

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE ESTATE OF DERRICK WATSON,
DECEASED AND RONKEYTA R.
WATSON,

Plaintiffs,

v.

CITY OF GARLAND, TEXAS and
MARC MENDOZA,

Defendants.

§
§
§
§
§
§
§
§
§
§
§

3:10-CV-1698-P

ORDER

Now before the Court is Defendant Marc Mendoza's Motion for Summary Judgment, filed on May 25, 2011. (Doc. 15.) Plaintiffs filed a Response on June 21, 2011. (Doc. 19.) Defendant filed a Reply on July 5, 2011. (Doc. 22.) After reviewing the parties' briefing, the evidence, and the applicable law, the Court GRANTS Defendant's Motion for Summary Judgment.

I. Background

On September 17, 2008, Officer Marc Mendoza ("Defendant" or "Mendoza") of the City of Garland was on undercover assignment and was attempting to buy drugs from Derrick Watson ("Watson") and his friends Deshawn James, Joseph Watson and Kiluu Shabazz. (Def.'s App. at 1-2.) The drug buy was to take place at the 11700 block of Ferguson Road at the Texaco Service Station in Dallas, Texas. (*Id.* at 1.) After observing the scene for a few minutes, Mendoza approached a blue Kia that Joseph Watson, Kiluu Shabazz, and Deshawn James were sitting in and asked if they were "serving" drugs. (*Id.* at 2-3.) The men began to threaten Mendoza and

ask if he was a police officer. Then, while continuing to verbally threaten Mendoza, Joseph Watson and Deshawn James exited the Kia and began to approach Mendoza. (*Id.* at 3.) The men were wearing clothes that concealed their waistlines and Mendoza became concerned that the men were armed. (*Id.*) At this point, Mendoza feared for his safety. (*Id.*) Accordingly, Mendoza identified himself as a police officer and drew his service weapon from the waistband of his shorts. (*Id.*) The men continued to approach Mendoza. (*Id.*) Mendoza claims that it was at this point that he first noticed Watson. (*Id.*) According to Mendoza's account, Watson was approaching him from behind the Ford F-150 truck he had been previously occupying. (*Id.*) Mendoza also states in his affidavit that Watson had a chrome .38 caliber handgun in his hand and Mendoza believed Watson intended to shoot him. (*Id.* at 3-4.) Fearing for his safety, Mendoza shot Watson and then continued to back towards his vehicle for cover. (*Id.* at 4.) Mendoza fired two more shots in Watson's direction but missed him as Watson had stepped behind the Ford F-150. (*Id.*) This entire encounter was recorded on the Texaco security camera but given the positioning of the camera, it is unclear whether Watson was armed. (Def.'s App. 43.) However, it does appear that while Watson began to approach Mendoza he put his right hand down as if "racking the slide" of a gun. (*Id.*)

Furthermore, other witnesses corroborate Mendoza's account. Lieutenant Fred Curry, who was assisting the undercover operation and was stationed across the street from the Texaco station, states that after hearing the gunshots, he came onto the scene and saw Watson lying face down on the ground with a "silver semi-automatic handgun clutched in his hand." (Def.'s App. at 8.) Curry yelled commands for Watson to release the weapon and when he did not, Curry kicked the handgun out of Watson's hand. (*Id.*) Watson's girlfriend, Sheniqua Yarborough, also supports Mendoza's statement that Watson was armed. In her Affidavit in Any Fact, Yarborough

states that after hearing gunshots, she observed Watson on the ground with a handgun under his hand. (Def.'s App. at 39.)

Plaintiffs refute Defendant's version of the facts regarding Watson's actions and allege that Watson was unarmed. However, Plaintiffs provide the Court with no evidence to support the assertion that Watson was unarmed.

II. Legal Standard & Analysis

A. Summary Judgment Standard

Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the burden of informing the district court of the basis for its belief that there is an absence of a genuine issue for trial and of identifying those portions of the record that demonstrate such absence. *See Celotex*, 477 U.S. at 323. However, all evidence and reasonable inferences to be drawn there from must be viewed in the light most favorable to the party opposing the motion. *See United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

Once the moving party has made an initial showing, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). The party defending against the motion for summary judgment cannot defeat the motion, unless he provides specific facts demonstrating a genuine issue of material fact, such that a reasonable jury might return a verdict in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). Mere assertions of a factual dispute unsupported by

probative evidence will not prevent summary judgment. *See id.* at 249–50. In other words, conclusory statements, speculation, and unsubstantiated assertions will not suffice to defeat a motion for summary judgment. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996) (en banc); *see also Abbott v. Equity Group, Inc.*, 2 F.3d 613, 619 (5th Cir. 1993) (“[U]nsubstantiated assertions are not competent summary judgment evidence.” (citing *Celotex*, 477 U.S. at 324)). Further, a court has no duty to search the record for evidence of genuine issues. *See Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998).

B. Qualified Immunity

Plaintiffs sued Defendants Mendoza and the City of Garland, Texas, under 42 U.S.C. § 1983 for use of excessive force, deficient policies, failure to train, and state tort claims. Plaintiffs allege that the use of deadly force violated Derrick Watson's Fourth Amendment right to be free from unreasonable seizure. In order to prevail on a Fourth Amendment excessive-force claim, a plaintiff must establish: (1) an injury; (2) that the injury resulted directly from the use of excessive force; and (3) that the excessiveness of the force was unreasonable. *Carnaby v. City of Houston*, 636 F.3d 183, 187 (5th Cir. 2011). An officer may plead qualified immunity as an affirmative defense to a Fourth Amendment excessive-force claim and "qualified immunity is appropriate unless the defendant violated a clearly established constitutional right." *Id.*

The use of deadly force to apprehend a suspect is by definition a seizure. *See Tennessee v. Garner*, 471 U.S. 1, 7 (1985). In this case, Mendoza used deadly force to apprehend Watson and Watson's death was an injury caused by the deadly force employed. Therefore, the only issue presently before the Court is whether Mendoza's use of deadly force was unreasonable. When analyzing the objective reasonableness of the force, courts "must balance the amount of force used against the need for force." *Carnaby*, 636 F.3d at 187-88 (quoting *Ramirez v.*

Knoulton, 542 F.3d 124, 129 (5th Cir. 2008)). The "[u]se of deadly force is not unreasonable when an officer would have reason to believe the suspect poses a threat of serious harm to the officer or others." *Carnaby*, 636 F.3d at 188 (quoting *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003)). The inquiry into reasonableness "requires careful attention to the facts and circumstances of each particular case" and "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

The facts of this case demonstrate that Mendoza's actions were reasonable. Mendoza was involved in an undercover assignment and was attempting to buy drugs from Watson and his friends. After approaching one of the cars and asking if they were "serving" drugs, Deshawn James, Joseph Watson and Kiluu Shabazz, three men who were in the company of Watson, began to threaten and curse at Mendoza. Joseph Watson and Deshawn James then exited their vehicle and began to approach Mendoza. The clothes the men were wearing concealed their waistlines and based on their comments and behavior, Mendoza became afraid they were armed and he believed they posed a direct threat to his safety. Mendoza then retrieved his service weapon from the waistband of his shorts, identified himself as a police officer, and began to back away from the men. However, the men continued to walk towards Mendoza and taunt him. At this time, Mendoza saw Derrick Watson come out from behind the Ford F-150 and begin to approach him as well. Mendoza alleges that Watson had a chrome handgun in his hand and that he believed Watson was going to shoot him. Given the threat to Mendoza's safety, Mendoza shot Watson to prevent Watson from shooting him first. An officer may use deadly force when they have reason to believe a suspect poses a threat of serious harm to the officer or others. See *Mace*, 333 F.3d 621 at 624. Mendoza believed Watson was going to shoot him and fearing for

his safety, Mendoza was required to make a split-second decision. The Court finds Mendoza's shooting of Watson reasonable given the circumstances and holds that Mendoza did not use excessive force. Therefore, Mendoza is entitled to qualified immunity.

Plaintiffs dispute Defendant's version of the incident and claim that Watson did not have a gun when Mendoza shot him. Plaintiffs contend that the video does not support Defendant's recitation of the facts and that there are inconsistencies in the statements made by Mendoza, Sheniqua Yarborough, Joseph Watson and Lieutenant Curry. However, the fact that the video does not establish that the deceased was armed is not dispositive. While the video is ambiguous as to whether or not Watson had a gun, it does appear that Watson put his right hand down as if "racking the slide" of a gun. More importantly, all of the witnesses who addressed the issue of whether Watson was armed agree that Watson was in possession of a handgun. Watson's girlfriend, Sheniqua Yarborough, states that she saw Watson on the ground of the Texaco station after the shooting and that his hand was "on top of a gun silver and black in color." (Def. App. at 39.) Lieutenant Curry's affidavit also supports Mendoza's statement that Watson had a gun. Curry states that he observed Watson lying face down on the ground with a "silver semi-automatic handgun clutched in his hand" which Curry proceeded to kick out of Watson's hand. (Def.'s App. at 8.) Plaintiffs present no evidence to the contrary.

Additionally, Plaintiffs claim Watson was not advancing towards Mendoza in a threatening manner and that the surveillance video supports this contention. However, the video corroborates Mendoza's account of the events and shows Watson approaching Mendoza in such a manner. Therefore, from all of the evidence presented, the Court finds no genuine issue of material fact. Mendoza was trying to prevent serious injury or death, making his use of force reasonable and further qualified-immunity analysis is unnecessary.


Accordingly, qualified immunity is appropriate in this case and Mendoza's Motion for Summary Judgment is GRANTED.

III. Conclusion

For the foregoing reasons, the Court GRANTS Defendant Mendoza's Motion for Summary Judgment.

IT IS SO ORDERED.

Signed this 6th day of December, 2011.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE