

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Christian Longoria, et al.,
Plaintiffs,
v.
Pinal County, et al.,
Defendants.

No. CV-15-00043-PHX-SRB

ORDER

At issue are Defendants' Motion for Summary Judgment ("Defs.' MSJ") (Doc. 53) and Plaintiffs' Cross-Motion for Summary Judgment on Qualified Immunity ("Pls.' Resp. to MSJ and MPSJ") (Doc. 85).

I. BACKGROUND

This case arises from the police shooting of an unarmed man in Pinal County, Arizona. Manuel Longoria stole a car while on probation for an assault charge (Doc. 48, Defs.' Statement of Facts in Supp. of Defs.' MSJ ("DSOF") ¶¶ 1, 6; Doc. 86, Pls.' Resp. to DSOF and Controverting Statement of Facts ("PSOF") ¶ 1.) The Eloy Police Department ("Eloy PD") attempted to stop Mr. Longoria and a chase ensued after he failed to yield. (DSOF ¶ 2; PSOF ¶ 2.) The Eloy PD chased Mr. Longoria for over an hour. (PSOF ¶¶ 2, 35, 55.) The parties dispute whether the Eloy PD sought the assistance of the Pinal County Sheriff's Office ("PCSO") or if the Eloy PD only asked the PCSO to be on "standby." (DSOF ¶ 5; PSOF ¶ 5.) Defendant Heath Rankin, a PCSO officer, independently monitored the Eloy PD frequency. (DSOF ¶ 4; PSOF ¶ 4.) The PCSO

1 dispatcher stated that the “driver has a weapon,” the “driver is armed,” and the subject
2 “may have a gun.” (DSOF ¶ 6; PSOF ¶¶ 6, 43.) Mr. Longoria stopped several times
3 during the pursuit but did not comply with requests to show both hands or turn himself in.
4 (DSOF ¶¶ 6, 7; PSOF ¶¶ 7, 33, 48, 50.) On one such occasion, Mr. Longoria allegedly
5 drove past Defendant Rankin with something pointed outside the driver-side window and
6 said, “[s]hoot me [expletive], I’m going to kill you.” (DSOF ¶ 8; PSOF ¶ 8.) Mr.
7 Longoria was observed to be driving “about 50” in a residential area and was driving
8 “very erratic.” (DSOF ¶ 9; PSOF ¶ 9.)

9 Later in the pursuit, Defendant Rankin was told to set up a perimeter. (DSOF ¶ 10;
10 PSOF ¶ 10.) The parties dispute whether Defendant Rankin knew that the PCSO was
11 previously called off the pursuit. (*See* DSOF ¶¶ 10-11; PSOF ¶¶ 10-11.) Mr. Longoria
12 was eventually stopped after an unmarked police cruiser rammed his car. (PSOF ¶ 11.)
13 As Mr. Longoria exited the car it appeared that he held something behind his back.
14 (DSOF ¶¶ 11, 15; PSOF ¶¶ 11, 15.) Mr. Longoria was given orders to raise both hands
15 and he did not comply. (DSOF ¶ 14; PSOF ¶ 14.) The parties dispute whether Defendant
16 Rankin heard Eloy Detective Salazar order the use of “less lethal” methods. (Doc. 96,
17 Defs.’ Supp. and Controverting Statement of Facts (“DSSOF”) ¶¶ 6, 14; PSOF ¶ 14.) Mr.
18 Longoria was shot with beanbag rounds and a Taser. (DSOF ¶ 16; PSOF ¶ 16.) After
19 being shot with the bean bag rounds, Mr. Longoria began waving his arms around; the
20 parties dispute whether this action was done in an aggressive or defensive manner.
21 (DSOF ¶ 17; PSOF ¶¶ 15, 17.) When Mr. Longoria turned towards officers on the same
22 side as Defendant Rankin, some officers and Defendant Rankin ducked. (DSOF ¶¶ 21-22;
23 PSOF ¶ 21.) Both Mr. Longoria’s hands were visible for a moment before he was shot.
24 (DSOF ¶¶ 19-20; PSOF ¶ 19.) Defendant Rankin fired two shots at Mr. Longoria, both of
25 which hit Mr. Longoria in the back. (DSSOF ¶ 22; PSOF ¶ 22.) Mr. Longoria died as a
26 result of his injuries. (DSOF ¶ 26.)

27 Plaintiffs filed this lawsuit bringing a state law wrongful death claim; a federal
28 civil rights claim under 42 U.S.C. § 1983 against Defendant Rankin, based on a violation

1 of Mr. Longoria's Fourth Amendment right to be free from the use of excessive force;
2 and a *Monell* claim against Defendants Pinal County and Babeu, alleging that the Pinal
3 County's unconstitutional policies and procedures and inadequate training and
4 supervision regarding the use of deadly force led to Mr. Longoria's Fourth Amendment
5 rights being violated. (Doc. 14, First. Am. Compl. ¶¶ 30-38.) Defendants now move for
6 summary judgment on all of Plaintiffs' claims arguing that Defendant Rankin did not
7 violate Mr. Longoria's constitutional rights and, alternatively, the rights were not clearly
8 established. (Defs.' MSJ at 1.) Plaintiffs have filed a cross-motion for partial summary
9 judgment on the issue of whether Defendants are entitled to qualified immunity, arguing
10 that Defendant Rankin's actions were unreasonable because he failed to use lesser
11 alternatives to deadly force. (Pls.' Resp. to MSJ and MPSJ at 16.)

12 **II. LEGAL STANDARD AND ANALYSIS**

13 Under Federal Rule of Civil Procedure 56, summary judgment is properly granted
14 when: (1) there is no genuine dispute as to any material fact; and (2) after viewing the
15 evidence most favorably to the non-moving party, the movant is clearly entitled to prevail
16 as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23
17 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288-89 (9th Cir. 1987). A fact is
18 "material" when, under the governing substantive law, it could affect the outcome of the
19 case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute of
20 material fact arises if "the evidence is such that a reasonable jury could return a verdict
21 for the nonmoving party." *Id.* In considering a motion for summary judgment, the court
22 must regard as true the non-moving party's evidence if it is supported by affidavits or
23 other evidentiary material, and "all inferences are to be drawn in the light most favorable
24 to the non-moving party." *Eisenberg*, 815 F.2d at 1289; *see also Celotex*, 477 U.S. at 324.
25 However, the non-moving party may not merely rest on its pleadings; it must produce
26 some significant probative evidence tending to contradict the moving party's allegations,
27 thereby creating a material question of fact. *Anderson*, 477 U.S. at 256-57 (holding that
28 the plaintiff must present affirmative evidence to defeat a properly supported motion for

summary judgment); *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

A. 42 U.S.C. § 1983 Claims

1. Defendant Rankin

Defendants argue that Defendant Rankin is entitled to qualified immunity on Plaintiffs' § 1983 claim because his conduct did not violate Mr. Longoria's Fourth Amendment right and because the right was not clearly established at the time of the alleged violation. (*See* Defs.' MSJ at 7, 14.) In evaluating whether a defendant is entitled to qualified immunity, the Court must consider (1) whether the facts alleged show the officer's conduct violated a constitutional right and (2) whether the right was clearly established at the time of the alleged violation, such that a reasonable officer would have known that he was acting unlawfully. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If the answer to both inquiries is yes, then the officer is not entitled to qualified immunity. *Davis v. City of Las Vegas*, 478 F.3d 1048, 1053 (9th Cir. 2007). If either answer is no, then the officer is entitled to qualified immunity. *See Hopkins v. Bonvicino*, 573 F.3d 752, 762 (9th Cir. 2009).

Plaintiffs argue that Defendant Rankin violated the Fourth Amendment because he used excessive force in shooting Mr. Longoria when he was unarmed. (Pls.' Resp. to MSJ and MPSJ at 8.) In order to determine if a shooting constitutes excessive force that violates the Fourth Amendment, a court should consider the objective reasonableness of the officer's behavior considering the totality of the circumstances including the severity of the crime, the immediate threat of harm to the officer or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. *Graham v. Connor*, 490 U.S. 386, 396 (1989). "The immediacy of the threat posed by the suspect is the most important factor." *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir. 2014) (en banc). A court should not conduct a hindsight analysis of an officer's actions, but must determine the reasonableness of the officer's action at the time with the knowledge he had. *Id.*

a. Severity of the crime

Mr. Longoria stole a car and failed to yield to police efforts to stop him. (Doc. 85-1, Ex. 1, Narrative Report of Eloy Police Officer Maestas at 10.)¹ Stealing a vehicle is a felony. A.R.S. § 12-1802(G); *see Coles v. Eagle*, 704 F.3d 624, 628-29 (9th Cir. 2012) (noting that a felony-grade offense weighs in favor of defendants on the severity of the crime prong). During the attempt to stop Mr. Longoria, Mr. Longoria threatened police officers. (Doc. 85-1, Narrative Reports of Eloy Police Officers Dean, Young, and Quintana at 37, 48, 51.) Mr. Longoria also refused to show one of his hands and told at least one officer that he had a gun. (PSOF ¶ 51.) Both the Eloy PD and the PCSO reported that Mr. Longoria had a gun. (DSOF ¶ 6; PSOF ¶ 43.) The fact that Mr. Longoria was committing a felony while threatening officers during the course of over an hour long pursuit weighs in favor of finding that Defendant Rankin's use of force in this case was not excessive. *See Tennessee v. Garner*, 471 U.S. 1, 11 (1985) ("[I]f the suspect threatens the officer with a weapon . . . deadly force may be used if necessary to prevent escape . . .").

b. Threat of harm

Plaintiffs argue that Mr. Longoria was unarmed and therefore use of deadly force was a violation of his Fourth Amendment rights. (Pls.' Resp. to MSJ and MPSJ at 8.)

¹ Defendants have raised relevance and hearsay objections to Plaintiffs' citation to interviews of Eloy police officers. (DSSOF ¶¶ 33-42, 44-48, 50-51.) Plaintiffs argue that these objections are unfair because Defendants sought and was awarded limited discovery, which limited Plaintiffs' ability to obtain depositions of the officers and that the interviews are nevertheless admissible under Federal Rule of Evidence 807. (Doc. 107, Pls.' Reply to DSSOF at 1-3.) The Court concludes that the reports are admissible subject to specific relevance exceptions under Federal Rule of Evidence 807 because the statements are likely trustworthy as they were completed soon after the incident; are offered for evidence of material fact; are more probative on points than other evidence offered, particularly they provide third-party verification for Defendant Rankin's version of the facts; and admitting them will serve the purpose of the rules and the interests of justice, particularly because Defendants obtained a ruling that precluded Plaintiffs from pursuing depositions of the officers and applicable case law requires weighing the testimony of the accused officer with that of others in the area. (*See* Doc. 70, Sept. 18, 2015 Order (staying discovery except as to the interview of Defendant Rankin)); *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014) (noting that a judge should examine all evidence in the record to determine whether the officer's story is internally consistent and consistent with other known facts).

1 Plaintiffs also argue that if Defendant Rankin was mistaken about Mr. Longoria having a
 2 weapon, that mistake was objectively unreasonable. (*Id.* at 9.) Defendants argue that
 3 Defendant Rankin thought that Mr. Longoria was holding a weapon and pointed it at him
 4 and that belief is supported by other officers near him also ducking moments before he
 5 fired at Mr. Longoria. (Defs.' MSJ at 9-10.) Plaintiffs dispute that Mr. Longoria pointed
 6 any object at the officers once he was stopped. (*Id.*) Both parties have submitted video
 7 evidence of the incident, Plaintiffs' from a police cruiser dash camera video and
 8 Defendants' from a bystander iPhone recording.² (Doc. 92, Notice of Filing Non-
 9 Electronic Ex. PSOF, Ex. 27(m).). The dash camera video shows Mr. Longoria exiting
 10 his vehicle with one hand behind his back with some object in it. (*Id.*) Mr. Longoria goes
 11 out of frame but is visible in the car reflection when Defendant Rankin runs onto the
 12 scene.³ (*Id.*) Mr. Longoria reenters the frame facing Defendant Rankin with both arms up
 13 and slightly bent. (*Id.*) Mr. Longoria's hands go down again and come up from his waist
 14 with him holding something in one of his hands. (*Id.*) Though Mr. Longoria goes out of
 15 frame again you can see a reflection of his hands in the air followed by one hand sliding
 16 down the side of the car. (*Id.*) A stabilized iPhone recording of the incident shows Mr.
 17 Longoria with one hand behind his back. (Pls. Ex. 27(l).) He turns toward Defendant
 18 Rankin after two loud pops. (*Id.*) His arms swing up bent, go down toward his waist, and
 19 then come back up to about chest height. (*Id.*) Mr. Longoria then turns with his hands
 20 above his head and is shot twice. (*Id.*) The time stamp shows that only a few seconds
 21 elapsed between Mr. Longoria raising his hands to chest height and him turning around
 22

23 ² Plaintiffs' dispute the enhanced still photos of Defendants' iPhone recording,
 24 claiming that the video from 200 feet away is less clear than the dash camera video.
 25 (PSOF ¶¶ 19-21.) Plaintiffs appear to dispute what the video shows, but do not object to
 the admissibility of the video. (*Id.*)

26 ³ The narration of events that follows is generated from the still frames of Pls.' Ex.
 27 27(m) 15h49m51s29 through 16h38m00s61. There appear to be gaps in the still photos
 28 sequence, for example they jump from 16h25m40s51 to 16h36m47s51 making it unclear
 how much time the entire confrontation took. Based on a full speed version of the dash
 camera video, the stop took about 30 seconds from Mr. Longoria exiting the car to
 Defendant Rankin's shots. (Doc. 108, Notice of Re-filing of Non-Electronic Ex., PSOF,
 Ex. 27(p).)

1 and being shot. (*See* Ex. 27(p) Time-stamp 1:10:25 to 1:10:29.)

2 Whether a suspect is actually armed with a deadly weapon is not dispositive for
 3 whether the use of deadly force is reasonable, “the critical inquiry is what [the officer]
 4 perceived.” *Wilkinson v. Torres*, 601 F.3d 546, 551 (9th Cir. 2010). Defendant Rankin
 5 asserts that he saw Mr. Longoria with his hand concealed behind his back, Mr. Longoria
 6 pointed an object toward him, he and some other officers ducked, and when he came up
 7 he shot Mr. Longoria. (Doc. 48-2, Rankin Interview at 71-72.) The uncontroverted video
 8 evidence shows that Mr. Longoria came up with both hands in front of him facing
 9 Defendant Rankin’s direction. (Pls.’ Ex. 27(m).) He had also threatened to kill officers
 10 and drove off during one of the earlier pauses in pursuit with a community member
 11 hanging out of his car.⁴ (Doc. 85-1, Salazar Interview at 25; Maestas Interview at 11.) No
 12 matter Mr. Longoria’s reasons for speeding, threatening to shoot officers and driving with
 13 a person holding onto the vehicle are objectively harmful. *See Scott v. Harris*, 550 U.S.
 14 372, 384 (2007) (finding that an officer did not violate the Fourth Amendment when he
 15 rammed the car of a fugitive who posed an actual and imminent threat to the lives of
 16 pedestrians, motorists, and officers involved in a chase); *Brosseau v. Haugen*, 543 U.S.
 17 194, 197 (2004) (noting that an officer did not violate clearly established law when she
 18 shot a fleeing suspect out of fear that he endangered other officers, occupied vehicles in
 19 his path, and any other citizens who might be in the area); *Smith v. City of Hemet*, 394
 20 F.3d 689, 704 (9th Cir. 2005) (“[W]here a suspect threatens an officer with a weapon
 21 such as a gun or a knife, the officer is justified in using deadly force.”). This factor also
 22 favors not finding that the use of force in this case was not unconstitutionally excessive.

23 **c. Resisting or attempting to evade arrest**

24 Both parties presented evidence demonstrating that Mr. Longoria was non-

26 ⁴ Plaintiffs argue that Mr. Longoria’s threats to Defendant Rankin before the final
 27 stop are irrelevant. (PSOF ¶ 8.) Defendants argue that the threats are relevant when
 28 considering if a shooting officer is entitled to qualified immunity. (DSSOF ¶ 8.) The
 Court agrees. *See Mullinex v. Luna*, 136 S.Ct. 306, 312 (2015) (noting that the suspect
 had previously threatened to kill police officers and was racing towards an officer at the
 time of the shooting).

1 responsive to verbal commands throughout the chase. (Doc. 48-2, Rankin Interview at
2 66; Doc. 85-1, Dean, Young, and Quintana Interviews at 37, 48, 51.) Mr. Longoria had
3 more than one encounter with officers before the final stop and refused to show his hands
4 or surrender. (Doc. 85-1, Salazaar Interview at 25, 28.) Plaintiffs do not dispute that Mr.
5 Longoria engaged in at least an hour-long chase, had conversations with officers where
6 he did not surrender, or that he stated “I have a gun. I’m going to kill you unless you kill
7 me first.” (*See id.* at 25.) Assuming facts most favorable to Plaintiffs, his non-
8 responsiveness to less lethal tactics could justify the use of deadly force. *See Forrett v.*
9 *Richardson*, 112 F.3d 416, 420 (9th Cir. 1997), *superseded on other grounds by Chroma*
10 *Lighting v. GTE Products Corp.*, 127 F.3d 1136 (9th Cir. 1997) (stating that the Fourth
11 Amendment “does not require law enforcement officers to exhaust every alternative
12 before using justifiable deadly force”). Plaintiffs dispute that Mr. Longoria was non-
13 responsive to the beanbag rounds the Eloy officers shot, but both Eloy and PCSO officers
14 stated and the video shows that Mr. Longoria appeared unfazed by at least five beanbag
15 rounds. (*See* Pls.’ Resp. to MSJ and MPSJ at 11-12; Doc. 85-1, Dean, Young, and
16 Quintana Interviews at 37, 48, 51; Pls.’ Exs. 27(k) & (l).) Considering Mr. Longoria’s
17 lack of compliance with directives, threats to officers, the ineffectiveness of less lethal
18 methods, and the unknown object in Mr. Longoria’s hand, this factor also weighs against
19 the conclusion that Defendant Rankin’s use of force in this case was not
20 unconstitutionally excessive. *See Sandberg v. City of Torrance*, 456 Fed. App’x 711, 713
21 (9th Cir. 2011) (noting that an officer did not violate the Fourth Amendment when he
22 shot a suspect who held a weapon and threatened officers). Because there is insufficient
23 evidence in the record from which a reasonably jury could conclude that Defendant
24 Rankin’s use of force was unconstitutionally excessive, the Court grants summary
25 judgment in favor of Defendant Rankin on Plaintiffs’ § 1983 claim and denies Plaintiffs’
26 motion for partial summary judgment on the issue of qualified immunity.

27 **2. Defendants Pinal County and Paul Babeu**

28 Defendants also argue that Plaintiffs cannot succeed on their *Monell* claim because

1 there is insufficient evidence in the record to demonstrate a Fourth Amendment violation
 2 occurred. (Defs.’ MSJ at 18); *see Monell v. Dep’t of Soc. Servs. of N.Y.C.*, 436 U.S. 658,
 3 694 (1978) (stating that a municipality may be liable for causing a constitutional violation
 4 under § 1983 by implementing “policy or custom, whether made by its lawmakers or by
 5 those whose edicts or acts may fairly be said to represent official policy”). A *Monell*
 6 claim cannot survive without an underlying constitutional violation. *Tatum v. City and*
 7 *Cnty. of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006) (“Absent a constitutional
 8 deprivation, neither [supervising officers] nor the City and County of San Francisco may
 9 be held liable under § 1983.”). Because the Court has concluded that Defendant Rankin
 10 did not violate Mr. Longoria’s Fourth Amendment rights, the Court grants summary
 11 judgment in favor of Defendants Pinal County and Babeu on Plaintiffs’ *Monell* claim.

12 **B. Wrongful Death Claim**

13 **1. Defendant Rankin**

14 Defendants argue that for the same reasons that Defendant Rankin did not violate
 15 Mr. Longoria’s Fourth Amendment rights, he is not liable for his use of deadly force
 16 under Arizona law. (Defs.’ MSJ at 16.) Defendants specifically argue that Deputy Rankin
 17 reasonably believed it was necessary to use force to defend himself or third persons. (*Id.*)
 18 Plaintiffs do not dispute that if the Court concludes that Defendant Rankin’s use of force
 19 was not unconstitutionally excessive, then his actions were also justified under Arizona
 20 law and, therefore, he is not liable under Plaintiffs’ wrongful death claim. (*See* Pls.’ Resp.
 21 to MSJ and MPSJ at 15); *see Hulstedt v. City of Scottsdale*, 884 F. Supp. 2d 972, 1016
 22 (D. Ariz. 2012) (“Arizona’s justification statutes mirror the Fourth Amendment standard
 23 for the use of deadly force.”). Further, under Arizona law the use of deadly force is
 24 expressly justified when an officer reasonably believes that it is necessary to defend
 25 himself or a third person from the use of deadly physical force or to effect an arrest of a
 26 person whom the officer reasonably believes has committed or is attempting to commit a
 27 felony involving the use or a threatened use of a deadly weapon. A.R.S. § 13-410(C).
 28 There is no dispute that the officers were attempting to arrest Mr. Longoria for the

1 commission of a felony. (Doc. 85-1, Maestas Interview at 1.) As noted above, Mr.
 2 Longoria put bystanders and officers at risk with his actions. Mr. Longoria threatened to
 3 kill officers, stated he had a gun, operated a motor vehicle with another person hanging
 4 off of it, and repeatedly acted as if he was concealing a weapon. (Doc. 85-1, Salazaar
 5 Interview at 25; Maestas Interview at 11; Garrison Interview at 15; Huffman Interview at
 6 18.) Defendant Rankin's use of deadly force was justified under Arizona law. The Court
 7 grants summary judgment in favor of Defendant Rankin on Plaintiffs' wrongful death
 8 claim.

9 **2. Defendants Pinal County and Paul Babeu**

10 Plaintiffs also allege a wrongful death claim against Defendants Pinal County and
 11 Sheriff Babeu based on a respondeat superior theory of vicarious liability. (Am. Compl.
 12 ¶¶ 6-7.) Defendants argue that where no liability can be attributed to the acts and
 13 omissions of the employee, there can be no vicarious liability. (Defs.' MSJ at 18.) When
 14 a plaintiff cannot establish a claim against the acting officer summary judgment in favor
 15 of the town is proper. *Hansen v. Garcia, Fletcher, Lund and McVean*, 713 P.2d 1263,
 16 1265-66 (Ariz. Ct. App. 1985). Because Defendant Rankin was justified in his use of
 17 deadly force, no party can be liable for his use of deadly force. Therefore, Defendants'
 18 Motion is granted as it relates to state law claims against Defendants Pinal County and
 19 Babeu.

20 **III. CONCLUSION**


21 The Court grants summary judgment in favor of Defendants because, based on the
 22 evidence in the record, no reasonable jury could conclude that Defendant Rankin's use of
 23 force was unconstitutionally excessive or not justified under Arizona law.

24 **IT IS ORDERED** granting Defendants' Motion for Summary Judgment (Doc.
 25 53).

26 **IT IS FURTHER ORDERED** denying Plaintiffs' Cross-Motion for Summary
 27 Judgment (Doc. 85).
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1 **IT IS FURTHER ORDERED** directing the Clerk to enter judgment for
2 Defendants.

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4 Dated this 17th day of March, 2016.

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10 Susan R. Bolton
11 United States District Judge
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