Circuit Court for Cecil County
Case No. 07-C-15-002008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 781

September Term, 2019

THE ESTATE OF ANTHONY A. HAMMOND, JR., ET AL.

v.

MICHAEL COX, ET AL.

Graeff,
Berger,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: September 24, 2020

This case comes before this Court for a second time, this time on the merits.[1] In its present iteration, summary judgement having been granted by the Circuit Court for Cecil County in favor of all defendants on all counts, plaintiffs below have noted this appeal.

Appellants, plaintiffs below, are Elizabeth Hammond, for herself as the mother of Anthony A. Hammond, Jr., the deceased, and as personal representative of his estate; Anthony Hammond, Sr., the decedent's father; decedent's three adult children and three minor children by their respective parents/next friends. Appellees are Cpl. Michael Cox, a Maryland State Police officer, and the State of Maryland.[2]

Following our dismissal of the first appeal, appellees again moved for summary judgment as to all remaining counts. Appellants moved in opposition to the motion, but without filing exhibits. Following a hearing, the court granted summary judgment on the remaining counts. This appeal followed, in which appellants, in sum, ask whether the trial court erred in granting summary judgment.[3]

[1] We dismissed the earlier appeal for want of a final, appealable judgment, pursuant to Maryland Rule 2-602. *See Hammond v. Cox* (*Hammond I)*, No. 1633, Sept. Term 2017 (filed February 14, 2019).

[2] Appellants originally named The Department of Maryland State Police as a defendant, but in their amended complaint did not include that entity as a defendant.

[3] In their brief, appellants ask:

> Did the trial Courts err in granting summary judgment to the Appellees/Defendants in holding that no reasonable interpretation of the facts, or reasonable inference of the facts, would permit a finding of an intentional tort, gross negligent or negligent tort on the part of the

We shall hold that the trial court did not err in granting summary judgment.

BACKGROUND

The circumstances surrounding the death of Anthony A. Hammond, Jr. are not in dispute; however, the parties dispute the legal consequences of the event. We highlight the relevant aspects of the events of that early morning, as drawn largely from the excerpts of Cpl. Cox's deposition testimony,[4] which were, in large part, adopted by appellants in the "Statement of Facts" of their opening brief.[5]

Just after midnight on December 20, 2012,[6] Cpl. Cox was in his marked Maryland State Police vehicle near the Winding Brook neighborhood in Elkton, Cecil County, checking for traffic violations when he observed a white Dodge Durango pass his

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> Appellee/Trooper, such that the Appellees/Defendants were entitled to judgments as a matter of law?

(Emphasis in the brief).

[4] Cpl. Cox's testimony was given in a deposition. The trial court heard no live testimony at either of the motions hearings.

[5] Appellants claim to have "reprinted" the excerpts of Cpl. Cox's deposition testimony from the appendix to their brief; however, they include two pages of the transcript that were not included in the appendix or made part of the record. As such, we will not consider those pages in our review of the appeal or in our recitation of the facts. *See Franklin Credit Mgmt. Corp. v. Nefflen*, 208 Md. App. 712, 724 (2012) (explaining that "'an appellate court must confine its review to the evidence actually before the trial court when it reached its decision'" (quoting *Cochran v. Griffith Energy Service Inc.*, 191 Md. App. 625, 663 (2010))).

[6] Throughout the pleadings and dispositive motions, there are references to the date of the incident being December 20, 2013, however, the Post Mortem Examination report and transcript excerpts of the deposition testimony for Cpl. Cox and Trooper LeCompte reflect the date of the incident as December 20, 2012.

location. He was aware that a white Durango was involved in a police chase in the area several weeks earlier, but that the driver had eluded the pursuit.

With that information, Cpl. Cox turned his lights on to follow the Durango, upon which, the Durango "immediately took a quick left turn" and "accelerated …, going through stop signs." Cpl. Cox activated emergency devices and gave chase, observing the Durango in several moving violations, including that "the operator [had] turned his vehicle lights off[]" during the chase. At one point, the Durango attempted to make a U-turn, which allowed for Cpl. Cox's headlights to shine into the Durango, revealing the driver to be "someone that resembled Mr. Hammond." The driver of the Durango, conceded to be Anthony A. Hammond, Jr., disregarded Cpl. Cox's effort to stop him and led him on a chase through the Winding Brook neighborhood, committing additional moving violations. Hammond was known to Cpl. Cox from previous contact, and Cpl. Cox was aware that Hammond was subject at that time to an outstanding arrest warrant "from the fleeing and eluding from[] the month and a half before[,]" where Hammond was suspected to have been involved in a car chase with police in a white Durango.

The vehicular pursuit ended when Hammond stopped and ran from his vehicle with Cpl. Cox pursuing him on foot. Cpl. Cox repeatedly identified himself as a "police officer, state trooper" and gave orders to stop, which Hammond disregarded. Hammond ran to a townhouse, "knocked a door off the hinges to one of the back of the town homes[,]" and "threw the door at [Cpl. Cox]." Cpl. Cox deflected the door and continued to follow Hammond. Cpl. Cox pursued him into the residence, continuing commands for Hammond to stop, and, unaware of whether others were present, drew his service weapon

as Hammond ran up the stairs to the second floor. From the bottom of the stairs, Cpl. Cox ordered him to come down. In response, Hammond "hesitates for a second[,]" then came down the stairs "quickly and in an aggressive manner[,]" grabbed Cpl. Cox and "swipe[d] [his] weapon away."

At that point, Cpl. Cox testified that he, believing that Hammond was attempting to take his weapon, "pushed him and gained separation, … and fired [his] first round[]" at Hammond. Hammond again approached Cpl. Cox and grabbed his uniform, and Cpl. Cox again pushed Hammond backwards up the stairs and fired a second shot, this time incapacitating Hammond. According to Cpl. Cox, during the struggle, he and Hammond were never more than four feet apart. Hammond died because of the gunshot wound to the upper right chest.

In his deposition, Cpl. Cox recounted the event and explained how and why the altercation escalated to shots being fired:

> [DEFENSE COUNSEL]: … The first time he made contact with you, could you just articulate for us why it's such a concern for somebody to come at you when you have your gun drawn?
>
> [CPL. COX]: … [I]t's kind of mind blowing, if you ask me, if a police officer has his gun drawn on you and you're aggressively not only disobeying the commands but coming down aggressively down the stairs and then trying to disarm him. And then latching hold of you -- latching hold of that police officer.
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> [DEFENSE COUNSEL]: … What could happen if he disarmed you?
>
> [CPL. COX]: … I still had no idea if he was armed. I didn't know. I don't know. So I would have had -- you know, it would have been a fight for the gun, I believe, because somebody -- you don't disarm somebody and then just let it go, in my opinion.

[DEFENSE COUNSEL]: During your use of force training, are you trained about the possibility of police officers being shot with their own gun?

[CPL. COX]: Yes.

[DEFENSE COUNSEL]: Was that a concern here?

* * *

[CPL. COX]: It was one of my concerns, yeah.

[DEFENSE COUNSEL]: Why did you fire the first shot?

[CPL. COX]: Because he came down the stairs very quickly, aggressively towards me, swatted my weapon away, and then grabbed a hold of me. So I gained separation. I pushed him and gained separation, punched out and fired my first round.[7]

[DEFENSE COUNSEL]: Why did you not fire multiple shots at that point? Why did you fire only one shot?

[CPL. COX]: I was only shooting to incapacitate him.

[DEFENSE COUNSEL]: So why did you feel a need to fire a second shot?

[CPL. COX]: Because it didn't do anything. The first round didn't do anything. Because he came back down and grabbed a hold of me.

[DEFENSE COUNSEL]: He was not incapacitated after the [first] shot?

[CPL. COX]: No.

DEFENSE COUNSEL: Did the second shot incapacitate him?

[CPL. COX]: Yes.

[7] Clearly, the first shot missed. The Post Mortem Examination report indicated that Hammond was struck by just one shot.

After Hammond was disabled and while Cpl. Cox was notifying the police barracks that shots were fired, several other persons appeared from within both the upper and lower areas of the house. Because the scene was not secured and concerned for his own safety, Cpl. Cox "backed [him]self up into a corner and put [his] weapon into a low ready[,]" and was unable to render aid to Hammond. From the group that gathered, Cpl. Cox asked for the address so that he could call for medical assistance. The group initially declined to assist, but eventually the address was given.[8] Shortly thereafter, another Maryland State trooper, Adam LeCompte, arrived at the home and attempted, unsuccessfully, resuscitation of Hammond.

The Litigation

Appellants amended complaint was in six counts, three of wrongful death and three in the nature of a survival action. Counts 1 and 2 alleged intentional killing; Counts 3 and 4 alleged gross negligence; and Counts 5 and 6 alleged negligence. Appellants have made no constitutional claims under either Article 24 or 26 of the Maryland Declaration of Rights.[9] Following discovery, appellees moved for summary judgment.

[8] Cpl. Cox's testimony was that, when he was finally given an address to direct the ambulance, he had been given the address of a neighboring house instead of the address where the incident took place.

[9] Article 24 of the Maryland Declaration of Rights states that "no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

While, Article 26 provides that

Their filing included a memorandum of law and accompanying exhibits, which included transcript excerpts of the deposition testimony of Cpl. Cox and trooper LeCompte, the post mortem examination report, the affidavit of Mark Rauser, appellees' proffered use-of-force expert, and appellants' answers to interrogatories. Appellants opposed the motion for summary judgment without offering any additional supporting documents.

As we have noted, the trial court ultimately granted summary judgment in favor of appellees as to all counts. In doing so, the court observed at the initial motions hearing:

> Here the facts are really -- they're not really in dispute. There is nothing in the record of a factual nature that is really in dispute.
>
> Basically the Officer's conduct during the chase doesn't reveal any reckless behavior. Officer Cox is alone pursuing a wanted man, Mr. Hammond. Mr. Hammond did flee in the vehicle, exited the vehicle, fled on foot, and threw a door or a screen door or something at the Officer as Mr. Hammond was trying to gain access to this apartment or building or townhouse or home. I'm not exactly sure what it was.
>
> And here is the way I look at the facts that [counsel have] argued. But the facts -- the standard of police behavior, the objectively reasonable standard is what a police officer would do under similar circumstances. And all we have to judge is the facts and circumstances that actually happened, not what Mr. Hammond could have done or the officer could have done. Actually, when they're in that position there is nothing prior to that confrontation that would indicate that the Officer was acting other than in a professional manner.

> all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

The standard for determining excessive force is the same whether the action is brought as constitutional claims or as claims of common law battery and gross negligence. *See Richardson v. McGriff*, 361 Md. 437, 452–53 (2000).

> I look at the facts that are in the record a little bit different than [appellants' counsel] argued to the Court. We have Mr. Hammond, who approaches the Officer, grabs ahold of him in some manner, and tries to swipe the gun away. He's pushed away, and a shot is fired.
>
> Now, when he re-approaches the Officer and grabs him again, I don't see how that would do anything but heighten the apprehension of the Officer that something is wrong with this guy. I just fired a shot at him and he's still -- what do I want to say? -- re-engaging me. I mean, it's not like Hammond stopped; he was shot while coming forward again.
>
> But based on the facts that I heard and the legal standards that are applicable to this case, I'm going to grant summary judgment on all counts.

The court then entered a written order granting summary judgment on counts 1 through 4, explaining that:

> After reading the file and considering the argument of counsel, the Court finds that no reasonable interpretation of the facts or reasonable inference of the facts would permit a finding of gross negligence or negligence on the part of Trooper Cox.

On appeal, unpersuaded as to the applicability of Rule 2-602(b) to the trial court's authority to certify only four of the six counts as final judgment, we dismissed the appeal for want of appellate jurisdiction. We explained that: "A grant of partial summary judgment by the trial court to one, or more, counts of a multicount complaint, all of which are based on a discrete factual situation, cannot implicate the application of Rule 2-602(b)." *Hammond I*, slip op. 5.

On remand, following the dismissal of the appeal in *Hammond I*, appellees again moved for summary judgment on the remaining counts, reiterating substantially the same

arguments, with the same supporting exhibits attached as their previous motion.[10] As we have noted, the trial court again granted summary judgment. In explaining its decision, the court stated:

> … Procedurally, I mean, the Court does agree for the reasons cited here that it is appropriate for the Court to consider this motion. … I have looked at the hearing notes when the motion was first heard, noting that it was granted as to -- well, it was granted, assuming all counts. And then I have in front of me [the] order in which [the prior court] found that no reasonable interpretation of the facts or reasonable inference of the facts would permit a finding of gross negligence or negligence on the part of Trooper Cox.
>
> And again, from my reading of the motions, all the exhibits, the transcripts, the cases, I mean, the Court concurs and the Court does find that Trooper Cox did act reasonably when he discharged his weapon. The Court concurs with [the prior court's] earlier findings with regard to Counts 1, 2, 3 and 4. So in other words, the Court is going to grant the defendant's [sic] motion for summary judgment, and we'll see where it goes.

A written order was entered, reflecting the same, without further explanation.

DISCUSSION

Standard of Review

Before turning to the merits of appellants' claims, we address the accepted standard for our review of a grant of summary judgment. Summary judgment is appropriate "'on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law.'" *Haas v. Lockheed Martin Corp*., 396 Md. 469, 478 (2007) (quoting *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 66 (2006)). To defeat a motion for summary judgment, the opposing

[10] Appellees also included the hearing sheet and transcript of the October 17, 2017 motions hearing.

party must show the trial court that there exists a genuine dispute of a material fact bearing on the complaint and must do so by proffering facts that would be admissible at trial. *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 737 (1993). To be sure, "[e]ven when the underlying facts are undisputed, if the undisputed facts are susceptible of more than one permissible factual inference, the choice between those inferences should not be made as a matter of law, and summary judgment should not be granted." *Zurich Am. Ins. Co. v. Uninsured Employers' Fund*, 197 Md. App. 290, 302 (2011) (quoting *Injured Workers' Ins. Fund v. Orient Exp. Delivery Serv., Inc*., 190 Md. App. 438, 451 (2010)).

However, "[w]here there is no dispute of material fact, this Court's focus is on whether the trial court's grant of the motion was legally correct." *Powell v. Breslin*, 195 Md. App. 340, 346 (2010) (citing *Laing v. Volkswagen of Am., Inc*., 180 Md. App. 136, 152–53 (2008)). "The question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006) (citing *Livesay v. Baltimore County*, 384 Md. 1, 9 (2004)).

"'An appellate court reviewing a summary judgment examines the same information from the record and determines the same issues of law as the trial court.'" *Haas*, 396 Md. at 478–79 (quoting *United Servs. Auto.*, 393 Md. at 67). The Court must "review the record in the light most favorable to the nonmoving party," *Myers*, 391 Md. at 203 (citation omitted), and will "construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party[.]" *Powell*, 195 Md. App. at 346 (citations omitted). And, "we review 'only the grounds upon which the trial court relied in granting summary judgment.'"

River Walk Apartments, LLC v. Twigg, 396 Md. 527, 541–42 (2007) (citations omitted); *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc*., 194 Md. App. 375, 387 (2010) (quoting *Lovelace v. Anderson*, 366 Md. 690, 695 (2001)).

Excessive Force

In *Cunningham v. Baltimore County*, 246 Md. App. 630 (2020), *reconsideration denied* (Aug. 26, 2020), Judge Graeff wrote for this Court:

> In determining whether a police officer has used excessive force in violation of 42 U.S.C. § 1983 or Articles 24 and 26 of the Maryland Declaration of Rights, we look to "whether the officers' actions were 'objectively reasonable' in light of the facts and circumstances confronting them." *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Estate of Blair by Blair v. Austin*, [469 Md. 1, 21–23 (2020)] (plurality opinion). *See Randall v. Peaco*, 175 Md. App. 320, 330 (Claims of excessive force brought under Article 24 are analyzed in the "same manner as if the claim were brought under Article 26[,]" i.e., "under Fourth Amendment jurisprudence, rather than notions of substantive due process."), *cert. denied*, 401 Md. 174 (2007). *See also*, Dan Friedman, *The Maryland State Constitution: A Reference Guide* 62–63 (Oxford ed. 2011).
>
> In an excessive force case, the plaintiff must prove, "by a preponderance of the evidence that the officer exceeded the level of force an objectively reasonable officer would use under the same or similar situation." *Blair*, [469 Md. at 21–22] (plurality opinion). "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396 (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)). The test of reasonableness requires careful attention to "the facts and circumstances of each particular case, 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*. at 396. "The 'reasonableness' of a particular 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*. "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." *Id*. at 396–97.
>
> The use of deadly force by a police officer is reasonable when the officer has "probable cause to believe that the suspect poses a threat of serious physical harm to the officer or to others." *Garner*, 471 U.S. at 11. *See Elliott v. Leavitt*, 99 F.3d 640, 642 (4th Cir. 1996) ("[T]he question is whether a reasonable officer in the same circumstances would have concluded that a threat existed justifying the particular use of force."), *cert. denied*, 521 U.S. 1120 (1997). "Where [a] suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." *Garner*, 471 U.S. at 11.

Cunningham, 246 Md. App. at 690–92 (internal footnotes omitted).

Appellees cite us to two prior Maryland cases that impact our review, both involving lawsuits against police officers alleging excessive force: *Richardson v. McGriff*, 361 Md. 437 (2000) and *Randall v. Peaco*, 175 Md. App. 320 (2007). In both cases, judgments for defendants were affirmed on appeal.

Taurrance Richardson, along with six friends, had broken into a vacant apartment, when police were called to investigate. *Richardson*, 361 Md. at 440. As best summarized by the Court of Appeals, the incident that followed when police arrived was that Richardson "hid in a kitchen closet, that he refused to come out when the police announced their presence and called upon him to do so, that he was holding a vacuum cleaner pipe in his hand, that it was extremely dark in the kitchen, …" and that when the closet door was quickly opened by police with a flashlight shining inside, "[the officer] saw what appeared to him to be a man holding a large weapon and lowering it into firing position, and that, in self-defense, he fired at [Richardson] and severely wounded him." *Id*. Richardson filed suit against the officers involved and relevant city and state officials

on various common law torts and violations of Articles 24 and 26 of the Maryland Declaration of Rights. *Id*. Following a jury trial on the claims against McGriff, the jury entered a verdict in the officer's favor. *Id*. at 441. As we shall discuss further, Richardson's appeals resulted in affirmance by this Court, and on certiorari, by the Court of Appeals. *Id*. at 441, 467.

Louis Randall, Jr. was shot by a police officer in the home he shared with his mother. *Randall*, 175 Md. App. at 321. Police were called to the home by his mother for assistance in transporting Randall, a diagnosed schizophrenic, to the hospital for medical attention after she observed him behaving erratically. *Id*. at 322–23. Unable to convince Randall to come outside, a specialized team of officers, including Cpl. William Peaco, entered the house. *Id*. at 323. Randall was found in his bedroom with a butcher knife in his hand. *Id*. at 323–24. The officers remained at the bedroom doorway as Randall "got out of bed, moved directly to the wall and then started down the wall towards the officers." *Id*. at 324 (internal quotations omitted). Despite a request to drop the knife, he refused and continued to move toward the officers with the knife in hand. *Id*. At a distance "well inside 15 feet," Peaco fired his weapon, wounding Randall. *Id*. (internal quotations omitted). Randall filed suit against Peaco and his employer, Prince George's County, alleging various common law tort claims and violations under Articles 24 and 26 of the Maryland Declaration of Rights. *Id*. at 325. The trial court granted summary judgment on all counts in favor of Peaco and Prince George's County. *Id*. at 327–28. This Court affirmed the trial court's grant of summary judgment, as we shall discuss, *infra*. *Id*. at 337.

Appellants posit that *Richardson* and *Peaco* are factually distinguishable, in that in each of those cases the plaintiff/victims were armed, or reasonably believed by the police to be armed. Appellants further assert that there was no evidence before the court of any attempt by Hammond to injure or disarm Cpl. Cox. Thus, they conclude, "the issue was not proper for summary judgment[,] because Cox's testimony and "reasonable arguable inferences permit the conclusion that [Hammond] had not threatened [Cox] with imminent serious bodily harm or death such that the use of deadly force in shooting him was reasonable." Appellants, however, fail to cite any supporting authority for their assertions.

Appellees respond that the crux of the issue is whether, on the known facts, Cpl. Cox acted reasonably, notwithstanding his lack of knowledge of Hammond's intent or the fact that Hammond did not appear to be — and in fact was not — armed.

As appellees point out, the lodestar of our inquiry is *Graham v. Connor*, 490 U.S. 386 (1989). Graham, a diabetic, feeling the onset of an insulin reaction, asked a friend to drive him to a convenience store so that he could purchase some orange juice to offset the attack. 490 U.S. at 388. Graham entered the store, observed a long line of customers, and promptly left the store intending to seek help at a friend's house instead. *Id*. at 389. His short stay in the store attracted the attention of a police officer, Connor, who followed Graham's vehicle and made an investigative stop. *Id*. Other officers arrived as backup. *Id*. Graham was handcuffed, and his explanations of his medical condition were ignored by the officers. *Id*. After satisfying themselves that there had been no crime committed in the convenience store, the police released Graham. *Id*.

Graham sued under 42 U.S.C. § 1983. 490 U.S. at 390. The District Court granted Connor's motion for directed verdict at the close of Graham's case, and the Court of Appeals for the Fourth Circuit affirmed. *Id*. at 390–91. However, the Supreme Court vacated the judgment and remanded for review by the Court of Appeals under Fourth Amendment standards, rather than substantive due process. *Id*. at 397–99. In doing so, the Court set forth the test to be applied in excessive force claims: "The 'reasonableness' of a particular 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. The Court added, "[t]he 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." *Id*. at 396–97. The Court established that "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id*. at 397.

As recognized above, the *Graham* rationale has been adopted and consistently applied by Maryland courts. Notably, in *Richardson*, the Court of Appeals declared that the concept of reasonableness stated by the *Graham* Court "is the appropriate one to apply" to excessive force claims brought under Article 26 of the Maryland Declaration of Rights and for common law claims of battery and gross negligence. 361 Md. at 452. Moreover, the Court of Appeals has also recognized that a "police officer's conduct should be judged not by hindsight but should be viewed in light of how a reasonably

prudent police officer would respond faced with the same difficult emergency situation." *Boyer v. State,* 323 Md. 558, 589 (1991).

The question of excessive force was again considered by this Court in *Peaco*, where we applied the rationale of both *Graham* and *Richardson* in our discussion and said:

> As we read appellant's assertions, he presents the purely legal question of whether he should be entitled to have a fact finder assess the reasonableness of Officer Peaco's decision to use lethal force by resort to antecedent events. He points out that he presented evidence of such events from which a fact finder could infer that Corporal Peaco acted unreasonably in shooting him.
>
> Appellant's contention fails in its premise. *The law in Maryland, and in a number of federal courts and our sister states, is that events that are antecedent to the conduct of the officer at issue do not bear on the objective reasonableness of that conduct*.

Peaco, 175 Md. App. at 329 (emphasis added).

We apply that rationale to the circumstances presented in this appeal, as did the trial court, and to the arguments of counsel, similar to those made on behalf of the claimant in *Peaco*. As we apply the objective reasonableness to the facts, as summarized, *supra,* we find support for the grant of summary judgment.

In reaching our conclusion that the trial court did not err in granting summary judgment, we consider that recent opinions of this Court and the Court of Appeals have

enhanced the inventory of excessive force cases. In addition to *Cunningham v. Baltimore County*, *supra*, we have considered *Estate of Blair by Blair v. Austin*, 469 Md. 1 (2020).[11]

The Estate of Jeffrey Blair was awarded damages by a jury which found that David Austin, a police officer, had used excessive force during his encounter (a traffic stop) with Blair. This Court, in an unreported opinion, reversed, holding that "as a matter of law, Austin's actions in using deadly force to defend himself were objectively reasonable." *Austin*, slip op. at 11. After recognizing the standard established in *Graham v. Connor* and adopted by the Court of Appeals and this Court in *Richardson v. McGriff* and *Randall v. Peaco*, respectively, this Court determined, relying principally on a security camera video that captured the event, that "faced with the same emergent circumstances, any prudent officer in Austin's position could reasonably have made the same decision, and the circuit court therefore erred in denying Austin's motion for judgment." *Austin*, slip op. at 3 (footnote omitted).

The Court of Appeals granted the Blair Estate's petition for certiorari to address one question:

> Did [the Court of Special Appeals] err when, based solely on [its] interpretation of the video evidence that the jury considered in reaching its verdict, it overturned the jury's factual finding that [Officer Austin] exceeded the level of force that an objectively reasonable officer in his situation would have used?

Blair, 469 Md. at 8.

Following a lengthy discussion, the Court of Appeals reversed:

[11] Before the Court of Appeals' consideration of the *Blair* appeal, it was before this Court, *sub nom*, *Austin v. Estate of Blair by Blair* (*Austin*), No. 580, Sept. Term, 2017 (filed April 25, 2019).

> In conclusion, we hold that the Court of Special Appeals erred when it substituted its judgment for the factual findings and verdict of the jury regarding Officer Austin's excessive use of force, for that of its own, based on its own independent evaluation of the video camera evidence.

469 Md. at 28.

However, there is nothing in the Court's majority opinion, or in the concurring opinion (explaining that this Court usurped the jury's fact-finding function), that suggests that the standard for determining excessive force is anything other than that propounded in *Graham* and adopted by Maryland courts in *Richardson, Peaco, Cunningham,* and the like.[12]

In considering the factual scenario now before us, we recall the Supreme Court's observation about summary judgment in *Scott v. Harris*, 550 U.S. 372 (2007):

> At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. As we have emphasized, [w]hen the moving party has carried its burden …, its opponent must do more than simply show that there is some *metaphysical doubt* as to the material facts[.] Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact. 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.

550 U.S. at 380 (first emphasis added) (internal quotations and citations omitted).

[12] *Blair* was a plurality opinion. Three members of the Court of Appeals joined the majority opinion; one member, writing separately, concurred in the result; and three members joined in a dissent.

Before us is a record containing uncontroverted facts of the sequence of events from that morning based solely on the deposition testimony of Cpl. Cox. Despite that fact, appellants, however, contend that "[t]he issue of reasonableness under these facts is a jury question." As we have noted, appellants offer no support for this assertion. To the contrary, appellants limit the scope of "facts" in their argument to the short interaction between Hammond and Cpl. Cox on the stairs. Notably absent is how the entire interaction between Cpl. Cox and Mr. Hammond began, as we described in detail, *supra*.

Indeed, as the trial court summarized in its reasoning during its oral ruling on the first motion for summary judgment: "Cox is alone pursuing a wanted man, Mr. Hammond[;] Mr. Hammond did flee in the vehicle, exited the vehicle, fled on foot, and threw a door … at the Officer as Mr. Hammond was trying to gain access to this … home[,]" then "[w]e have Mr. Hammond, who approaches the Officer, grabs ahold of him in some manner, and tries to swipe the gun away. He's pushed away, and a shot is fired." After the first shot, "when [Hammond] re-approaches the Officer and grabs him again, I don't see how that would do anything but heighten the apprehension of the Officer that something is wrong with this guy."

We find neither error nor abuse of discretion in the trial court's entry of summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANTS.