

NONPRECEDENTIAL DISPOSITION

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United States Court of Appeals**For the Seventh Circuit
Chicago, Illinois 60604**Argued October 1, 2024
Decided October 18, 2024**Before**MICHAEL B. BRENNAN, *Circuit Judge*MICHAEL Y. SCUDDER, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 24-1363

RAE-JEAN REYNOLDS, as Special
Administratrix of the Estate of Jessie
Leonard, Deceased,
*Plaintiff-Appellant,**v.*KEITH SHELTON, *et al.*,
*Defendants-Appellees.*Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:22-cv-01345-RLY-MKK

Richard L. Young,
*Judge.***ORDER**

Officers of the Indianapolis Police Department shot and killed Jessie Leonard after she fled police, disobeyed their orders, and reached for a gun in her waistband. Her estate sued the officers under 42 U.S.C. § 1983, alleging they violated her Fourth

Amendment rights by using excessive force in shooting her. The district court entered summary judgment for the defendants. It ruled that the officers were entitled to qualified immunity because, based on the undisputed facts, they did not violate Leonard's constitutional rights. On appeal, the estate argues that the district court erred by overlooking a genuine factual dispute over whether she "pointed" the gun at the officers.

The video recordings from the officers' body-worn cameras undisputably establish that the officers acted reasonably under the circumstances, even if Leonard did not "point" the gun at them. The recordings show that the officers shot Leonard after she reached for the gun in her waistband despite the officers telling her not to do so. Because the officers reasonably defended themselves from the threat of deadly harm, we affirm.

Background

We recount the evidence in the light most favorable to the nonmovant, except to the extent the nonmovant's story is "blatantly contradicted" by the officers' body-worn cameras. *Dockery v. Blackburn*, 911 F.3d 458, 461 (7th Cir. 2018) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)). Officer Joshua Smith encountered Leonard when he observed a red Honda Pilot drifting into other lanes. Smith attempted to stop the car, but the driver did not pull over. He then described the car, its driver, and the license plate number to the department's central control.

Later that day, Officer Keith Shelton observed the same red Honda Pilot parked in front of a house. After confirming that the license plate matched the one on the car that Smith attempted to stop, he requested a tow truck to impound the car. At this time, Shelton observed Leonard, who was sitting on the house's front porch, remove a gun from her purse and place it in her waistband. As the car was towed, Shelton approached Leonard and asked her if she knew who owned the car. Leonard denied knowing the owner of the car.

Eventually, three additional officers arrived at the scene to investigate. First, Officers Dylan Sheets and Joseph Reynolds arrived, and Shelton told them that Leonard had a gun in her waistband. Then, Shelton spoke to a neighbor. The neighbor told him that Leonard drove the red Honda Pilot to the property about an hour earlier, took off the license plate, and removed things from the car. Sheets and Reynolds observed Leonard drinking alcohol and acting "erratically." Next, Smith came to the house to see

whether Leonard was the driver that evaded him earlier. When Smith arrived, he told Shelton that Leonard looked like the woman who fled from him earlier, but he needed a closer look. Shelton warned Smith that Leonard had a gun. The four officers approached Leonard from different directions, including the front lawn, to block her path in case she tried to flee again.

Over approximately ten seconds, the officers approached, and Leonard became uncooperative. When Smith, who was crossing the front lawn, asked "Hey, how ya doing?" and said he wanted to talk to her, she replied, "I don't care. Don't come no closer." She lifted her shirt and reached into her waistband where she had placed the gun. The officers drew their weapons and ordered Leonard to freeze: Smith said, "Don't you dare fucking touch it"; Sheets said, "Do not"; Shelton said, "Don't you do it." Despite the orders, she started to remove the gun from her waistband. All four officers shot at Leonard, and she was struck by seven bullets. Officers immediately rendered emergency medical aid, but Leonard was pronounced dead at the scene.

Leonard's estate brought this § 1983 suit against the four officers, the local police department, the City of Indianapolis, and Marion County. The estate alleged the defendants violated Leonard's Fourth Amendment rights by entering the property without a warrant (a claim not at issue on appeal) and by using excessive force.

The district court granted the officers' motion for summary judgment. The court ruled that the officers were entitled to qualified immunity because a reasonable jury could find that the officers acted reasonably when they shot Leonard. It added that because the officers did not violate the Constitution, the city and county could not be liable under *Monell v. Department of Social Services*, 426 U.S. 658 (1978). The court also dismissed the police department because it is not a suable entity.

Analysis

On appeal, the estate argues that a reasonable jury could find that the officers unreasonably shot and killed Leonard because a genuine dispute of material fact exists about whether Leonard "pointed" the gun at the officers. We review de novo the district court's decision that this asserted dispute is not material. *See Horton v. Pobjecky*, 833 F.3d 941, 948 (7th Cir. 2018).

Claims of excessive force are analyzed under the Fourth Amendment's standard of objective reasonableness. *King v. Hendricks Cnty. Comm'rs*, 954 F.3d 981, 984 (7th Cir.

2020) (citing *Graham v. Connor*, 490 U.S. 386, 388 (1989)). An officer's use of deadly force is constitutional if it is reasonable under the totality of the circumstances. *Graham*, 490 U.S. at 396. An officer's use of force must be judged from the perspective of a reasonable officer on the scene "rather than with the 20/20 vision of hindsight." *Id.* at 396. In doing so, we consider several factors, including "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." *Id.* We may also consider "whether the individual was under arrest or suspected of committing a crime; whether the individual was armed; and whether the person was interfering or attempting to interfere with the officer's duties." *Dawson v. Brown*, 803 F.3d 829, 833 (7th Cir. 2015).

We conclude that because on this record a jury could only find that the officers' use of force was reasonable, they did not violate Leonard's Fourth Amendment rights. It is undisputed that the officers knew that Leonard was suspected of the serious crime of evading police, a Class 6 Felony, IND. CODE § 35-44.1-3-1(a), (c)(A), and that they feared she might try to flee again. It is also undisputed that each officer knew that Leonard posed a deadly threat. They knew she possessed a gun, and they reasonably perceived her as threatening to use it. She had been drinking and behaving erratically and told them "Don't come no closer." But when the officers ordered her not to reach for the gun, she disobeyed them. Under these circumstances, the officers reasonably used deadly force defensively against Leonard. *See King*, 954 F.3d at 985.

The estate pushes back, arguing that a jury could find that Leonard did not pose a deadly threat. It relies on *Sanzone v. Gray*, 884 F.3d 736 (7th Cir. 2018), where police shot a suspect who threatened to "fire a warning shot" at police, raised his arm, and pointed his gun. *Id.* at 738. There, this court reversed the denial of the officers' request for qualified immunity, reasoning that the use of force was reasonable because the man "threatened the officers when he pointed a gun at them." *Id.* at 740. The estate argues that *Sanzone* requires us to reverse because Leonard, unlike the man in *Sanzone*, did not verbally threaten to shoot the police officers or physically point the gun at them.

This argument is unpersuasive. We may assume that Leonard never pointed the gun at, or verbally threatened to shoot, the officers. Even so, a rational jury would find that the officers reasonably perceived an imminent risk of serious bodily harm because, as they approached her, Leonard coupled her warning, "Don't come no closer," with a grab for the gun in her waistband despite their commands that she not do so. *See Sanzone*, 884 F.3d at 740. Further, the estate does not dispute that Leonard reached

for and grabbed the gun in defiance of the officers' order that she not touch it. Leonard's undisputed acts contrary to the officers' orders that she not touch the gun renders reasonable their use of deadly force to protect themselves. *Id.* Finally, "[p]olice officers cannot be expected to wait until a resisting arrestee has a firm grip on a deadly weapon" before protecting themselves with deadly force. *Henning v. O'Leary*, 477 F.3d 492, 496 (7th Cir. 2007). It is thus unnecessary to decide whether Leonard "pointed" the gun at them or whether they had to wait for her to do so before they reacted defensively.

Next, the estate argues the officers' use of deadly force was unjustified because a jury could find that Leonard merely passively resisted arrest. The estate cites *Abbott v. Sangamon County*, 705 F.3d 706, 732 (7th Cir. 2013), which states, "police officers could not use significant force on non-resisting or passively resisting suspects." The estate then argues that a jury could reasonably "believe that Ms. Leonard was trying to disarm herself" when she grabbed the gun in her waistband, and therefore not resisting arrest.

This argument does not succeed for two reasons. First, read in context, *Abbott* does not help the estate. There, an officer fired a Taser twice at a woman, first when she approached him despite his order to stop, and second after she was motionless on the ground. *Id.* at 729. This court ruled that a jury could find that the second deployment was excessive because the officer had time to see that the suspect was subdued. *Id.* But Leonard was never subdued: The undisputed evidence shows that Leonard verbally resisted the officers' approach, she was commanded not to touch the gun in her waist band, and she reached for it anyway.

Second, even if a jury could conclude that Leonard subjectively intended to grab the gun in order to discard it and surrender, the jury would still have to conclude that the officers acted reasonably based on what they could objectively observe. The officers were not required to assume a possible intent to surrender in the split seconds after Leonard disobeyed their command not to touch the gun. *See Johnson v. Scott*, 576 F.3d 658, 660 (7th Cir. 2009). In *Johnson*, this court ruled that an officer reasonably used significant force (allowing a police dog to bite a suspect) even though, a few seconds earlier, the suspect had raised his arms and said, "I give up." *Id.* at 659–60. Because not all apparent surrenders are genuine, "the police are entitled to err on the side of caution when faced with an uncertain or threatening situation." *Id.* at 659. For the use of significant force after an apparent surrender to be unreasonable, the suspect must be subdued and the police must establish that the suspect is unarmed. *Id.* at 660. But Leonard was both armed and not subdued when she reached for the gun in her waist

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band. Further, she did not say, “I give up” and throw her hands in the air, and only about ten seconds had elapsed between the officers approaching Leonard and when they shot her. Thus, a jury would have to find that the officers reasonably assumed that she was not surrendering.

Finally, the estate contends the officers “created and unnecessarily escalated a situation that led to the use of deadly force.” An officer can violate the Fourth Amendment if he “unreasonably create[s] the encounter” and the suspect is “unable to react in order to avoid presenting a deadly threat” to the officer. *Estate of Starks v. Enyart*, 5 F.3d 230, 234 (7th Cir. 1993). Here, though, the officers walked slowly to Leonard and Smith politely asked to talk to her. Leonard could have surrendered without touching the gun. Instead, she refused to talk, demanded that the officers stop, and when the officers shouted to her to keep her hand away from the gun, she disobeyed those lawful commands. Therefore, a reasonable jury could not find that the officers forced Leonard to pose a deadly threat to them.

For these reasons, we AFFIRM summary judgment in favor of the officers. We also AFFIRM the district court’s decision to dismiss the city and county from the lawsuit. Because the officers did not commit a constitutional violation, the city and county cannot be held liable under *Monell* for damages for such a violation. See *Jenkins v. Bartlett*, 487 F.3d 482, 492 (7th Cir. 2007).