[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13004
Non-Argument Calendar

D.C. Docket No. 7:20-cv-00298-LSC

SAMANTHA DUNCAN,

Plaintiff - Appellant,

versus

SHERIFF JODY WADE,
Bibb County Sheriff,
JIMMY WARD,

Defendants - Appellees.

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

(April 2, 2021)

Before WILSON, JILL PRYOR and LUCK, Circuit Judges.

PER CURIAM:

Samantha Duncan appeals the district court's order granting summary judgment on the basis that her excessive-force claim against Deputy Jimmy Ward is barred by qualified immunity. Finding that Deputy Ward did not violate Duncan's Fourth Amendment right to be free of excessive force, we affirm the district court.

I. Background

Duncan was a passenger in her cousin Ricky Duncan's vehicle when he was stopped for a traffic violation.[1] During the stop the officer discovered a warrant for Ricky's arrest. The officer asked Ricky to get out of the car, but Ricky refused and drove away. The officer got back into his car and pursued Ricky. Shortly thereafter, two other officers, including Deputy Ward, joined the chase.

Ricky stopped his car, at which point the officers also stopped and exited their vehicles. As Ricky also exited his car, he held a gun over his head. Upon seeing that Ricky had a gun, the officers opened fire. When the shooting ended, Duncan got out of the vehicle with the assistance of an unknown officer and walked to the rear of the vehicle where she stood eight to twelve feet away from Deputy Ward. Deputy Ward ordered Duncan to "get down." Duncan—who was unarmed—immediately raised her hands above her head and stepped back. Deputy

[1] This opinion refers to appellant-plaintiff Samantha Duncan as "Duncan," and her cousin Ricky Duncan as "Ricky."

Ward ordered twice more that Duncan "get on the ground."[2] Before Duncan could react, Deputy Ward tased her in the chest, and she fell to the ground convulsing. A few minutes later, Deputy Ward handcuffed Duncan. She then walked to his police car without assistance and was able to communicate with the officer.

Duncan filed a complaint pursuant to 42 U.S.C. § 1983 alleging, among other things, that Deputy Ward violated her Fourth Amendment right to be free of excessive force.[3] Deputy Ward filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56(a), arguing that he was entitled to qualified immunity. The district court agreed with Deputy Ward, granted summary judgment, and dismissed Duncan's case with prejudice. This is her appeal.

II. Standard of Review

We review de novo a grant of summary judgment and apply the same legal standards as the district court. *King v. Pridmore*, 961 F.3d 1135, 1138 (11th Cir. 2020). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* We review all evidence and draw all reasonable inferences in favor of the nonmoving party. *Id.* However, in qualified-immunity cases, we

[2] Duncan alleges that she did not hear Deputy Ward, though body-cam video footage confirms that he instructed her to "get down" and "get on the ground."

[3] Duncan also alleged assault and battery against Deputy Ward, and failure to train against Sheriff Jody Wade, Deputy Ward's supervisor. These allegations are not relevant to this appeal.

consider "only the facts that were knowable to the defendant officers." *White v. Pauly*, 137 S. Ct. 548, 550 (2017) (per curiam).

III. Qualified Immunity

Qualified immunity protects government officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). We must grant qualified immunity unless the plaintiff can demonstrate "(1) that the facts, when construed in plaintiff's favor, show that the official committed a constitutional violation and, if so, (2) that the law, at the time of the official's act, clearly established the unconstitutionality of that conduct." *Singletary v. Vargas*, 804 F.3d 1174, 1180 (11th Cir. 2015). Duncan does not dispute that Deputy Ward was acting in the scope of his discretionary authority when he tased her. Therefore, we only need to determine whether the officer violated a right, and, if so, whether that right was clearly established at the time.

Duncan argues that Deputy Ward's actions constituted a violation of her clearly established Fourth Amendment right to be free of excessive force. "An officer's use of force is excessive under the Fourth Amendment if the use of force was objectively unreasonable in light of the facts and circumstances confronting the officer." *Fils v. City of Aventura*, 647 F.3d 1272, 1287 (11th Cir. 2011)

(alteration adopted and internal quotation marks omitted). To determine whether an action constituted reasonable or excessive force, we examine the "totality of the circumstances," including "(1) the need for the application of force, (2) the relationship between the need and amount of force used, and (3) the extent of the injury inflicted." *Draper v. Reynolds*, 369 F.3d 1270, 1277–78 (11th Cir. 2004). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor*, 490 U.S. 386, 396–97 (1989).

Measuring the facts of this case against the above factors, Deputy Ward acted reasonably when he used force against Duncan after she did not obey his orders to get on the ground. Even accepting as true that Duncan did not hear Deputy Ward, nothing in the record indicates that Deputy Ward knew that. *See White*, 137 S. Ct. at 550 ("[T]he Court considers only the facts that were knowable to the defendant officers."). Acting under a reasonable-but-mistaken belief that Duncan had heard his instruction after Deputy Ward gave it three times, Deputy Ward was not required to "wait and hope for the best" before making the split-second decision to tase Duncan. *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010) (alteration adopted and internal quotation marks omitted).

Moreover, we recognize that it was not just the fact that Duncan did not follow Deputy Ward's orders that led to Deputy Ward's need to exercise force—it was also the "tense, uncertain, and rapidly evolving" series of dangerous events. *Graham*, 490 U.S. at 397. What started as a routine traffic stop quickly escalated: Duncan had been the passenger in a vehicle that had just led Deputy Ward and other law-enforcement officers on a chase that ended with Ricky getting out of the car with a gun in his hand, causing the officers to shoot.

Further, Deputy Ward exercised force proportional to the need given the circumstances. We accept as true that Duncan was not resisting. Still, given the "tense and difficult" nature of the situation, an attempt to restrain Duncan could have escalated into a physical struggle that might have resulted in Duncan or Deputy Ward being injured. *See Draper*, 369 F.3d at 1278 (recognizing that the use of a taser gun is a reasonable alternative in a "tense and difficult situation" and may prevent further escalation into a physical struggle). And the extent of Duncan's physical injury was not serious—minutes after being tased Duncan was able to walk and talk to Deputy Ward. *See id.* (explaining that the use of a taser gun "was reasonably proportionate to the need for force and did not inflict any serious injury" when the plaintiff was coherent and able to stand up shortly after the taser gun "stunned and calmed him").

Finally, we are not persuaded that the cases Duncan relies on are instructive here. Duncan points to cases where this court has "repeatedly ruled that a police officer violates the Fourth Amendment, and is denied qualified immunity, if he or she uses gratuitous and excessive force against a suspect who is under control, not resisting, and obeying commands." *Saunders v. Duke*, 766 F.3d 1262, 1265 (11th Cir. 2014) (citing *Priester v. City of Riviera Beach*, 208 F.3d 919, 927 (11th Cir. 2000)). But, in those cases, force was used when the suspects were already under the officer's control. *Saunders*, 766 F.3d at 1265 (plaintiff was handcuffed and under arrest); *Priester*, 208 F.3d at 923 (plaintiff was laying down on the ground). Quite the opposite here, Duncan had not yet been physically restrained—so that line of cases is inapposite.

Duncan also relies on *Fils v. City of Aventura* for the proposition that "unprovoked force against a non-hostile and non-violent suspect who has not disobeyed instructions violates that suspect's rights under the Fourth Amendment." 647 F.3d at 1289. In *Fils*, however, the plaintiff had not only been non-hostile and non-violent; the incident took place in a calm and controlled setting, and the plaintiff was engaged in a private conversation with his back to the police officers. *Id.* at 1288. Even assuming here that Duncan was non-hostile and non-violent, Deputy Wade reasonably believed that she was disobeying his instructions amidst

a violent situation. Therefore, Deputy Ward's use of force did not constitute excessive force.

Deputy Ward's use of the taser gun did not constitute excessive force. He did not violate Duncan's Fourth Amendment rights. We affirm summary judgment in favor of Deputy Ward.

AFFIRMED.