Rel: May 27, 2022



# SUPREME COURT OF ALABAMA

## OCTOBER TERM, 2021-2022

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## 1210113

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**Ex parte City of Vestavia Hills and Officer William Mitchell**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Aisha Castro**

**v.**

**City of Vestavia Hills and Officer William S. Mitchell)**

**(Jefferson Circuit Court: CV-20-902924)**

SELLERS, Justice.

The City of Vestavia Hills ("the City") and police officer William S. Mitchell ("Officer Mitchell") petition this Court for a writ of mandamus directing the Jefferson Circuit Court ("the trial court") to grant their motion for a summary judgment on the basis that they are entitled to immunity on the claims asserted against them by Aisha Castro ("the plaintiff"). We grant the petition in part, deny the petition in part, and issue the writ.

## I. Procedural Facts and History

This case arises out of the fatal shooting of a dog owned by the plaintiff. On May 19, 2019, Officer Mitchell was dispatched to the plaintiff's residence to investigate a physical altercation between the plaintiff's two sons; a total of five officers were at the scene. While Officer Mitchell and another officer, Cpl. Lee McGuire, were outside talking to one of the sons, the plaintiff's dog, a boxer weighing approximately 70 pounds, exited the residence, appearing friendly. However, in a fast-paced series of events, lasting only a few seconds, Officer Mitchell shot and killed the dog. The plaintiff commenced this instant action against the City and Officer Mitchell, individually, asserting: (1) that, pursuant to 42 U.S.C. § 1983, Officer Mitchell unlawfully seized her dog when he

shot and killed it without cause, thus depriving her of her Fourth Amendment rights under the United States Constitution; (2) that, pursuant to § 1983, the City was liable for the unreasonable seizure based on its policy or custom relating to, among other things, the use of deadly force; (3) that the City was liable under § 11-47-190, Ala. Code 1975, based on Officer Mitchell's alleged negligence, carelessness, or unskillfulness in shooting and killing her dog; and (4) that Officer Mitchell wrongfully deprived her of possession of her property in violation of § 6-5-260, Ala. Code 1975. The City and Officer Mitchell filed a joint motion for a summary judgment, pursuant to Rule 56(c), Ala. R. Civ. P., on the grounds of qualified immunity and State-agent immunity. The trial court entered an order denying that motion, without stating its rationale. The City and Officer Mitchell petitioned this Court for a writ of mandamus.

## II. Standard of Review

A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate: " '(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate

remedy; and (4) the properly invoked jurisdiction of the court.' " Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)). The general rule is that the denial of a motion for a summary judgment is not reviewable; however, the denial of a summary-judgment motion grounded on immunity is reviewable by a petition for the writ of mandamus. Ex parte Blunt, 303 So. 3d 125 (Ala. 2019). This Court reviews a summary judgment de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Rule 56(c), Ala. R. Civ. P.; Nettles v. Pettway, 306 So. 3d 873 (Ala. 2020). The movant for a summary judgment has the initial burden of producing evidence indicating that there is no genuine issue of material fact and that the movant is entitled to a judgment as a matter of law. Id. Once the movant produces evidence establishing a right to a summary judgment, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. We view the evidence in a light most favorable to the nonmovant. Id.

## III. Analysis

### A. Summary-Judgment Facts

The City and Officer Mitchell rely on multiple exhibits in support of their motion for a summary judgment. Officer Mitchell presented his affidavit describing the events leading up to the shooting. According to Officer Mitchell, when the plaintiff's dog exited the residence, the dog was "friendly." He explained that Cpl. McGuire went to the door of the residence and retrieved a leash to secure the dog; however, he said, when Cpl. McGuire leaned down to attach the leash onto the dog's collar, the dog lunged at him, making contact with his face. Officer Mitchell stated that Cpl. McGuire was able to stand up quickly to avoid being bitten but that the dog lunged at him again, biting his midsection; Cpl. McGuire was wearing a vest, which prevented any injury. Officer Mitchell stated that, when the dog disengaged from Cpl. McGuire, it advanced quickly toward him, growling; that he took a step backward; and that, when the dog was approximately one foot away from him, he shot and killed it. Cpl. McGuire presented his affidavit, confirming Officer Mitchell's version of the events leading up to the shooting and, specifically, that the dog had attacked him by biting his midsection; he stated that the dog was "shaking his head and growling" and that the dog then advanced directly toward Officer Mitchell, growling. According to Cpl. McGuire, the dog

posed a threat to public safety. Cpl. McGuire included with his affidavit photos of his vest showing the tear that, he said, occurred when the dog bit him. The City and Officer Mitchell also presented the City's policies and procedures manual on the use of force, which specifically states that police officers are authorized to use deadly physical force to "[p]rotect the police officer or others from what is reasonably believed to an imminent threat of death or serious bodily harm." They also presented records from the "Red Mountain Animal Clinic," which indicated that, on one specific visit, the dog had been labeled as "AGGRESSIVE." The City and Officer Mitchell further relied on the plaintiff's responses to interrogatories, in which she indicated that the dog had bitten a maintenance man at the apartment complex where she lived. Finally, as explained in more detail below, the City and Officer Mitchell presented two dashboard-camera videos taken from police cars that captured the events leading up to the shooting. Accordingly, the burden shifted to the plaintiff to offer substantial evidence demonstrating a genuine issue of material fact. The plaintiff presented her own affidavit, which conveys a different version of facts. Specifically, the plaintiff asserts that her dog did not attack Cpl. McGuire; rather, she says, when Cpl. McGuire attempted to attach the

leash onto the dog's collar, the dog merely "jumped up on him in a friendly manner" and the dog's toenails ripped Cpl. McGuire's vest. She also stated that, at the time of the shooting, her dog was not barking or growling at any of the police officers and that it did not pose a threat to anyone as Officer Mitchell claimed. The plaintiff contends that her affidavit testimony, viewed in a light most favorable to her, presents a genuine issue of material fact as to whether Officer Mitchell's actions in shooting and killing her dog were unreasonable, thus depriving her of its possession and violating her constitutional rights under the Fourth Amendment and state law. Contrary to the plaintiff's affidavit testimony, the two dashboard-camera videos captured the events leading up to the shooting, and both videos confirm that the plaintiff's dog did attack Cpl. McGuire and then advanced toward Officer Mitchell, who shot and killed the dog. Specifically, the dashboard-camera videos, albeit without audio, show that the dog exited the residence and walked around the area where Officer Mitchell, Cpl. McGuire, and one of the plaintiff's sons were gathered; that Cpl. McGuire petted the dog without incident; that Cpl. McGuire walked to the entrance of the plaintiff's residence and retrieved a leash; that, when Cpl. McGuire attempted to attach the leash

onto the dog's collar, the dog lunged at him twice and began biting his midsection; that, when the dog disengaged from Cpl. McGuire, it advanced toward Officer Mitchell, who stepped backward; and that, when the dog was approximately one foot away from Officer Mitchell, he shot and killed the dog. The entire incident happened within a matter of seconds, and the videos clearly refute the plaintiff's version of facts. See Scott v. Harris, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."). When evidence from dashboard-camera videos refutes a party's version of the facts, a court should view the facts "in the light depicted by the videotape." Harris, 550 U.S. at 381. Accordingly, the plaintiff's affidavit in this case does not create a genuine issue of material fact, and this Court will view the facts in the light depicted by the dashboard-camera videos.

B. Qualified Immunity -- 42 U.S.C. § 1983

The City and Officer Mitchell argue that they have a clear legal right to a summary judgment on the plaintiff's § 1983 claims based on

qualified immunity. Section 1983 allows an injured person to seek damages against an individual who has violated his or her federal rights while acting under color of state law. 42 U.S.C. § 1983. In such actions, public officials sued in their individual capacities may assert the defense of qualified immunity, which shields those officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). We first address whether Officer Mitchell has demonstrated a clear legal right to a summary judgment on the ground of qualified immunity. A public official asserting qualified immunity must first establish that he or she was acting within the scope of his or her discretionary authority at the time of the alleged constitutional violation. Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1264 (11th Cir. 2004). Once a public official demonstrates that he or she was acting within the scope of his or her discretionary authority, the burden shifts to the plaintiff to show that the official was not entitled to qualified immunity. Id. "To overcome qualified immunity, the plaintiff must satisfy a two-prong test; he must show that: (1) the [public official] violated a constitutional right, and (2)

this right was clearly established at the time of the alleged violation." Id. If the plaintiff fails to satisfy either prong, the public official is entitled to qualified immunity. Id. In other words, it is unnecessary to address both prongs of the qualified-immunity analysis if addressing one is dispositive. This Court may decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Pearson v. Callahan, 555 U.S. 223, 236 (2009).

In this case, it is undisputed that, at the time of the alleged constitutional violation, Officer Mitchell was acting within the scope of his discretionary authority in responding to a domestic-disturbance call at the plaintiff's residence. Thus, the burden shifted to the plaintiff to demonstrate that Officer Mitchell was not entitled to qualified immunity by satisfying both prongs of the qualified-immunity analysis. Our analysis in this case begins and ends with the first prong because, we conclude, the plaintiff has failed to demonstrate a constitutional violation under the Fourth Amendment. The Fourth Amendment provides, in relevant part, that "[t]he right of people to be secure in their … effects, against unreasonable searches and seizures, shall not be violated …."

U.S. Const. amend. IV. See also Hogan v. Hogan, 199 So. 3d 50, 56 (Ala. Civ. App. 2015) (noting that "Alabama law has long held that dogs are property"). Assuming without deciding that the killing of a family pet constitutes a "seizure" within the meaning of the Fourth Amendment, we conclude that Officer Mitchell's action of killing the plaintiff's dog was objectively reasonable; thus, there was no constitutional violation. The touchstone of the Fourth Amendment is reasonableness. Brigham City v. Stuart, 547 U.S. 398, 403 (2006). "The question is whether the officer's conduct is objectively reasonable in light of the facts confronting the officer." Vinyard v. Wilson, 311 F.3d 1340, 1347 (11th Cir. 2002). As indicated, the dashboard-camera videos confirm that the plaintiff's dog behaved aggressively by attacking Cpl. McGuire and then immediately advancing toward Officer Mitchell. Viewed from the perspective of an objectively reasonable officer, we conclude that, based on its aggressive behavior, the dog posed an imminent threat of harm to Officer Mitchell and others. Officer Mitchell has therefore demonstrated a clear legal right to a summary judgment on the ground of qualified immunity with respect to the plaintiff's § 1983 claim asserted against him.

The City argues that, like Officer Mitchell, it, too, is entitled to qualified immunity on the § 1983 claim asserted against it. We disagree. The United States Supreme Court has held that municipalities are not entitled to qualified immunity in § 1983 actions. See Owen v. City of Independence, 445 U.S. 622, 638 (1980) (holding that a municipality has no qualified immunity from § 1983 claims arising out of its alleged constitutional violations). Rather, a municipality can be sued under § 1983 and will be held liable if its municipal policy or custom caused an alleged constitutional violation. See Monell v. Department of Soc. Servs. of City of New York, 436 U.S. 658, 694 (1978) (holding that a municipality is not liable under § 1983 unless a municipal "policy" or "custom" is the moving force behind the constitutional violation). To impose liability on a municipality under § 1983, a plaintiff must show "(1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004). Although a municipality cannot assert the defense of qualified immunity in a § 1983 action, it may assert other defenses for which it may be

entitled to relief. In this case, the City moved for a summary judgment on the § 1983 claim based on its assertion of qualified immunity. However, because qualified immunity is not available with regard to the plaintiff's § 1983 claim against the City, the trial court's denial of the City's motion for a summary judgment, even if erroneous for other reasons, is not reviewable by a petition for the writ of mandamus. As indicated, mandamus review of the denial of a summary-judgment motion based on immunity is an exception to the general rule against interlocutory review of the denial of summary-judgment motions. Ex parte Blunt, supra; see also Ex parte Hudson, 866 So. 2d 1115, 1120 (Ala. 2003) ("We confine our interlocutory review to matters germane to the issue of immunity. Matters relevant to the merits of the underlying [action] … are best left to the trial court ….") Accordingly, the City has not shown that it has a clear legal right to mandamus relief on the basis that the trial court exceeded its discretion in denying its motion for a summary judgment.

C. State-Agent Immunity -- State-Law Claims

The City and Officer Mitchell assert that they have a clear legal right to a summary judgment on the state-law claims asserted against

them under the restatement of State-agent immunity set forth in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion), which was adopted by the Court in Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000); see also Hollis v. City of Brighton, 950 So. 2d 300, 309 (Ala. 2006) (modifying category (4) of the Cranman restatement) and § 36-1-12, Ala. Code 1975. We agree. A police officer claiming immunity in his or her individual capacity bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity. Cranman. If the police officer makes such a showing, the burden then shifts to the plaintiff to demonstrate that the police officer acted "willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." Cranman, 792 So. 2d at 405. It is undisputed that, at the time Officer Mitchell shot and killed the plaintiff's dog, he was a police officer employed by the City and that he was performing a law-enforcement duty, i.e., responding to a domestic-disturbance call at the plaintiff's residence. Thus, the burden shifted to the plaintiff to show that Officer Mitchell acted either willfully, maliciously, or in bad faith in shooting and killing her dog. Again, the plaintiff relies on her version of the facts and, specifically, that, at the

time of the shooting, her dog was not being aggressive and did not pose a threat to anyone as claimed by Officer Mitchell. However, we rejected the plaintiff's version of the facts because those facts are refuted by the dashboard-camera videos, which clearly show that, immediately before the shooting, the dog became aggressive when Cpl. McGuire attempted to attach the leash onto the dog's collar, that the dog attacked Cpl. McGuire, and that the dog immediately advanced toward Officer Mitchell, who shot it. Based on the undisputed evidence, Officer Mitchell is entitled to State-agent immunity under Cranman. Because Officer Mitchell is immune from any liability arising out of his actions in shooting and killing the plaintiff's dog, the City is also immune from liability for those actions. City of Crossville v. Haynes, 925 So. 2d 944 (Ala. 2005). In other words, both the City and Officer Mitchell are entitled to State-agent immunity on the state-law claims asserted against them.

## IV. Conclusion

Based on the foregoing, Officer Mitchell is entitled to qualified immunity with respect to the § 1983 claim asserted against him, and the City and Officer Mitchell are entitled to State-agent immunity with

respect to the state-law claims asserted against them; thus, we grant their petition for a writ of mandamus in part and direct the trial court to enter a summary judgment in their favor on those claims. Because the City does not have a clear legal right to a summary judgment based on qualified immunity with respect to the § 1983 claim asserted against it, we deny the petition in part as to that issue.

PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Shaw, Wise, Bryan, Mendheim, and Stewart, JJ., concur.

Mitchell, J., concurs specially, with opinion, which Bolin, J., joins.

Parker, C.J., concurs in part, concurs in the result in part, and dissents in part, with opinion.

MITCHELL, Justice (concurring specially).

I concur in the main opinion. I write separately to say a few words about the effect of that opinion on remand and why I believe we should consider extending mandamus relief to encompass situations such as this one, in which our grant of mandamus relief to an individual defendant necessarily disposes of the plaintiff's claim with respect to that defendant's employer.

The main opinion correctly notes that a petition for the writ of mandamus is generally not available to review the denial of a motion for summary judgment, with a handful of exceptions. See Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060, 1064 (Ala. 2014) (cataloguing this Court's well-established exceptions). The only exception the City of Vestavia Hills asks us to apply here is the exception for claims of "immunity." But, as the main opinion explains, municipal entities are not eligible for the affirmative defense of qualified immunity as to claims asserted under 42 U.S.C. § 1983; only individual officers are. The main opinion therefore declines to issue the writ with respect to Aisha Castro's § 1983 claim against the City.

But our partial denial of mandamus relief should not be interpreted as holding that Castro's § 1983 claim against the City should go to trial. In fact, the opposite is true. In resolving Officer Mitchell's petition, the main opinion correctly holds that "there was no constitutional violation" of Castro's Fourth Amendment rights. ___ So. 3d at ___. This holding, which is now the law of the case,[1] necessarily precludes the City's liability under Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978), because a municipal employer cannot be liable under Monell if there is no underlying violation of the plaintiff's constitutional rights. See ___ So. 3d at ___ ("To impose liability on a municipality under § 1983, a plaintiff must show … 'that his constitutional rights were violated ….' " (quoting McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004))); see also, e.g., City of Los Angeles v. Heller, 475 U.S. 796, 799

[1]See Honea v. Raymond James Fin. Servs., Inc., 279 So. 3d 568, 570-71 (Ala. 2018) ("An appellate court's decision is final as to the matters before it, becomes the law of the case, and must be executed according to the mandate. Generally, a lower court 'exceeds its authority' by addressing issues already decided by an appellate court's decision in that case." (internal citations omitted)). Notably, a trial court's failure to apply the law of the case on remand is itself grounds for mandamus relief. Ex parte Williford, 902 So. 2d 658, 662 (Ala. 2004).

(1986); Rooney v. Watson, 101 F.3d 1378, 1380 (11th Cir. 1996).[2] In other words, this Court's determination that Castro's rights were not violated forecloses Castro's § 1983 claim against the City even though, for procedural reasons, we do not issue a writ of mandamus as to that specific claim.

In a future case, if a party asks us to do so, I would consider extending mandamus relief to encompass situations like this one, in which our grant of mandamus relief with respect to one petitioner necessarily disposes of the plaintiff's claim with respect to another petitioner.

Bolin, J., concurs.

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[2]This is not to say that a grant of qualified immunity to an individual defendant necessarily precludes Monell liability in all cases. There are some (albeit rare) instances in which municipal liability can exist absent individual liability, such as when a jury finds that the plaintiff sustained "a constitutional [deprivation]" that was caused by "a municipal policy, custom, or practice," yet does not have enough evidence to find that any particular "officer is individually liable" for that deprivation. Barnett v. MacArthur, 956 F.3d 1291, 1301 (11th Cir. 2020). But in cases like the present one, where a court's ruling in favor of an individual defendant is expressly based on its determination that no "constitutional deprivation has occurred" at all, then the judgment in favor of the individual defendant does mean -- as a matter of logic and the law-of-the-case doctrine -- that "there cannot be municipal liability under Monell." Id.

PARKER, Chief Justice (concurring in part, concurring in the result in part, and dissenting in part).

I disagree that Officer William S. Mitchell was entitled to summary judgment on the basis of qualified immunity. In my view, the dashboard-camera videos do not conclusively refute plaintiff Aisha Castro's version of events. Thus, we cannot disregard the conflict in the evidence as to whether Mitchell's shooting of the dog was unreasonable.

When we review a grant or denial of a summary-judgment motion, we must view the evidence in the light most favorable to the nonmovant, drawing all reasonable inferences from the evidence, and resolving all reasonable doubts, in the nonmovant's favor. Ex parte Hugine, 256 So. 3d 30, 44-45 (Ala. 2017). It is true that we should not countenance a version of events that is "blatantly contradicted by the record, so that no reasonable jury would believe it," Scott v. Harris, 550 U.S. 372, 380 (2007). Thus, when video evidence "utterly discredit[s]" one party's narrative, id., we ought to reject that narrative. But in determining whether a particular video does so, we must ask whether the video "eliminates any reasonable contention" that one party's narrative is accurate, Ex parte City of Montgomery, 272 So. 3d 155, 165 (Ala. 2018).

That is, we cannot look at the video as if we are the jury. Instead, as we do generally under the standard of review, we must ask whether, after viewing the video, any reasonable juror could find that the nonmovant's version is accurate. Accordingly, we can reject Castro's version of the events only if, viewing the videos most favorably to Castro, they conclusively refute her affidavit.

I have watched the videos, and I am unable to conclude that they utterly discredit Castro's affidavit. Her affidavit stated that the dog jumped up on Cpl. Lee McGuire as a friendly gesture, that McGuire "shushed and pushed [the dog] to get down," and that in the process the dog ripped McGuire's vest with its toenails. According to Castro, the dog then approached Mitchell, but the dog had not been barking or growling and did not pose a threat to anyone.

The videos do not indisputably show that Castro's affidavit was false. Notably, the events occurred at night and appear to have been illuminated primarily by police-car headlights, and the videos are relatively grainy. They show the dog ambling out of the home and around the officers; nothing about the dog's behavior suggests that the dog was unfriendly or menacing at that time. The videos confirm that, when

McGuire tried to attach the leash, the dog jumped toward McGuire's face and put his paws on McGuire's midsection, but the videos appear inconclusive as to whether the dog was aggressive or merely excited. I cannot tell from the videos whether the dog bit (or tried to bite) McGuire or whether his vest was torn by the dog's teeth or toenails. The dog proceeded toward Mitchell at a trot. The dog's pace and posture as it approached Mitchell were not overtly aggressive. Importantly, the videos have no sound, so they cannot refute Castro's testimony that the dog was not barking or growling.

A couple of cases suffice to illustrate when video "blatantly contradict[s]" one party's summary-judgment evidence and when it does not. In Scott, the United States Supreme Court held that video evidence refuted a plaintiff's contention that a police officer acted unreasonably. The plaintiff had been severely injured in a police chase when the pursuing officer had used his vehicle to bump the plaintiff's vehicle off the road. The plaintiff asserted that, "during the chase, 'there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [the plaintiff] remained in control of his vehicle.'" 550 U.S. at 378. The officer moved for a summary judgment based on

qualified immunity, but the district court denied his motion. The United States Court of Appeals for the Eleventh Circuit held that there was a genuine issue of material fact regarding whether the plaintiff's driving had "posed a substantial threat of imminent physical harm to motorists and pedestrians." Harris v. Coweta Cnty., 433 F.3d 807, 815 (11th Cir. 2005). But the Supreme Court reversed, concluding that the "videotape [of the chase] quite clearly contradicts the version of the story told by [the plaintiff]." Scott, 550 U.S. at 378. Specifically, the Court observed,

> "[the video showed the plaintiff]'s vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. [The vehicle] swerve[d] around more than a dozen other cars, cross[ed] the double-yellow line, and force[d] cars traveling in both directions to their respective shoulders to avoid being hit. [The vehicle ran] multiple red lights and travel[ed] for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what … the video [showed] more closely resemble[d] a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury."

Id. at 379-80 (footnotes omitted). The Court held that the plaintiff's "version of events [wa]s so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not

have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape." Id. at 380-81.

In contrast, the United States Court of Appeals for the Sixth Circuit affirmed a denial of a prison guard's motion for a summary judgment because video of an altercation between the guard and the plaintiff did not unequivocally contradict the plaintiff's version of events. Oliver v. Greene, 613 F. App'x 455 (6th Cir. 2015). It was undisputed that the guard had "grabbed ahold of [the plaintiff], wrestled him to the ground, choked him, and struck him in the face repeatedly." Id. at 456. The plaintiff claimed that the guard had "needlessly subjected him to excessive force." Id. at 457. The guard asserted qualified immunity, contending that he had just been trying to restrain the plaintiff, who was an unruly inmate, and then to defend himself. Video showed that another guard had tried to separate the plaintiff and the defendant guard, and had told the defendant guard to back away, but that the defendant guard had pushed aside the other guard in order to reach the plaintiff. The court of appeals held that the defendant guard's motion was correctly denied, explaining:

> "[The guard]'s ... view of the meaning of and motivations for the events depicted in the surveillance video might

> persuade a jury, but it does not 'speak for itself,' Scott, 550 U.S. at 378 n. 5 ..., nor does it 'unequivocally contradict[] [the plaintiff]'s version of events,' …. That is, [the guard] has not shown that [the plaintiff]'s version is 'blatantly and demonstrably false,' ...."

Id. at 459. Here, like in Oliver and unlike in Scott, the videos do not unambiguously demonstrate that Castro's affidavit was false. Thus, Mitchell is essentially asking this Court to do what the prison guard asked the Oliver court to do: interpret the videos through the lens of his version of the events. But like in Oliver, the videos are simply not conclusive -- in particular, regarding whether the dog was threatening. And unlike the video in Scott, which clearly showed numerous specific facts that contradicted the plaintiff's version, the videos here do not show any specific behavior by the dog that was obviously or indisputably aggressive. The videos are unclear as to some important facts, such as whether the dog bit McGuire, and uninformative as to others, such as whether the dog was growling.

Thus, viewing the videos in the light most favorable to Castro as we must, they do not cancel out Castro's affidavit. Since the affidavit disputes the officers' version of the key facts that bear on the reasonableness of Mitchell's shooting of the dog, an issue of fact remains.

Accordingly, the main opinion errs by concluding that there is no genuine issue of material fact regarding whether Mitchell reasonably shot the dog.

Finally, I concur with the main opinion that the City of Vestavia Hills is not eligible for qualified immunity. I concur in the result as to State-agent immunity because Castro did not carry her summary-judgment burden. She merely stated that Mitchell shot the dog willfully, in bad faith, or beyond his authority; she did not specifically explain how.