

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13573

CHANDA CALLAWAY,

Plaintiff-Appellant,

versus

MASON ADCOCK,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:20-cv-00598-ECM-CWB

Before GRANT, ABUDU, and ED CARNES, Circuit Judges.

ED CARNES, Circuit Judge:

This appeal involves a claim that a police officer used excessive force in violation of the Fourth Amendment when he fatally shot a man. The plaintiff is Chanda Callaway, the aunt and

administrator of the estate of Channing Spivey, the man who was shot.¹ On behalf of the estate she claimed that the use of deadly force was excessive and therefore violated the Fourth Amendment. The district court concluded that the officer who fired the shots was entitled to qualified immunity and granted his motion for summary judgment on that basis.

A reasonable officer in the circumstances that this one found himself in could have believed that the use of deadly force was necessary to avoid a threat of serious physical harm or death to himself or others. It follows that the force used was not excessive in violation of the Fourth Amendment.

I. THE FACTS²

The shooting happened on the evening of May 27, 2020. What led to it was Spivey's irrational and violent behavior. The root cause of that behavior first came to light in early March 2020. That is when Spivey, who was then thirty-three years old, had a seizure at work and was hospitalized. Tests showed that he had a glioblastoma grade 4, which is the most aggressive and lethal form of

¹ To simplify things, we will refer to Callaway, the administrator, as "the estate."

² We take these facts from the record as a whole, drawing them from testimony under oath in depositions, affidavits, and other sworn statements, in light of the standard of review applicable to decisions granting summary judgment. See *infra* at 32–33 (setting out the standard of review).

Opinion of the Court

3

brain cancer.³ Soon after his diagnosis, Spivey underwent surgery to remove the brain tumor, or as much of it as feasible. Surgery was followed by an “aggressive course of chemotherapy” administered five days a week during April and May of 2020. He also had radiation treatments. And he took a lot of prescription medication.

After he was released from the hospital following his surgery, Spivey stayed at his aunt’s house for about a month, and she observed him. She summarized some of the serious problems he had: “Among the usual side-effects of this type of brain surgery and ten to twelve weeks of chemotherapy that Spivey experienced were confusion, irrational thought process, agitation, seizures, irritability, changes in personality and erratic behavior.”⁴

³ See Torin Karsonovich, David P. Gasalberti, & Appaji Rayi, *Low-Grade Gliomas*, NAT’L LIBR. OF MED., (Dec. 13, 2025), <https://www.ncbi.nlm.nih.gov/books/NBK560668/> [https://perma.cc/RC3H-W9QT] (published in StatPearls [Internet]); Lauren Rose, *Glioma vs. glioblastoma: What’s the difference?*, Cancerwise (Feb. 18, 2022), <https://www.mdanderson.org/cancerwise/glioma-vs-glioblastoma--what-is-the-difference-in-these-brain-tumors-treatment-diagnosis.h00-159537378.html> [https://perma.cc/34QB-H9FW].

While some laymen witnesses in this case referred to Spivey’s glioblastoma as being “stage 4,” when speaking of glioblastomas the medical profession uses “grade” instead of “stage” terminology. See Rose, *supra*. The most aggressive glioblastomas are grade 4. *Id.*

⁴ Channing Spivey’s brother, Westly Spivey, is mentioned a number of times in this opinion. To avoid confusion, we will follow the district court’s convention of referring to Channing Spivey by his last name and referring to his brother Westly by his first name. And to minimize the number of brackets, we will substitute the name “Spivey” without brackets for “Channing” or

Another person who was around Spivey after his brain surgery was Zana Bloodsworth, his brother's girlfriend. She blamed his abnormal behavior on the course of the radiation treatments he received, stating that "I knew something was off in his brain due to the radiation and stuff." Because of how he began behaving, she thought the radiation had been "frying his brain." Her opinion as a lay person may have been an oversimplification, but it was apparent to all those around Spivey that, whatever the cause, his behavior became abnormal, irrational, and aggressive.

Spivey could no longer work after his surgery. After he left his aunt's house, Spivey, Westly, and Westly's girlfriend Zana Bloodsworth all moved into the house on North Glenwood Road, a rural two-lane highway just outside the little town of Luverne, Alabama.⁵ All three had been living with Callaway before they moved into the house she bought for them on Glenwood Road. Justin Robinson, a family friend, didn't live there but he spent time with Spivey and the others. Westly, Bloodsworth, and Robinson all

"Channing Spivey" wherever either of those names appears in documents or statements that we are quoting. We have, for example, done that in the quotation to which this footnote is attached.

⁵ Luverne had a population of 2,765 in 2020. *See* U.S. Census Bureau, https://www.census.gov/search-results.html?q=luverne%2C+alabama&page=1&stateGeo=none&searchtype=web&cssp=SERP&_charset_=UTF-8&search%3Atab=Infographics [<https://perma.cc/8RLN-AGV7>] (last visited July 10, 2026); City of Luverne, Ala., <https://luverne.org/business/demographics.html> [<https://perma.cc/N74G-RW5E>] (last visited September 7, 2026).

Opinion of the Court

5

had an opportunity to observe Spivey's increasingly disturbing conduct.

Spivey didn't like the way he looked after his operation. His head was shaved, and he had a large V- or L-shaped scar where the craniotomy had been performed, and there were staples in his head. The heavy course of treatments and the medications he was taking made him feel bad. As a result, Spivey decided to end all of his chemotherapy and radiation treatments and stop going to the doctor. So he quit.

Spivey had been taking a large number of prescription medications; Westly said it was "a bunch — it was a lot of them." Among them were pain medicine and a mood stabilizer. Westly said, "[h]e just decided he just didn't want to take [his medications] anymore," so he didn't. When asked why someone hadn't seen to it that Spivey kept taking his medication, Bloodsworth explained: "He was a grown man. We couldn't force him to do it if he didn't want to do it. And he wasn't going to do it." His prescribed medicine was not all that Spivey quit; he had been smoking a little marijuana but stopped that as well. His brother Westly was surprised, saying it was "something kind of weird, too, that he didn't even want to smoke" anymore.

On Sunday or Monday, May 24 or 25, Westly noticed that after Spivey abruptly quit taking all of his medications, including his pain medicine and his mood stabilizer, his behavior worsened. It became more erratic, more irrational, and more disturbing, as he

quickly spiraled toward the violent acts he would commit on Wednesday, May 27.

Bloodsworth recounted how Spivey would “holler” and then be talking to you fine, and then he’d say something that you couldn’t understand: “[I]t was normal words – English words, but he just wasn’t making any sense.” The incoherent talking got worse in the days leading up to what happened on May 27.

Westly noticed the same behavior and added that “I mean, he was in and out of making sense.” He said that Spivey “would get calm and talk like normal for a minute, and then all of a sudden like, he would just say something off the wall.” Westly explained how some things Spivey said “really didn’t make sense,” he was “blaming people for things he knew didn’t happen and all.” An example he gave is that Spivey started blaming their mother’s suicide years before on Robinson, their friend, which was something “really off the wall.” Not only that but Spivey would walk outside “on the back side of the property,” and would be “praying aloud, like, talking to God.” He hadn’t done that before.

Bloodsworth also related that Spivey “wasn’t really sleeping” from “the Sunday [May 24] through Wednesday [May 27].” Instead, “[h]e would be loud and stuff and keep us up, like laughing really loud, you know, or hollering.” She recounted how “[h]e would just walk around the yard and just holler.” As for what he was hollering, “it was mostly religious stuff like talking to God.” She “remember[ed] him saying some stuff about a king or being a king.”

Opinion of the Court

7

Wednesday, May 27 was Spivey's worst day. And it would prove to be his last. That morning he got into his Yukon truck, drove it down a country road into a field, started "doing donuts and ran it into a tree," wrecking the truck.⁶ As Bloodsworth described it: "He was doing donuts in this little small tiny field thing, and he, like, hit a tree. He, like, centered a tree." Spivey left his wrecked truck and walked back to the house.

When he got back to the house after the wreck, Spivey "swore it was his day." He told Bloodsworth that "he had petted a spider," said "[s]omething about a poisonous mushroom," and "then something about seeing Elijah's eye." When asked if Spivey also talked about death at that time, Bloodsworth answered: "[H]e said something about thinking it was his day. I think that's how he worded it [H]e said he thought — he could have swore it was his day or something like that."

As the day wore on, Spivey's behavior became more erratic and aggressive. He "was walking in and out of the house, like, yelling, like talking to the Lord."

⁶ In the context of driving, a "donut" is a vehicle-driving maneuver characterized by the "intentional and unnecessary operation of a motor vehicle in a manner that causes the vehicle to move in a zigzag or circular course or to gyrate or spin around." Ala. Code § 13A-11-300(a)(2) (defining "motor vehicle donut"). Most jurisdictions outlaw the maneuver, at least on public roads, because it can cause rollovers or other types of wrecks. *See, e.g., id.* § 13A-11-300(b)(1)(d). Which is what Spivey's doing donuts did.

In the two hours leading up to the shooting that night there were several episodes in which Spivey was violent or was aggressive. He broke a cup during one episode. And shortly after, while the others were watching a movie on the TV, Spivey walked in, picked up the TV, and threatened to throw it down and break it. “He said he was doing what he was told to do, was going to bust it,” that it was “of the devil, like talking about the TV, the nonsense TV has.” He was eventually persuaded to put the TV down. He also said the same thing about the air conditioner being of the devil.

Spivey’s irrational behavior caused Bloodsworth to call 911. She walked outside and made her first call at 7:41 p.m.⁷ Bloodsworth told the 911 operator that they needed an ambulance because her boyfriend’s brother, a 34-year-old male with “stage 4” brain cancer, “for the past couple of days” was having “episodes where he just screams and hollers.”

But while Bloodsworth was still on the phone with the operator, Westly told her that Spivey was going to calm down. He wanted her to give Spivey another chance. Westly later explained

⁷ The record in this case includes an audio recording of Bloodsworth’s two 911 calls. The record also includes a written “Computer-Assisted Dispatch” (CAD) report that memorializes in condensed form some information about those 911 calls and the times they were made. It also memorializes some information about another 911 call made by a deputy sheriff. More about that call later. *See infra* at 15–16 n.12.

Opinion of the Court

9

that he hadn't wanted Spivey to be taken to the hospital, "because he didn't want to be there, and he was a grown man." Westly thought his brother shouldn't be forced to go to the hospital "just because he was acting irrational." And Westly "didn't see where he was of harm to us at the time."

At Westly's request, Bloodsworth told the 911 operator that Spivey had started calming down, and they wanted to give him another chance. She said they no longer wanted an ambulance, but she would call back "if it happens again."

Bloodsworth then went back inside the house and hadn't been there long when she heard the noise of Spivey punching a hole in the living room ceiling. As she explained, that was it for her: "About that time I heard the crunch of the ceiling, and then I was like, okay, he needs medical treatment. I'm calling 911. And I wasn't going to let Westly or anybody tell me any different."

Bloodsworth called the 911 operator that second time at 7:49 p.m, which was just eight minutes after she had placed the first 911 call. In this second call she reported that Spivey was "screaming," was "aggressive," had "tried to break the TV," and had "punched a hole in the ceiling." She warned the operator: "[T]here's a chance that he may not want to go," but "take my word for it," he is not "in the right mindset right now." The operator (who also served as dispatcher) told Bloodsworth that she would send both a law enforcement officer and emergency medical services (EMS) to the

scene.⁸ And she did. She dispatched an EMS team to the Spivey house at 7:51 p.m., and the ambulance arrived there at 7:54 p.m.

When she dispatched the ambulance with the EMS team and a deputy sheriff, who was in a separate vehicle, the operator/dispatcher told them that the subject had a terminal illness, needed medical treatment, and was “combative.”

Deputy Brent Penny of the Crenshaw County Sheriff’s Office was dispatched to the Spivey house at the same time the ambulance was. Penny understood that he was being asked to assist an EMS team with “a combative subject” who had “a brain tumor or something to that effect” and who had “broke[n] a TV and punched holes in the wall.” Penny, who had seven years of experience in law enforcement, raced to the scene in a sheriff’s department SUV with “emergency equipment activated.”

Meanwhile, Bloodsworth, Westly, and Robinson waited outside the house for the ambulance, while Spivey wandered around the yard, screaming, yelling, and praying out loud. At one point, Spivey took an unprovoked swing at Robinson, his brother’s friend. He also took a swing at his brother Westly, who described what

⁸ The record doesn’t clarify each EMS team member’s scope of duties and position title. There’s either an absence of job titles or conflicting testimony about whether a person is a paramedic or EMT. *See generally* Ala. Code § 22-18-1(1), (12)–(13), (16) (detailing different required training, licensure, and a different scope of practice for various levels of EMTs and paramedics). These job titles are often used interchangeably, and that is technically incorrect. To avoid those inaccuracies, we will use the umbrella term EMS team, which covers both EMTs and paramedics.

Opinion of the Court

11

happened: “I don’t even think there was anything that set him off . . . he just looked at me and just swung.” Westly added: “That was the first time he’s ever swung at me ever.” Westly ducked to avoid the punch, grabbed Spivey, and held him down until he quit fighting. While they were outside, Spivey also put his arms under Westly’s and then locked his fingers behind Westly’s neck “[k]ind of like a headlock,” in what Bloodsworth considered an “aggressive” move.

The EMS team arrived in an ambulance before Deputy Penny got to the Spivey house. Given the report that the subject was combative, they stopped on top of a hill two hundred yards up the road from the house and waited for the deputy to arrive. One of the dispatched EMS team members was Tim White, a friend of Captain Mason Adcock, who knew that Adcock lived nearby. Just before 8:00 p.m., while waiting in the ambulance up the road from the Spivey house for Deputy Penny to arrive, White called Adcock.

At the time of White’s call, Mason Adcock was taking it easy after a day’s work as a police officer.⁹ It was past the dinner hour, and he was wearing gym-type shorts and a T-shirt, and relaxing in his recliner, watching TV. Adcock’s wife and fourteen-year-old stepson were there with him. Adcock was unaware of any problem at or near the Spivey house, until he spoke with White.

⁹ Adcock was a Captain and Assistant Chief of the Luverne Police Department, but there were only 13 officers in the department to cover all three shifts, so Adcock had patrol duties as well as administrative ones. About half of his time was spent on patrol and half on administrative matters.

In their brief phone conversation, which lasted only “[o]ne to two minutes,” White told Adcock that the EMS team, “had received some type of call” about an issue at the Spivey residence, which was on the other side of Glenwood Road from the Adcock house. White said that the EMS team was now “staged” atop a hill a couple of hundred yards up the road away from the Spivey house, “waiting on a deputy to get . . . there.” White asked Adcock whether he had heard “the ruckus, racket, whatever, going on across the road.”

Adcock hadn’t heard anything and didn’t know what White was talking about. He was acquainted with Spivey, and they would speak when they saw each other.¹⁰ He had heard Spivey was being treated for brain cancer, but that was second-hand information. He hadn’t talked with Spivey about it and didn’t know the status of it. And he also was unaware that Spivey was living with his brother Westly in the house across the road. White didn’t tell Adcock that Spivey was the one causing trouble there; he didn’t mention Spivey or anyone else’s name to Adcock.

The conversation with White lasted one to two minutes and left Adcock, who had 15 years law enforcement experience, with an uneasy feeling. After the conversation, he got out of his recliner, put on long pants and boots, and clipped on the holster containing

¹⁰ The estate asserts in its brief that Adcock “knew” Spivey didn’t have a history of violent behavior, but the record shows what Adcock actually testified is that he wasn’t “aware” of any history of violent behavior. There is a difference between not being aware of something and *knowing* that it does not exist.

Opinion of the Court

13

his firearm. When asked later if he had grabbed the weapon because he thought he'd need it, Adcock answered: "I carry a gun almost everywhere I go every day. So it's not out of the ordinary for me to pick up my gun." He normally didn't carry a taser, so he didn't have one available, and he left his baton (sometimes called a night stick) in the house because he did not think he would need it.

Because of what White had told him, Adcock stuck his head out his door. When he did, he could hear "a lot of screaming, yelling, cursing, banging," and "maybe glass breaking." He wasn't sure what he was hearing, but he was "hearing something over there" across the road.

Back at the Spivey residence, as Bloodsworth, Westly, and Robinson waited for the arrival of law enforcement and an ambulance, Spivey had grown increasingly agitated. He was yelling as he walked around outside the house. Deputy Penny arrived in his official sheriff's office vehicle, a black Ford Explorer SUV, and he parked near the driveway to the Spivey residence where four or five people were. Penny began to get out of the vehicle. But before he could make it out, Spivey got to the rear end of the SUV and shattered the back window with his bare hands. As Penny experienced it: "I got my door maybe about four inches open — barely opened my door, then all of a sudden my back window was shattered."

When Penny got out of his freshly damaged vehicle, he saw Spivey, whom he described as a "tall person in just a pair of shorts." Spivey came at Penny, causing him to start backing away immediately. While backing away from Spivey, Penny reached for his taser

and ordered him to get on the ground. When Spivey didn't obey that order, Penny fired his taser at him. The taser prongs hit Spivey, and he "went down." But not for long. Five or fewer seconds after going down, Spivey pulled the taser prongs out of his body and got back up.¹¹ Penny twice tried to tase Spivey another time, but he couldn't get the taser to fire again.

The EMS team, which had been waiting up the road for an officer, saw Deputy Penny arrive. The ambulance, with its lights on, started moving slowly towards the Spivey house. At that point, Spivey saw the ambulance and jogged over to it. When he got there, Spivey suddenly leapt onto the hood of the ambulance and shattered the windshield by striking it hard with his bare fists.

When Spivey shattered the windshield some of the shards of broken glass hit the ambulance driver, Robert Knight, in his eyes, temporarily blinding him and imperiling his ability to drive the ambulance. Because of the glass in his eyes, Knight was later attended to by an EMS team member. But immediately after Spivey shattered the windshield with his fists sending shards of glass into the ambulance, Knight managed to put the ambulance in reverse and "stepped on the gas," which slung Spivey off the hood and into the ditch.

¹¹ See generally *Cantu v. City of Dothan*, 974 F.3d 1217, 1224–25 (11th Cir. 2020) (explaining that "[i]n the 'prong' mode, a taser fires small prongs that are connected to the taser by thin wires The usual result of being tased with the device in the prong mode is temporary incapacitation and inability to move.") (quotation marks omitted) (citation omitted).

Opinion of the Court

15

The people who were outside the Spivey house when Penny arrived watched the events unfold. All of them were pleading with Spivey to stop. Spivey ignored their pleas. He jumped up from the ground, turned, and “[h]is attention goes off of the ambulance crew and back on to” Penny who was “on the radio hollering for assistance.”

Spivey “jogg[ed]” toward Penny, who later described how Spivey appeared as he approached him: “So as he’s running at me, I could tell that something wasn’t right. By his demeanor, he appeared to be under — to my — to what I believed to be under the influence of something.”

Penny drew his pistol, and he gave Spivey “verbal commands to get on the ground,” while saying “I do not want to shoot you; I do not want to shoot you,” and he kept saying repeatedly: “[G]et on the ground; I do not want to shoot you.” But Spivey didn’t get on the ground. He kept after Penny. And Penny kept backing up, pleading with Spivey to stop and get on the ground. Spivey neither stopped nor got on the ground. He just kept coming.¹²

¹² Penny’s unheeded commands to Spivey were captured in a 911 audio recording. Soon after Penny arrived at the Spivey house, he used his cell phone to call the dispatcher on a continuously recording open line. He put the phone in his pocket or vest, resulting in a recording of all the sounds that could be heard by the operator/dispatcher over the open line, not just Penny’s words, from the beginning through the time the shots were fired. The recording is in the record, *see* Doc. 57-7.

Penny was frightened, even though he had his firearm drawn and he could see that Spivey was unarmed. When asked if he had been afraid when Spivey, with bloody fists, advanced on him, Penny answered: “For my life, yes.” Penny was afraid because he could tell from the way that Spivey “had just caved in the windshield of an ambulance with his bare fist, something wasn’t right with that situation.” Not only that but, as Penny explained, “I could tell just by the way he was looking at me like, and — like he wanted to kill me.” *See also infra* at 80.

That’s not all. In addition to the threatening “look[]” Spivey gave Penny, the estate’s attorney stated into the record that: “Mr. Spivey’s head had been shaved, and there was the remainder of a scar running from the top of his head to right about the start of his forehead[.]” It is also undisputed that Spivey had “staples . . . all in his head.”

Penny, who was terrified, drew his gun instead of attempting to use his pepper spray or baton. He testified he did so because he was concerned that Spivey could potentially overpower him and use his weapon against him. Penny, with his gun drawn, kept backing up from the oncoming Spivey, all the while warning him that if he didn’t stop and get on the ground Penny would shoot him. More specifically, Penny shouted: “Get on the fucking ground or I’m [gonna] shoot your ass!” And he also yelled, apparently to the onlookers, “I’m going to have to shoot him.” Spivey ignored all of Penny’s warnings and orders to stop and get on the ground. He

Opinion of the Court

17

kept coming at Penny. None of the onlookers got involved, except to plead with Spivey to stop. He ignored their pleas.

During his encounter with Spivey that night, Penny repeatedly called the operator/dispatcher and requested backup. No backup arrived in time.

Bloodsworth, who had been witnessing the increasingly disturbing events heading toward a bad end, ran for help.¹³ She knew that Adcock was a law enforcement officer who lived down the road and up a long driveway. She “took off running” down North Glenwood Road and up the driveway to Adcock’s house. She ran all of the way, which the attorneys agreed was between “a hundred and some-odd yards” and “200 yards.”

Adcock heard a loud, rapid, banging on his front door. He drew his weapon, which he had holstered on his hip after Tim White’s phone call about trouble down the road. And Adcock opened the door to find Bloodsworth on his porch. He knew her by name and was aware that she lived at the house across the road, even though he didn’t know that Spivey had been living there with Westly and Bloodsworth.

¹³ Penny recalled that it was his idea for Bloodsworth to go to Adcock’s house to get him to help, while Bloodsworth recalled it was her idea. That difference in recollection is immaterial. Regardless of whose idea it was, Bloodsworth ran to Adcock’s home to get his help.

Bloodsworth was bent over on Adcock's porch with her hands on her knees, trying hard to catch her breath. Adcock saw that she was "cow[ered] down," "frantic," "distraught," and "hysterical." He told her to "come inside; come inside; come inside," and she did.

When asked later what she had told Adcock, Bloodsworth answered: "I said, they need help. Spivey's got brain cancer. I said, he's acting out. He said he was going to shoot him. Don't let him shoot him." What she meant by that statement is that Adcock should not let Penny shoot Spivey, but she didn't say that. She did not know Penny's name or describe him, and she didn't tell Adcock who had the gun or who had threatened to shoot whom.

Adcock told Bloodsworth and his wife to stay inside the house, not to go outside. Then, within "a minute or less" after his conversation with Bloodsworth, Adcock grabbed a flashlight because "it was getting about dark," and he stepped outside, with his gun holstered at his side. That was one or two minutes before the shooting. He went out the back door and walked toward his front door to check whether "anybody had followed [Bloodsworth] to the front of the house."

Meanwhile, Penny, with his gun still drawn, had moved farther down the road. Spivey followed him. Stumbling, Penny had walked backwards in the direction of Adcock's driveway, keeping his gun drawn and his eyes on Spivey, who was walking forward and continuing to pursue him. The distance from the Spivey driveway to where Adcock's long driveway began at the road is

Opinion of the Court

19

approximately 100 yards, and Adcock's house is another 50 to 80 yards from there.

As Penny retreated backwards from Spivey, he kept ordering Spivey to get on the ground and warning that he'd have to shoot him if he didn't comply. Spivey ignored the orders and warnings. He kept coming after Penny. The 911 recording captures Penny pleading with the dispatcher for backup. He shouts, "Send me anybody" and says, "he's advancing on me!" He tells the dispatcher, "I already tazed him," and "it had no effect."

Backward-facing Penny and forward-facing Spivey moved in tandem down the road, while Westly and Robinson hung back closer to the Spivey property where they had witnessed Spivey's violence. The two of them later followed Spivey and Penny, but at a distance. Westly testified that he and Robinson did not "start[] easing over" in that direction until Penny and Spivey "got kind of close" to Adcock's property, because they thought Penny might fire his weapon, and they didn't want to risk being shot.

Penny was not getting any further away from Spivey. As he told it, "The more I was trying to get distance away, the more he was" closing the gap. "He kept closing it." But as Penny also recounted, somewhere in the road "I felt like I was close enough to [Adcock's] driveway, that I holstered, turned, and took off running" to and then up Adcock's driveway. Westly and Robinson went down the road in that direction, but they continued to keep their distance from Penny and Spivey.

Penny ran the full 50 to 80 yards up Adcock's driveway. The 911 recording of his call to the dispatcher indicates that Penny was running up Adcock's driveway for approximately 20 seconds, based on the sound of heavy footsteps. As Penny approached Adcock's house, he saw Adcock in his yard with a flashlight in his hand.

Because Bloodsworth had not mentioned any names to him, Adcock did not know who he would see when he came out of his house. What Adcock heard when he got outside was Penny screaming for his help. The 911 audio recording establishes that after yelling Adcock's name twice in rapid succession, Penny shouted "I'm gonna have to shoot him!" and then yelled Adcock's name a third time. Penny shouted something that sounds like "Help!" About two seconds later, Adcock's voice is heard on the recording for the first time.

Adcock described how he and Penny exchanged frantic words:

[H]e was yelling out my name; help me. I still didn't know . . . who we were looking for or talking about or how many or anything like that. I yelled at Deputy Penny where is he at, and Deputy Penny's in a sprint coming up the driveway.

Then Adcock for the first time saw Spivey, who arrived in the driveway not far behind Penny, both of them were running at "a trot," with Spivey chasing Penny. As soon as he saw the two of them, Adcock started giving Spivey verbal commands to get on the ground. He was surprised to see Penny, he was surprised to see Spivey, and he was surprised to see Spivey chasing Penny.

Opinion of the Court

21

Spivey's appearance concerned Adcock. He saw that Spivey was not wearing any shoes, or a shirt, or pants; nothing but a pair of swim trunks. Alarming, he was "wet looking" because "he was covered in sweat and blood." Adcock saw that Spivey "was bloody from head to toe." There was blood on his "face, arms, chest, torso," and "[e]ven down on his legs, possibly." Adcock did not know why Spivey had all that blood on him.

Added to Spivey's alarming appearance was the fact that even though he was unarmed, Spivey obviously had struck terror in the heart of an armed deputy. The deputy wasn't chasing Spivey; Spivey was chasing the deputy.

And there was also the fact that Spivey was a large man. At 6'3" tall and 199 pounds, he was a full half foot taller and nearly 20 pounds heavier than Adcock.¹⁴ According to the autopsy report, Spivey was that height and weight at the time of his death. Adcock's driver's license, which is in the record, shows he was 5'9" tall and weighed 180 pounds.

In spite of what he saw, Adcock, who only moments before had been relaxing on a recliner watching TV in the peace and comfort of his own home, did not run from the threat of violence that Spivey posed. Instead, he tried his best to subdue Spivey.

¹⁴ The State Bureau of Investigations' report lists Spivey at 6'4" and 195 pounds. Westly also testified he thought Spivey was that height. The autopsy report's official measurements list Spivey at 6'3" and 199 pounds. The slight height and weight disparities in the record are immaterial, so we will use the official measurements in the autopsy report.

The 911 recording establishes that a few seconds before Penny quit running up the driveway (based on the recorded sound of his heavy footsteps ending), Adcock shouted at Spivey to get down. He ordered Spivey to “get on the ground.” Followed by, “Get down, mother fucker!” Adcock then warned Spivey that he was going to shoot him. Penny spoke indistinctly, using the words “shoot him.” Adcock told Penny to tase Spivey, and Penny said, “I already did. It didn’t work.”

Over the span of about seven seconds, Adcock in rapid succession hollered “Get down!” to Spivey at least two, and possibly four, more times. Then Adcock shouted, “Get the fuck down!” and again, “Get the fuck down!” Penny, referring to the possibility of having to shoot Spivey, shouted “I don’t want to do it!” Adcock asked Penny, “Have you called for backup?” and Penny said he had. After the sound of a police radio activating, Penny shouted into it another request for backup. Adcock again ordered Spivey to “get down.”

All told, the 911 recording establishes that in the lead up to the shooting, Penny yelled orders at Spivey to get on the ground at least eight times, orders interspersed with warnings to Spivey that he was going to shoot him, and loud statements that he didn’t want to do it but was going to have to shoot him. Adcock himself ordered Spivey to get down at least seven times, and all seven times Spivey ignored those orders. Adcock also warned Spivey he was going to shoot him. Spivey repeatedly disobeyed Adcock’s orders

Opinion of the Court

23

to get down and the warning that he would be shot if he didn't, just as he had ignored all of Penny's orders and warnings.

Instead of obeying any order or heeding any warning, Spivey kept coming. The chief effect of Adcock's orders was that they caused Spivey to shift his focus from Penny to Adcock. He turned and went toward Adcock, leaving the driveway and crossing the yard to get at him. When he had first seen Spivey chasing Penny up the driveway, Adcock had drawn his weapon and came to what he called "a ready gun position," which means that while he had drawn his firearm, he had not pointed it at anyone.

When Spivey left the driveway and started across the grass toward him, Adcock still didn't shoot. Instead, he "holstered [his] weapon and prepared for a physical confrontation." Adcock decided he was "going to try to subdue him, try to grab him." And he did try. But his attempt to subdue Spivey that way didn't work. As Adcock explained: "I grabbed his arms, and Mr. Spivey was bloody from head to toe. He had on nothing but a pair of shorts. He was bloody and sweaty from head to toe, and I couldn't get a grip on him."

Adcock recounted: "As I attempted to grab him, he pulled back, and we started fighting. Like, blows started — blows started passing. He struck me, you know."¹⁵ Spivey struck a blow and went

¹⁵ Both Westly and Robinson testified they didn't see a fight but also testified that they had lost sight of Penny and Spivey and didn't regain sight of them until they also were able to see Adcock for the first time. This matter is discussed in more detail later. *See infra* Part IV(D)(1)–(3).

“on the offensive . . . striking and kicking” Adcock. The two men were standing upright. Spivey was not only heavier than Adcock but also six inches taller than him. With his greater height came longer arms, which gave Spivey’s swings greater reach.

Adcock had pulled out the flashlight he had in his pocket and tried to hit Spivey with it, but the flashlight didn’t make contact with Spivey, or if it did, it was ineffective. Either way, it “[d]idn’t even slow him down.” The “blood and sweat and all” made it hard for Adcock to hold onto his flashlight, so he shoved it back into his pocket to keep Spivey from getting control of it.

Penny, who had redrawn his weapon when Spivey had started “running” toward Adcock, witnessed the fight from about ten feet away. He remembered that when Spivey “got to” Adcock, Spivey “started just punching him in his head.” When asked how many times Spivey succeeded in striking Adcock, Penny answered: “I’d say at least two or three times, easy.” When asked what part of Adcock’s head he saw Spivey punch, Penny elaborated: “Well, I mean, Spivey is a whole lot taller than Mason [Adcock], and Mason had his arm up, and Spivey was striking him on his head right here (indicating), right close to his temples.” Spivey hit Adcock “with his bloody fists” in “full force blows,” which Penny described as “haymakers.”

At least one of Spivey’s punches deserved Penny’s “hay-maker” description. This is how Adcock himself described that blow:

Opinion of the Court

25

And just out of nowhere I – he come with a punch, and it landed in my hairline on the right side here. My left side. I’m sorry. It was with his right hand, and he hit me. And when he hit me, I buckled. And I was about 20 foot maybe from my back porch, and I thought I was going to pass out when he hit me.

That punch almost rendered Adcock unconscious.

Even though Penny had redrawn his firearm and had it in his hand while the two men were fighting, Penny was unable or unwilling to help Adcock. It was a “one-on-one fight.” As Adcock put it, “Deputy Penny, he hadn’t engaged at all.”

Having seen what Spivey had done to the window of the sheriff’s department’s SUV, and what he had done to the windshield of the ambulance, and how the taser didn’t faze him, and his bloody fists, and the way he looked as though he wanted to kill someone, Penny was afraid of Spivey. As he admitted in his deposition, Spivey had made him “afraid for my life.” He thought that if he tried to do something Spivey would overpower and kill him.

Because Penny was terrified of Spivey, Adcock was left to face him alone, and Adcock knew it. He also knew that he was losing the fight. He couldn’t tell if any of his attempts to strike Spivey had succeeded. But he knew that some of Spivey’s blows had hit him, including a hard one that had almost knocked him unconscious, and he knew that he was losing ground and being pushed back closer to his house, about 20 feet away, which was where his wife, stepson, and Bloodsworth were sheltering.

Adcock drew his pistol, which he had holstered earlier, and with pistol in hand managed “to disengage” and push Spivey back in an attempt to put some distance between them. But Spivey, unfazed, started back toward Adcock, and when he did, Adcock fired. Five of the bullets hit Spivey who, fatally wounded, fell to the ground.

Adcock described the actual shooting this way:

I drew my pistol and I fired until it was empty. I had six rounds in it, and I tried to make sure that I put all six into his chest so it would stop him from coming. I couldn't let him get in my house. My wife and my son were inside, and he couldn't get in my house.

When asked “[W]hy did you take the action that you did,” Adcock answered:

I thought he was going to kill me, and I thought he might could kill my family if he killed me and that little girl [Bloodsworth] that had come to the house trying to find a safe place. I thought — I mean — and the only way I could stop him — after I tried to fight him, the only way I could stop him was by shooting him.

Adcock also filed an affidavit attesting that, during the physical altercation: “I feared that Spivey would seriously injure or kill me, or incapacitate me and injure or kill my family or Ms. Bloodsworth inside my residence just a few steps away.”

Adcock described that the distance between him and Spivey before he started firing had been “closer than five feet,” but because

Opinion of the Court

27

Adcock was “walking backwards, backing up” from Spivey at the time, and had pushed Spivey back from him, the distance had increased to “[p]robably about six feet” when he fired.¹⁶ That means the two of them were essentially the same distance apart as Spivey was tall (6’3”).

¹⁶ Westly said that the first time he and Robinson could see Adcock’s house and yard, Adcock, Penny, and Spivey were standing “within like a triangle,” and they were within “[l]ike 10 feet of each other everywhere probably 10 feet.” That was before any shots. But when asked how far Adcock was from Spivey at the time the shots were fired, Westly answered “Probably five feet.” And when asked one deposition page later if “your testimony is there was 5 feet distance between [Adcock] and Spivey when the shots were fired,” Westly answered, “It looked to be.”

When Robinson was asked how far apart Adcock and Spivey were when the shots were fired, he answered: “Once again, I don’t know precise, but for sure less than — I would say less than 10 feet.” Robinson’s answer is consistent with Westly’s and Adcock’s estimates of five feet and six feet. When pressed to be more precise than “less than 10 feet,” Robinson said: “I don’t want to tell you wrong. I don’t know.” Penny’s recollection differed from everyone else. He thought that when Adcock fired the two men were close, “skin on skin.”

The estate is the non-movant, and for the estate farther apart is better than closer together, so we will go with Adcock’s estimate of six feet at the time the shots were fired instead of Westly’s estimate of five feet.

Contrary to what the estate represents in its brief, *see* Initial Brief of Appellant at 56 & n.17, no one who was there ever said the two men were ten feet apart at the time when the shots were fired. “[L]ess than ten feet” is not ten feet; it is, to borrow Robinson’s phrase — “for sure” — less than ten feet. That said, we do not mean to imply that if Adcock had fired the shots at the advancing Spivey from a distance of ten feet instead of six feet, it would have made any difference. It wouldn’t have, especially since Westly, Robinson, and Adcock all agree that Spivey was moving toward Adcock at the time Adcock fired.

All who witnessed the shooting agree that Adcock fired only after Spivey started coming at him. Robinson testified that before he was shot, Spivey had been moving forward, straight toward Adcock. Westly said that before Spivey was shot he had been “moving that way,” toward Adcock. His exact testimony was: “Spivey starts moving towards them, and then they shoot him or — Mason shoots him” from what Westly judged to be five feet away.¹⁷

From the time Adcock came out of his house and into his yard to see what was going on, events had unfolded quickly. It is undisputed from the CAD report that the shots were fired at 8:11 p.m. Reading that time marker from the CAD report along with the recording of Penny’s 911 call, which captured the sound of the shots and more, we can tell how little time there was between certain events and the shooting. *See supra* at 8 n.7, 15–16 n.12.

We can tell, for example, that the shots were fired about one minute after Penny, being chased by Spivey, started running to and then up Adcock’s driveway (based on the sound of his heavy footsteps), shouting for Adcock’s help. And the shots were fired about 37 seconds after Adcock’s voice is first audible on the recording, at which time all three men were in Adcock’s yard.

Penny testified that:

¹⁷ We use the distance of five feet in that sentence because it is what Westly said. But, as we have already stated, we are counting the actual distance between the two men as six feet because that is Adcock’s estimate, and it is slightly more favorable for the non-movant estate than five feet. *See supra* at 27–28 n.16.

Opinion of the Court

29

After the shooting was over, [Adcock] fell to his knees, and I looked at him and said: I'm so sorry, you know, and he said: Why didn't you take care of this out there? Why did you bring it to my house? And that was all that he said. Then he told me to shut up.

Westly recalled hearing essentially the same thing: Adcock "started yelling at Penny" asking him "'Why in the eff did you bring him over to my property? This is my house.' Something like that."

Adcock did not go back into his house immediately after the shooting because he didn't want his wife and stepson to see him with blood on him. Because Adcock "didn't feel like Deputy Penny was properly relaying" to the dispatcher "the circumstances that were going on and the urgency and the need for medical attention and other officers and stuff," Adcock himself did that using his own cell phone to dial 911.

Adcock also called EMS team member White to let him know that he was needed at the scene. White told Adcock their ambulance was basically disabled, they were covered in shattered glass, and they had other people coming to the scene. Adcock insisted White come immediately, telling White that somebody had been shot at his house and he needed rescue personnel there now. Soon thereafter White arrived in an ambulance driven by Robert Knight. White checked Spivey's body for a pulse and found none.

Adcock testified that in the fight that he had sustained a bruise on his stomach, a "busted" bottom lip, and an injury "on the left side of [his] head right at [his] hairline." The head injury was

the most serious because it “almost caused [him] to lose consciousness.” Penny testified that he “saw blood on Adcock’s forehead, on the side of his head right here (indicating) close to his temple; and I saw blood on the side of his neck,” and he had “a bloody lip.”

The EMS team, which included White, that arrived at Adcock’s house examined him in the ambulance within 20 minutes of the shooting. The EMS report they filed listed the Patient: “Mason Adcock,” the Type of Call: “assault,” and the chief complaint: “head & stomach pain.”

The narrative part of the EMS report states that upon arrival they found Adcock “standing in yard,” “extremely stressed,” with “blood on both arms” and “left side of head,” along “with redness to left side of head and stomach.” It recounts that Adcock had stated: “he was struck in his head and stomach by another subject. Subject punch (sic) him in head and kicked him in his stomach.”¹⁸ The report closes with: “Cleaned blood from patient. Patient refused treatment & transport.”

Photograph no. 241, an exhibit, was taken by the driver of the ambulance, using his cell phone, within less than 30 minutes after the shooting. It shows dried blood on Adcock’s neck under his left ear. Adcock’s lip had been “busted” in the fight, but he

¹⁸ To make our description of the contents of the report more easily readable, we have substituted the word “patient” for the abbreviation “pt,” which is used five times in the report, and we have substituted the word “left” for a circled “L,” which is used as a shorthand symbol twice in the report.

Opinion of the Court

31

believes that the blood shown in the photo may have been transferred onto him from Spivey, who had been covered in blood when he arrived in Adcock's yard and assaulted him.

Penny testified that before the fight, Spivey's hands had been dripping with blood as a result of his having shattered the rear window of the sheriff's department SUV and the windshield of the ambulance. One of his bloody fists hit Adcock on the right side of his head, which is the same side photograph no. 241 shows spots of blood on his neck after the fight.

Photograph no. 241 is important for an additional reason. It shows a bruise on Adcock's left temple near the hairline. Which is exactly where Penny testified Spivey had landed a haymaker blow to Adcock, and exactly where Adcock testified Spivey had hit him so hard it caused him to buckle at his knees and almost lose consciousness.

The chaotic, tense, and uncertain nature of events is shown by the fact that after the shooting, Adcock's wife and stepson were relocated to a safe place away from the Adcock home in case there was an unknown "secondary threat" to them.

II. PROCEDURAL HISTORY

The estate brought a Fourth Amendment claim against Adcock under 42 U.S.C. § 1983 based on his alleged "[u]nlawful use of deadly force," meaning excessive force in violation of the Fourth Amendment. Adcock moved for summary judgment, and the estate moved for partial summary judgment on the issue of liability. The district court granted Adcock's motion and denied the estate's

motion, finding that Adcock was entitled to qualified immunity. The court concluded that clearly established law didn't put Adcock on notice that it would violate the Fourth Amendment to use lethal force against an unarmed, out-of-control, non-compliant suspect. The estate appealed, so here we are.¹⁹

III. STANDARD OF REVIEW

Our review is *de novo*, and we “view the evidence in the light most favorable to the nonmoving party,” which is the estate. See *Settle v. Collier*, 160 F.4th 1282, 1287–88 (11th Cir. 2025) (quotation marks omitted). At this stage of the proceedings, “the evidence of the nonmovant is to be believed,” and we must draw “all justifiable inferences” from it in the nonmovant’s favor. *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (alteration adopted and quotation marks omitted); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Our task “is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Tolan*, 572 U.S. at 656. Summary judgment is proper if there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. See *id.* at 656–57; Fed. R. Civ. P. 56(a).

IV. DISCUSSION

“To overcome the qualified immunity defense, the estate must satisfy a two step inquiry.” *Shaw v. City of Selma*, 884 F.3d

¹⁹ The estate also brought a wrongful death claim against Adcock under Alabama law. The district court granted summary judgment to Adcock on that claim. The estate does not challenge that part of the court’s judgment.

Opinion of the Court

33

1093, 1099 (11th Cir. 2018). The estate must establish, based on the evidence viewed in the light most favorable to it, that a constitutional violation occurred. *Id.* And it must also show that controlling law existing at the time the conduct occurred clearly established that the conduct violated the Constitution. *Id.* Failure to meet the first of those requirements is fatal to the claim and entitles the defendant officer to qualified immunity. *See, e.g., Tillis ex rel. Wuenschel v. Brown*, 12 F.4th 1291, 1302 (11th Cir. 2021) (holding that because the officer “acted reasonably in firing both the first and second rounds of shots, he did not violate the Fourth Amendment, and he is entitled to qualified immunity”).

As we stated in *Settle*: “We may review whether there was a [constitutional] violation or whether the violation was clearly established in either order. In this appeal, we start and end with whether [Adcock] violated [Spivey’s] constitutional rights by using excessive force.” 160 F.4th at 1288 (citation omitted).

A. The Excessive Force Standard and Principles

We will begin our analysis with discussion of the controlling standard and principles that are used to determine if the force used by an officer is excessive in violation of the Fourth Amendment.

1. Reasonableness is the Touchstone for Judging an Excessive Force Claim

“Reasonableness is the touchstone for all excessive force claims” *Hammett v. Paulding Cnty.*, 875 F.3d 1036, 1048 (11th Cir. 2017). Or, as the Supreme Court and this Court have recognized, “in the end all that matters is whether the officer’s actions

were reasonable.” *Singletary v. Vargas*, 804 F.3d 1174, 1180 (11th Cir. 2015) (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)) (alteration adopted and quotation marks omitted). Simple as that sounds, because excessive force cases can be fact-intensive, getting to the end sometimes requires considerable effort. As the Supreme Court put it metaphorically, “we must still slosh our way through the factbound morass of ‘reasonableness’” while keeping in mind that, even when an officer uses deadly force, the reasonableness of his actions is “all that matters.” *Scott*, 550 U.S. at 383.

“We have held that it is reasonable, and therefore constitutionally permissible, for an officer to use deadly force when he has probable cause to believe that his own life is in peril.” *Singletary*, 804 F.3d at 1181 (quotation marks omitted). Or “to dispel a threat of serious physical harm to either the officer or others.” *Id.*; *see also*, *e.g.*, *Settle*, 160 F.4th at 1288 (“The use of *deadly* force is reasonable when an officer has probable cause to believe that the suspect poses *a threat of serious physical harm*, either to the officer or to others.”) (quotation marks and citation omitted) (second emphasis added); *Prosper v. Martin*, 989 F.3d 1242, 1251 (11th Cir. 2021) (“When the use of deadly force is at issue, we ask whether the officer had probable cause to believe that the suspect posed *a threat of serious physical harm* to the officer or others”) (quotation marks omitted) (emphasis added); *Hammett*, 875 F.3d at 1048 (“As to deadly force, a police officer may use such force to dispel *a threat of serious physical harm* to either the officer or others”) (quotation marks and citation omitted) (emphasis added); *Penley v. Eslinger*, 605 F.3d 843, 851 (11th Cir. 2010) (“Where the officer has probable cause to

Opinion of the Court

35

believe that the suspect poses *a threat of serious physical harm*, either to the officer or to others,’ use of deadly force does not violate the Constitution.”) (alteration adopted and emphasis added) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)).

And that is true regardless of whether the deadly force is applied in the course of an arrest or to prevent an escape. *See Garner*, 471 U.S. at 11. What matters is not a reasonable belief that there is the threat of escape from an arrest or from custody, but a reasonable belief there is a *threat* of serious physical injury, or serious physical harm, or death to the officer or another person. *See id.*; *see also McCormick v. City of Fort Lauderdale*, 333 F.3d 1234, 1246 (11th Cir. 2003) (“[T]he Constitution must also permit the use of deadly force against a suspect who poses not merely an escape risk (because he is not yet in police control), but also an imminent threat of danger to a police officer or others.”); *Robinson v. Arrugueta*, 415 F.3d 1252, 1256 (11th Cir. 2005) (“[I]t is also constitutionally reasonable for an officer to use deadly force when he has probable cause to believe that his own life is in peril.”); *Shaw*, 884 F.3d at 1099 n.5 (“If a reasonable officer could have believed that under the circumstances Shaw posed *a threat of inflicting serious injury or death* on him, the shooting was objectively reasonable *regardless of whether Shaw had already committed a crime or was resisting or attempting to evade arrest.*”) (emphasis added).²⁰

²⁰ Before we go further, we pause to clarify one point about the wording of the excessive force standard, specifically the proper placement of the modifier “serious.” The author of our *Shaw* opinion (regrettably, it was the author of

2. Reasonableness is Fact-Focused and Judged from the Perspective of the Officer on the Scene with Allowance Given for the Need to Make Split-Second Decisions in Tense, Uncertain, and Rapidly Evolving Circumstances

this opinion) slipped up in one of the sentences. He inadvertently moved the adjective “serious” from its rightful place immediately before and modifying “physical injury” or “physical harm” to just before the word “threat,” leading to the phrase “a serious threat.” See 884 F.3d at 1099.

But in four other places the *Shaw* opinion does have the adjective in the correct place. See *id.* (“feared serious injury or death”); *id.* at 1100 (“threat of serious physical injury or death”); *id.* at 1099 n.5 (“threat of inflicting serious injury or death”); *id.* (“threat of serious physical harm”) (quoting *Garner*, 471 U.S. at 11). The Supreme Court’s formulation, and that of our own earlier opinions, as well as later ones, place the adjective “serious” in front of “injury” or “physical injury,” just as it is in three out of four places in the *Shaw* opinion. See, e.g., *Scott*, 550 U.S. at 386 (“serious physical injury to others”); *Brosseau v. Haugen*, 543 U.S. 194 197–98 (2004) (“threat of serious physical harm”) (quotation marks omitted); *Settle*, 160 F.4th at 1288 (“a threat of serious physical harm”) (quotation marks omitted); *Vaughan v. Cox*, 343 F.3d 1323, 1329, 1330, 1332, 1333 (11th Cir. 2003) (“threatened infliction of serious physical harm”) (quotation marks omitted). We will follow precedent and place “serious” in front of “injury” or “physical harm.”

We are not dissuaded from doing so by the fact that the same inadvertent error occurred in the *Prosper* opinion (written by a different judge) in one out of three places in which the “serious” modifier was used in stating the standard. Compare *Prosper*, 989 F.3d at 1253 (“a *serious threat* of physical harm”) (emphasis added), with *id.* at 1251 (“a threat of *serious physical harm*”) (emphasis added) (quotation marks omitted), and *id.* at 1254 (“an imminent threat of serious physical harm”). As we discussed just above in connection with the *Shaw* opinion, the standard we are bound to follow uses the adjective “serious” to modify “physical harm” or “injury,” not to modify “threat.”

Opinion of the Court

37

The Supreme Court has stressed that “objective reasonableness turns on the facts and circumstances of each particular case,” and it must be determined “from the perspective of a reasonable officer on the scene, including what the officer knew at the time.” *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) (quotation marks omitted); accord, e.g., *Saucier v. Katz*, 533 U.S. 194, 207 (2001) (“Excessive force claims, like most other Fourth Amendment issues, are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred.”), *unrelated part overruled on unrelated grounds*, *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

The Supreme Court in *Saucier* discussed why it is imperative when judging the reasonableness of an officer’s decision about the appropriate level of force to use an on-scene perspective and afford the officer some “deference.” 533 U.S. at 205. It is imperative to do that, the Court explained, “[b]ecause police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.” *Id.* (quotation marks omitted); accord, e.g., *Kisela v. Hughes*, 584 U.S. 100, 103 (2018); see also *Ryburn v. Huff*, 565 U.S. 469, 475, 477 (2012) (reversing the denial of summary judgment in warrantless entry case where instead of applying a split-second, rapidly evolving perspective, the Ninth Circuit “[w]ith the benefit of hindsight and calm deliberation” had erroneously concluded that it was unreasonable for officers to fear that there was “an imminent threat to their safety and to the safety of others”).

In the last five years alone, this Court has reiterated those core principles of excessive force law in five published opinions issued in police shooting cases. *See Settle*, 160 F.4th at 1291 (“[I]n circumstances that are tense, uncertain, and rapidly evolving, we must make allowance for the fact that police officers are often forced to make split-second judgments. Sometimes, an officer does not have time to reflect . . .”) (quotation marks and citation omitted); *Heid v. Rutkoski*, 143 F.4th 1255, 1263 (11th Cir. 2025) (same); *Baxter v. Santiago-Miranda*, 121 F.4th 873, 888 (11th Cir. 2024) (same); *Powell v. Snook*, 25 F.4th 912, 921–22 (11th Cir. 2022) (same); *Prosper*, 989 F.3d at 1251 (same).²¹

We have echoed the Supreme Court’s reasoning and directive, sometimes in our own emphatic language:

In making an excessive force inquiry, we are not to view the matter as judges from the comfort and safety of our chambers, fearful of nothing more threatening than the occasional paper cut as we read a cold record accounting of what turned out to be the facts. We must see the situation through the eyes of the officer on the scene who is hampered by incomplete information and forced to make a split-second decision between action and inaction in circumstances where inaction could prove fatal.

²¹ In four of those five decisions the people who were shot died. The lone exception is the *Heid* case in which the two defendant deputies fired a total of 19 or 20 shots from their .45 caliber pistols, six of which struck the man who nonetheless survived. *See* 143 F.4th at 1259–61.

Opinion of the Court

39

Crosby v. Monroe Cnty., 394 F.3d 1328, 1333–34 (11th Cir. 2004).

3. The Question Is Whether Any Reasonable Officer in the Defendant Officer’s Position Could Have Reasonably Perceived There Was a Threat of Serious Physical Harm or Death, Even If It Was a Reasonable Mistake to Do So

The estate puts forward the wrong standard for determining whether the force employed was excessive. The estate contends that Adcock used excessive force because, it argues, there was no threat of serious physical harm or death at the time he fired. Even if that were the right question, the answer would still be in Adcock’s favor. But it is the wrong question. Because the controlling standard is objective reasonableness, the question is not whether a court concludes there actually was a threat of serious physical harm or death, but whether a reasonable officer in the defendant officer’s position could have reasonably perceived that there was such a threat. Our decision in *Settle* makes that clear.

In the *Settle* case the officers were attempting to serve an arrest warrant on a man sitting in a truck with windows up and doors locked. *See id.* at 1285, 1286. They ordered the man to unlock the door and step outside. *Id.* at 1286. Instead, he cranked the truck and put it into gear. *Id.* at 1287. Within seconds of the man doing that, and before the truck could move an inch, one of the officers fatally shot him through the driver’s side window. *Id.* The officer did so because he “was in a tight space in between the truck and the house,” and he “feared the truck would hit him and his partner.” *Id.* at 1285.

The following is the critical part of our analysis and holding in reversing the denial of qualified immunity in the *Settle* case:

The estate insists that [the officer] was unreasonable in firing because he “was not in the path of the truck” and was about eight feet away when he fired. *This argument answers the wrong question.* Reasonableness hinges on the perspective of the officer, so *the more apt question is whether [the officer] could have reasonably perceived that he was in the path of the vehicle and that his safety was in danger.* See *Tillis*, 12 F.4th at 1299. And we do not impose on officers “the benefit of hindsight.” *Baxter [v. Santiago-Miranda]*, 121 F.4th [873,] 890 [(11th Cir. 2024)]. When officers must make split-second judgments, we accept that they “d[o] not have time to calculate angles and trajectories to determine whether [they are] a few feet outside of harm’s way.” *Tillis*, 12 F.4th at 1299.

160 F.4th at 1290 (emphasis added). The “could have reasonably perceived” words do important work. They give meaning to the Supreme Court’s determination that perfection is not required and mistakes don’t necessarily doom an officer’s defense. See generally *Saucier*, 533 U.S. at 206.

Settle is binding precedent. It establishes that the argument of the estate that Spivey did not actually present a threat of serious physical harm or death to Adcock at the time he was shot poses and then “answers the wrong question.” *Settle*, 160 F.4th at 1290. “[T]he more apt question is whether [Adcock] could have *reasonably*

Opinion of the Court

41

perceived that” there was a threat of serious physical harm or death to Adcock or another person. *Id.*

4. Facts Known to Another Officer that Are Communicated to the Officer are Relevant

Penny had witnessed up close, and was terrified by, Spivey’s violent and unprovoked attacks on the back window of the sheriff department’s SUV and on the windshield of the ambulance, which scared Penny. *See supra* at 13–17, 25. Penny had also seen that tasing Spivey had virtually no effect on him. The district court imputed Penny’s knowledge of what he had seen Spivey do in a rage to Adcock, who did not know about those attacks until after the shooting. For authority, the district court cited *Terrell v. Smith*, 668 F.3d 1244, 1252 (11th Cir. 2012), and applied the collective knowledge doctrine. In his brief, Adcock argues the district court was correct to do so, and he cites in support of that position not only *Terrell* but also *Tillis*, 12 F.4th at 1302. The estate insists that the collective knowledge doctrine is not applicable in excessive force cases, at least not in this one.

Adcock also asserts that regardless of the collective knowledge doctrine, what he directly heard and observed is part of the totality of the circumstances that must be considered. We agree, and as a result, we need not decide the issue of whether the collective knowledge doctrine applies, and we pass it by without implying any view. While application of that doctrine would bolster the conclusion we reach, it is not necessary to it.

The collective knowledge doctrine is unnecessary to our reasoning and conclusion because in Fourth Amendment cases generally, officers may consider and rely on information that is actually communicated to them by another officer or civilian. It’s a matter of actual information received versus imputed information the officer did not know at the time of the conduct. See *Nnadi v. Richter*, 976 F.2d 682, 686 (11th Cir. 1992) (“[A] law-enforcement officer may rely upon information received second-hand from other law-enforcement officers to demonstrate the existence of probable cause.”); *United States v. Hensley*, 469 U.S. 221, 231 (1985) (“[E]ffective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and . . . officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information.”) (quotation marks and citation omitted); see also *United States v. Yarbrough*, 961 F.3d 1157, 1163–64 (11th Cir. 2020) (explaining that “anonymous tips” can support officers’ “understanding about the situation” they are “entering” and a tip about drug activity at a house gave on-scene officers “reasonable cause to believe they were entering a volatile and potentially dangerous situation,” which justified a protective sweep); *Jordan v. Mosley*, 487 F.3d 1350, 1355–36 (11th Cir. 2007) (concluding an officer had probable cause to arrest the plaintiff for property damage because he had been told that the plaintiff had used and had damaged a backhoe that didn’t belong to him); *Rankin v. Evans*, 133 F.3d 1425, 1441 (11th Cir. 1998) (“Generally, an officer is entitled to rely on a victim’s criminal complaint as support for probable cause.”).

Opinion of the Court

43

And the same principles apply in cases involving excessive force claims. *See Penley*, 605 F.3d at 846–47, 853, 856 (affirming summary judgment in favor of an officer who shot and killed a teen-aged-suspect after another officer “announced ‘to everyone on scene’ that [the suspect] was wielding a large semiautomatic pistol,” only to discover later that the gun was a toy); *cf. White v. Pauly*, 580 U.S. 73, 80 (2017) (“Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures . . . have already been followed.”).

So we can and will consider what the frightened Penny directly communicated to Adcock through his words and conduct when he arrived in Adcock’s yard, being pursued by Spivey.

B. The Probable Cause Measure

As our previous discussion indicates, probable cause is the measure of confidence that we must have that a reasonable officer could have believed from all of the facts and circumstances that there was a threat of serious physical injury or death. *See supra* at 34–36 (citing decisions). Probable cause is a familiar term in the law generally and especially in Fourth Amendment cases.

The Supreme Court has told us that “probable cause is not a high bar.” *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018) (quotation marks omitted). “[I]t does not require anything close to conclusive proof or proof beyond a reasonable doubt . . . or even a finding made by a preponderance of the evidence.” *Paez v. Mulvey*, 915 F.3d 1276, 1286 (11th Cir. 2019). “Because probable cause

requires less than a preponderance of the evidence, it necessarily follows that probable cause does not require that it be more likely than not” *Davis v. City of Apopka*, 78 F.4th 1326, 1334 (11th Cir. 2023). Instead, “[p]robable cause exists if the totality of circumstances known to the officers could persuade a reasonable officer that there is a ‘substantial chance’” that the requisite fact or condition exists. *Id.* at 1334 (quotation marks and citation omitted). “A substantial chance is all that is required, not an actual showing” *Id.* at 1334–35 (quotation marks omitted).

In *Davis* we took note of the fact that the Supreme Court has on many occasions reiterated that “the probable-cause standard is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” 78 F.4th at 1335 (quoting *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)); accord, e.g., *Illinois v. Gates*, 462 U.S. 213, 231 (1983) (“Perhaps the central teaching of our decisions bearing on the probable cause standard is that it is a practical, nontechnical conception.”) (quotation marks omitted). One of our sister circuits fleshed out the same point more than a half century ago: “Probable cause does not emanate from an antiseptic courtroom, a sterile library or a sacrosanct adytum, nor is it a pristine philosophical concept existing in a vacuum, but rather it requires a pragmatic analysis of everyday life on which reasonable and prudent men, not legal technicians, act.” *United States v. Davis*, 458 F.2d 819, 821 (D.C. Cir. 1972) (citation and quotation marks omitted).

Opinion of the Court

45

As the Supreme Court has explained: “[t]he substance of all the definitions of probable cause is a reasonable ground for belief” *Pringle*, 540 U.S. at 371 (quotation marks omitted). One more quotation on the subject says a lot: “The probable cause decision, by its nature, is hard to undermine, and still harder to reverse.” *Kaley v. United States*, 571 U.S. 320, 339 (2014).²²

**C. The Reasonableness of Adcock’s Decision to Use
Deadly Force**

We have discussed the facts at length. *See supra* at 2–31. In making our decision about reasonableness and in explaining it in this section, we condense the facts and consider only what Adcock had seen, heard, or been told at the time he fired his weapon. *See, e.g., Hernandez v. Mesa*, 582 U.S. 548, 554 (2017) (“Facts an officer learns after the incident ends — whether those facts would support granting immunity or denying it — are not relevant.”).

Adcock knew what EMS team member White told him during their brief phone conversation: an ambulance had been called to the Spivey house but had stopped up the road from it, awaiting the protection of a deputy sheriff. That indicated there was reason to be concerned about the potential for violence. And White told

²² While *Kaley* involved a finding of probable cause by a grand jury, probable cause is probable cause in whatever context the issue arises. *See Price v. Sery*, 513 F.3d 962, 967–68 (9th Cir. 2008) (relying on a holding about probable cause in an arrest case to decide an issue about probable cause in a case about the use of deadly force, because “the phrase ‘probable cause’ itself should not mean one thing in one context and something different elsewhere”).

Adcock there was some kind of ruckus or racket going on at the house, which caused Adcock to be uneasy and to stick his head out of his door. What he heard was “a lot of screaming, yelling, cursing, banging,” and “maybe glass breaking,” which added to his concern for obvious reasons. *See supra* at 13.

Soon after that, there was a loud banging on Adcock’s door and he opened it to find Zana Bloodsworth, a terrified young woman who was breathless, cowered down, frantic, distraught, and hysterical about what was happening at the Spivey house. She had run from there all the way to Adcock’s house to get his help. She told him that they needed help, that Spivey had brain cancer and had been “acting out” and that “[h]e said he was going to shoot him,” and begged “don’t let him shoot him.” She didn’t specify who was going to be the shooter and who was going to be shot, but her behavior made it clear there was grave danger. *See supra* at 18.

Within a minute or less after hearing what the hysterical Bloodsworth had said to him, and after what she had communicated to him by her behavior, Adcock went out his back door and walked to the front of his house to see if anyone had followed her there. He had put on the holster holding his pistol, and he had grabbed a flashlight because it was getting dark. *See supra* at 18. Once outside, he saw Penny, who was hollering, being pursued up to Adcock’s house by Spivey. Penny was armed with his firearm while Spivey was not only unarmed but also nearly unclothed, wearing only a pair of swim trunks.

Opinion of the Court

47

Even more surprising was Spivey's appearance. He was so covered in sweat and blood that he was wet looking. His fists were bloody, as were his face, arms, chest, torso, and possibly his legs as well. It was clear Spivey had been involved in some kind of violence.

Spivey's behavior and Penny's response to it, which Adcock witnessed, were also frightening. The armed deputy wasn't chasing Spivey. The unarmed Spivey was chasing him. Penny was terrified, screaming repeatedly for Adcock's help, and yelling multiple times that "I'm going to have to shoot him!" and at least once said "shoot him." That conveyed to Adcock that Penny was convinced, from whatever he had seen Spivey do, that Spivey was violent, dangerous, and threatening enough to justify the use of deadly force, although Penny apparently didn't want to be the one to do it; he preferred that it be Adcock. There is no need to impute any of that from Penny to Adcock, because Adcock knew it from what he could see from Penny's conduct and hear in his frantic, frightened shouting.

The terrified Penny told Adcock that he had tried to stop Spivey with a taser, but it didn't do any good. Penny also told Adcock he had called for backup, but none had arrived.

Penny did not attempt to physically intervene to help Adcock but left him to face Spivey alone. As Adcock put it, "Deputy Penny, he hadn't engaged at all."

The audio recording reveals that in addition to all of the times Penny had unsuccessfully ordered Spivey to get down,

Adcock himself had ordered him to get down at least seven times and had warned him that he was going to shoot him. Spivey ignored all of those orders and that warning, proving to Adcock that words were pointless against Spivey's violence. *See Prosper*, 989 F.3d at 1253 (the subject's ignoring the officer's repeated commands to "get down" and "get on the ground" is a factor indicating the need for force because it "would have reinforced the impression in a reasonable officer's mind that his words were ineffectual"); *Hinson v. Bias*, 927 F.3d 1103, 1120 (11th Cir. 2019) ("Notably, Hinson had also repeatedly failed to comply with nearly all of the [o]fficers' simple instructions, making him seem even more unpredictable to a reasonable officer.").

Adcock tried to physically stop Spivey, but that did not work, and he was given abundant reasons to believe that nothing less than lethal force would do it. He had tried to grab ahold of Spivey, but Spivey "was bloody from head to toe," and Adcock "couldn't get a grip on him." He tried to use his flashlight as a non-lethal weapon against Spivey, but that didn't work either. He didn't have a taser because he normally didn't carry one, and he had left his baton (aka night stick) in the house.

Adcock learned that he couldn't overpower Spivey, but Spivey could overpower him. In the fight they had, Adcock did not recall landing a single punch on Spivey, who was half a foot taller and nearly 20 pounds heavier than him. But Adcock did recall, as Penny did, that Spivey, who was the bigger and better fighter, slugged Adcock and landed a haymaker blow to his head causing

Opinion of the Court

49

him to buckle at the knees and almost knocking him out. As we observed in *Prosper*, “It goes without saying that once [Spivey] struck [Adcock], a reasonable officer would know that he was dealing with a man who was not only irrational, erratic, and unresponsive, but also violent.” 989 F.3d at 1253. And, we would stress, dealing with a man who was capable of overpowering Adcock and knocking him unconscious, as he had already come close to doing. As the district court aptly described it, “Spivey engaged in violent behavior in a residential neighborhood and was unpredictable, non-compliant, and dangerous.” Doc. 84 at 18.

A major factor permeating this case, which increased the risk of physical harm or death that Spivey posed for Adcock, is that Spivey was obviously deranged. An assailant who moves to the meter of madness is all the more dangerous because of it. A violent man who is truly out of his mind cannot be calmed, or deterred, or reasoned with, or made to obey orders. Our precedent reflects those truths and how strongly they can weigh in favor of the use of deadly force.

In each of the following five excessive force cases involving a fatal shooting, this Court pointed out and considered the subject’s aberrant mental state as a factor contributing to, and enhancing, the risk of serious physical harm or death that the officer faced, which justified the use of deadly force: *Swinford v. Santos*, 121 F.4th 179, 182, 189 (11th Cir. 2024) (a man experiencing a mental health crisis and under the influence of drugs); *Prosper*, 989 F.3d at 1253 (“From the moment he arrived on the scene, a reasonable officer

would have observed—as [the defendant officer] did—that [the suspect] was behaving irrationally and erratically.”); *Shaw*, 884 F.3d at 1096, 1099, 1101 (a “mentally ill” man); *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007) (“We stress these facts: Long was mentally unstable”); *id.* at 578 (suffering from psychosis); *Kesinger*, 381 F.3d at 1246, 1249 (describing “an obviously deranged and crazed man,” who “behaved in an aggressive and belligerent manner,” and, among other things, broke the patrol car’s rear window).

Not only was Adcock confronted with a deranged, violent assailant who ignored every order and warning, but it happened in a “tense, uncertain, and rapidly evolving” situation. *Graham*, 490 U.S. at 397. That is the prototypical use-of-force setting in which we should grant officers some measure of deference and not second-guess their decisions. *See, e.g., Saucier*, 533 U.S. at 205 (cautioning “against the ‘20/20 vision of hindsight’ in favor of deference to the judgment of reasonable officers on the scene”) (citation omitted); *Kisela*, 584 U.S. at 103; *accord, e.g., Shaw*, 884 F.3d at 1100; *Penley*, 605 F.3d at 854 (“We are loath to second-guess the decisions made by police officers in the field.”) (quotation marks and alteration omitted).

We emphasize how little time Adcock had to consider the chaotic, rapidly evolving, and dangerous position he was thrust into and how he was “forced to make [a] split-second” life-or-death decision with no time for reflection. *Graham*, 490 U.S. at 397; *accord Saucier*, 533 U.S. at 205; *Kisela*, 584 U.S. at 103; *Settle*, 160 F.4th at 1291; *see also Powell*, 25 F.4th at 924 (focusing on what “[a]n officer

in [his] position during the rapidly unfolding events on that dark night reasonably could have believed”). The 911 recording shows that the shots were fired about one minute after the terrified Penny, being chased by Spivey, turned and started running to and then up Adcock’s driveway shouting for his help. Adcock was forced to decide what to do about 37 seconds after his voice is first heard on the recording, which indicates when he was in the front yard where he was surprised to see Spivey pursuing Penny who was armed.

During that brief time, Spivey turned his attention from Penny to Adcock, started throwing punches at Adcock, and nearly knocked him unconscious. And after being pushed away five or six feet, Spivey started back at Adcock again. Only then did Adcock fire, ending the threat.

An officer in Adcock’s position, with only seconds to decide, and finding himself in the chaotic and frightening circumstances he faced, reasonably could have believed when he fired the shots that deadly force was necessary to prevent a threat of serious physical harm or death to himself or others. Stating the same thing with different words, there was probable cause for a reasonable officer in Adcock’s position to believe that he was threatened with serious physical harm or death, and that the use of deadly force was necessary to avoid it.

We turn now to the estate’s arguments against this conclusion.

D. The Estate’s Argument that there is a Genuine Issue of Fact about Whether Spivey Struck Adcock

The estate argues Spivey didn't strike Adcock before the shooting, or at least there's a genuine dispute about it. The estate is wrong. Uncontradicted evidence establishes Spivey did strike Adcock. There is no genuine issue of fact about it.

1. The overwhelming and uncontradicted evidence that Spivey struck Adcock

Adcock and Penny both unequivocally testified that Spivey threw multiple punches at Adcock. *See supra* at 23–25. Adcock testified that Spivey inflicted injuries to Adcock's lip, his stomach, and the left side of his head near the hairline, and that the blow to his head caused him to buckle and nearly caused him to "lose consciousness."

While Penny said there was not enough light for him to see everything clearly, he testified that Adcock's house "had an overhead — a driveway light that was on." Because of that, Penny testified that "there was enough light for [him] to see what was occurring." He was only about seven feet away from the two men, and "there was nothing to obstruct [his] view. He testified that he saw Spivey hitting Adcock "as hard as he can," throwing "haymaker[]" punches at him. Penny also testified that he saw Spivey hit Adcock in the head near the temple with his "bloody fists."

The EMS team's report documenting Adcock's condition, which was drawn from their observations made minutes after the shooting, states that Adcock had blood on him, including on the "left side of [his] head," along "with redness to [the] left side of [his]

Opinion of the Court

53

head and stomach.” It also recounts that Adcock reported he was punched in the head.

A photograph of Adcock’s injuries, which was taken by a member of the EMS team 20 minutes or so after the shooting, shows reddened skin or a bruise on his left temple. It also shows what appears to be dried blood on his neck on that same side, which was transferred there during the fight. *See supra* at 30–31; *see also* Doc. 66-6 (Exh. No. 241 photo of Adcock’s injury). Spivey’s hands had been dripping with blood as a result of his having only minutes before used his bare fists to shatter both the back window of Penny’s SUV and the windshield of the ambulance. *See supra* at 13–17, 24–25, 31.

There is no evidence in the record that is contrary to the plentiful evidence establishing that Spivey hit Adcock. It is true that “in ruling on a motion for summary judgment, the *evidence* of the nonmovant is to be believed, and all *justifiable inferences* are to be drawn in his favor.” *Tolan*, 572 U.S. at 651 (alteration and quotation marks omitted) (emphasis added). But an absence of evidence supporting the non-movant’s position is not evidence that creates a factual dispute for a jury to resolve.

Nor can a plaintiff defeat a motion for summary judgment by simply questioning the credibility of the defendant’s testimony or pointing to the ability of juries to reject even uncontradicted testimony. It is true that in an appeal from the denial of judgment as a matter of law following a jury verdict we must “assume that the jury resolved all conflicts and credibility determinations, and drew

all inferences, in [the nonmovant's] favor.” *Edwards*, 179 F.4th at 926 (citing *Bailey v. Swindell*, 89 F.4th 1324, 1329 (11th Cir. 2024)). For that reason, we concluded in the *Edwards* case that the jury wasn't required to believe an officer's testimony, even if it was uncontroverted, that the person he was chasing had made “a ‘swing-type motion’ towards him.” *Id.* That makes sense because when a case goes to trial, “[c]redibility is for the trier of the facts and the uncontradicted testimony of a witness does not have to be accepted.” *Tyler v. Beto*, 391 F.2d 993, 995 (5th Cir. 1968) (citing *Hawk v. Olson*, 326 U.S. 271 (1945)).²³

But it is a different story at the summary judgment stage. Both the Supreme Court and our Court have held that in deciding a motion for summary judgment, uncontroverted testimony cannot be rejected based on credibility concerns. The Supreme Court has stressed that “the plaintiff must present *affirmative* evidence in order to defeat a properly supported motion for summary judgment.” *Anderson*, 477 U.S. at 257 (emphasis added). And we have held that when reviewing summary judgment, “in the absence of contrary evidence, questioning the witnesses’ credibility is not enough to create a factual dispute.” *Dershowitz v. Cable News Network, Inc.*, 153 F.4th 1189, 1193 (11th Cir. 2025); see *Crawford-El v. Britton*, 523 U.S. 574, 600 (1998) (holding that “the plaintiff may not respond simply with general attacks upon the defendant’s

²³ Decisions by the former Fifth Circuit handed down before October 1, 1981, are binding on this Court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

Opinion of the Court

55

credibility, but rather must identify affirmative evidence” to survive summary judgment). Courts are permitted to draw inferences in the non-movant’s favor only “*to the extent supportable by the record.*” *Scott*, 550 U.S. at 381 n.8; *Penley*, 605 F.3d at 848 (same).

On summary judgment, uncontroverted testimony on a factual matter rules out a genuine issue of material fact on that matter. *See Hubbard v. Bayer HealthCare Pharms. Inc.*, 983 F.3d 1223, 1233 (11th Cir. 2020) (concluding defendant was entitled to summary judgment after relying on the “explicit, uncontroverted testimony” of a witness for the defendant) (quotation marks omitted); *Dietz v. Smithkline Beecham Corp.*, 598 F.3d 812, 816 (11th Cir. 2010) (same); *see also Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1253 (11th Cir. 2013) (explaining that “testimony cannot be discounted on summary judgment unless it is blatantly contradicted by the record, blatantly inconsistent, or incredible as a matter of law, meaning that it relates to facts that could not have possibly been observed or events that are contrary to the laws of nature”); *Redd v. City of Enterprise*, 140 F.3d 1378, 1383 (11th Cir. 1998) (relying on the “uncontroverted testimony” of a police officer to conclude that the officers had reasonable cause to believe that the plaintiffs had violated the law and reversing in favor of the officers the district court’s denial of summary judgment on a Fourth Amendment unlawful arrest claim).

Even when a motion for summary judgment is supported only by the self-serving testimony of a party, credibility concerns alone cannot defeat it. In affirming the grant of summary judgment in *Dershowitz*, we explained that the plaintiff had failed to

produce evidence to “counter” the defendants’ testimony, and “[i]nstead, he repeated a boilerplate objection that the testimony was ‘scripted and self-serving,’” which is not enough to defeat summary judgment. *Dershowitz*, 153 F.4th at 1193, 1195. If the law were otherwise, summary judgment would never be granted when a party is their own key witness, which often happens because parties frequently know a great deal about the facts of their own case.

We do draw reasonable evidence-based inferences in favor of the non-movant, but we don’t draw inferences that are evidence-free or contrary to the evidence. An “inference” that is not based on evidence and that is contradicted by the evidence is not an inference; it is, instead, outside-the-lines speculation and conjecture, neither of which is a valid basis for denying a summary judgment motion. *See Prosper*, 989 F.3d at 1252.

2. The estate’s assertions that Westly and Robinson testified Spivey did not strike Adcock

Faced with the overwhelming evidence of Spivey striking Adcock, and with nothing in the record to affirmatively counter it, the estate’s attorney still argues that Spivey didn’t hit Adcock. The pivotal premise in his argument on this issue is the false statements in his opening brief and in two of his supplemental letter briefs that Westly and Robinson testified in their depositions that Spivey never struck Adcock. That is not true. Neither one of those two men, or anyone else, testified that Spivey did not strike Adcock.

In his opening brief the attorney asserts: “Adcock testified that Spivey struck him just prior to Adcock’s shooting Spivey, but

Opinion of the Court

57

two other witnesses, *Westly and Justin [Robinson]*, gave contrary testimony.” Initial Brief of Appellant at 34 n.9 (emphasis added). Two supplemental letter briefs the attorney filed repeat that assertion. The first of those letter briefs asserts: “[W]hether Spivey struck Adcock is a disputed issue of fact. *Two witnesses, Westly Spivey and Justin Robinson, testified Spivey did not strike Adcock*; and two witnesses, Adcock and Penny, testified he did.” App. Doc. 45 at 2 (Aplt.’s Reply Supp. Ltr. Br. No. 1) (emphasis added). In the second supplemental letter brief the estate’s attorney reiterates the substance of that false assertion twice, once by complaining about: “the [district] court’s dismissing from consideration *Westly Spivey and Justin Robinson’s testimony that Spivey never struck Adcock*.” App. Doc. 46 at 1 (Aplt.’s Reply Supp. Ltr. Br. no. 2) (emphasis added), and again by referring to “[*Westly*] and *Robinson’s testimony that Spivey never struck Adcock*.” *Id.* at 2 (emphasis added).

Those assertions are false. The only testimony Westly and Robinson gave is in their depositions, which are in the record. And not once during their testimony did either Westly or Robinson say that Spivey never struck Adcock. Nor could either of them have said that because, as both of them did testify, Spivey was out of their sight for a period of time before the shooting, and neither one of them saw Adcock until immediately before the shooting. See *supra* at 19 and *infra* at 59–62 (recounting their testimonies).

Westly and Robinson know nothing about what happened before they got to the place where they could see Spivey and Adcock together in the front yard of Adcock’s house. Neither of the

two testified that he knew anything about what happened between Spivey and Adcock before then. Neither of the two testified about whether Spivey did or didn't strike Adcock before they arrived at a place where they could see the two men. Yet in his briefs the attorney for the estate misrepresented to this Court multiple times that Westly and Robinson testified that Spivey never struck Adcock.

When Robinson, a family friend, was asked in his deposition if he “recall[ed] whether Spivey hit one of the officers,” he answered, “I didn't see that.” And we take it as true that he didn't see that. But not seeing something happen doesn't mean it did not happen when you weren't in a position to have seen it, if it did happen. As the district court cogently explained:

[The estate] claims that the physical confrontation itself is a disputed fact. However, it is undisputed that Westly and Robinson reached Adcock's property after Penny and Spivey. It is also undisputed that Westly and Robinson temporarily lost sight of Penny and Spivey. That Westly and Robinson did not see a physical confrontation, when the facts show they were not on the scene observing the entire interaction between Penny, Spivey, and Adcock, is insufficient to establish a genuine dispute as to that fact. *Anderson*, 477 U.S. at 252 (“The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.”).

Doc. 84 at 7 n.3.

Opinion of the Court

59

In an attempt to get around Westly and Robinson's admission that they could not and did not see all of what happened between Spivey and Adcock, the estate's attorney wrenches some of Westly's testimony out of context and misrepresents the substance of it. This statement appears in his initial brief: "Westly testified (Doc. 57-4, p.134) that during the entire encounter, Adcock did not touch Spivey and that Spivey did not touch Adcock; and that nobody '*touched anybody throughout the whole thing.*' (Doc. 57-4, p. 135)[.]" Initial Brief of Appellant at 15 (emphasis in original). One unfamiliar with the attorney's creativity with the facts might assume from that statement Westly testified that, from the beginning of the encounter between Spivey and Adcock to the end of it, neither one of them touched the other. But that is not what Westly testified.

Westly never used the words "the entire encounter" either there or anywhere else in his deposition. He was talking about what he saw during the brief time after he and Robinson had finally made it to a point where they could for the first time see Spivey and Adcock together, which was just before Spivey started towards Adcock again and was shot.

The words "during the entire encounter" were made up by the estate's attorney to imply that Westly somehow saw that Spivey did not hit Adcock at any time during their entire encounter, from start to finish. Westly saw parts of what happened "down there in front of [the Spivey] house" and parts of what happened at [Adcock's] house." But Westly candidly admitted he was not in a

position to have seen anything that Spivey did for a period of “maybe a minute, two minutes” during which Spivey was out of his sight. Westly did say that although he couldn’t remember, he didn’t think that anybody touched anybody “throughout the whole thing.” But that had to mean “throughout the whole thing” that he could see. Obviously, Westly did not see any part of what happened during the “maybe a minute, two minutes” that he testified he could not see Spivey. The “whole thing” was the whole thing he had seen, not anything else.

The same passage of the estate’s brief quotes a statement from Robinson about what he saw when he finally could see Spivey, Penny, and Adcock. After recounting how, soon after he and Westly had gotten to a spot where they could see, he saw Spivey’s foot move forward and heard gunshots. He was asked if he had seen Spivey touch Adcock or Penny at all. And he answered “[n]o.” But Robinson never suggested that he had been in a position to see whether Spivey had struck Adcock before then.

There is no genuine issue of material fact about whether Westly and Robinson were in a position to see if Spivey struck Adcock before they arrived at their vantage point. They were not.

In a closely related falsehood, the estate’s brief asserts that Westly and Robinson each testified that: “they *saw both the confrontation that preceded the shooting* as well as the shooting itself, i.e., they saw and heard Adcock tell Spivey to stop and that immediately thereafter when Spivey took an additional step, they both saw Adcock begin firing at Spivey.” Reply Brief of Appellant at 24

Opinion of the Court

61

(emphasis added). That statement mischaracterizes their testimony. Neither Westly nor Robinson testified that they saw “the confrontation that preceded the shooting.” Their two depositions combined total nearly 250 pages and not once did either of them even mention the word “confrontation” or any variation of it.

On the pages of Westly’s deposition that the estate’s brief cites (Doc. 57-4 at 85–90), Westly testified that when he and Robinson got to where they could see what was going on, Spivey was about five feet away from Adcock and had started moving toward him when Adcock fired. On the cited pages of Robinson’s deposition (Doc. 57-5 at 64–67), he testified that when he and Westly got to where they could see Adcock and Spivey, immediately before the shooting, he saw Spivey move straight ahead toward Adcock from a distance of “less than ten feet” from Adcock. But neither Westly nor Robinson ever testified they had been in a position to see any preceding “confrontation” or other interaction or fight between Spivey and Adcock. Their testimony established that they arrived and saw what did or didn’t happen just before the shots were fired, but not what led up to the shooting.

The reason the attorney for the estate wishes that Westly and Robinson had testified they saw “the confrontation” is to support his argument that if Spivey had hit Adcock, they would have seen it, and since they didn’t see it, it must not have happened. That argument might have worked but for the fact that Westly and Robinson stuck to the truth. Their testimony made clear that they

didn't see "the confrontation" between Spivey and Adcock, only the very end of it, the shooting.

There is no genuine issue of material fact about whether Westly and Robinson were in a position to have seen whether Spivey struck Adcock. They weren't.

3. The estate's argument that there was not enough time for Spivey to strike Adcock before Westly and Robinson could see them

Alternatively, the estate argues that we must assume Spivey never struck Adcock, or at least that there is a genuine issue of fact about whether he did, because it couldn't have happened during the brief time that Westly and Robinson couldn't see what was going on between Adcock and Spivey.

Westly's testimony was that he and Robinson lost sight of Penny and Spivey for "maybe a minute, two minutes." Robinson testified that Spivey, who was pursuing Penny down the road and up the drive to Adcock's house, was out of his and Westly's sight for only a "very brief moment" that "wasn't long at all." But Robinson never translated "a very brief moment" that "wasn't long at all" to an estimated number of seconds or minutes. He never stated or implied that Spivey couldn't have already struck Adcock before he and Westly got to where they could see them, which the affirmative evidence provided by Adcock, Penny, the EMS report, and the photograph of Adcock's injury all establish is what happened.

Opinion of the Court

63

Westly and Robinson couldn't see Penny, Spivey, and Adcock from the road or even from the entrance to Adcock's driveway. When asked if he could see Penny and Spivey as they went up to Adcock's house, Westly testified that he could not. The record establishes why. A photo taken looking out from Adcock's house toward the road shows that a tree line obscures the view of anyone traveling on the roadway from the direction of the Spivey residence. Westly and Robinson had to go up the road from the Spivey house and then about 20 to 30 feet into Adcock's driveway before they could see Penny and Spivey again.

One reason that Westly and Robinson could not see what happened between Spivey and Adcock until right before the shots were fired is that they hung back some from Spivey and Penny as those two went towards Adcock's home. Westly testified that he and Robinson stayed "back . . . closer to the [Spivey] house." And they did so in case Penny, who had drawn his weapon and threatened to shoot Spivey, carried through on his threat and fired. Robinson testified that he and Westly stayed on the "side" of the road where the Spivey house was in case "there was going to be a shot" so that they wouldn't "be behind it and get shot" by Penny. Robinson explained that the two of them "stayed there" until Penny and Spivey "ran down" to Adcock's property at the entry to his driveway. That delayed their arrival on the scene.

And even if we were to assume that it was only for a matter of seconds that Westly and Robinson couldn't see what was happening, that is still enough time for Spivey to have struck Adcock

and for Adcock to have pushed him back. That is consistent with Penny's testimony that Spivey hit Adcock with at least two or three full force blows, including one to the head. And it's consistent with Adcock's testimony that Spivey hit him "a minimum of three times," including one hard punch to the head, which caused him to buckle and almost knocked him out.

Devastating as such blows can be, they don't take long to throw. In the *Hinson* case, six seconds was enough time for officers to land five punches on a resisting suspect. *See Hinson*, 927 F.3d at 1111. And in a Sixth Circuit excessive force case, a video tape proved that one second was enough time for an assailant to hit an officer a second time in the head and neck. *See Davenport v. Causey*, 521 F.3d 544, 548–49 (6th Cir. 2008) ("Mr. Davenport's second blow, delivered within one second of the first . . . hit Officer Pugh on the top of the head."). And the video tape in that case also proved that four seconds was enough time for the assailant to have delivered five blows to two officers. *See id.* at 554 (noting that the assailant "had attacked two police officers in quick succession, with only four seconds having elapsed while he delivered at least five blows to the two officers"). Spivey and Adcock were out of sight from Westly and Robinson for plenty of time for Spivey to have hit Adcock a number of times.

Given their inability to see everything that had happened between Spivey and Adcock, the fact that Westly and Robinson did not see Spivey strike Adcock does not contradict the evidence that

Opinion of the Court

65

he did: Adcock's testimony, Penny's testimony, the EMS report, and the photograph of the injury to Adcock's head.

The estate's suggestion that there might not have been enough time for Spivey to strike Adcock while they were out of Westly and Robinson's sight is not "affirmative evidence" that it didn't happen. *Anderson*, 477 U.S. at 257. If we adopted the estate's position, we would have to engage in "unfounded speculation," which is forbidden. *Prosper*, 989 F.3d at 1252 ("We will not treat as true a party's unfounded speculation about what happened."). And that unfounded speculation is contrary to the evidence in the record showing that there was time for Spivey to strike Adcock, as the evidence shows he did.

In *Hammett*, we rejected the plaintiff's theory of the case because none of the "critical facts" were "disputed by *affirmative* evidence" favoring the plaintiff. 875 F.3d at 1049–50 (emphasis added). The same is true here.

In *Singletary*, 804 F.3d at 1182, 1185, we held that the defendant officer was entitled to summary judgment on an excessive force claim where the witness, whose testimony was offered in opposition to it, "failed to observe the pivotal event" upon which the claim turned. The same is true here.

In the *Singletary* case a key piece of evidence was a video showing that the deputy who fired the shots was in the car's path. *See id.* at 1182–83. In a similar vein, in this case a photograph shows an injury to Adcock's left temple, where he and Penny testified that Spivey had hit Adcock hard, nearly causing him to lose

consciousness. That photo also shows blood on the left side of Adcock's neck, which had been transferred from Spivey's "bloody fists" when he hit Adcock with "full force blows," which Penny described as "haymakers."

In *Kesinger*, the district court had denied summary judgment based on testimony from a witness whose view of what happened was obscured and who provided only a "'snapshot' version of what happened" that was "*inconsistent with the photographic evidence.*" 381 F.3d at 1245, 1249–1250 (emphasis added). We reversed the denial of summary judgment to the officer, concluding that "there was no *substantial* evidence contrary to" the testimony of witnesses who were on the scene *and* the admitted photographic evidence. *Id.* at 1249–1250 (emphasis added). The same is true here.

Because all the affirmative evidence establishes that Spivey struck Adcock and no evidence contradicts it, there is no genuine issue of material fact about it.

4. Minor discrepancies about immaterial details do not present genuine issues of material fact

Trying yet another angle, the estate also argues that even if Spivey struck Adcock, Penny's testimony about some of the details of the assault, which took place quickly, don't precisely match other testimony about those details. In the estate's view, because the details don't all match up, that's enough to deny summary judgment. Specifically, the estate notes that Adcock testified he tried unsuccessfully to defend himself when Spivey attacked him, while Penny got the impression that Adcock failed to do anything to fend

Opinion of the Court

67

off the attack. How well Adcock defended himself is immaterial to whether Spivey struck him. See *Anderson*, 477 U.S. at 247–48 (“[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.”).

The estate sees inconsistencies in the way the witnesses described how Spivey striking Adcock led to the shooting. Adcock recounted how after Spivey hit him, he disengaged from Spivey, pushed him back, and stepped back a few feet, and then Spivey came at him again before Adcock shot him. That is consistent with Westly and Robinson’s testimony that after they arrived, they saw Adcock and Spivey several feet away from each other before Spivey moved toward Adcock, prompting Adcock to shoot him. Penny, from his perspective, did not recall that Adcock had gained any distance from Spivey before he fired. But whether he did and how much distance is not material.

What is material is that when the shots were fired Spivey had physically assaulted Adcock. And he was either continuing to do so, or he was coming back toward Adcock to do so again a few seconds after he had been pushed away. Either way, Spivey struck Adcock, and at least one blow was hard enough to cause him to buckle at his knees, almost knocking him out, and Spivey was advancing on Adcock again despite his repeated orders to get down and a warning that he would be shot if he didn’t.

E. The Estate’s Other Arguments

In addition to arguing that there never was a fight and Spivey didn't strike Adcock, the estate makes a number of other arguments against the grant of summary judgment, none of which is persuasive.

1. The estate's argument that adverse inferences should be drawn against Adcock because he did not fully waive his Fifth Amendment privilege until his second deposition

The estate devotes four sentences to an argument that “[i]nferences adverse to Adcock could and should have been drawn” because at his first deposition, Adcock sought advice of counsel and “claimed the Fifth Amendment privilege a dozen times at his initial [civil] deposition” in this case. *See* Initial Brief of Appellant at 37–38 (footnote omitted). The only authority cited is *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976), a prison disciplinary case in which the prisoner refused to answer any questions during his disciplinary hearing. *See Baxter*, 425 U.S. at 318. In its opinion the Court recognized “the prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties to civil actions *when they refuse to testify* in response to probative evidence offered against them.” *Id.* (emphasis added). But that is not what happened in this case.

The estate has not cited any decision holding that an adverse inference may be drawn at summary judgment from a party's invocation of the Fifth Amendment privilege during discovery. And there is authority that undermines the estate's position. The Fifth Circuit has concluded that invoking the privilege against self-incrimination is not sufficient to create a genuine issue of material

Opinion of the Court

69

fact preventing summary judgment. *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 119 (5th Cir. 1990); see *Curtis v. M&S Petroleum, Inc.*, 174 F.3d 661, 675 (5th Cir. 1999) (“Without more, the adverse inference from Mr. Barrett’s refusal to answer questions at his deposition will not preclude summary judgment.”); *id.* (noting that *Gutterman* “held that the adverse inference from a party’s refusal to answer questions was not enough to create an issue of fact to avoid summary judgment”); see also *Nat’l Acceptance Co. of Am. v. Bathalter*, 705 F.2d 924, 930 (7th Cir. 1983) (stating that the Supreme Court’s *Baxter* decision does not hold that an adverse finding based on assertion of the Fifth Amendment privilege could “properly rest on the silence, without other evidence”). And this Court has held: “Invocation of the fifth amendment privilege [does] not [necessarily] give rise to any legally cognizable inferences sufficient to preclude entry of summary judgment. The negative inference, if any, to be drawn from the assertion of the fifth amendment does not substitute for evidence needed to meet the burden of production.” *Avirgan v. Hull*, 932 F.2d 1572, 1580 (11th Cir. 1991).

We do agree with the Second Circuit that a district court, “to prevent prejudice to opposing parties and to control attempts to manipulate discovery, may in appropriate cases bar litigants from testifying concerning those matters about which they had previously improperly impeded discovery through an invocation of the Fifth Amendment.” *United States v. Certain Real Prop. & Premises*, 55 F.3d 78, 87 (2d Cir. 1995). In the *Certain Real Property* case, the litigant “had utilized the Fifth Amendment in an abusive or manipulative fashion, by asserting and waiving the privilege when

convenient and by persistently asserting his Fifth Amendment rights throughout the pendency of [the] proceeding and then seeking to waive or deny the existence of the privilege on the eve of trial or the equivalent thereof.” *Id.* at 85–86 (alteration adopted and quotation marks omitted). “Given this pattern of abusing the discovery process” and “[h]is history of obstruction,” as well as the obvious prejudice to the other party, the Second Circuit held that the district court did not abuse its discretion by forbidding the litigant from introducing at trial evidence that he had persistently claimed during discovery was protected by the privilege. *Id.* at 86–87.

The circumstances in this case could hardly be more different than those the Second Circuit had before it in *Certain Real Property*. On advice of counsel, in his first deposition, which was 226 pages long, Adcock did assert his Fifth Amendment privilege to *some* of the many questions the attorney for the estate asked him, but he answered the overwhelming majority of them. Not only that, but after he was cleared of any wrongdoing by the State Bureau of Investigations and a grand jury, Adcock sat for a second deposition, which was 148 pages long. He did not assert the Fifth Amendment privilege to any of the nearly 900 questions he was asked during it. At the end of that second deposition, the estate’s attorney announced, “That’s all.”

The estate was not prejudiced by Adcock’s assertion of the privilege to some of the questions in the first deposition. Unlike the litigant in the Second Circuit case, Adcock did not “invoke his

Opinion of the Court

71

privilege against self-incrimination to hinder the [other side's] discovery efforts and then seek to waive or deny the existence of the privilege on the eve of trial or equivalent thereof.” *Certain Real Prop.*, 55 F.3d at 81 (quotation marks omitted). Instead, he sat for a second deposition, during which he didn’t assert his Fifth Amendment privilege to a single question. And that happened more than seven months before the discovery cutoff date, which is a far cry from “the eve of trial” situation in the *Certain Real Property* case. *Id.*

The district court reasoned that by sitting for a second deposition and answering questions, Adcock provided his testimony without unduly prejudicing the estate, and it ruled that an adverse inference would be improper in this case. Doc. 84 at 10 n.6. That is correct. There was no abuse of discretion.

2. The estate’s argument that Adcock should have taken his chances and waited to see if Westly and Robinson would help him prevent Spivey from seriously injuring or killing Adcock or some other person

When Penny, being pursued by Spivey, had reached Adcock’s driveway and started up it, Westly and Robinson were some distance behind them and out of sight. Spivey was between Penny and them, and they were afraid that Penny might fire at Spivey and hit them by mistake. So, as Westly and Robinson began going up the driveway, according to their testimony, they started hollering to Penny: “Don’t shoot. We can help. Don’t shoot. We can help. We’re coming backup. We’re backup. Don’t shoot.”

Based on those facts, the attorney for the estate makes this argument:

Four able-bodied men — Adcock, Penny, Westly and Robinson — were available to restrain Spivey if he had physically assaulted anyone with his hands — which was the only “weapon” Spivey had. A four-to-one numerical superiority in a hand-to-hand melee or physical confrontation is decisive.

Because four can overcome one, the argument goes, it was unreasonable for Adcock to fire instead of waiting for the other three to come to his aid and help him stop the violent Spivey.

The underlying math that forms the factual premise of that argument is false. The impending fight was not to be 4 to 1, counting Penny. Having seen what Spivey could do with his bare hands, Penny was afraid of him and never lifted a finger to physically help Adcock fight off Spivey, even though he had the opportunity to do so. *See supra* at 25. When Adcock asked Penny to help him with Spivey, the frightened Penny said he couldn’t. And he didn’t.

Nor was the fight going to be 3 to 1, at least not insofar as Adcock knew, because Westly and Robinson did not tell Adcock they were available to help him, and he didn’t even know they were anywhere near until after the shooting. They testified that they volunteered their help to Penny; he was closer to them. Westly testified that when they finally got to within 20 to 30 feet away and saw Adcock for the first time, he and Westly “really didn’t say anything.” And when asked who they had earlier yelled to, Robinson testified unequivocally that he and Westly had yelled to “[t]he

Opinion of the Court

73

deputy,” meaning Penny. Neither Robinson nor Westly testified that they continued yelling when they regained sight of Penny and Spivey and saw Adcock for the first time.

Even assuming that Westly and Robinson would have followed through on their promised help if Adcock could hold out long enough,²⁴ and further assuming that they would have arrived soon enough to be of any help, the argument still fails. We judge

²⁴ The reason we say “even assuming” the promised help would have been delivered is that minutes earlier Westly and Robinson had been gathered outside the Spivey house, just feet away from Spivey. They witnessed him attacking the ambulance and breaking its windshield, and they saw him attacking the Sheriff Department’s SUV and breaking its back window, and they witnessed him terrorizing Penny who had just arrived. Yet neither Westly nor Robinson attempted to intervene physically to stop Spivey’s rampage and help Penny then.

Referring to Penny, Robinson, and himself back when they were at Spivey’s house and he was acting violently, Westly testified that “all three of us could have took him down without a problem.” Then, however, he added:

But I wasn’t going to go over there and grab my brother and slam him on the ground when he just had brain cancer surgery and he has staples — you know what I’m saying — all in his head. I wasn’t going to slam him on the ground.

Westly never explained why he would not intervene in front of the Spivey house but would have intervened later. We will, however, assume that when they made the offer of help to Penny, Westly and Robinson were sincerely willing to help. But, as we explain in the text, Adcock did not know Westly and Robinson had said they would be willing to help subdue Spivey. And even if Adcock had known about the offer, a reasonable officer would not have believed he was required to wait and hope that their help materialized in time and eliminated the threat that Spivey posed. *See Scott*, 550 U.S. at 385; *Baxter*, 121 F.4th at 890.

an officer's actions by what he knew when he fired his weapon, even if he was reasonably mistaken as to the facts he confronted; we do not judge him by what others knew but he didn't. *See Saucier*, 533 U.S. at 205–06.

From Adcock's perspective — which is the only one that counts in this analysis — it was not four to one, not three to one, and not two to one — it was one to one. And the violent one that Adcock faced was out of his mind, was taller and heavier than Adcock, and had already hit him hard enough that his knees buckled and he almost passed out. And the violent one, Spivey, had ignored every order and warning, was just a few feet away, and was moving back to attack Adcock again when he was shot.

Instead of being faithful to the record, the estate's attorney tries to cure the factual problem with the argument by using the misleading statement that the point at which Westly and Robinson volunteered their help was "*when they saw Adcock and Penny pointing their guns at Spivey.*" Initial Brief of Appellant at 36 (emphasis added). The emphasized language is not accurate. It is completely unfounded. Neither Westly nor Robinson ever testified that at the time they volunteered their help to Penny, they could see Adcock.

Apparently, the idea behind the claim that they could see Adcock then is that if they could see him then, it would be more likely that he could have seen and heard them. But there is nothing in the record that indicates the offer to help was made to anyone but Penny, or that anyone other than Penny heard it, or that Westly and Robinson could see Adcock at the time they said they would help.

Opinion of the Court

75

When Adcock himself was asked if he had heard anyone else other than Penny at the time of the shooting, he unequivocally answered that he had not. There is no evidence to the contrary.

There is another reason that this wait-and-see, maybe-things-will-turn-out-okay argument of the estate fails. Even if Adcock had heard what Westly and Robinson said to Penny about helping out, a reasonable officer in his perilous position could well have believed that he was not required to stake his life on the promised assistance of two civilians who were farther away from him than the deranged person posing the threat. *See, e.g., Baxter*, 121 F.4th at 890 (explaining the officer “was not required to wait and ‘hope for the best’” where he had “only a second or two to react to [a dangerous suspect’s] movements”) (quoting *Scott*, 550 U.S. at 385) (brackets omitted); *Settle*, 160 F.4th at 1288–89 (same); *Heid*, 143 F.4th at 1263 (same); *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010) (same); *Shaw*, 884 F.3d at 1100 (same); *Long*, 508 F.3d at 581 (same); *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) (same).

3. The estate’s argument that Adcock was not injured enough by Spivey to justify the use of deadly force

The estate argues that, even if Spivey did strike Adcock, the blow to his head was at most a “*de minimis*, insignificant” injury. Initial Brief of Appellant at 34. We doubt that anyone who suffered a haymaker blow to the temple causing him to buckle at the knees and almost lose consciousness would describe it as “*de minimis*” and “insignificant.” This argument of the estate not only has no

affirmative evidence to support it, but it is also belied by the testimony of Adcock, the testimony of Penny, the EMS report, and the photograph of Adcock's face after the fight, which shows obvious discoloration on the left side of his head at or near his temple where he was hit. *See supra* at 30–31. It also runs contrary to common knowledge and common sense to suggest that a hard blow to the head could not cause serious harm.

More fundamentally, the legal premise of the estate's argument is plainly wrong. The excessive force standard is not aimed at punishing an offender for injuries inflicted on an officer. The purpose is not retribution. The excessive force standard is aimed at safeguarding the officer and other innocent people from suffering serious physical harm or death at the hands of the assailant. The purpose is protection. That's why the question is whether at the time the officer used deadly force a reasonable officer in those circumstances could have reasonably believed, as Adcock did, that there was a *threat* of serious physical harm or death. *Shaw*, 884 F.3d at 1099 n.5. The question is not whether the attacker had already inflicted serious physical harm, or any harm at all, on the officer. *See supra* at 40–41.²⁵

²⁵ The estate's initial brief lists a number of state statutes and other sources defining "serious injury," and argues that Spivey had not inflicted injury that was truly serious at the time Adcock fired the shots; therefore, the estate asserts, deadly force was not justified. But the question is not how the term "serious injury" is defined for purposes of some state statute, or some other federal purpose, or how it is used in some other context. The question is what that term and the synonymous term "serious physical harm" mean for

Opinion of the Court

77

And, as we’ve mentioned, that is the question regardless of whether the person who posed the threat had already committed a crime. *Shaw*, 884 F.3d at 1099 n.5 (“If a reasonable officer could have believed that under the circumstances Shaw posed *a threat of inflicting serious injury or death* on him, the shooting was objectively reasonable *regardless of whether Shaw had already committed a crime or was resisting or attempting to evade arrest.*”) (emphasis added); see *supra* at 35–36, 40–41. Binding authority is unanimous on the point that an officer isn’t required to risk letting an attacker inflict serious physical harm or death on the officer or others, not when deadly force is “certain to eliminate the risk.” See, e.g., *Scott*, 550 U.S. at 384–85 (emphasis omitted); see also *Baker v. City of Madison*, 67 F.4th 1268, 1281 (11th Cir. 2023).

And, of course, the estate’s argument that serious physical harm to the officer must precede the use of deadly force is flatly inconsistent with binding precedent. The Supreme Court and this Court have both held that the use of deadly force was justified based on the *threat* that serious physical harm or death could be inflicted even though it hadn’t yet been inflicted. See, e.g., *Garner*, 471 U.S. at 11; *Settle*, 160 F.4th at 1288–89 (“[T]he Fourth Amendment does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to

purposes of the Fourth Amendment standard governing an officer’s use of deadly force in defense of himself or others. And, as we have explained in the text, the issue is focused on *threatened* physical harm or death, not on previously inflicted physical injury. See *supra* at 39–41. None of the statutes or other sources that the estate relies on speaks to that issue.

stop the suspect.”) (quotation marks omitted); *Singletary*, 804 F.3d at 1183 (same); *Long*, 508 F.3d at 580–81 (same); *see also Mullenix v. Luna*, 577 U.S. 7, 16–19 (2015) (holding officer did not violate clearly established law in his use of deadly force against a suspect who drove at extreme speeds, presenting a *threat* of serious physical harm to other officers); *Brosseau*, 543 U.S. at 197, 201 (holding officer did not violate clearly established law in her use of deadly force against a fleeing suspect who she feared presented a *threat* of serious physical harm to other officers in the immediate area of the suspect’s vehicle).

4. The estate’s argument that because Spivey did not have a weapon other than his fists the use of force was excessive

Adcock could tell that Spivey, who was wearing only a pair of swim trunks or shorts, was unarmed. The estate argues that is a strong factor weighing against the use of deadly force against him. Only in the most extraordinary circumstances, it says, can deadly force be used against an aggressor who is unarmed. There is no precedent for that proposition but, if there were, the circumstances Adcock found himself in would qualify as extraordinary enough.

Whether one who attacks a law enforcement officer has a firearm or knife to help him inflict serious physical harm or death is a factor that weighs into the reasonableness analysis. But there aren’t two different standards for the use of deadly force, one involving attackers with a weapon and another involving unarmed attackers.

Opinion of the Court

79

The use of deadly force against a bare-handed attacker whose weapons are his fists, his strength, and his deranged determination to use them violently is not, as the estate argues, unreasonable.

While bare-handedness is one fact in the totality of the circumstances, it is not all that matters. We’ve already recognized, and it’s worth reiterating: “Reasonableness is the touchstone of all excessive force claims.” *Hammett*, 875 F.3d at 1048. And “in the end all that matters is whether the officer’s actions were reasonable.” *Singletary*, 804 F.3d at 1180 (brackets and quotation marks omitted); *see also Scott*, 550 U.S. at 383.

Were there a bright line rule or presumption of the kind that the estate favors, a larger assailant who was a better fighter could beat an officer until he was unconscious or dead with little, if any, fear that the officer could use his firearm to prevent it. This case is a good example of that danger. Spivey was almost 20 pounds heavier, and he was half a foot taller than Adcock. With his greater height he had a longer swing radius, and he had used it to land at least one haymaker punch to Adcock’s head, causing him to buckle at the knees and almost lose consciousness. *See supra* at 24–25. A reasonable officer in Adcock’s position reasonably could have believed, as Adcock did, that if he did not use his firearm to prevent Spivey from resuming his attack, he could lose the ability to defend himself and others.

While deposing Penny, the attorney for the estate rehearsed his argument that it was unreasonable for Adcock to shoot Spivey because, the attorney insisted, an unarmed man could not do much

harm. He asked Penny if it wasn't true that since Spivey didn't have a weapon the worst thing that could have happened was "a fist fight or a wrestling match." Penny answered: "In regards to that, sir, at that moment, I'm going to be honest, I was in fear for my life." The attorney tried to fend off that answer by telling Penny he was not asking him "subjectively." But Penny would have none of that and replied emphatically: "I'm not telling you subjectively. I'm telling you honestly. You want my honest answer. I'm telling you."

The attorney persisted, asking: "Is a black eye or bruise or loss of a tooth, that's the usual limit of damage that a person can do with his fists; correct?" Penny answered: "No." The attorney kept on, asking: "What is the limit of it?" To which Penny answered: "The limit is, they can basically in the middle of an altercation, could actually do a lot more damage than just a black eye, lost tooth, or anything; they could actually kill you." "That's not rare," he added.

In his deposition, Adcock acknowledged that people *generally* don't die from being struck with a fist. Two things about that. First, the standard is not threat of death, but threat of serious physical injury or death. Second, most people who are struck with a fist are not being violently attacked by a larger, deranged assailant who punches them so hard it causes them to buckle and almost lose consciousness. Most people struck by a fist are not being attacked by a man who has proven to be impervious to a taser. And most people struck by a fist are not being attacked by an assailant so aggressive that he defied and terrorized an armed deputy sheriff.

Opinion of the Court

81

As Adcock explained, “I feared that Spivey would seriously injure or kill me, or incapacitate me and injure or kill my family or Ms. Bloodsworth inside my residence just a few steps away.” He elaborated:

I thought he was going to kill me, and I thought he might could kill my family if he killed me and that little girl that had come to the house trying to find a safe place. I thought — I mean — and the only way I could stop him — after I tried to fight him, the only way I could stop him was by shooting him.

That is a perception and fear that a reasonable officer in those circumstances could have, and would have, had.

We return now to the main part of the estate’s argument that the use of deadly force was unreasonable because Spivey did not have any weapon other than his fists (and feet). That he had no weapon other than his body is relevant, but it is not the end of the inquiry because, as we have stated, “a foot, or a fist . . . may be used to apply deadly force.” *Bradley v. Benton*, 10 F.4th 1232, 1241 (11th Cir. 2021). And, for that matter, as our *Prosper* decision held, so can teeth, because they are capable of being used to bite off a finger. *See Prosper*, 989 F.3d at 1254. The law is that “whether an object constitutes a ‘dangerous weapon’ turns not on the object’s latent capability alone, but also on the manner in which the object was used.” *United States v. Guilbert*, 692 F.2d 1340, 1343 (11th Cir. 1982). That means in an excessive force case a “‘dangerous weapon’ . . . can include virtually any object given appropriate circumstances.” *Id.*

Other circuits have recognized, as we did in *Bradley*, that fists can be deadly weapons because they can inflict deadly blows. The Sixth Circuit’s decision in *Davenport v. Causey*, 521 F.3d 544, 552–54 (6th Cir. 2008), is instructive. An assailant named Davenport got into a fight with two officers after he was stopped for speeding. *See Id.* at 547–48. With his bare fists he hit one of them, Officer Causey, three times, causing him to fall to the ground. *Id.* at 548. Davenport then hit the second one, Officer Pugh, three times, twice in the head, which caused him to stagger backward. *Id.* at 548–49. He was in the process of raising his fist to hit Pugh a fourth time when Causey shot Davenport to death. *Id.* at 548.

Davenport’s estate sued Officer Causey claiming excessive force in violation of the Fourth Amendment. *Id.* at 546 & n.1. The Sixth Circuit reversed the district court’s denial of Causey’s motion for summary judgment. *Id.* at 546. In doing so, the Court explained that Officer Causey had “believed that Officer Pugh was in mortal danger.” *Id.* at 549. Causey thought that if Davenport wasn’t stopped, “he was going to seriously injure Officer Pugh or possibly kill him.” *Id.* (quotation marks omitted). Causey was also concerned that if Davenport disabled Pugh, he could take Pugh’s weapon and use it against him. *Id.*

The Sixth Circuit noted that “Davenport had used closed-fisted blows,” and it held that “*closed-fisted blows may constitute deadly force.*” (emphasis added) (brackets, ellipses, and quotation marks omitted). *Id.* at 552–53. It cited for support the Seventh Circuit’s decision in *Sallenger v. Oakes*, 473 F.3d 731, 740 (7th Cir. 2007), which

Opinion of the Court

83

concluded that a “closed-fisted blow” to the head may cause death. That is also a matter of common sense and common knowledge.

The estate’s bare-hands-aren’t-dangerous argument also fails for another reason. It ignores the possibility that if Adcock had not shot him, Spivey could have overpowered Adcock, taken his firearm, and used it to seriously injure or kill him or another person. That is one of the concerns that Officer Causey had in the *Davenport* case. See 521 F.3d at 549. And it was a concern that Penny voiced during his deposition. Penny, who had seven years of experience as a law enforcement officer, had seen what Spivey had done with his bare fists to the back window of the SUV and to the windshield of the ambulance. And he explained that Spivey — who was a large man — could have overpowered him in a fight and gained “access to my firearm,” “access to my baton,” and “access[] to everything that was on my belt.” And if that happened, Penny feared, “my children wouldn’t have a father and my wife would be a widow.”

The risk that an assailant will take an officer’s firearm from him is a real one, and it matters. *McCormick v. City of Fort Lauderdale*, 333 F.3d 1234, 1246 (11th Cir. 2003), was an excessive force claim case where the aggressor, McCormick, was armed with only a walking stick. The officer he attacked shot him because he “was afraid that McCormick might have access to his firearm if McCormick was successful with his attack.” *Id.* This Court held that the officer could reasonably perceive that McCormick posed an

imminent threat of violence to the officer and bystanders, and under the circumstances shooting him was objectively reasonable. *Id.*

The Ninth Circuit has held that summary judgment was appropriate for an officer who used deadly force where there was a risk that the man he was fighting might overcome the officer and get his weapon. *Waid v. County of Lyon*, 87 F.4th 383 (9th Cir. 2023), involved an excessive force claim against two officers after they fatally shot an unarmed man who had charged down a short hallway at them and ignored their orders to get down. *See id.* at 389, 391. Even though the man the officers shot was unarmed, the Ninth Circuit affirmed the grant of qualified immunity for those officers, reasoning that the man “*could have accessed the officers’ weapons* at any time or otherwise harmed them,” and they had “needed to make split-second decisions as they were being charged.” *Id.* (emphasis added).

In the *Orr case*, the Fifth Circuit reversed the denial of qualified immunity for an officer who fatally shot an unarmed suspect who had ignored orders to get down, was much larger than the officer, got the best of him in a fight, attempted to choke him, and tried to grab his gun. *Orr v. Copeland*, 844 F.3d 484, 487–89, 494–95 (5th Cir. 2016).

And the Third Circuit held that the use of deadly force was reasonable where the officer was physically attacked by an unarmed man high on PCP, who ignored orders to stop, hit the officer on the head multiple times, and reached for the officer’s gun. *Johnson v. City of Philadelphia*, 837 F.3d 343, 345–46, 354 (3d Cir. 2016).

Opinion of the Court

85

In this case, the possibility of Adcock losing control of his firearm to Spivey was real given that Spivey had a substantial size advantage over him and had already hit Adcock hard enough to make him buckle and almost pass out. If Adcock had not used his firearm to stop Spivey's attack when he did, he could have been knocked out and lost the ability to stop him. A reasonable officer could have feared that and believed that not using deadly force would have been fatal for himself and possibly for one or more others.

5. The estate's argument that Adcock should not have chosen to be a police officer

The ugly cousin of all the other arguments made by the estate's attorney is his assertion that Adcock should not have chosen to be a police officer if he was unwilling to "mix it up" or physically subdue . . . bad actors." This is how the attorney for the estate sees it:

Policemen are not drafted. They choose their calling. They do so knowing what the job entails, including that they will occasionally have to "mix it up with" or physically subdue some bad actors. . . . If Adcock was unwilling or was afraid of having to, on occasion, physically mix it up with these bad actors, a part of the job of policing that Adcock admitted he knew about, Adcock should have perhaps chosen to be an accountant, a grocery store manager, an auto mechanic, even a lawyer, or any of dozens of other professions or callings that do not require physical courage. He did not. Adcock *chose* to be a policeman.

Reply Brief of Appellant at 34 (bolded italics in original).

Yes, Adcock chose to be a policeman. And, even though he was off duty one night and relaxing with his family inside his home, when he heard there was a chaotic and dangerous situation unfolding outside, Adcock did not choose to remain inside in relative safety of his house, as “an accountant, a grocery store manager, an auto mechanic, [or] even a lawyer” probably would have. Instead, because he had chosen to be a police officer Adcock had the courage to go outside and face the danger in an attempt to render assistance to any innocent person in harm’s way.

As we have said before, “Courage in the line of duty should be commended, not condemned. It certainly should not subject an officer to liability for damages.” *Tillis*, 12 F.4th at 1301.

Adcock was not, as the estate implies, unwilling or afraid to “mix it up” with the man posing the danger, even though that man was deranged and violent and bigger than Adcock. He attempted to control the man without using deadly force. When that didn’t work, Adcock was not required to take a beating at the blood-soaked hands of the man and subject himself and others to the risk of serious physical harm or death. To suggest that Adcock lacked physical courage or was in the wrong profession is as unseemly as it is baseless.

V. CONCLUSION

We don’t mean to suggest with anything we have said that Spivey had any moral culpability in the events that led to his death. He was a young man making his way through life when, through

Opinion of the Court

87

no fault of his own, he was afflicted with an aggressive brain tumor that robbed him of his sanity, setting him on a violent downward spiral ending in his death. But as we have, unfortunately, had occasion to say before, “The shooting of a mentally ill man was tragic, as such shootings always are, but tragedy does not equate with unreasonableness.” *Shaw*, 884 F.3d at 1101; *see also Powell*, 25 F.4th at 925 (reiterating that “tragedy does not equate with unreasonableness”); *Davis v. Waller*, 44 F.4th 1305, 1317 (11th Cir. 2022) (“What happened to Mr. Davis was tragic and almost unimaginable, but we cannot say that the officers’ conduct was unreasonable.”).

The judgment of the district court is AFFIRMED.