality of the circumstances to determine whether his use of force was reasonable); Henry, 652 F.3d at 533 n.11 (considering officer's prior training in analyzing the reasonableness of his conduct); Thomas v. Holly, 533 F. App'x. 208, 220 (4th Cir. 2013) (considering departmental policy in analyzing the reasonableness of closed fist strikes to the back of the head). Stilley had been trained that the use of roadblocks was prohibited except as a last resort against fleeing violent felons whose escape would endanger the lives of others. (J.A.000345-347, J.A.000372, J.A.000375). Even then, his training had emphasized that the use of roadblocks was only to occur in circumstances in which their deployment was carefully controlled and authorized. (J.A.000345-347). Stilley, however, had no reason to believe that Michael was a violent felon and had no information to suggest that his escape would endanger lives. (J.A.000259-261). By choosing to use a makeshift roadblock, Stilley failed to secure proper authorization

and failed to act in compliance with his training. Thus, Stilley's actions departed significantly from NPD policy, his training, and common sense. This is additional evidence highlighting the unreasonableness of his actions.

Additionally, the manner in which Stilley executed the roadblock speaks directly to its unreasonableness. In Brower, the Supreme Court acknowledged that the use of a roadblock designed in a way likely to cause death could render it unreasonable under the Fourth Amendment. Brower v. County of Inyo, 489 U.S. 593, 599 (1989). This principle was later reinforced in Scott v Harris, where the Court emphasized the importance of balancing the likelihood of death or injury caused by an officer's use of force to stop a fleeing motorist against the risks posed by the chase to innocent bystanders. 550 U.S. 372, 384 (2007). In Scott, the Court specifically noted as part of its reasonableness analysis that the method used by the officer to stop the fleeing motorist (applying the push bumper to the rear of suspect's vehicle), while likely to cause serious injury or death, fell "far short of the certainty of death" that would accompany other forms of deadly force, such as a gunshot to the head. Id. Consequently, that use of force was reasonable because the chase itself was unfolding in a manner that "posed a substantial and immediate risk of serious physical injury to others[.]" Id. at 386. Here, however, the dynamics were different. Unlike the driver in Scott, Michael was not driving erratically, nor posing an immediate danger to others at the scene. Nevertheless, Stilley sprung a last-second,

makeshift roadblock that more certain to cause Michael's death than any gunshot wound. Specifically, by positioning an unmarked vehicle in the direct path of Michael's motorcycle merely two seconds before the motorcycle would inevitably contact the police cruiser at a high rate of speed, Stilley ensured that Michael's collision would be unavoidable and fatal. The absolute certainty of death inherent to Stilley's chosen tactic weighed against the existing danger to others at the scene at the time places Stilley's actions squarely within the category of excessive and unreasonable force.

- c. The Core Constitutional Principles and Rules in Existence *Clearly Established* that Officers may not Employ Deadly Force Against a Fleeing Motorist Unless the Officer has Probable Cause to Believe that the Suspect Poses a Significant and Immediate Threat of Death or Serious Physical Injury to the Officer or Others.

It was well-settled in the Fourth Circuit for years prior to the events forming the basis of this case that “an officer may reasonably apply deadly force to a fleeing suspect—even someone suspected of committing a serious felony—**only if the officer has ‘probable cause to believe that the suspect poses a significant [and immediate] threat of death or serious physical injury to the officer or others.’**” Williams, 917 F.3d at 769 (quoting Garner, 471 U.S. at 3, 11) (emphasis added). This clearly established constitutional right governs the outcome of this case.

In Williams, the plaintiff (“Williams”) traveled from Georgia to South Carolina to visit a family member, bringing his six-year-old son along for the

journey. Id. at 765. During the drive, Williams happened to cross paths with an officer named Heroux, who was on duty and in his patrol car. Id. Heroux ran the license plate on Williams' vehicle through dispatch, discovering that the plate had been reported as stolen. Id. The officer then followed Williams into the complex's parking lot and activated his vehicle's blue lights. Id. Williams responded by pulling his car into a parking space, and Heroux exited his patrol car to approach him. Id. Shortly after, another officer named Strickland arrived at the scene. Id.

As Heroux approached to within ten feet of Williams's vehicle, Williams inexplicably shifted into reverse and turned the steering wheel, angling the front of the car toward Heroux. Id. Believing himself to be at risk, Heroux stepped back and drew his firearm. Id. At the same time, Strickland began advancing toward Williams's vehicle. Id. Williams then shifted into drive, straightened the car, and drove in the direction of Strickland. Id. Both Heroux and Strickland opened fire on Williams's car. Id. One of Heroux's bullets struck Williams in the back. Id. Williams lost control of his vehicle and ultimately collided with a tree. Id. Emergency responders airlifted him to the hospital, where he underwent surgery and was placed in a medically induced coma. Id. Williams suffered substantial injuries including losing proper function of his bowels, lungs, and other bodily systems. Id. at 766-67.

Williams initiated a lawsuit under § 1983 against Strickland and Heroux. Id. at 767. He claimed that by discharging their firearms during his arrest, the officers

subjected him to excessive force, thereby infringing his Fourth Amendment rights. Id. In analyzing whether the officers were entitled to qualified immunity, this Court first considered the merits question, i.e., the first prong of the qualified immunity analysis. It began by noting that deadly force, given its extreme nature, is only justified under stringent conditions. Id. at 769 (citations omitted). Specifically, an officer may justifiably use deadly force against a fleeing suspect, even one suspected of a serious crime, only if there is probable cause to believe that the suspect presents an **imminent threat of death or severe physical harm to the officer or others**. Id. (citations omitted). Consequently, even if a threat appears substantial enough to meet this standard, **an officer still cannot resort to deadly force unless the threat is also immediate**. Id. (citations omitted) (emphasis added). Relying on its prior holding in Waterman,¹⁰ this Court held that “we have no difficulty concluding that if Strickland and Heroux started or continued to fire on Williams after they were no longer in the trajectory of Williams’s car, they violated Williams’s Fourth Amendment right to freedom from excessive force.” Id.

¹⁰ In Waterman v. Batton, this Court held that officers lawfully used deadly force against the driver of a car when, following a high-speed chase during which the driver had attempted to run an officer off the road, the officers were initially situated such that they reasonably believed that the car was going to run them over. 393 F.3d at 478-79. However, this Court also held that the same officers had violated the Fourth Amendment to the extent that they continued to use deadly force after the car had driven past them and it was no longer reasonable for them to believe that the car was about to run them or anyone else over. Id. at 482.

Turning to the question of whether the officers had violated a clearly established right, this Court noted:

[T]he instant case requires no subtle line-drawing: The right that the officers allegedly violated falls well within the ambit of clearly established law. When we decided Waterman, in 2005, we clearly established that (1) law enforcement officers may—under certain conditions—be justified in using deadly force against the driver of a car when they are in the car’s trajectory and have reason to believe that the driver will imminently and intentionally run over them, but (2) the same officers violate the Fourth Amendment if they employ deadly force against the driver once they are no longer in the car’s trajectory.

Id. at 770.

d. Stilley’s Use of Deadly Force Violated the Clearly Established Right Articulated in *Williams*.

Here, viewing all evidence in the light most favorable to Appellant, Stilley’s use of deadly force against Michael violated the clearly-established right set forth in Williams. On the record available, Michael was a fleeing motorist who, though driving fast, was not out of control nor on trajectory to strike anyone. At the time Stilley decided to employ deadly force against Michael, Stilley did not have the requisite reasonable belief that Michael posed an **immediate threat of death or severe physical harm to the officer or others**. Even though Michael’s speed and refusal to pull over conceptually posed a heightened threat to motorists in general, Stilley had no information that the threat was particularized or imminent. Stilley was not in the trajectory of Michael’s motorcycle (until he intentionally and voluntarily

placed himself in the path of the motorcycle), and, viewing the record in the light most favorable to Appellant, Stilley did not have knowledge that anyone else was in the trajectory of Michael's vehicle (at the time he accelerated, Michael was in a clear lane of travel and was not impeded by the vehicles Stilley had stopped). Consequently, the holding of Williams put Stilley on notice that the use of deadly force was not lawful under those circumstances.

Despite this clear guidance, the district court reached a different conclusion. It distinguished Williams by emphasizing that Michael was actively fleeing at high speeds on a public roadway, placing other motorists generally at risk, in contrast to the stationary parking lot¹¹ setting in Williams where, the district court reasoned, no similar generalized threat to others was present. (J.A.000563). Based on these articulated distinctions, the district court concluded that Williams did not clearly establish that Stilley's conduct violated the Fourth Amendment. (J.A.000563) The district court further concluded that there was no other controlling precedent from the Supreme Court, this Circuit, or a consensus of authority among the other circuits that would have done so. (J.A.000568). In arriving at that conclusion, it reasoned that Michael's actions posed a danger to others in the immediate vicinity—citing to the presence of other motorists in the area; Michael's speed; the dark of night (while

¹¹ Although, given that Stilley had stopped traffic, the distinction is not quite as pronounced as the district court considered it to be.

simultaneously acknowledging that Abney indicates that such conduct is actually more likely to be dangerous during the day); the motorcycle having only one headlight; and the upcoming shift in the narrowness of the road due to a mud slide and the potential (but unlikely) presence of VDOT workers attending to the same. (J.A.000570).¹² Concluding, the district court determined that, because the danger attendant to the chase fell somewhere in between the level danger present in other cases that examined similar conduct with differing outcomes, the instant case involved sufficient constitutional ambiguity to entitle Stilley to qualified immunity. (J.A.000568-71).¹³

¹² There is no contemporaneous evidence remotely suggesting that Stilley was aware of a mudslide elsewhere on the road or the presence of VDOT employees. It is certainly not referenced in his statement of the incident that was drafted with the assistance of legal counsel. (J.A.000183-184). Stilley's purported awareness of these facts first rests entirely upon self-serving evidence that Stilley generated in the context of litigation. Therefore, like Stilley's late-appearing claim that that he perceived Pitzer's van to be in danger and he intentionally acted to save it, Stilley's alleged knowledge of the mudslide and the VDOT workers on the road is disputed and the district court should not have credited it to Stilley's account in conducting its qualified immunity analysis.

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¹³ Notably, the district court's analysis did not account for or even mention much of the evidence that a jury could find as proving the absence of danger—certainly the absence of an immediate threat of serious physical harm to officers or others. For example, the district court's analysis of the danger did not take into consideration any of the circumstantial evidence furnished by Vinson's and Stilley's conduct indicating that the threat posed by the chase, while certainly existing in a general sense, was not of a substantial or immediate nature. Critically, the district court did not acknowledge that the factors or variables it cited as showing that Michael's conduct presented a danger to others in the immediate vicinity (i.e., Michael's speed, the dark of night, the presence of others nearby, and the shift in road conditions

The district court then conducted an analysis of the Graham factors and determined that their specific application to this case also would not have given Stilley notice that his use of the roadblock was unconstitutional. The district court found that the first Graham factor slightly favored Appellant (given the record viewed in the light most favorable to Appellant allowed for the finding that Michael's conduct only rose to the level of misdemeanors). It found the second factor slightly weighed in Stilley's favor because Michael's conduct did pose a danger to others—although he was not headed into oncoming traffic, driving erratically, nor in a congested area. (J.A.000569-570). The district found the third Graham factor strongly favored Stilley as Michael's conduct, by definition, was attempting to flee or evade arrest. (J.A.000570-571).

To be sure, the district court was correct that there are factual distinctions between Williams and the present matter. And, it must be conceded that the district

further up the road due to a mudslide) were all present and known to Stilley at the time that Stilley determined it was best to let Michael pass by and also decided to intentionally pool civilian vehicles in the area to slow Michael down. In other words, Stilley clearly did not ascribe much significance to those factors or variables at the scene, so it is unclear why they occupied an elevated station in the district court's reasoning. Nor did the district court assign any significance to the portions of the NPD Policy Manual speaking to the type of circumstances that present a sufficient danger to employ a roadblock (i.e., the escape of a fleeing violent felon), the nonhazardous road conditions at the time, the method by which a roadblock should be employed, or the fact that Michael was actually slowing down as he drove through Narrows.

court was correct that neither the Supreme Court, this Court, nor a consensus of binding authority by the other federal circuits have held that this *exact* roadblock tactic under these *exact* circumstances violates the Fourth Amendment. But, as noted above, a clearly established right can be found in decisional law even in the absence of such precise factual alignment. The rule laid down by Williams (which is really just a more nuanced application of the rule articulated by Garner, so as to specifically address scenarios involving fleeing motorists) is clear and can be applied in different settings (be it different actions by the fleeing motorist, roadway conditions, or different modalities of deadly force) through employing “logical inferences, reasoning by analogy, or exercising common sense.” Williams, 917 F.3d at 770. That is to say, Williams unquestionably establishes that a fleeing motorist may only be lawfully seized through the use of deadly force if that motorist poses an *immediate* risk of *serious* physical harm to officers or others. Williams, 917 F.3d at 769 (quoting Garner, 471 U.S. at 3, 11). It did not leave **any** open question as to whether some lesser degree of danger could still somehow justify the use of such force.

That the existing law at the time was clearly established in this respect becomes even more apparent when also considering Brower and Scott. Brower clearly established that the use of roadblocks tactics would be governed by the Fourth Amendment as a seizure, and Scott clearly established that the reasonableness of a given use of force in apprehending a fleeing motorist would involve a balancing

of the likelihood of serious injury or death to the suspect against the risks posed by the chase to innocent bystanders. Scott, 550 U.S. at 384; Brower, 489 U.S. at 599. In light of these clearly established authorities, any reasonable officer in Stilley's position would have known that the use of a roadblock **certain to cause death** against a fleeing motorist who was not posing an immediate danger to officers or others was a seizure that would violate the Fourth Amendment. The district court erred in concluding otherwise. Indeed, in a virtually identical case on the facts, the Sixth Circuit held that the combination of Garner and Brower alone were sufficient to put the officer on notice of a clearly established right in this respect. Buckner v. Kilgore, 36 F.3d 536, 540 (6th 1994) ("We hold that an officer violates a clearly established right under Brower if he pulls his squad car onto a highway with knowledge or reason to know that an approaching motorcyclist will not have time or the ability to stop or otherwise safely avoid collision with the car.").

Although the district court found that Michael posed a general threat to others in the immediate vicinity, it did not reach any express conclusion as to whether that threat amounted to a substantial and immediate threat of serious physical harm to officers or others. That was the level of danger clearly set by existing law that would justify Stilley's deadly roadblock against Michael. Importantly, when it comes to the use of deadly force, the law does not leave open questions of gradient. Rather, a "threat" falling below the requisite threshold will **never** be enough to authorize

deadly force (in this or any other context). Aleman, 80 F.4th at 291 (“Galindo posed a threat to the safety of the responding officers at the moment he was shot, but a reasonable officer on the scene would not have had probable cause to believe that he posed an ‘immediate threat’ such that deadly force could constitutionally be used against him.”).

It is critical that the rule of existing law be enforced here because “threats” on the roadway are ubiquitous. Indeed, all motorists on the road, even law-abiding ones, pose a threat to other motorists in their immediate vicinity just by virtue of their mere proximity and the operation of a multi-ton vehicle at speeds sufficient to cause substantial harm should a collision ensue (be it through the fault of a driver or the mechanical failure of the vehicle). To be sure, law-abiding drivers are not “culpable” in creating this threat in the way envisioned by Scott. However, other drivers among us frequently are culpable and threaten those in their immediate vicinity through their culpable actions. For example, drivers talking on cell phones without a handsfree device or those texting or checking emails while driving. Does the law countenance the use of deadly force to abate the unquestionable danger such culpable behaviors create for others in the immediate vicinity of perpetrators of these acts? One would certainly hope that there is a clearly established right not to be subjected to the use of deadly force for texting while driving, even if no case has already specifically articulated that granular rule.

In short, even without factually identical decisional law from the Supreme Court, this Court, or a consensus of other federal circuits which had already adjudicated the unlawfulness of Stilley's chosen roadblock tactic, Brower, Scott, and Williams supplied the necessary constitutional rules for any reasonable officer in Stilley's position to understand the line between whether the roadblock being contemplated would be constitutional or unconstitutional under the circumstances. Simply put, if there was probable cause to believe that Michael posed an **immediate danger of death or serious injury to officers or others**, the use of the roadblock was reasonable under the Fourth Amendment. **If not, existing law clearly forbade Stilley from using deadly force in response to Michael's actions even if some lesser danger was present** by virtue of Michael's conduct. Viewing the record in the light most favorable to Appellant, and for the reasons set forth above, a reasonable officer in Stilley's position would not have believed that Michael posed an **immediate danger of death or serious injury to officers or others**. There are many disputed factual issues and connected inferences that would afford a reasonable jury an opportunity to determine the issues in this case. On summary judgment, however, this Court must accept that view of the record which resolves these disputes in Appellant's favor. Doing so, no objectively reasonable officer in Stilley's position (i.e., not perceiving Michael as posing the requisite degree of danger) would have believed the use of the last-second of a roadblock that was

certain to kill Michael could possibly be constitutionally reasonable. Therefore, Stilley is not entitled to qualified immunity and this case should be remanded to the district court for trial.

2. The District Court Erred in Granting Stilley Good Faith Immunity.

The district court erred in granting Officer Stilley good faith immunity under Virginia law to the state-law battery claim. The district court, in arriving at this result, observed that this Court has previously stated that Virginia good faith immunity is “congruent” with qualified immunity. (J.A.000572). While this is true, Wingate v. Fulford, 987 F.3d 299, 312 (4th Cir. 2021), the district court misapplied this principle by treating the two defenses as legally synonymous and essentially duplicative in their entirety. By improperly conflating the doctrines of good faith immunity and qualified immunity, the district court failed to account for the distinct analytical elements that differentiate these defenses. This approach undermines the nuanced analysis Virginia law requires for good faith immunity, which incorporates both subjective and objective components, and precludes reliance solely on the qualified immunity analysis.

Under Virginia law, an officer is entitled to good faith immunity only if they acted with a *subjectively* held **good faith belief** in the lawfulness of their conduct **and** that belief was *objectively* reasonable. See DeChene v. Smallwood, 226 Va. 475, 311 S.E.2d 749, 751 (1984); see also Wingate, 987 F.3d at 312 (“Virginia law

provides a defense to officers who subjectively believed in good faith that their conduct was lawful and whose subjective beliefs were objectively reasonable.” (cleaned up)). Thus, unlike federal qualified immunity which focuses exclusively on an objective “clearly established law” inquiry, good faith immunity requires additional scrutiny of the officer’s subjective state of mind. Lawhon v. Mayes, Nos. 20-1906, No. 20-1907, No. 20-1908, 2021 U.S. App. LEXIS 33823, at *7 (4th Cir. Nov. 15, 2021) (“Virginia’s good faith immunity defense requires a showing of a good faith belief in the lawfulness of one’s actions.”). By failing to conduct this dual inquiry, the district court improperly collapsed the good faith analysis into its qualified immunity determination.

Critical to the present case, “Virginia’s ‘good faith’ immunity **does not spare a Virginia official the burden of a jury trial.**” Figg v. Schroeder, 312 F.3d 625 n.15 (4th Cir. 2002) (emphasis added). That is to say, whether Stilley possessed a good faith (i.e., subjective) belief in the lawfulness of his conduct is a jury question provided there is evidence in the record demonstrating a genuine issue of material fact on the question. Id. Here, any claim by Stilley of a subjective good faith belief in the lawfulness of his actions is seriously undermined by his disregard for his training and departmental policy, which explicitly addressed the use of roadblocks. Brooks v. Johnson, 924 F.3d 104, 122 (4th Cir. 2019) (compliance with use of force policy indicative of good faith); see also Groh v. Ramirez, 540 U.S. 551, 564 n.7

(2004) (noting that an officer's violation of an internal guideline will not deprive an officer of qualified immunity, but it can be used to underscore the officer's knowledge that a course of conduct is improper). As noted above, Stilley's training, as well as the Narrows Police Department (NPD) Policy Manual, unequivocally characterized the use of a roadblock as deadly force, permissible only against fleeing violent felons whose escape would pose a life-threatening danger to others with proper authorization. (J.A.000345-347). Yet, Stilley did not have any information suggesting Michael Acord was a violent felon or that his escape posed a threat to the lives of others. (J.A.000259-60, J.A.000293). Nor did he seek or receive authorization from the Chief of Police or Lieutenant, as mandated by NPD policy, before erecting a makeshift roadblock. (J.A.000144-146). These glaring deviations from training and departmental policy on his part raise genuine issues of material fact about whether he subjectively believed the use of the roadblock was lawful under the circumstances.

Moreover, the absence of a subjective good faith belief in the lawfulness of his actions can also be inferred from Stilley's evolving explanations for his actions. Namely, Stilley originally asserted his original maneuver was unintentional—a slip of the foot. Yet, as time has passed since the incident, Stilley has abandoned the notion that the movement was ever unintentional. Instead, he now claims it was motivated by facts not alluded to in any way in his contemporaneous (or even pre-

litigation) statements or reporting—i.e., the alleged “wobbling” motorcycle, his alleged concern for the Pitzer van, and his alleged awareness of VDOT workers farther down the road. A jury could infer from this course of conduct that Stilley intentionally placed his vehicle into Michael’s path at the last moment knowing he lacked legal justification for doing so and therefore initially claimed the movement was accidental for that reason. However, as the scrutiny of criminal prosecution and civil litigation challenged this questionable narrative, Stilley (likely guided by his legal team) came to admit what had always been the case—i.e., that the roadblock was an intentional application of force—but now with some retroactive amplification in his reasons for doing so.

Moreover, even if Stilley held such a subjective good faith belief in the lawfulness of his actions, it would not have been objectively reasonable for the same reasons set forth in the qualified immunity analysis above. Therefore, for the reasons set forth above, the district court erred in granting Stilley good faith immunity to Appellant’s battery claim and the ruling should be reversed and this matter remanded to the district court for trial.

VIII. CONCLUSION

For the foregoing reasons, the district court’s grant of summary judgment to Officer Stilley on the basis of qualified immunity and good faith immunity should be reversed. The record, when viewed in the light most favorable to Appellant,

reveals genuine disputes of material fact regarding the reasonableness of Stilley's use of deadly force and the availability of good faith immunity under Virginia law. These factual disputes are for a jury to resolve, and summary judgment was therefore improper. This Court should remand the case for trial to allow a jury to assess the evidence and determine whether Stilley's actions violated Michael's constitutional and state law rights.

RESPECTFULLY SUBMITTED,

**TED ACORD, as Administrator of
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/s/ Seth Carroll

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IX. STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested because it will significantly aid the Court in resolving the complex issues surrounding the District Court's grant of qualified immunity and good faith immunity to Officer Stilley. The case hinges on nuanced legal principles concerning the use of deadly force under the Fourth Amendment and Virginia state law, as well as the interplay between departmental policy violations and the officer's subjective and objective beliefs.

The record contains substantial factual disputes regarding whether Officer Stilley had probable cause to believe that Michael posed an immediate risk of serious physical harm and whether Stilley's actions were objectively reasonable or subjectively in good faith under Virginia law. Oral argument will provide an opportunity to address these factual and legal nuances, clarify the application of existing precedent and demonstrate how the District Court's rulings improperly conflated distinct legal standards.

By engaging with these issues directly, oral argument will assist the Court in applying controlling precedent to the specific facts of this case and ensure a just resolution of critical questions regarding constitutional and state-law immunities.

X. CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Rule 32(a)(7) of the Federal Rules of Appellate Procedure.

XI. CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing was filed electronically and served on all counsel of record.