CASE NO. 22-1360

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

DILLARD A. PUTMAN,
Plaintiff - Appellee,

v.

CORPORAL QUENTIN HARRIS,
Defendant - Appellant,

and

SERGEANT TRAVIS HAYTON,
Defendant.

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

OPENING BRIEF OF APPELLANT

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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No. 22-1360 Caption: Dillard Putman v. Quentin Harris

Pursuant to FRAP 26.1 and Local Rule 26.1,

Quentin Harris
(name of party/amicus)

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

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐YES ☑NO

2. Does party/amicus have any parent corporations? ☐YES ☑NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐YES ☑NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Julian F. Harf Date: 04/14/2022

Counsel for: Appellant Quentin Harris

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JURISDICTIONAL STATEMENT

Because this case arises under 42 U.S.C. § 1983, the district court had federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291. On March 28, 2022, the district court entered an opinion and order denying Appellant Corporal Quentin Harris' motion for summary judgment thereby denying Harris qualified immunity—a "final decision" for purposes of 28 U.S.C. § 1291. *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). Harris timely filed his notice of appeal.

STATEMENT OF THE ISSUES PRESENTED

1. Did the district court err by denying Harris qualified immunity?

STATEMENT OF THE CASE

I. Background and Procedural History.

This lawsuit stems from the seizure of Plaintiff Dillard A. "Andy" Putman by Defendants—Harris and Hayton—for a mental health evaluation on May 20, 2019. Earlier in the evening, Putman had sent his wife, Kandi Mullins-Putman, text messages threatening to commit suicide with a firearm. Ms. Mullins-Putman called 911 and reported the threat to local authorities. When deputies responded to the Putman residence, Putman was gone. Ms. Mullins-Putman did not know where he was, and she gave the deputies permission to search the property for him.

Putman owned firearms, and Ms. Mullins-Putman told dispatch that Putman had threatened to kill himself with a firearm he said he had on his person.

After other deputies cleared the home and could not locate Putman, Harris and Hayton searched for Putman in the wooded area of the property. Harris, a canine officer, was accompanied by canine Criss. Criss used Putman's scent to search for him. When the deputies came upon Putman, he was lying in a large ditch near an uprooted tree. During the ensuing discussion, Putman lied about sending the subject text messages, argued with the deputies, and refused to comply with the deputies' commands. He yelled at the deputies to "get the fu*k off [his] property," smelled of alcohol, and rejected the deputies' repeated orders to put his hands behind his back and turn around. The deputies could not confirm whether Putman had a gun, but they knew he had told his wife he had a gun. After two minutes of a verbal back-and-forth, Harris released canine Criss, who first attempted to bite Putman but missed. When Putman continued to refuse commands and physically resisted to submit to the deputies, Harris re-engaged Criss. Criss successfully bit and held Putman this time. After a brief struggle, Hayton handcuffed Putman and Harris instructed Criss to release the bite.

Putman brought three counts in his Complaint arising from this incident. In Count I, Putman claimed Harris and Hayton executed a false arrest in violation of the Fourth Amendment. In Counts II and III, Putman claimed Harris' use of

canine Criss constituted excessive force in violation of the Fourth Amendment and state law.

Both parties moved for summary judgment. On March 28, 2022, the district court denied Putman's motion for summary judgment and granted the Defendants' motion in part. The district court held that Harris and Hayton had probable cause to seize Putman for a mental health evaluation as a matter of law and thus granted summary judgment on Count I. The ruling removed Hayton from the case. (JA 319.)

With respect to the excessive force claim against Harris, the district court denied summary judgment, thereby denying qualified immunity. The court first performed a *Graham v. Connor* analysis, finding that all three factors favored Putman. (JA 319-323.) The district court found the "severity of the crime" factor favored Putman because he was not suspected of a crime and only threatened to harm himself. (JA 320-21.) With respect to the second and third factors, whether Putman posed an immediate threat to the safety of the deputies or himself and whether Putman was actively resisting arrest, the district court found that Putman merely refused to cooperate and did not make any threatening movements or statements towards the officers. (JA 321-22.) Accordingly, the district court found Putman's actions, "while cause for some concern, [did] not import much danger or urgency into a situation that was, in effect, a static impasse." (JA 323.) The court

ultimately found that Putman provided sufficient evidence that Harris used excessive force. (*Id.*)

Turning to qualified immunity, the district court surveyed Fourth Circuit case law and held:

> Although there is no Fourth Circuit case that is on all fours with the facts presented here, its prior decisions nonetheless would give fair warning that ordering a police dog to bite a person who, while using profane language, was not attempting to flee or physically resisting seizure, and who had not complied with commands after only two minutes was objectively unreasonable.

(JA 327.)

Harris filed this appeal and now argues that the district court erred because it failed to account for the totality of the circumstances—including the deputies' belief that Putman was armed—and incorrectly found Harris' actions were objectively unreasonable in light of the clearly established law.

II. Statement of Facts.

a. Ms. Mullins-Putman comes home from work and determines Mr. Putman is missing.

On May 20, 2019, Ms. Mullins-Putman left work at 5:00 PM. (JA 59.) She arrived at her home at 184 Adventure Road, in North Tazewell, Virginia, shortly before 6:00 PM. (JA 55-56, 59.) Ms. Mullins-Putman lived with her husband, Andy Putman. (JA 56.) Putman was typically home by 6:00 PM. (JA 60.) That evening, however, Putman was not in the house. (JA 59.) His vehicles were on

the property. (JA 62.) Ms. Mullins-Putman called Putman's cell phone but he did not answer. (*Id.*) Ms. Mullins-Putman "walked up behind the house, through the hills, calling out his name." (*Id.*) She also yelled she would call the police if Putman did not answer. (JA 59-60.) Putman never answered, so Ms. Mullins-Putman called 911. (*Id.*)

Within the hour between the time Ms. Mullins-Putman left work and the time she arrived home, Putman had sent her disturbing text messages. (JA 60-63, JA 78.) In the text messages, Putman stated, *inter alia*:

- "I'm sorry for hurting you but I can't do this anymore I've hurt you to [sic] much[.] Don't blame yourself for what I'm getting ready to [do]."
- "I'm going to end this"
- "You are sooo fu*king stupid I'm setting [sic] here with a gun in my mouth and you are clueless"
- "Fu*k you you don't give a fu*k[.] Don't come to the house I'd rather someone else find me because you would only be to . . ."
- "Goodbye Kandi I love you."

(JA 201-06.)

Putman owned multiple guns at the time, which he kept in a gun safe in the house. (JA 66.) Ms. Mullins-Putman searched the room where the gun safe was located. (JA 66-67.) She could not verify whether any of Putman's guns were missing. (JA 67.) She decided to call 911 because of Putman's text messages; she was concerned Putman would commit suicide. (*Id; see also* JA 64.) Ms. Mullins-

Putman reported to the 911 dispatcher that her husband said he had a gun in his mouth and was going to "end it all." (JA 25 at 0:30-56.)

b. Deputies Bowles and Baldridge arrive at the Putman property.

Tazewell County Sheriff's Deputies Robert Baldridge and Stephen Bowles responded to the 911 call. (JA 210-11; JA 215.) They arrived at the Putman residence at approximately 6:00 PM. (JA 225.) Upon their arrival, Mullins-Putman expressed concern about her husband and showed them the disturbing text messages. (JA 196; JA 216-217, JA 219; JA 211-12.) She told the deputies that she and Putman were having marital problems and discussed the "clubhouse cocktails" that he drank regularly at the time. (JA 190, JA 198, JA 199-200.) She requested that they help find Putman, and gave them permission to search the property. (JA 197.) Deputies Baldridge and Bowles searched the home, but they could not locate Putman. (JA 216-17; JA 212-213.) The Putman property was large and contained a wooded area. (JA 217.) Baldridge and Bowles believed Putman may have walked into the woods. (*Id.*)

After speaking with Ms. Mullins-Putman and clearing the home, Deputy Baldridge contacted Sergeant Hayton and "filled him in on what [he and Bowles] had so far." (JA 211-212.) Sergeant Hayton then called Corporal Harris and advised that Putman had threatened suicide, was not in his home, and the deputies on scene believed Putman had walked into the woods. (JA 229-230.) Hayton

requested Harris' assistance to help track down Putman in the woods. (*Id.*; JA 238-39.)

c. Hayton and Harris arrive on scene and search for Putman.

When Hayton arrived at the Putman property, Deputies Baldridge and Bowles gave Hayton "all the information that [they] had received" from Ms. Mullins-Putman. (JA 218.) Hayton understood that Putman had threatened to shoot himself in text messages to Mullins-Putman. (JA 239.) Hayton also learned that Putman owned firearms, and that the deputies had located a rifle in Putman's attic. (JA 242-43.) Corporal Harris arrived on scene, and spoke to Bowles about the text messages. (JA 231.) Hayton then told Harris that Putman "was believed to have a gun on his person" and that Putman said "he had had the gun in his mouth." (*Id.*)

After their discussion, Hayton and Harris began to track for Putman with canine Criss. (*Id.*) It was daylight. (*See generally*, JA 24.) After approximately four minutes, the deputies located Putman, who was lying in a ditch near an uprooted tree. (JA 24 at 4:04-4:30.) Hayton approached with his rifle drawn. (*Id.* at 4:10-4:20.) The area smelled like alcohol, and there were cans of an alcoholic beverage near Putman. (JA 244.) Hayton immediately ordered Putman to put his hands up. (JA 24 at 4:14-4:15.) Putman refused. (*See, e.g.*, *id.* at 4:20-4:52.) Hayton and Harris repeatedly ordered Putman to "get up." (*Id.* at 4:18-4:32.)

Putman initially refused, instead responding "I live here, why are you on my property?" (*Id.*) Putman stood up after about 14 seconds, after Harris said "get up or the dog is going to bite you." (*Id.* at 4:30-4:34.)

When Putman stood up, he was facing Hayton and Harris. (*Id.* at 4:34.) The deputies loudly ordered Putman to "face away" and "turn around" several times. (*Id.* at 4:34-5:15.) Putman rejected those commands. (*Id.* at 4:34-4:39.) Putman instead yelled "face away for fu*king what! . . . Fu*k you I'm on my property, you're on my property, get that fu*king dog off of my property." (*Id.* at 4:34-4:43.) Harris warned Putman the dog would bite him if Putman did not listen to the deputies. (*Id.* at 4:43-4:44.) Putman responded that if the dog came near him he would sue Hayton and Harris, and told the deputies to "get the fu*k off [his] property." (*Id.* at 4:44-4:52.) During this time, Hayton transitioned from his rifle to his taser, pointing it at Putman. (*Id.* at 4:44-4:49.) Putman then asked Hayton and Harris why they were on his property and demanded they "show [him] the warrant." (*Id.* at 4:52-4:55.)

Harris informed Putman "we don't need [a warrant]," to which Putman replied "the fu*k you don't!" while angrily pointing at Harris. (*Id.* at 4:55-5:01.) Putman repeated, "if that fu*king dog bites me I'm suing you and Tazewell County." (*Id.* at 5:03-5:07.) Harris again warned Putman the dog would bite him (implying the dog would bite Putman if he did not follow the deputies' commands)

and both Harris and Hayton repeated their commands for Putman to turn around. (*Id.* at 5:06-5:09.) Putman again refused, and asked "why, for what? What have I done wrong?" (*Id.* at 5:09-5:17.) Hayton responded by asking Putman whether Putman had said he was going to kill himself. (*Id.* at 5:19-5:21.) Putman replied "no," which the deputies knew was false due to their knowledge of the text messages Putman sent to his wife. (*Id.* at 5:21-5:22; *see* JA 201-06.)

At this point Putman lifted up his t-shirt from the front, and said "where's the gun? Where's the gun? Show me the fu*king gun." (JA 24 at 5:22-5:27.) When Putman lifted up his shirt he did not turn around, so the deputies could not determine whether Putman had a gun in his back waistband. (*Id.* at 5:24-5:30; JA 234; JA 240-41.) Accordingly, Hayton ordered Putman to turn around, but Putman blatantly refused, yelling "no I'm not turning around!" and again demanding that the deputies "show [him] the god damn warrant that [the deputies] got to be on [his] fu*king property. (JA 24 at 5:30-5:37.) Again, Hayton explained that the deputies did not need a warrant, and that Ms. Mullins-Putman gave them permission to be on the property. (*Id.* at 5:37-5:45.) Putman responded it was his property and the deputies should "get the fu*k off of it." (*Id.* at 5:45-5:48.) The deputies, yet another time, ordered Putman to turn around and put his hands behind his back. (*Id.* at 5:48-5:51.) Putman replied, "I'm not. I'm not doing it." (*Id.* at 5:52-5:55.)

Harris began to say "listen this is the options you got . . ." but was interrupted by Putman, who yelled (while angrily pointing at Harris) "no here's the options YOU'VE got!" (*Id.* at 5:55-6:01.) Harris asked "do you want to get dog bit?" to which Putman stated (again while angrily pointing at Harris) that if Harris let the "fu*cking dog bite" him he would sue Tazewell County. (*Id.* at 6:01-6:05.)

d. The use of force incident.

For two minutes, Putman—who deputies believed to be armed—had defied lawful directives from those officers. Concerned about the risk Putman posed to himself and the deputies, Harris gave canine Criss the command to bite Putman. (*Id.* at 6:06-6:07.) Criss initially jumped at Putman and Putman fell over. (*Id.* at 6:07-6:09.) Criss attempted to bite Putman but bit Putman's clothing and did not get hold of his arm. (*Id.*; JA 227.) Harris followed Criss, and pushed Putman to the ground, while commanding "get on the ground!" (JA 24 at 6:07-6:08.) Hayton followed behind Harris, and Harris went off to the side to control Criss, who had released Putman's clothing and was standing off to the side. (*Id.* at 6:09-6:15; JA 227.) While on the ground, Putman was briefly on his right side, partially facing the deputies, until Hayton grabbed Putman's shirt and maneuvered Putman to face the ground. (JA 24 at 6:12-6:16.) Hayton again ordered Putman to put his hands behind his back. (*Id.* at 6:15-6:16.) Putman did not put his hands behind his back, but rather kept them under him, repeated variations of "you're funny, punk," and

started to try and stand up. (*Id.* at 6:13-6:18; JA 226.) Hayton then tased Putman using the drive-stun method. (JA 24 at 6:16-6:18.) Canine Criss re-engaged Putman at this time, successfully biting his upper-right arm. (*Id.* at 6:18-6:21.) Upon Criss' bite, Putman said "you got me, you got me." (*Id.* at 6:22.) Putman was on his back, face-up at the time. (*Id.*)

By the 6:40 mark in the video (approximately 18 seconds later), Hayton had rolled Putman to his stomach and handcuffed him. (*Id.* at 6:22-6:40.) While Hayton was trying to handcuff Putman, Harris assisted by placing a hand on Putman's back to secure him. (*Id.* at 6:37-6:39.) Harris' leg was under Putman's chest at this time. (*Id.*) Once Hayton got Putman handcuffed, he told Harris to get the dog off of Putman. (*Id.* at 6:40-6:42.) Immediately upon removing his leg out from under Putman, Harris went to Criss and began issuing commands—"paust"—for Criss to release his bite. (*Id.* at 6:41-6:48; JA 236.) Criss released his bite shortly thereafter. (*See* JA 24 at 6:49-7:35.)

e. Events following the incident.

Harris and Hayton took Putman into custody via a paperless ECO.[1] Putman conversed with Harris and Hayton as they escorted him out of the woods. Putman

[1] Pursuant to Virginia Code § 37.2-808(A) and (G), an officer can take custody of a mentally ill individual if he has probable cause, "based upon his observation or the reliable reports of others," to believe that the individual will cause serious physical harm to himself or others "as evidenced by recent behavior causing, attempting, or

said he "wasn't doing nothin'." (JA 24 at 7:14-7:16.) Harris said "when we tell you to do something you gotta do it." (*Id.* at 7:17-7:20.) The deputies informed Putman he was disobeying commands by refusing to turn around and refusing to put his hands behind his back. (*Id.* at 7:20-7:30.) Harris further explained to Putman that he kept putting his hands down around his side, and Harris did not know whether Putman had a gun or not. (*Id.* at 7:51-8:11.) Hayton told Putman, again, that Putman's wife said Putman was suicidal and had a gun. (*Id.* at 8:51-8:59.) Hayton explained the deputies needed to "take precautions" and had to use the canine because Hayton would not listen; Sergeant Hayton was merely "going to put cuffs on [Putman] but [Putman] wouldn't turn around." (*Id.* at 9:05-9:16.)

EMS responded to the scene and transported Putman to Tazewell Hospital for treatment. (JA 225.) While at Tazewell Hospital, Putman had bloodwork done at approximately 8:20 PM. (*See* JA 256-258.) He had a blood alcohol content of 0.171, more than twice the legal limit. (JA 258.) Putman subsequently underwent surgery at Roanoke Memorial Hospital. (JA 165-67.)

SUMMARY OF THE ARGUMENT

In performing its *Graham* analysis, the district court failed to account for the totality of the circumstances, which justified Harris' use of canine Criss.

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threatening harm and other relevant information, if any," is in need of treatment, and is unwilling to volunteer for treatment.

Moreover, the district court erred by denying qualified immunity, because, in light of the clearly established law, no reasonable officer in Harris' position would have known he violated Putman's Fourth Amendment rights.

ARGUMENTS AND AUTHORITIES

I. Standard of Review.

This Court reviews an order denying summary judgment on the basis of qualified immunity *de novo*, "using [its] full knowledge of relevant precedent and limiting [its] review to the district court's legal conclusions." *Parrish v. Cleveland*, 372 F.3d 294, 301 (4th Cir. 2004). In so doing, this Court must "consider the facts in the light most favorable to the nonmoving party and draw all justifiable inferences in that party's favor." *Mitchell v. Rice*, 954 F.2d 187, 190 (4th Cir. 1992).

II. The district court erred by denying Harris qualified immunity.

The district court erred by denying Harris qualified immunity because he did not violate any of Putman's clearly established Fourth Amendment rights. Qualified immunity bars claims against government officials performing discretionary functions whose conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *S.P. v. City of Takoma Park*, 134 F.3d 260, 265 (4th Cir. 1998) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Public employees performing discretionary

functions are entitled to qualified immunity if their actions are objectively reasonable. *E.g.*, *Anderson v. Creighton*, 483 U.S. 635, 639 (1987). "Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992). Thus the protection of qualified immunity "extends to 'all but the plainly incompetent or those who knowingly violate the law.'" *Raub v. Campbell*, 785 F.3d 876, 881 (4th Cir. 2015).

To determine qualified immunity, the Court decides whether the facts, in a light most favorable to the plaintiff, show a constitutional violation. If they do, then the Court determines whether the right was clearly established at the time. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). A right must be clearly established at "a high level of particularity." *Edwards v. City of Goldsboro*, 178 F.3d 231, 250-51 (4th Cir. 1999). "[T]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

The Fourth Amendment's prohibition on unreasonable seizures bars law enforcement officers from using excessive force while seizing a citizen. *Jones v. Buchanan*, 325 F.3d 520, 527 (4th Cir. 2003). Courts evaluate excessive force claims under an objective reasonableness standard. *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011). The reasonableness inquiry "requires careful attention to

the facts and circumstances of each particular case." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

In *Graham v. Connor*, the United States Supreme Court provided a list of factors for courts to consider in evaluating whether force was reasonable: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396. These factors are not exclusive; courts should also account for other objective circumstances relevant to the use of force. *E.W. v. Dolgos*, 884 F.3d 172, 179 (4th Cir. 2018). Indeed, in cases where the suspect has not committed a crime but has a medical emergency, the *Graham* factors may hold little value because there could be a serious, immediate threat to the suspect or officers without a crime or criminal arrest. *Estate of Hill v. Miracle*, 853 F.3d 306, 314 (6th Cir. 2017). "The ultimate question is whether the totality of the circumstances justified a particular sort of seizure." *Id.* (internal quotations and citations omitted). The analysis "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *County of Los Angeles v. Mendez*, 137 S.Ct. 1539, 1546 (2017). The calculus of reasonableness "must embody allowance for the fact that police officers are often forced to make split-second judgments – in

circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396-97.

a. The district court did not account for the totality of the circumstances.

The court evaluated the threat level posed by Putman without due regard to the totality of the circumstances of this particular case. The court discounted the undisputed evidence from the call for service—*i.e.*, Putman's threats to his wife that he had a gun and was going to shoot himself—as well as his demeanor and movements on scene. From a reasonable officer's perspective, Putman posed an immediate, dangerous threat to himself and the deputies as soon as the deputies came upon him. At that time, the deputies had reliable information that Putman was suicidal, lying in a ditch in the woods, and armed with gun. At the scene, Putman did nothing to diminish the threat presented; rather, his behavior escalated it.

In addition to the text messages, the deputies came upon Putman lying in a grave-like ditch in broad daylight. A reasonable officer would believe this behavior was strange and supported that Putman was unstable. When the deputies spoke with Putman, he was noncompliant. He disobeyed their repeated commands to turn around and put his hands behind his back. This made it so the deputies could not verify Putman's text message that he had a gun. Putman deliberately refused to turn all the way around and show his entire waistband or submit to

handcuffs. Further, when asked whether he said he was going to kill himself, Putman said no. With reliable information that Putman did say he was going to kill himself, a reasonable officer would believe Putman was not trustworthy.

Additionally, Putman was angry throughout the encounter, swearing at the deputies and making angry hand gestures. The deputies also smelled alcohol where Putman was standing. Moreover, at the time Criss successfully bit Putman, Putman was physically resisting and refusing to submit, instead attempting to stand up while in close proximity to Hayton's Taser and rifle. (*See* JA 141) ("During that time was when I was afraid that [Putman] was going to grab either the Taser or maybe even the rifle that was around Hayton's chest.")

The district court minimized the need for force, finding that Putman "was not attempting to flee or physically resist[]" when Harris released the dog, but rather stood "with his hands outstretched, repeating his demands to see a warrant, as he had done for the past minute." (JA 322.) The court continued: "Putman's refus[al] to comply with shouted orders' to turn around, 'while cause for some concern, do not import much danger or urgency into a situation that was, in effect, a static impasse.'" (JA 322-23.) (citing *Armstrong*, 810 F.3d at 901-02). But the inquiry is not that simple. The district court's watered-down analysis failed to account for factors that are critical to the reasonableness question.

Putman's refusal to comply with the deputies' commands meant they could not verify whether he had the gun he said he had. He faced the deputies and refused commands to turn around. Contrary to the deputies' orders for Putman to put his hands up and then behind his back, Putman kept his hands near his waistband for much of the encounter, where a firearm could have been, and fidgeted with his shirt and jacket. He defiantly told the deputies he was not going to comply. He was irate and presented with clear signs of instability. Harris was informed about the text messages and that Putman "was believed to have a gun on his person" and "had actually said that he had had the gun in his mouth." (JA 231.) Further, Putman continued to physically resist after the deputies made initial contact, while in close proximity to Hayton's rifle and Taser. With this information, a reasonable officer would believe that Putman might use the gun he said he had if Harris attempted to seize Putman without immediately immobilizing him, or reach for Hayton's Taser or rifle. A reasonable officer would believe the canine was justified to prevent the risk that Putman would cause serious injury or death to himself or the deputies. Harris' decision to release Criss was reasonable based on the volatile threat posed by Putman and his continued resistance to the deputies' commands.

b. No reasonable officer in Harris' position would know he violated Putman's Fourth Amendment rights in light of the clearly established law.

On one end of the spectrum, this Court has established that generally, canine officers must give a verbal warning before releasing a police dog. *Vathekan v. Prince George's County*, 154 F.3d 173, 179 (4th Cir. 1998). Further, the use of a police dog is not justified if the subject is known to be unarmed and secured. *Meyers v. Balt. County*, 713 F.3d 723, 734-35 (4th Cir. 2013). The Fourth Circuit has also found that officers "who encounter an unarmed and minimally threatening" person with mental illness may not execute a seizure by using a degree of force that "risks substantial harm to the subject." *Estate of Armstrong v. Village of Pinehurst*, 810 F.3d 892, 896-97, 900 (4th Cir. 2016).

Conversely, the use of significant force is reasonable during execution of a mental health seizure if the subject is actively threatening officers with a deadly weapon. *See Estate of Williams v. Clemens*, 1997 U.S. App. LEXIS 30503 (4th Cir. 1997) (finding that the fatal shooting of an armed, mentally ill individual after a standoff involving sporadic gunfire was reasonable). This Court has not, however, delineated the contours of reasonableness in a context similar to this case, which falls somewhere in the middle of *Armstrong* and *Clemens* – where law enforcement used a police canine to assist in the mental health seizure of a noncompliant individual who was believed to be suicidal, armed with a deadly

weapon, and potentially intoxicated.[2] There is existing case law that is instructive, however.

From the case law in sister circuits, *Zuress v. City of Newark* appears to be the most comparable to this case with respect to the information known to police and level of resistance by the suspect. In *Zuress*, police surveilled a known drug house looking for plaintiff's boyfriend, Grooms, who had an outstanding arrest warrant and was a person of interest in an armed robbery. 815 F. App'x 1, 2-3 (6th Cir. 2020). The canine officer, Burris, received a tip that Grooms had arrived at the house, so Officer Burris and another officer, Officer Hunt, drove to it. *Id.* at 3. The officers saw Grooms' Jeep leave the residence, and the officers pulled it over. *Id.* Once the Jeep stopped, Grooms fled. *Id.* Shortly thereafter, the remaining person in the Jeep drove away. *Id.* Another officer, Purtee, intercepted the Jeep in his cruiser. *Id.* Officers Burris and Hunt caught up, and pulled up behind Purtee. *Id.* Officer Purtee exited his vehicle and assumed a shooting stance. *Id.* Officer Purtee commanded the driver, plaintiff Zuress, to exit the vehicle. *Id.* After three

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[2] The district court incorrectly stated in its opinion that Harris argued this case fell somewhere in the middle of *Meyers v. Baltimore Cnty.*, 713 F.3d 723 (4th Cir. 2013) and *Armstrong ex rel. Lopez v. Village of Pinehurst*, 810 F.3d 892 (4th Cir. 2016). Harris argues this case falls somewhere in the middle of *Armstrong* and *Estate of Williams v. Clemens*.

commands to exit, Zuress complied, but when she exited she was facing the officers. *Id.* Purtee ordered Zuress to turn around, but Zuress refused. *Id.* Purtee told Zuress to "turn away" five times before she initially complied, but she then turned back around to again face the officers. *Id.* Further, she disobeyed Officer Purtee's command to walk backwards towards him. *Id.* Instead, Zuress argued with Purtee, waved her hands around, and reached down towards her waistband, adjusting her shirt or pants. *Id.* Officer Purtee warned Zuress he would deploy the dog if she did not comply. *Id.* One or two seconds after Purtee gave that warning, Officer Burris released his canine partner, Ike. At the same time, Officer Burris approached Zuress. *Id.* At about the time Burris made physical contact with Zuress, canine Ike bit Zuress' arm and held his bite. *Id.* Officer Burris, Zuress, and Ike all fell to the ground, at which point other officers advanced. *Id.* Once the Jeep was confirmed to be clear of other occupants, another officer took Burris' place on top of Zuress to secure her while Burris moved to get Ike to release his bite. *Id.* Officer Burris struggled with Ike for 24 seconds before Ike released his bite. *Id.*

On these facts, Zuress claimed Officer Burris used excessive force in violation of the Fourth Amendment when he deployed the police dog and allowed the dog to continue to bite her after she had been subdued. *Id.* at 4. The Sixth Circuit Court of Appeals, guided by the *Graham* factors, held Officer Burris'

actions did not violate Zuress' Fourth Amendment rights. *Id.* at 7. With respect to whether Zuress presented a threat to the officers, the panel noted the suspicious circumstances in which the officers encountered Zuress (traveling from a known drug house with a companion who fled, had an outstanding warrant, and was a person of interest in an armed robbery), Zuress was an "unknown quantity" and failed to follow commands, the officers did not know if she or others in the vehicle were armed, and, "perhaps most importantly," Zuress "was not complying with the officers' commands; she was arguing, waving her hands around, turning to face the officers, and even reached for her waistband where a weapon could have been." *Id.* at 5. With respect to whether Zuress was resisting, the panel found Zuress' "repeated non-compliance—coupled with her arguing with the officers—put her conduct just over the line into the active-resistance category." *Id.* at 6. Only the severity-of-the-crime factor weighed in Zuress' favor (at most Zuress committed minor misdemeanors by driving away from the officers). *Id.* The court found, however, that the paramount inquiry was whether the "totality of the circumstances" justified the degree of force used. *Id.* The court ultimately held that the totality of the circumstances justified Officer Burris' use of the canine. *Id.* at 7.

Many of the circumstances in *Zuress* parallel those in the instant case. The deputies encountered Putman in strange circumstances – lying in a ditch in broad

daylight, in the woods, smelling of alcohol, after having told his wife he intended to kill himself. Putman was an "unknown quantity," believed to be suicidal. *Id.* at 5. The deputies had been informed he was armed and had no reason to believe otherwise. *See id.* And Putman did not comply with the deputies' commands. *See id.*; *See Armstrong*, 810 F.3d at 901 ("Noncompliance with lawful orders justifies some use of force . . . the level of justified force varies based on the risks posed by the resistance.") He argued, angrily pointed at the deputies and made other gestures with his arms, faced the deputies while refusing to turn around, and his hands were near his waistband for much of the encounter (and he adjusted his shirt and jacket at separate times), where a firearm could have been. *See Zuress*, 815 F. App'x at 5.

To be sure, there is one primary difference between *Zuress* and this case. In *Zuress*, the officers encountered the plaintiff during a criminal investigation; here, the deputies responded to a call that Putman was suicidal. In both cases, however, the *Graham* severity-of-the-crime factor weighs in the plaintiff's favor. But that factor is not dispositive, and does not hold the same significance in the mental health context. Indeed, this factor "is intended as a proxy" for determining whether the officer had reason to believe the subject of the seizure 'was a potentially dangerous individual.'" *Armstrong*, 810 F.3d at 900 (quoting *Smith v. Ray*, 781 F.3d 95, 102 (4th Cir. 2015)). Here, Corporal Harris had reliable

information that Putman was dangerous. It would be irresponsible and unsafe for Harris to discount the safety threat presented by Putman simply because he was believed to be suicidal as opposed to a criminal. Harris and Hayton were there based on a threat to Putman's life.

DuVall v. City of Santa Monica is also instructive. In *DuVall*, officers responded to a call from the relative of a man who had called his mother to tell her he was armed, suicidal, and "felt like going out and killing everybody." 1994 U.S. App. LEXIS 35921, at *3 (9th Cir. Dec. 7, 1994). After verifying the call with DuVall's mother, officers went to DuVall's trailer and called him from a car phone. *Id.* DuVall maintained he had only a pellet gun but refused to leave the trailer. *Id.* at *3-4. He then turned off his lights and announced he was going to bed. *Id.* Unable to verify whether DuVall had the gun he told his mom he had, the officers sent a police canine into DuVall's trailer to apprehend DuVall. *Id.* at *6.

A Ninth Circuit panel found that the officer's use of the police canine was objectively reasonable and did not violate DuVall's constitutional rights. *Id.* at *6-7. The court focused on the fact that DuVall was believed to have a gun, refused commands to leave the trailer, and relatives "attested [him] to be suicidal and possibly homicidal." *Id.* at *9-10. Reviewing the *Graham* factors, the court held that DuVall was an immediate threat despite that the officers did not know if DuVall had true intentions to kill himself or others, or if he actually had a gun. *Id.*

at *10. The court also found that the "severity of the crime" factor weighed against DuVall because "the police had probable cause to think he was likely to kill himself and others" despite the fact that he had not committed a crime. *Id.* The court found the third factor, whether DuVall actively resisted arrest, was unclear because whether DuVall would have cooperated "had he been ordered out [of the trailer] and warned of the dog's presence" was subject to speculation. Nevertheless, "[g]iven the weight of the other two factors, and the reasonableness of the officers' decision to employ the dog in order to prevent serious injury or death to DuVall or themselves," the court found the force used was reasonable as a matter of law. *Id.* at *11.

Similar to DuVall, Putman presented an immediate threat because he refused to submit to the deputies, was believed to have a gun, and thought to be suicidal (and was also acting strangely, angry, belligerent, and showed signs of intoxication). Even though Putman was not suspected of a crime, the "severity of the crime" factor weighed against Putman because the deputies "had probable cause to think he was likely to kill himself." *Id.* at *10. Furthermore, Putman resisted the deputies' attempts to take him into custody. Like the Ninth Circuit panel in *Duvall*, this Court should find that Harris' use of canine Criss was objectively reasonable.

In *Jay v. Hendershott*, 579 F. App'x 948 (11th Cir. 2014), an officer saw plaintiff Monell stopped in his vehicle in the middle of a highway. 579 F. App'x at 949. The officer approached Monell and asked if he needed assistance. *Id.* Monell did not respond. *Id.* Shortly thereafter, Officer Hendershott responded to the scene. *Id.* Monell then started to drive away slowly. *Id.* Officers followed Monell while he drove below the speed limit towards his residence. *Id.* Monell did not drive erratically nor commit any violations other than failing to pull over upon the officers' directives. *Id.* As Monell approached his residence, he opened his garage door from inside his vehicle, and walked towards the garage. *Id.* While Monell "displayed no outward hostility or violent behavior towards any of the officers, Monell completely ignored the officers' presence and again failed to heed their warnings to stop." *Id.* As Monell walked towards his garage, Officer Hendershott ordered his canine to apprehend Monell. *Id.* Monell sustained serious injuries. *Id.*

On these facts, the Eleventh Circuit panel held that Hendershott was entitled to qualified immunity. The court found, "[w]hile the officers' initial pursuit of Monell was not precipitated by Monell's commission of a serious offense, the facts alleged in the complaint indicate that Monell was altogether uncooperative, and officers reasonably could have believed that Monell posed a significant threat to officer safety and to the safety of others." *Id.* at 953. The court accounted for

Monell's "lengthy period of noncompliance, his unwavering resolve to enter the garage, and his unusual behavior, officers had no way of knowing Monell's purpose in going into the garage, whether weapons awaited him, or whether Monell intended to enter the house and possibly take hostages." *Id.*

In the instant case, the deputies had more reason to believe Putman was dangerous than the officers in *Hendershott*. While both Putman and Monell were noncompliant and acted strangely, the officers in *Hendershott* had no information that Monell was armed or suicidal. Putman had told his wife he was both armed and suicidal. Further, unlike Monell, Putman displayed "outward hostility" towards the deputies. *Id.* at 949. He also smelled of alcohol.

It was reasonable for Harris to use the police dog in light of his belief that Putman was suicidal, thought to be armed with a gun, and potentially intoxicated, coupled with Putman's noncompliant and belligerent behavior at the scene. *See Mickle v. Ahmed*, 444 F. Supp. 2d 601, 611 (D.S.C. 2006) ("[T]he use of police dogs can (1) prevent officers from having to resort to deadly force and (2) protect the officers from being subjected to deadly force used against them by suspects attempting to avoid arrest."). Harris warned Putman multiple times that he would release Criss if Putman did not follow commands, and gave more warning than the officers in *Zuress*. *See Shockley v. Foster*, 2021 U.S. Dist. LEXIS 127382, at *18 (E.D. Va. July 7, 2021) ("use of a warning indicates the officers 'were trying to

avoid unnecessary harm'"). Putman had ample opportunity to avoid being bitten – he could have simply followed the deputies' verbal commands to turn around and put his hands behind his back. He repeatedly refused.

A review of the cases relied on by the district court shows obvious, material distinctions, precluding a finding that Harris violated clearly established law:

***Yates v. Terry*, 817 F.3d 877 (4th Cir. 2016)**

In *Yates*, during a routine traffic stop, Yates (the driver) was pulled over but did not have his driver's license. The officer, Terry, detained Yates for driving without license. Terry ordered Yates to step out of the vehicle and place his hands on the vehicle. Yates complied. With his hands on top of the vehicle, Yates merely turned his head, at which point Terry deployed his taser. Yates fell to the ground. While on the ground and having made no attempt to get up, Terry tased him again. Yates then told his brother, who was on scene, to call his commanding officer (Yates was in the military). When Yates reached for his cell phone clipped to his waist, Terry tased him a third time, despite Terry giving Yates permission to slide the phone to his brother. Terry never gave any warnings that Yates would be tased or that he could not move his body; in fact, Terry gave no commands whatsoever. Yates was unarmed and complied with all of the officer's commands, offering no resistance. Yates was "a nonviolent misdemeanant who [was]

compliant, [was] not actively resisting arrest, and pose[d] no threat to the safety of the officer." *Id.* at 888.

Yates is not comparable. Unlike in *Yates*, where Terry gave zero commands prior to deploying his taser, Harris gave numerous commands and canine warnings. He tried to resolve the situation verbally for two minutes prior to transitioning to the canine. In *Yates*, there was no report or other evidence that Yates was armed. Here, Putman told his wife he had a gun. In *Yates*, the suspect complied with all of the officer's commands. Here, Putman complied with virtually none of Harris' commands, and was visibly distraught throughout the encounter, screaming profanities and arguing. Yates did not resist arrest; Putman resisted throughout the encounter – first verbally and then physically. Yates was suspected of driving without a license; Putman made threats to kill himself. From a reasonable officer's perspective, Yates posed a minimal safety threat to Terry. Putman posed a grave safety threat to himself and the deputies.

***Smith v. Ray*, 781 F.3d 95, 102 (4th Cir. 2015)**

In *Smith v. Ray*, the plaintiff, Smith, was inside a residence when she responded to a knock from the defendant, Officer Ray. *Id.* at 98. Ray was searching for T., another person who was believed to be in the residence. *Id.* Ray asked Smith a series of questions on the front stoop. *Id.* Smith answered Ray's questions "clearly and cogently and g[ave] no indication that she was at all inclined

to cause him any harm or that she had any capacity to do so." *Id.* at 102. When Ray asked if an acquaintance of T.'s was in the home, she said yes and that she would get him. *Id.* at 98. As she opened the screen door, Ray slammed the door shut and grabbed her arm. *Id.* Smith pulled her arm back. *Id.* In response, Ray threw Smith to the ground, jumped on her, and twisted her right arm behind her back. *Id.* Ray ordered Smith to show her arms but Smith kept her left arm under her so she could breathe; she told Ray she needed her arm there due to the level of pressure he was placing on her back. *Id.* at 98-99. Ray subsequently punched her three times and, after placing handcuffs on Smith, yanked her to her feet by her ponytail so hard that it ripped chunks of hair from her scalp. *Id.* at 99.

This Court denied Ray qualified immunity, finding Smith was "fully compliant and responsive to Ray's instructions and questions." *Id.* at 102. She was "not intoxicated, or belligerent" and Ray "did not have any reason to believe that Smith was armed." *Id.* at 99, 102. Moreover, there was clearly no justification for ripping hair out of Smith's scalp after she was handcuffed. *Id.* at 103.

There are obvious, material distinctions between *Smith v. Ray* and this case. In fact, *Smith v. Ray* supports that the district court erred in denying qualified immunity to Harris. Putman was not "fully compliant" (or compliant at all), nor was he "responsive" to the deputies' commands. Unlike Smith, Putman was both

"intoxicated" and "belligerent." And Harris *did* have "reason to believe that [Putman] was armed." In contrast to Ray, Harris made efforts to remove the canine as soon as Putman was secured. Unlike Ray, Harris was confronted with a noncompliant, intoxicated, belligerent, and angry man, who was potentially armed with a gun he said he was going to use to kill himself. No reasonable officer would believe the use of the canine was unreasonable to secure Putman under these circumstances.

***Estate of Armstrong ex rel. Lopez v. Village of Pinehurst*, 810 F.3d 892 (4th Cir. 2016)**

The district court also relied on *Estate of Armstrong v. Village of Pinehurst*, 810 F.3d 892 (4th Cir. 2016) in denying Harris qualified immunity. But there are significant differences between this case and *Armstrong* such that *Armstrong* cannot be said to clearly establish Harris' conduct was unlawful.

Armstrong's only manner of resistance was wrapping his arms and legs around a four-by-four post. *Id.* at 896. He only failed to submit to the officers' seizure for thirty seconds—not two minutes—before officers tased him. He was not swearing at the officers, arguing with them, yelling at them, angrily pointing, or doing anything else to suggest his demeanor was equivalent to Putman's combativeness. Armstrong did not exhibit signs of intoxication. Most significantly, in *Armstrong* there was no evidence that the plaintiff was armed, had a gun, or threatened to kill himself.

This Court described *Armstrong* as a "static stalemate with few, if any exigencies," *id.* at 906, in which the suspect presented "no serious safety threat," *id.* at 904, and was a "danger only to himself." *Id.* at 910. Plainly, Harris had an objectively reasonable belief that Putman posed a deadly threat to himself *and the deputies*. The district court's finding that this case was comparable to *Armstrong*, characterizing Putman's actions as "stationary and non-violent resistance to being handcuffed," (JA 327), fails to appreciate material distinctions in the facts and circumstances present here. *See Graham*, 490 U.S. at 396 (the Fourth Amendment test "requires careful attention to the facts and circumstances of each particular case").

***Kopf v. Wing*, 942 F.2d 265 (4th Cir. 1991)**

In *Kopf v. Wing*, police received a report of an armed robbery by a man with a handgun. The police stopped a van, which contained three occupants: Corcoran, Obloy, and Casella. The occupants fled on foot. Corcoran was quickly apprehended. Obloy and Casalla hid in a narrow passageway between a shed and a fence in a residential neighborhood. Wing, a canine officer, responded to the scene with his canine, Iron. Iron located Casella and Obloy. Wing then released Iron without any warning. Iron bit both Obloy and Casella, but Obloy was soon removed from the area. Iron continued to bite Casella while multiple officers beat him with a blackjack, including blows to the head. Even after officers secured

Casella from the hiding place and into the adjoining yard, an officer issued more blows with his blackjack. Casella sustained a fractured skull, subdural hematoma, and scalp lacerations.

Casella brought an excessive force lawsuit against the officers.[3] In denying qualified immunity, the Court relied on several material facts not present here. For example, Casella submitted evidence that the canine officer gave no warning prior to releasing the canine and did not provide Casella any time to surrender. Additionally, there was testimony that Casella did not resist arrest while the officers issued strikes and head blows in addition to use of the canine. The fact that the officers hit Casella in the skull with such force, and with evidence that he was not resisting arrest, was a key fact for the court. Further, there was evidence the officers issued blows even after Casella was secured.

Kopf is distinguishable for many of the same reasons the other cases are distinguishable. Unlike in *Kopf*, it is undisputed that (1) Putman was noncompliant; (2) Harris gave ample warnings prior to releasing canine Criss; (3) Harris gave ample time for Putman to comply; (4) Harris ceased force when Putman was secured; and (5) Harris did not issue any head blows or other strikes.

[3] Kopf was the personal representative of the Casella's estate. Casella was killed in prison.

Like the other cases relied on by the district court, *Kopf* could not have informed Harris that his use of Criss was unreasonable in this case.

***Vathekan v. Prince George's Cnty.*, 154 F.3d 173 (4th Cir. 1998)**

In *Vathekan*, the canine officer, Smith, was searching for a robbery suspect. Smith released his canine to search a home, and commanded it to find and bite any occupants. The canine searched the home and found the owner, Vathekan. Vathekan, a night-shift nurse, was sleeping innocently in her bedroom. The canine proceeded to bite her skull and face.

Vathekan presented evidence that the officer gave no verbal warnings before releasing his dog. The Court held the officer was not entitled to qualified immunity because there was a "genuine issue of fact whether Simms made a warning before releasing his dog into Vathekan's home." *Id.* at 180.

Vathekan is not applicable to the qualified immunity inquiry here. Prior to releasing Criss, Corporal Harris gave Putman many clear warnings he was going to release the dog if Putman did not comply.

In denying qualified immunity, the Court ignored context:

> Although there is no Fourth Circuit case that is on all fours with the facts presented here, its prior decisions nonetheless would give fair warning that ordering a police dog to bite a person who, while using profane language, was not attempting to flee or physically resisting seizure, and who had not complied with commands after only two minutes was objectively unreasonable.

(JA 327.) Certainly *if there are no other factors indicating the person is a threat*, the Court's prior decisions (*e.g.*, *Armstrong*) would inform a reasonable officer that he cannot order his police dog to bite a person who is merely using profane language and not complying with commands. To be sure, the video evidence in this case by itself may "not [be] conclusive as to whether Harris reasonably could have believed that Putman may have possessed a gun." (JA 323.) But the video only tells part of the story in this case; it does not account for the totality of the circumstances or the information known by Harris "immediately prior to" the force being used. *Hensley v. Price*, 876 F.3d 573, 582 (4th Cir. 2017). It does not account for the text messages from Putman to his wife that he was suicidal and in possession of a firearm, nor does it account for the report from Hayton to Harris that Putman was believe to be armed. It also does not account for the smell of alcohol indicating potential intoxication.

The district court misstated Harris' position when it said Harris "contends that these decisions [relied on by the district court] stand for the proposition that a Fourth Amendment violation occurs only when an officer is not facing an immediate threat and fails to give a warning." (JA 325.) To be sure, an officer could give a canine warning and subsequently deploy his canine in a scenario where it was unreasonable and excessive. But Defendant's narrow position is that it was not clearly established that it was unreasonable for Harris to deploy his

canine under these circumstances, to assist in seizing Putman and neutralizing the potential deadly threat presented. The distinctions between this case and those cited by the district court are not "subtle factual distinctions." (JA 327.) They are material distinctions critical to an officer's split second use of force analysis.

The district court erred when it denied qualified immunity because it relied on broad concepts to hold that the law was clearly established without adequately accounting for the nuanced circumstances of this case. A right is clearly established only if existing precedent places the constitutional question "beyond debate" such that every reasonable officer would have known that the conduct was unconstitutional. *Carroll v. Carman*, 574 U.S. 13, 16 (2014); *Reichle v. Howards*, 566 U.S. 658, 664 (2012). The existing precedent did not establish, beyond debate, that Harris' use of canine was unconstitutional. At worst, whether Harris' use of canine Criss constituted a violation of the Fourth Amendment is a legal gray area, to which qualified immunity applies. *Maciariello*, 973 F.2d at 298.

Contrary to the district court's holding, Harris had a reasonable belief that Putman may be armed as a matter of law. Harris knew Putman had stated to his wife he had a gun on his person. Putman rejected the deputies' attempts to confirm that information by refusing to turn around and submit to handcuffs. *See United States v. Jordan*, 432 F. App'x 206, 208 (4th Cir. 2011) ("Evasive behavior and alarmed reaction further support reasonable suspicion of criminal activity.") (citing

United States v. Smith, 396 F.3d 579, 584 (4th Cir. 2005); *United States v. Humphries*, 372 F.3d 653, 657 (4th Cir. 2004); *United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993)). Putman's location and demeanor were consistent with his suicidal text messages and would form a reasonable belief in an officer that Putman may follow through on his suicide threats. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) ("officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation"). Harris was not required to rely on Putman's statements that he was unarmed, particularly in light of the fact that he had already proven himself to be untrustworthy by lying about sending the suicidal text messages to his wife. *See United States v. Cartwright*, 2010 U.S. Dist. LEXIS 106473, at *32 (N.D. Okla. Oct. 5, 2010) ("That Cartwright told Officer Newberry he had only ammunition but not a gun is irrelevant, as an officer who has reason to believe a weapon is present is not required to take a defendant at his word . . . ."); *Barrett v. PAE Gov't Servs.*, 975 F.3d 416, 431 (4th Cir. 2020) (finding that officers were not required to take plaintiff at her word that she had no intent to harm herself). Further, Putman's haphazard side-to-side turns were insufficient to demonstrate that he was unarmed. Indeed, even on mere reasonable suspicion that a person is armed and dangerous, an officer is entitled to a hands-on frisk. *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968). Harris had a reasonable belief

Putman may be armed with a gun until he could conclusively determine otherwise. The deputies tried to make that determination by ordering Putman to turn around and put his hands behind his back. Putman refused.

Harris escalated his force from verbal commands when it was clear Putman would not voluntarily comply, and de-escalated force when Putman was secured. *See Unus v. Kane*, 565 F.3d 103, 120-21 (4th Cir. 2009) (finding the officers appropriately reassessed the need for force as the situation progressed). This was a volatile situation with a potentially armed and mentally unstable individual. The circumstances were "tense, uncertain, and rapidly evolving." *Graham*, 490 U.S. at 396-97. In such circumstances, courts should "make allowances for on-the-scene decisions about the amount of force that is necessary, 'even if it may later seem unnecessary in the peace of a judge's chambers[.]'" *Maney v. Garrison*, 681 F. App'x 210, 221 (4th Cir. 2017) (quoting *Graham*, 490 U.S. at 396-97). Harris reasonably deployed his canine to ensure the safety of Putman and the deputies.

CONCLUSION

For the foregoing reasons, Appellant Corporal Quentin Harris respectfully requests that this Court reverse the judgment of the district court and enter summary judgment in his favor.

REQUEST FOR ORAL ARGUMENT

This appeal involves important questions of law that could affect future police canine excessive force cases within the Fourth Circuit. Oral argument would assist the Court's resolution of the appeal.

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. 32(f), this brief contains 9,302 words and complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman font, size 14.

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CERTIFICATE OF SERVICE

I certify that, on June 6, 2022, I electronically filed the foregoing Opening Brief of Appellant with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

I further certify, that on June 6, 2022, I served Joint Appendix Volume II – Digital Media, via USPS, on counsel listed below:

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