

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 20-11389  
Non-Argument Calendar

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D.C. Docket No. 1:18-cv-01394-SDG

KENNETH R. KNOWLES,

Plaintiff-Appellant,

versus

OFFICER JASON MICHAEL HART,

Defendant-Appellee.

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

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(August 28, 2020)

Before NEWSOM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Kenneth R. Knowles, individually and as administrator of the estate of his late wife, Lori Renee Knowles (“Decedent”), appeals the district court’s order granting summary judgment in favor of Officer Jason Michael Hart based on qualified and

official immunity. Knowles argues that the district court did not properly apply the summary judgment standard in granting Officer Hart qualified and official immunity and abused its discretion in retaining and ruling on state law claims rather than dismissing them to be filed in state court. Upon consideration, the district court's order is AFFIRMED.

### **BACKGROUND**

We presume familiarity with the factual and procedural history and describe it below only to the extent necessary to address the issues raised in this appeal.

Decedent called 911 multiple times—yelling, screaming, and somewhat incoherent—and indicated she had taken too much medicine. Dispatch informed Officers Hart and Goetz of the call and sent them to Decedent's house. The officers knocked on the front and back doors with no answer, but they could hear a female inside yelling and screaming "f\*\*\* you," among other things, in an incoherent manner. After waiting for paramedics to arrive, the officers forced their way into the house and followed the voice down a hallway with Officer Hart in the lead. Officer Hart stopped when he saw Decedent lying on a bed in a room to his right. Officer Goetz remained behind Officer Hart but could see Decedent in a mirror hanging on the bedroom wall.

When Officer Hart saw a handgun in a holster on Decedent's hip, he drew his gun, pointing it at the floor, and yelled at her to show her hands. Decedent arose

from the bed with blood on her face, yelling and screaming, with what the officers later described as an “evil” look on her face. Decedent reached for her gun at least once before Officer Hart fired at her. Immediately after firing his gun, Officer Hart, joined now by Officer Goetz, tackled Decedent and secured her weapon. Decedent kicked, fought, and screamed until the officers handcuffed her. Decedent indicated she had been shot in the chest, and the paramedics strapped her to a stretcher to take her to a hospital. On the way, the paramedics administered anti-psychotic medication and Decedent began having seizures. Tragically, she died of a cardiac dysrhythmia before reaching the hospital.

The autopsy report indicated that the bullet entered Decedent’s right breast and exited her armpit, traveling along the ribs without entering the chest cavity. Although the wound was not an independently lethal injury, it may have contributed in some degree to the stress causing Decedent’s fatal cardiac dysrhythmia. The autopsy indicated the main stress was a combination of mixed drug intoxication, physical restraint from the handcuffs and stretcher, and a history of bipolar and panic disorders.

Decedent’s husband, Knowles, sued on behalf of Decedent’s estate, alleging six counts: battery, negligence, wrongful death, pain and suffering, bad faith, and a federal excessive force claim in violation of the Fourth Amendment under § 1983.

The district court granted Officer Hart's motion for summary judgment, and Knowles timely appealed.

### **DISCUSSION**

Knowles argues that (1) the district court did not properly construe the evidence in his favor; (2) Officer Hart was not entitled to qualified immunity because he used excessive force against Decedent; (3) Officer Hart was not entitled to official immunity because he acted with actual malice in shooting Decedent; and (4) the district court should have dismissed the state law claims rather than retain them under 28 U.S.C. § 1367(a) supplemental jurisdiction.

We review a district court's order granting summary judgment de novo. *Haves v. City of Miami*, 52 F.3d 918, 921 (11th Cir. 1995). And we review a district court's decision to retain supplemental jurisdiction over state law claims for abuse of discretion. *Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 738 (11th Cir. 2006). In conducting our review, we hold that none of Knowles's arguments have merit. We address each in turn.

First, the district court correctly granted summary judgment notwithstanding certain alleged inconsistencies in the record. We will reverse a district court's grant of summary judgment if it overlooks evidence contradicting factual points key to the holding. *Tolan v. Cotton*, 572 U.S. 650, 659 (2014). Here, Knowles argues that the following should have foreclosed summary judgment: Officer Hart could not recall

whether Decedent touched the gun, Officer Hart stated once that he thought Decedent was “going over into the corner, like she was gonna get her gun out and take cover and start shooting,” the Joint Preliminary Report and Discovery Plan stated that Officer Hart “shot and killed Knowles, without hesitation and without giving any warning”, Officer Hart thought his shot missed Decedent but did not shoot at her again, and Officer Hart did not disarm Decedent before resorting to deadly force. But none of this evidence negates the reasonableness of Officer Hart’s use of deadly force. The pertinent facts, which Officer Hart consistently asserted, are that Decedent refused to show her hands until she arose from the bed, yelling and screaming with blood on her face, before reaching towards the gun she had holstered on her waist. Under these facts and circumstances, an officer is entitled to use deadly force to protect himself, as set out further in the qualified immunity analysis.

Second, Officer Hart was entitled to qualified immunity from Knowles’s federal claim because his reasonable use of deadly force did not violate the Constitution. In a qualified immunity case, an officer bears the initial burden of showing he was engaged in a discretionary function; the burden then shifts to the plaintiff to show the officer is not entitled to qualified immunity. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1267 (11th Cir. 2004). Neither party disputes

that Officer Hart was acting in a discretionary function, so the burden is on Knowles to show that Officer Hart is not entitled to qualified immunity.

To overcome qualified immunity, Knowles must show that (1) Officer Hart violated a constitutional right, and (2) that right was clearly established at the time of the alleged violation. *Cozzi v. City of Birmingham*, 892 F.3d 1288, 1293 (11th Cir. 2018). A court need not proceed to the second factor if it finds that a constitutional right was not violated. *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *see also Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (recognizing that proceeding in this order is “often appropriate,” but is not mandatory). Knowles argues that Officer Hart violated Decedent’s constitutional right to be free from unreasonable seizure because mere possession of a lethal weapon in a non-threatening manner is no justification for use of deadly force. But Decedent did not merely possess a weapon. The only evidence on point establishes that she acted in a threatening manner by refusing to show her hands, climbing off the bed, yelling and screaming, and reaching for her weapon at least once.

The right to be free from unreasonable search and seizure is secured by the Fourth Amendment. Under the Fourth Amendment, an officer’s use of deadly force must be reasonable. *Graham v. Connor*, 490 U.S. 386, 395 (1989). The reasonableness determination is based on the facts and circumstances as the officer reasonably believed them to be, even if the officer’s judgment was mistaken.

*Garczynski v. Bradshaw*, 573 F.3d 1158, 1167 (11th Cir. 2009); *Wood v. Kesler*, 323 F.3d 872, 878 (11th Cir. 2003).

To assess “reasonableness,” a court holds up an officer’s decision to use deadly force against the case’s particular facts to determine whether the officer was justified under the totality of the circumstances. *Garczynski*, 573 F.3d at 1166. No set list of essential factors bearing on reasonableness exists, but some examples of relevant factors might include: “the seriousness of the crime, whether the suspect poses an immediate danger to the officer or others, whether the suspect resisted or attempted to evade arrest, and the feasibility of providing a warning before employing deadly force.” *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 822 (11th Cir. 2010). The mere possession of a gun in and of itself is not sufficient to justify using deadly force: “Where the weapon was ... and what was happening with the weapon are all inquiries crucial to the reasonableness determination.... [T]he ultimate determination depends on the risk presented, evaluating the totality of the circumstances surrounding the weapon.” *Perez v. Suszczyński*, 809 F.3d 1213, 1220 (11th Cir. 2016); *see also Mercado v. City of Orlando*, 407 F.3d 1152, 1154, 1158 (11th Cir. 2005) (Fourth Amendment violation for shooting person armed with knife but making no threatening moves); *Turk v. Bergman*, 685 F. App’x 785, 788–89 (11th Cir. 2017) (Fourth Amendment violation for shooting person holding gun in lap when officers found him but not making any threatening moves).

Here, the facts and circumstances as Officer Hart reasonably believed them to be were that he was responding to a call from an unknown, distressed woman who had ingested an unknown drug. No one answered either the front or back door and he could hear a woman screaming, yelling, and cursing inside. He turned a corner and found himself in close quarters with an armed woman who refused to show her hands and jumped up out of the bed, still yelling and screaming. She then reached for her gun at least once.

Under these facts and circumstances, Officer Hart did not violate Decedent's constitutional rights. He was not required to wait for Decedent to draw her gun and point it at him. Officer Hart's decision may not have been reasonable had Decedent been holding a knife, had she complied with commands to show her hands, or had she merely been holding a gun without making any threatening moves. But Decedent was armed with a gun, not a knife. She was not showing her hands. And she was reaching for her weapon, not already holding it when the officers arrived. Officer Hart's use of deadly force was reasonable under the Fourth Amendment, and he is entitled to qualified immunity.

Third, Officer Hart was entitled to official immunity from Knowles's state claims. Under Georgia law, an officer who shoots a person intentionally and without justification can be sued in tort. *Kidd v. Coates*, 518 S.E.2d 124, 125 (Ga. 1999). But the shooting must show "actual malice or intent to cause injury," meaning the



malice must be express and deliberate, not just implied through a reckless disregard for the rights or safety of others. *Murphy v. Bajjani*, 647 S.E.2d 54, 60 (Ga. 2007). If the officer did not have tortious intent, the officer is entitled to official immunity. *Kidd*, 518 S.E.2d at 125.

Here, no genuine issue of fact exists that would indicate Officer Hart shot the decedent with actual malice. The evidence on summary judgment shows that Officer Hart shot Decedent after she refused to show her hands; jumped out of the bed, yelling and screaming; and reached for her gun at least once. Officer Hart argues that he shot Decedent in self-defense. Even if we were unpersuaded by Officer Hart's self-defense claim, mere recklessness is insufficient to overcome official immunity under Georgia law. Instead, Knowles would have to show that Officer Hart acted with actual malice. No such evidence exists on this record.

Fourth, the district court did not abuse its discretion in retaining supplemental jurisdiction over, and dismissing, Knowles's state claims. Under 28 U.S.C. § 1367(a), the district courts "shall have" supplemental jurisdiction over state claims that are so close to claims subject to a court's original jurisdiction as to form part of the same Article III case or controversy. Supplemental jurisdiction is discretionary, and a court may exercise its discretion to dismiss or retain state claims after dismissing claims subject to its original jurisdiction under 28 U.S.C. § 1367(c)(3).

Knowles argues that the district court was required to consider the factors of comity, convenience, fairness, and judicial economy, which were announced in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). Knowles's state claims arise out of the same facts as the federal excessive force claim, over which the district court had original jurisdiction. The state claims did not present any novel or complex issues of state law. The claims did not substantially predominate over the excessive force claim; in fact, they are inextricably intertwined. And these state claims were clearly barred by official immunity. Dismissing these claims so they could be raised again in state court would have been a waste of judicial resources.

### **CONCLUSION**

The district court did not err in granting summary judgment or abuse its discretion in retaining supplemental jurisdiction over Knowles's state claims. Accordingly, we **AFFIRM** the district court's grant of summary judgment.