

ENTERED

December 04, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

CARMEN TREVINO, INDIVIDUALLY, §
AS REPRESENTATIVE OF THE §
ESTATE OF JOSE ROMAN §
RODRIGUEZ, DECEASED, AND ON §
BEHALF OF ALL THOSE ENTITLED §
TO RECOVER UNDER THE TEXAS §
WRONGFUL DEATH ACT FOR THE §
DEATH OF JOSE ROMAN §
RODRIGUEZ, NOEMI LONGORIA, §
AS NEXT FRIEND OF MINOR §
CHILDREN G.R.R. AND G.N.R., AND §
JOSE GUADALUPE RODRIGUEZ §
VEGA, §

Plaintiffs, §

VS. §

CIVIL NO. 1:16-CV-262

ROLANDO TRUJILLO JR., §
Defendant. §

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion for Summary Judgment [Doc. No. 19], Plaintiffs' Response [Doc. No. 25], and Defendant's Objections and Reply [Doc. No. 28]. For the following reasons, the Court grants the Defendant's Motion for Summary Judgment in part and denies it in part.

I. Background

This case arises from the events of July 17, 2015, when Brownsville Police Officer Rolando Trujillo, Jr. ("Trujillo" or "Defendant") shot and killed Jose Roman Rodriguez ("Rodriguez" or "Decedent") after Trujillo had pulled over Rodriguez's vehicle in Brownsville, Texas.

The initial facts leading to the stop are not hotly disputed. In the early morning hours of July 17, 2015, during his shift as a patrol officer, Officer Trujillo responded to a police radio call alerting him to the scene of an alleged theft. He arrived at the 7-Eleven convenience store where the theft took place and spoke briefly with the store's clerk. The clerk informed Trujillo that a man had walked into the store, taken three cases of beer and quickly walked out without paying, driving away with another person in an SUV. The clerk described the vehicle, but he and Trujillo did not discuss whether the thief was armed. Trujillo got back in his police cruiser and left to find the vehicle.

As he drove up to the intersection of Highway 77 and East University Boulevard, Trujillo saw a brown SUV matching the clerk's description stopped at the red light. He approached the vehicle from behind, and when the traffic light turned green, he activated his police car's lights and sirens. What happened from this point forward was captured on the dash-cam video taken from inside Trujillo's cruiser. [Doc. No. 19, Ex. H; Doc. No. 25, Ex. D].

Both vehicles proceeded left through the stoplight onto East University Boulevard, however, Rodriguez did not immediately pull over. He drove the SUV forward at a moderate speed for several hundred yards before finally rolling to a stop on the right side of the road. Following closely, Trujillo also pulled his police cruiser off the road behind the SUV, with his lights still engaged.

As Trujillo stepped out of the police car and while he was approaching the driver's side of Rodriguez's SUV, the vehicle's front passenger door quickly opened. The passenger, who fit the description of the 7-Eleven thief, fled on foot across an open grassy field adjacent to the road, in effect sprinting away from the SUV and Officer Trujillo. Trujillo, who was patrolling by

himself, continued walking toward the driver's side window and used his shoulder-mounted radio to report the fleeing suspect.

Trujillo then opened the driver's side door of the SUV while Rodriguez remained in the driver's seat. According to Trujillo, the two shared a brief exchange. The dash-cam audio did not pick up their conversation. [Doc. No. 19-2, at 167–68]. He asked Rodriguez, “What happened back there?” and Rodriguez, again according to Trujillo's recollection, responded, “No, yo no se nada (No, I do not know anything).” [*Id.* at 168]. As Trujillo again reached for his shoulder-mounted radio, Rodriguez quickly grabbed and pulled the driver's side door closed.

The parties dispute what happened next, and a review of the dash-cam video does not resolve their dispute. Trujillo says that Rodriguez moved his hand toward the center console and drew out a dull gray object. [Doc. No. 19-2, at 78]. Trujillo thought it was a weapon. [*Id.* at 90]. A screwdriver was later found in the vehicle. [*Id.* at 114]. The Plaintiffs claim that this description of events would have been impossible, given the short amount of time that elapsed, and that Rodriguez could not have reached into the console. [Doc. No. 25, at 5–6]. They claim, instead, that Rodriguez reached down merely to shift the vehicle's gear selector into the drive position because he was attempting to flee. [*Id.*]. They say Rodriguez accidentally shifted the car into neutral, revved the engine, and then shifted into gear. [*Id.*]. In the dash-cam recording, it sounds like the SUV's engine revved once just before the vehicle began to pull forward, but it does not resolve with clarity exactly what Rodriguez was doing. [Doc. No. 19, Ex. H; Doc. No. 25, Ex. D].

As Rodriguez pulled the door closed, Trujillo turned his body to a profile position and drew his service weapon with his right hand. The SUV began to move forward, and Trujillo

aimed the pistol into the vehicle, firing four rounds. Two of the bullets struck Rodriguez in the side of his body.

After the gunshots, the SUV continued forward for several yards and slowed to a stop. Trujillo ran back to his police car, calling over his radio to ask for an ambulance and to report the shooting. He drove the police car forward along the shoulder of the road and stopped behind the SUV, then got out of the car and again approached the vehicle. By this time, Rodriguez was nonresponsive. Other officers responded to the scene within minutes and attempted to revive Rodriguez, but he was pronounced dead approximately an hour later.

At the scene, Trujillo told his superiors that he fired his weapon at Rodriguez after seeing him reach into the console, but did not mention at that time seeing a weapon, a gun, a screwdriver, or a dull, gray object. [Doc. No. 19-2, at 105]. A screwdriver was ultimately found inside the vehicle. [*Id.* at 114].

The Plaintiffs, Rodriguez's estate representative and his surviving relatives, brought this lawsuit under 42 U.S.C. § 1983, alleging that Trujillo violated Rodriguez's Fourth Amendment right to be free from unreasonable seizure and his Fourteenth Amendment right to due process. The Defendant has moved for summary judgment, asking the Court to dismiss Plaintiffs' claims on the grounds of qualified immunity.

II. Legal Standard

A. Summary Judgment

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute as to a material fact exists "if the evidence is such that a reasonable jury

could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In considering the evidence, a court will “construe all facts and inferences in the light most favorable to the nonmoving party.” *McFaul v. Valenzuela*, 684 F.3d 564, 571 (5th Cir. 2012) (citation omitted). After a movant submits a properly supported motion, the burden shifts to the non-moving party to show that summary judgment is not proper. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986). The non-moving party must provide specific facts to show that there is a genuine dispute of material fact. *Id.* at 324.

B. Qualified Immunity

Qualified immunity shields government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The concept of qualified immunity has broad application to officers acting in their official capacity. The Supreme Court has summarized its reach by saying it protects “all but the plainly incompetent or those who knowingly violate the law.” *Pratt v. Harris Cty., Tex.*, 822 F.3d 174, 181 (5th Cir. 2016) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

To determine whether an official is entitled to qualified immunity, courts engage in a two-step analysis. They must decide (1) whether the facts that the plaintiff has alleged make out a violation of a constitutional right; and (2) whether the right at issue was clearly established at the time of the defendant’s misconduct. *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010) (citation omitted). A defendant’s assertion of qualified immunity “alters the usual . . . burden of proof.” *Trent v. Wade*, 776 F.3d 368, 376 (5th Cir. 2015) (quoting *Brown*, 623 F.3d at 253). In

the summary judgment context, the plaintiff thus bears the burden of proof to show a genuine and material factual dispute as to whether the official is entitled to qualified immunity. *Id.*

“Immunity ordinarily should be decided by the court long before trial.” *Hunter v. Bryant*, 502 U.S. 224, 228 (1991). Nevertheless, where there remain disputed issues of material fact related to immunity, the jury, if properly instructed, may decide the question. *Snyder v. Trepagnier*, 142 F.3d 791, 800 (5th Cir. 1998) (quoting *Presley v. City of Benbrook*, 4 F.3d 405, 410 (5th Cir. 1993)). The denial of a motion for summary judgment based on qualified immunity is immediately appealable under the collateral order doctrine to the extent that it turns on an issue of law. *Flores v. City of Palacios*, 381 F.3d 391, 393 (5th Cir. 2004) (citation omitted).

C. Evidence Properly Before the Court

Although the Court must review evidence in the light most favorable to the nonmoving party, it may assign greater weight, even at the summary judgment stage, to the facts evident from video recordings taken at the scene. *See Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011) (citing *Scott v. Harris*, 550 U.S. 372 (2007)).

Additionally, in his reply, Defendant asks the Court to strike several exhibits provided by the Plaintiffs as attachments to their summary judgment response. These include: a “trimmed” copy of the dash-cam video [Doc. No. 25, Ex. F]; a slowed copy of the dash-cam video [Doc. No. 25, Ex. I]; a digital animation of the Plaintiffs’ account of the events [Doc. No. 25, Ex. J-1]; a written attempt to authenticate the animation [Doc. No. 25, Ex. J]; and an “Exhibit Q” (Plaintiffs refer to an “Exhibit Q” in their motion, but it is neither listed in their table of contents nor provided as an attachment). It is unnecessary for the Court to rule on this motion as these exhibits have no effect on the Court’s ruling one way or another. Even if the Court were to strike these exhibits in their entirety, its ruling here would be the same.

III. Analysis

A. Plaintiffs' Excessive Force Claim

Plaintiffs' first claim is that Officer Trujillo deprived Rodriguez of his Fourth Amendment right to be free of unreasonable seizure. Officer Trujillo asks the Court to grant his motion for summary judgment because he is protected by qualified immunity. The Court denies Defendant's motion and holds that a genuine issue of material fact exists.

i. Excessive Force

To support an allegation of excessive force, a plaintiff must show, "(1) an injury, (2) which resulted directly and only from the use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 382 (5th Cir. 2009) (citation omitted). When examining whether the excessiveness was clearly unreasonable, a court should consider, "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

The use of force must be evaluated "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Poole v. City of Shreveport*, 691 F.3d 624, 627 (5th Cir. 2012) (quoting *Graham*, 490 U.S. at 397). Excessive force claims are necessarily fact intensive; whether the force used is excessive or unreasonable depends on the facts and circumstances of each particular case. *Deville v. Marcantel*, 567 F.3d 156, 167 (citation omitted).

In excessive force cases, "the second prong of the [qualified immunity] analysis is better understood as two separate inquiries: whether the allegedly violated constitutional rights were clearly established at the time of the incident; and, if so, whether the conduct of the defendants

was objectively unreasonable in light of that then clearly established law.” *Tarver v. City of Edna*, 410 F.3d 745, 750 (5th Cir. 2005) (citations and quotations omitted). “If officers of reasonable competence could disagree as to whether the plaintiff’s rights were violated, the officer’s qualified immunity remains intact.” *Id.*

ii. A Fact Issue Remains that Prevents a Finding of Objective Reasonableness.

In cases where disputed issues of material fact are inextricably related to a qualified immunity defense, a denial of summary judgment may be appropriate. *See Snyder v Trepagnier*, 142 F.3d 791, 799–800 (5th Cir. 1999) (allowing that a jury may properly decide the question of immunity), *Lytle v. Bexar Cty.*, 543 F. Supp. 2d 656, 660 (W.D. Tex. 2008) (denying a motion to dismiss on qualified immunity grounds when the qualified immunity determination “hinge[d] on the resolution” of a factual dispute). *See also Maestas v. Lujan*, 351 F.3d 1001, 1007 (10th Cir. 2003) (“[H]istorical facts may be so intertwined with the law that a jury question is appropriate as to whether a reasonable person in the defendant’s position would have known that his conduct violated that right.”). In *Snyder*, after a police officer shot a fleeing suspect, the parties disputed whether the suspect had a gun at the time of the shooting. *Id.* at 794. The Fifth Circuit affirmed the trial court’s decision to submit the issue of qualified immunity to the jury, holding that the jury “must determine the objective legal reasonableness of [the] officer’s conduct by construing the facts in dispute.” *Id.* at 799–800 (citing *Melear v. Spears*, 862 F.2d 1177, 1184 (5th Cir. 1989)).

In this case, Officer Trujillo claims that Rodriguez reached toward his SUV’s console and presented what the Defendant described as a dull, gray object. This event happened at night (just after 2 A.M.) and clearly visibility was limited due to that factor. Further, whether intentionally or not, Rodriguez clearly gunned the motor while leaning toward the console and put his vehicle

into drive. The Plaintiffs, on the other hand, allege that Rodriguez never reached into the console area and never grabbed a screwdriver or an object of any kind. Instead, they claim that Rodriguez only reached toward the center of the vehicle to manipulate the vehicle's gear selector in an attempt to flee. According to the Plaintiffs, he first tried to shift the selector to drive, mistakenly put it in neutral, tried again, and finally put the car in drive.

The dash-cam video does not resolve this factual dispute. A jury could view the video and reasonably arrive at either conclusion. The video is grainy, its lighting is somewhat hazy, and it does not clearly depict what actually occurred inside the vehicle. The video depicts the back of Rodriguez's SUV, as seen from behind, and clearly shows Officer Trujillo. It does not, however, provide a clear view through the rear window of the SUV nor does it depict what was seen from Officer Trujillo's vantage point. Especially problematic is the glare; the bright headlights on the police cruiser wash out the SUV's dark inside, making its interior imperceptible. A viewer is able to see the back of the vehicle and Officer Trujillo standing beside it, but one is unable to see Rodriguez inside the vehicle and cannot make out what he is doing. It is impossible for this Court to determine from the video or from the summary judgment evidence when reviewed in its entirety what actions Rodriguez takes just before he is shot so as to resolve the factual dispute at this summary judgment stage. Thus, the Court holds that a reasonable juror could conclude that either the Plaintiffs' or the Defendant's account of the events is accurate. Accordingly, a genuine issue of material fact exists.

Officer Trujillo's claim of qualified immunity turns on the answer to this factual question. The objective reasonableness of his actions cannot be determined without first determining to what he was reacting. Only a jury is capable of resolving that fact issue, and the Court cannot rule as a matter of law on the legal question of objective reasonableness before a

factfinder has done so. The Court is therefore unable to complete its qualified immunity analysis. For this reason, a denial of summary judgment is appropriate.

iii. If Plaintiffs' Allegations Are True, They Have Established a Constitutional Violation.

Still, it is the Court's duty to decide whether Plaintiffs' claim, *if true*, sufficiently alleges a constitutional violation, and if so, whether the claim alleges a violation of clearly established law. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001). An answer to the first question is straightforward: Officer Trujillo's use of deadly force certainly implicated Rodriguez's Fourth Amendment right to be free from unreasonable seizure.

The second question must be answered by assessing the relevant case law at the time, to determine whether it would be "clear to a reasonable officer" that his conduct would be unlawful in the situation he confronted. *Saucier*, 533 U.S. at 202. It has long been clearly established that, absent another justification for the use of force, it is unreasonable for a police officer to use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officers or others. *See Lytle v. Bexar Cty.*, 560 F.3d 404, 417 (5th Cir. 2009) (citing *Tennessee v. Garner*, 471 U.S. 1, 11–12 (1985)). This extends to the specific context of shooting at a suspect fleeing in a motor vehicle. *See id.* (citing *Kirby v. Duva*, 530 F.3d 474, 484 (6th Cir. 2008) and *Vaughan v. Cox*, 343 F.3d 1323, 1332–33 (11th Cir. 2003)).¹ Here, the right was clearly established on the date of the incident. Therefore, if a jury were to resolve the factual dispute discussed above in the Plaintiffs' favor, they could conclude that Rodriguez, despite his attempt to flee, did not pose a

¹ The case of *Luna v. Mullenix*, 136 S.Ct. 305 (2015), decided after *Lytle*, is distinguishable. In that case the suspect, fleeing at speeds in excess of 100 MPH, had called into police dispatch twice claiming to have a gun and threatening to shoot police officers. Here, under the Plaintiffs' version of facts, Officer Trujillo had no such reason to believe a weapon was present. While it would not be unreasonable to conclude that Rodriguez's attempt to flee in this case caused Officer Trujillo to fear for his own safety, the Court cannot reach that conclusion as a matter of law based upon the record before it.

threat of harm to Officer Trujillo such that the use of deadly force was reasonable. Accordingly, the Court must deny the Defendant's motion for summary judgment on these grounds.

As stated above, the Court is cognizant of the fact that qualified immunity issues are most often decided early in the adjudication process because qualified immunity is a shield "not only from liability but also from 'the costs of trial [and] . . . the burdens of broad-reaching discovery.'" *Lion Boulos v. Wilson*, 834 F.2d 504, 507 (5th Cir. 1987) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 816, (1982)). Although the factual issue in this case prevents an early resolution here, this Court's denial of Officer Trujillo's immunity defense does not entirely prevent him from reaping its benefits. Qualified immunity is also a defense against liability and damages, and the Defendant may raise the defense with the jury at trial to avoid liability, or after the trial to avoid damages once the facts have been established. *See Ramirez v. Martinez*, 716 F.3d 369, 375 (5th Cir. 2013) ("The doctrine of qualified immunity protects public officials from liability for civil damages . . ."). *See also Snyder*, 142 F.3d at 799 ("[I]f the issue [of qualified immunity] is not decided until trial, the defense is not waived but goes to the jury . . ."). Although he has been denied qualified immunity at this stage, Officer Trujillo may still be able to assert it as a defense at trial.

B. Plaintiffs' Due Process Claim

In addition to bringing an excessive-force claim under the Fourth Amendment, Plaintiffs also allege a violation of the Decedent's due-process rights under the Fourteenth Amendment. Defendant asks that the Court dismiss the Plaintiffs' claim to the extent it is based on a violation of due process.

The Supreme Court has held that an excessive force claim is properly adjudicated using the Fourth Amendment's reasonableness requirement, and not as a violation of the Fourteenth

Amendment. *Graham*, 490 U.S. at 388 (“[An excessive-force claim is] properly analyzed under the Fourth Amendment’s ‘objective reasonableness’ standard, rather than under a substantive due process standard.”).

Plaintiffs concede this point. In their response to Defendant’s motion for summary judgment, they appear to abandon their due-process claim: “Plaintiffs concede that their claims under § 1983 derive from Mr. Rodriguez’s Fourth Amendment rights only.” [Doc. No. 25, at 47]. Accordingly, the Court grants the Defendant’s motion for summary judgment as to Plaintiffs’ Fourteenth Amendment due-process claim.

C. Deliberate Indifference

In his motion for summary judgment, Defendant also asks the Court to deny as a matter of law Plaintiffs’ claim because they cannot show that Officer Trujillo acted with “deliberate indifference.” While deliberate indifference is an essential element of a constitutional claim based on supervisory liability, the Plaintiffs have made no such claim here. *See Davidson v. City of Stafford, Tex.*, 848 F.3d 384, 397 (5th Cir. 2017) (citing *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454 (5th Cir. 1994) (en banc)). Plaintiffs have not brought suit against the Brownsville Police Department, the City of Brownsville, or another entity in a supervisory capacity; their claims are exclusively against Officer Trujillo as an individual. Deliberate indifference is not an element of this type of claim. *Id.* Accordingly, the Court denies the Defendant’s motion on these grounds.

D. Gross Negligence and Punitive Damages

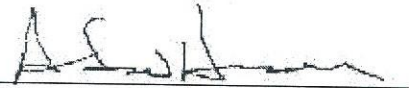
Additionally, the Defendant asks the Court to grant judgment on Plaintiffs’ claim for punitive damages. In their Second Amended Complaint, the Plaintiffs make the following request for damages: “As a result of Defendant’s gross negligence, Plaintiffs seek punitive damages.” [Doc. No. 22, at 16]. The Plaintiffs have not pleaded a cause of action for gross

negligence, or even negligence, nor do they discuss those issues outside of the request for punitive damages. Consequently, they have failed to sufficiently plead this issue. Therefore, the Court grants the Defendant's motion for summary judgment on the punitive damage claim.

IV. Conclusion

For the foregoing reasons, the Court grants the Defendant's motion in part and denies it in part.

Signed this 4th day of December, 2017.

A handwritten signature in black ink, appearing to read 'A. S. Hanen', is written over a horizontal line.

Andrew S. Hanen
United States District Judge