

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

HUNTER TILLIS,

Plaintiff,

v.

CONSOLIDATED GOVERNMENT OF
COLUMBUS, GEORGIA, *et al.*,

Defendants.

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CASE NO. 4:18-cv-220-CDL

NANCY SORRELLS, as grandmother,
legal custodian and as Administratrix of the
Estate of CHRISTIAN REDWINE,

Plaintiff,

v.

CONSOLIDATED GOVERNMENT OF
COLUMBUS, GEORGIA, *et al.*,

Defendants.

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CASE NO. 4:18-cv-222-CDL

HANNAH WUENSCHER,

Plaintiff,

v.

THE CONSOLIDATED GOVERNMENT
OF COLUMBUS, GEORGIA, *et al.*,

Defendants.

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CASE NO. 4:18-cv-224-CDL

**DEFENDANTS' STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

Plaintiffs Hunter Tillis, Nancy Sorrells, and Hannah Wuenschel brought these actions, which arise from a November 6, 2016 high speed police pursuit and shooting, against Defendants Consolidated Government of Columbus, Georgia (“CCG”), Columbus Police Department (“CPD”) Chief Ricky Boren in his official and individual capacities (“Chief Boren”), and former CPD officer Allan H. Brown, Jr. in his official and individual capacities (“Officer Brown”) (collectively “Defendants”).¹ Plaintiffs attempt to assert claims against Defendants pursuant to 42 U.S.C. § 1983 and Georgia and Alabama state law. The Court previously consolidated the cases for all pretrial proceedings. [Order to Consolidate, ECF No. 16] Defendants submit the following Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried (“SMF”) in support of their Motion for Summary Judgment.

I. The Parties

1. Plaintiff Nancy Sorrells is the custodial grandmother and duly appointed Administratrix of the Estate of Christian Redwine. [Sorrells’ Compl., ECF No. 1, at ¶7] Redwine was fatally shot by Officer Brown on November 6, 2016 following a high speed pursuit and while attempting to elude arrest in a 2006 Pontiac G6 (“Pontiac”) that he, Tillis and Wuenschel stole from Fred Levins. Redwine lived with Sorrells and Levins at 3311 Cherokee Avenue in Columbus, Georgia.

2. Plaintiffs Tillis and Wuenschel were passengers in the Pontiac and were also shot. Tillis is Redwine’s cousin.

3. Defendant CCG is a consolidated city-county government, and for sovereign

¹ Tillis and Sorrells also named, but voluntarily dismissed, CPD as a defendant. [Tillis Case (4:18-cv-220) at ECF No. 12; Sorrells Case (4:18-cv-222) at ECF No. 14]

immunity purposes, is treated as a department or agency of the State of Georgia. *Bowen v. Columbus*, 349 S.E.2d 740, 741-42 (Ga. 1986); *Gilbert v. Richardson*, 452 S.E.2d 476, 479 & 484 (Ga. 1994); *Thomas v. Hosp. Auth. of Clarke Cnty.*, 440 S.E.2d 195, 196 (Ga. 1994).

4. Defendant Chief Boren is, and was at all relevant times, the CPD Chief of Police. [*Id.* at ¶10] He has been sued in his individual and official capacities. [Tillis Compl., ECF No. 1, at ¶10; Sorrells Compl., ECF No. 1, at ¶10; Wuenschel Compl., ECF No. 1, at ¶10]

5. Defendant Officer Brown was, at the time of the events underlying this lawsuit, a CPD officer. [Defs.' Consolidated Answer and Defenses to Plaintiffs' Complaints, ECF No. 17, at ¶11] Officer Brown resigned from the CPD on May 6, 2017. [April 23, 2019 Deposition of Allan H. Brown, Jr. ("Brown Depo., Vol. II"), filed concurrently with Defendants' summary judgment motion, at 12:3-8] He has been sued in his individual and official capacities. [Tillis Compl., ECF No. 1, at ¶11; Sorrells Compl., ECF No. 1, at ¶11; Wuenschel Compl., ECF No. 1, at ¶10]

II. 3311 Cherokee Avenue

6. Redwine lived with Sorrells from the time he was 5 months old until his death. [Deposition of Nancy Sorrells ("Sorrells Depo."), filed concurrently with Defendants' summary judgment motion, at 12:3 - 13:9] Sorrells was appointed formal custodian of Redwine when he was 12 years old and after Redwine's father was sentenced to life in prison for murder and after his mother's custody rights were taken away. [*Id.* at 11:5-21; 16:17 - 17:2]

7. From about 2013 until his death, Redwine lived with Sorrells and Levins at 3311 Cherokee Avenue ("3311 Cherokee") in Columbus, Georgia. [*Id.* at 6:20 - 7:1; 12:18 - 13:1]

III. Activities Leading Up To The High Speed Pursuit

A. *Drug Use at 3311 Cherokee Avenue*

8. On November 4, 2016, Tillis left community service and went to see Redwine at 3311 Cherokee. [Deposition of Hunter Tillis (“Tillis Depo.”), filed concurrently with Defendants’ summary judgment motion, at 63:10-13]

9. Sometime during the day on November 4, 2016, Tillis and Redwine walked from 3311 Cherokee to the CVS on Hilton Avenue to purchase “triple Cs,” which is slang for Coricidin HBP Cough & Cold. [Tillis Depo. at 47:20 - 51:14; 65:18 - 66:4; 274:13 - 275:3 & Ex. 9 (copy of Coricidin packaging)] According to Tillis, triple C’s are cold and congestion medicine that contain dextromethorphan, which is the ingredient that makes everyone “trip.” [*Id.* at 65:18 - 66:4]

10. Tillis and Redwine bought 2 boxes (each containing 16 pills) of triple Cs. [*Id.* at 50:20 - 51:14] When they got back to 3311 Cherokee, Tillis and Redwine smoked a “blunt.” [*Id.* at 57:14 - 58:3] A blunt is a cigar into which marijuana is rolled. [*Id.* at 81:3-5]

11. Tillis and Redwine started taking the triple Cs during the night of November 4, 2016. [*Id.* at 47:20 - 48:20] Tillis took an entire box -- 16 pills -- even though 8 pills were enough to get him high. [*Id.* at 50:10-16] Tillis knows Redwine took some triple Cs, but does not recall how many he took. [*Id.* at 52:22 - 54:9]

12. Sometime after taking triple Cs, Tillis and Redwine each ingested 4 Xanax bars. [*Id.* at 55:22 - 58:5] Tillis took all 4 by mouth, while Redwine ate some and snorted some. [*Id.*]

13. Tillis knew that the type and amount of Xanax he was taking would “carry” him for a couple of days. [*Id.* at 58:13 - 59:10]

14. Before going to bed on November 4, 2016, Tillis and Redwine had taken triple Cs

and at least 4 Xanax bars and smoked marijuana. [*Id.* at 59:11-16 & 67:1-6]

15. When Tillis and Redwine woke up on Saturday, November 5, 2016, they went straight back to ingesting triple Cs, splitting up what was left. [*Id.* at 68:10-25]

16. Tillis was still feeling the effects of the triple Cs he had taken the night before, so the triple Cs he took November 5, 2016 only intensified his high and made Tillis feel like he could not do “this no more” and needed to go to sleep. [*Id.* at 59:17 - 60:20] Redwine suggested he had a buddy with some “soft” (slang for cocaine) that “should clear it up.” [*Id.* at 59:17 - 60:23]

17. After taking the triple Cs, Redwine called a person named “E Man” to come over to 3311 Cherokee with cocaine. [*Id.* at 68:21 - 69:6] A couple of hours later, E Man arrived with powder cocaine, and Tillis, Redwine and E Man each snorted 1 line. [*Id.* at 69:24 - 70:9] When Tillis took the cocaine, it intensified the high he already had and made the triple Cs stronger. [*Id.* at 76:11 - 77:4]

18. After doing the cocaine, Tillis and Redwine hung out with E Man at 3311 Cherokee for a little while and smoked a couple of blunts. [*Id.* at 70:24 - 71:15] When they were smoking a blunt, Redwine told Tillis “I’m fucked up” and “I’m high as fuck.” [*Id.* at 77:5-23]

19. At the time Tillis and Redwine did cocaine on November 5, 2016, it was dark outside or getting close to being dark. [Tillis Depo. at 74:3-16]

20. Wuenschel arrived at 3311 Cherokee on November 5, 2016 when it was starting to get dark. [*Id.*] Wuenschel routinely hung out and smoked marijuana with Redwine at 3311 Cherokee. [Deposition of Hannah Wuenschel (“Wuenschel Depo.”), filed concurrently with Defendants’ summary judgment motion, at 29:23 - 30:12] They smoked marijuana every time

Wuenschel was there, and Sorrells and Levins knew they smoked marijuana at their house. [*Id.* at 30:16 - 31:16 & 32:14-18]

21. According to Tillis, when Wuenschel saw him after she arrived at 3311 Cherokee on November 5, 2016, she said “damn, you look high as hell.” [Tillis Depo. at 78:1 - 79:2] Tillis responded to Wuenschel, “I’m high as hell...these triple Cs got me fucked up.” [*Id.* at 79:3-15] Wuenschel replied, “I can tell you’re fucked up.” [*Id.*]

22. According to Wuenschel, she went to 3311 Cherokee on November 5, 2016 to pick up her infant son who was supposed to be there with Redwine’s girlfriend “Sierra.” [Wuenschel Depo. at 34:5 - 35:22] However, Sierra and Christian had an argument, and Sierra left with Wuenschel’s son before Wuenschel arrived. [*Id.*] Sorrells then drove Tillis, Redwine and Wuenschel to a house on 3rd Avenue (“3rd Avenue House”) in Columbus to get her son from Sierra. [*Id.* at 35:3 - 36:13] While at the 3rd Avenue House, Redwine tried to get Sierra to come back to 3311 Cherokee, but she refused. [*Id.* at 35:23 - 36:6]

23. Later that night, at around 8:00 p.m., Sorrells took Tillis, Redwine and Wuenschel back to the 3rd Avenue house so Redwine could try to convince Sierra to come back to 3311 Cherokee. [*Id.* at 40:5 - 41:12] Sierra again refused. [*Id.* at 41:13-14] Sorrells, Tillis, Redwine and Wuenschel left the 3rd Avenue House and arrived back at 3311 Cherokee around 8:30 p.m. [*Id.* at 41:15-25]

24. After they got back to 3311 Cherokee, Wuenschel put her son to sleep, and Tillis, Redwine and Wuenschel went outside and smoked marijuana. [*Id.* at 42:9-13]

B. *The Stolen Pontiac and Further Criminal Activities*

25. Levins was in the car business and would keep and sell cars on the lot at 3311 Cherokee. [Deposition of Fred Levins (“Levins Depo.”), filed concurrently with Defendants’

summary judgment motion, at 28:3-9] The Pontiac was one of the cars he kept at 3311 Cherokee. [Sorrells Depo. at 47:15 - 48:15; Levins Depo. at 38:19 - 39:19]

26. Levins went to bed on November 5, 2016 at around 11:00 p.m. [Levins Depo. at 38:1-6] He woke up at 1:00 a.m. on November 6, 2016 and realized that the Pontiac, its key and Redwine, Tillis and Wuenschel were all missing. [*Id.* at 38:19 - 40:5 & 56:21 - 57:25]

27. Levins never gave Redwine permission to drive any of the cars he kept at 3311 Cherokee, including the Pontiac. [*Id.* at 33:10 - 34:12]

28. Redwine never had a driver's license. [*Id.* at 33:6-9]

29. Redwine, Tillis and Wuenschel stole the Pontiac from 3311 Cherokee at around 10:00 p.m. or 11:00 p.m. on November 5, 2016 after Redwine and Tillis took cocaine. [Wuenschel Depo. at 43:6-22; Tillis Depo. at 94:11-22] Wuenschel left her son behind at 3311 Cherokee. [Tillis Depo. at 94:11-22; Levins Depo. at 56:21 - 57:25] Wuenschel sat in the front passenger seat and Tillis sat in the back seat behind Redwine. [Wuenschel Compl. at ¶22]

30. They drove to the Circle K on Rosemont Drive to get cigarettes, and then drove to the 3rd Avenue House to look for Sierra. [Tillis Depo at 94:23 - 95:16] Redwine got out of the Pontiac at the 3rd Avenue House to look for Sierra and returned with an individual named Aaron Scarborough ("Scarborough"). [*Id.* at 101:5 - 102:5]

31. Scarborough got in the Pontiac with Redwine, Tillis and Wuenschel and they rode around and smoked marijuana. [*Id.* at 102:25 - 104:9]

32. Redwine and Scarborough were intending to "hit licks on cars," meaning burglarize them. [*Id.* at 103:10 - 104:14] At one point, Redwine and Scarborough got out to burglarize a car while Tillis and Wuenschel stayed in the Pontiac. [*Id.*] Redwine opened the car door and a porch light came on, after which Tillis saw Scarborough running. [*Id.*]

33. When Redwine and Scarborough got back to the Pontiac, Scarborough said he wanted to go home because Redwine was being reckless. [*Id.*] Tillis explained that Redwine did not care if anybody was going to come outside and catch him breaking into cars because Redwine was going to do what he wanted anyway. [*Id.*] According to Tillis, the Xanax Redwine took that night made him reckless because he had seen Redwine like that before on Xanax. [*Id.* at 109:18 - 110:19 & 111:8 - 112:12]

34. After they dropped Scarborough off at the 3rd Avenue House,² Redwine, Tillis and Wuenschel drove to the Country Inn and Suites off of Williams Road in Columbus. [*Id.* at 103:10 - 105:16 & 109:1-10] Redwine and Wuenschel then got out of the Pontiac while Tillis stayed in the car. [*Id.* at 109:11-17] When Redwine and Wuenschel returned to the Pontiac, they were arguing about a camera and Wuenschel threw a bag of change through the window as she was getting back into the car. [*Id.* at 112:17 - 113:16]

35. At some point after leaving the Country Inn and Suites, Redwine, Tillis and Wuenschel ended up at the Gold and Silver Exchange pawn shop across the street from USA Discounters on Milgen Road in Columbus. [*Id.* at 115:2-13] Redwine parked the Pontiac in the parking lot of the Gold and Silver Exchange while he used Tillis' phone to try to get in touch with Sierra again. [*Id.*]

36. Levins first called the police to report the Pontiac stolen at 3:30 a.m. [Levins Depo. at 56:21 - 58:6] When reporting the Pontiac stolen, Levins, did not tell the police that Redwine, Tillis and Wuenschel had taken the car. [*Id.* at 42:16 - 43:20]

37. The police called Levins back at 3:38 a.m., and Levins told them that he wanted

² At some point after the November 6, 2016 incident, Wuneschel sent Tillis a Facebook message and told him not to tell anyone that Scarborough was in the car with them that night. [*Id.* at 89:23 - 90:4]

Redwine, Tillis and Wuenschel put in jail. [*Id.* at 44:18 - 45:17] He was mad because they had stolen his car. [*Id.*] Despite knowing that Redwine, who he considered to be like a grandson, took the Pontiac, Levins never retracted his request that the police arrest Redwine, Tillis and Wuenschel. [*Id.* at 47:21 - 49:12]

IV. The High Speed Pursuit

A. *From The Beginning Up Until Officer Brown Joins*

38. Around 4:25 a.m. on November 6, 2016, CPD Captain William Turner, who was driving a black, unmarked Chevrolet Impala, observed the Pontiac parked by the Gold and Silver Exchange. [Deposition of Captain William D. Turner (“Turner Depo.”), filed contemporaneously with Defendants’ summary judgment motion, at 73:15 - 75:18 & Ex. 1 (November 10, 2016 Interview with Office of Professional Standards (“OPS”)) at p.2]

39. Captain Turner wanted to check the vehicle because there had been a lot of burglaries in the area and because the Pontiac was parked with its lights off. [*Id.*] He watched the Pontiac’s lights turn back on, and began to follow it as it re-entered the roadway, traveling westbound on Gentian Boulevard. [*Id.*] He also radioed dispatch and asked if there was a unit available in the area that could check the vehicle. [*Id.*]

40. Tillis testified that he saw an undercover police vehicle pull out of the USA Discounters, which was across the street from the Gold and Silver Exchange, and get behind them. [Tillis Depo. at 116:1 - 117:5] He then told Redwine that “the folks” -- meaning the police -- were behind them. [*Id.*]

41. Redwine turned left onto University Avenue, passing Columbus State University (“CSU”) and heading towards Macon Road. [911 Audio Recording Track 1 at 00:43 - 00:55;

911 Transcript at CCG00057]³ He then turned right onto College Drive and stopped at the second gated entrance to the CSU apartments. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.2]

42. Wuenschel stated that before the pursuit began, she saw a car that she thought was the police and that Redwine told her if it was, he was running. [Wuenschel Depo., Def. Ex. 3 (November 6, 2016 OPS Interview Transcript) at p.12]⁴

43. When they pulled over by the apartments, Tillis was going to approach the vehicle to see who was following them. [Tillis Depo. at 116:1 - 117:5] As soon as he cracked his door to get out, the blue lights came on, and Redwine “smashed the gas.” [*Id.*] Wuenschel testified that Redwine -- not Tillis -- opened his door when they pulled over by the CSU apartments. [Wuenschel Depo. at 88:16 - 89:11] Regardless, she agrees that as soon as the door was shut, the police officer turned on his lights. [*Id.*] She also testified that Redwine instantly floored the gas and took off at a high rate of speed. [*Id.* at 89:12-19]

44. Redwine pulled back onto the roadway and began running westbound on College Drive. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at pp.2-3; 911 Audio Recording Track 1 at 01:55 - 02:16; 911 Transcript, Exhibit 1 hereto, at CCG00058]

45. In the early seconds of the high speed pursuit, 911 dispatch reported the Pontiac as stolen. [Turner Depo. at 73:11-14]

46. According to Tillis, after law enforcement got behind the Pontiac, Redwine suddenly began to increase his speed and “was driving crazy, pulling up on the e-brake, making

³ A copy of the 911 audio recordings from November 6, 2016 has been filed manually on a USB flash drive concurrently with Defendants’ summary judgment motion. References to the recordings are denoted by the time reflected on the audio counter. A copy of the transcript of 911 recordings (“911 Transcript”) is attached as Exhibit 1 hereto.

⁴ Wuenschel claims that she does not recall this interview, but she admits that her OPS interview transcript accurately reflected what she told OPS personnel. [Wuenschel Depo. at 114:6 - 116:1]

the car slide all over the place, it was crazy.” [Tillis Depo., Ex.1 (Officer Report of November 6, 2016 Tillis Interview) at CCG01625]

47. Tillis further stated that Redwine refused to stop because he had just gotten out of jail a week before the incident. [Tillis Depo., Ex. 6 (Transcript of December 5, 2016 Recorded Statement of Hunter Tillis to Alabama SBI) at CCG01684 - CCG01714]⁵ Wuenschel also stated that Redwine ran because he had just gotten out of jail and did not have a driver’s license. [Wuenschel Depo., Ex.2 (November 7, 2016 Alabama SBI Statement) at p.2]⁶

48. As Captain Turner began pursuit, he was advised that the Pontiac had been reported as a stolen vehicle. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.3; 911 Audio Recording Track 1 at 03:45 - 03:48 & 05:03 - 05:06; 911 Transcript, Exhibit 1 hereto, at CCG00058].

49. Captain Turner did not know, and was not advised at any point during the pursuit of, the identity of the Pontiac’s driver or of whether there were passengers in the Pontiac. [Turner Depo. at 187:23 - 189:1 & Ex.1 (November 10, 2016 Interview with OPS) at p.7]

50. Redwine picked up speed as he continued on College Drive and ran the stop sign at the intersection of College Drive and East Lindsey Drive. [*Id.*, Ex. 1 (November 10, 2016 Interview with OPS) at p.3] Redwine was driving at such a high rate of speed through the neighborhoods on College Drive that he had to lock the breaks up every time he came to an intersection. [Tillis Depo. at 118:6 - 119:24]

⁵ Tillis admits that he sought advice of counsel before giving the December 5, 2016 interview, and that attorney Stacey Jackson was with him at the interview. [Tillis Depo. at 143:21 - 144:14] Tillis also admits that he told the truth when he gave his interview. [*Id.* at 155:9 - 157:2]

⁶ The information set forth and attributed to Wuenschel in the Statement was elicited during an interview by Alabama SBI Special Agent Green. Wuenschel remembers speaking with Special Agent Green and admits she was able to tell him what happened that night. [*Id.* at 109:24 - 110:15]

51. Tillis remembers Redwine panicking during the pursuit and saying that he did not want to go back to jail. [*Id.* at 119:25 - 120:4] Wuenschel also testified that Redwine “didn’t want to go back to jail, period.” [Wuenschel Depo. at 93:1-5]

52. Redwine ran another stop sign at College Drive and Camille Drive. [Turner Depo., Ex. 1 (November 10, 2016 Interview with OPS) at p.3] Redwine turned right onto Camille Drive and continued westbound until he got to Hilton Avenue, where he turned right. [*Id.*; 911 Audio Recording Track 1 at 03:29 - 03:30 & 03:50 - 03:52; 911 Transcript, Exhibit 1 hereto, at CCG00058]

53. From Hilton Avenue, Redwine turned left onto Warm Springs Road and continued westbound towards 17th Avenue. [911 Audio Recording Track 1 at 04:11 - 04:35; 911 Transcript, Exhibit 1 hereto, at CCG00058]

54. Redwine continued down Warm Springs Road/Talbotton Road, crossing over 12th Avenue [911 Audio Recording Track 1 at 04:47 - 05:20; 911 Transcript, Exhibit 1 hereto, at CCG00058] and later Hamilton Road. [911 Audio Recording Track 1 at 05:40 - 05:46; 911 Transcript, Exhibit 1 hereto, at CCG00058]

55. From Talbotton Road, Redwine turned right onto Veterans Parkway heading northbound. [911 Audio Recording Track 1 at 06:23 - 06:31; 911 Transcript, Exhibit 1 hereto, at CCG00058] Redwine continued northbound on Veterans Parkway, distancing himself from Captain Turner and other officers in pursuit, and was seen turning right onto 39th Street. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.3; 911 Audio Recording Track 1 at 07:04 - 07:08; 911 Transcript, Exhibit 1 hereto, at CCG00058]

56. Tillis testified that Redwine briefly lost the pursuing police around the Ashley Station Apartments area. [Tillis Depo. at 120:23 - 121:7] Redwine pulled between two cars on

the side of the road and told Tillis and Wuenschel that if they wanted to get out, they needed to do it then. [*Id.* at 121:8 - 123:8]

57. Tillis reminded Wuenschel that she had a child at home and told her that she needed to get out of the car. [*Id.*] Wuenschel refused to get out and leave Redwine. [*Id.*]

58. Redwine, Tillis and Wuenschel all had time to get out of the Pontiac at the point when they lost the pursuing officers. [*Id.*]

59. The pursuit continued when Captain Turner spotted the Pontiac entering Rose Hill Street from 12th Avenue. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.3; 911 Audio Recording Track 1 at 08:22 - 08:31; 911 Transcript, Exhibit 1 hereto, at CCG00058]

60. Redwine took a right onto Howard Avenue and another right onto Warm Springs Road, heading back towards 12th Avenue. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.3; 911 Audio Recording Track 1 at 08:45 - 09:03; 911 Transcript, Exhibit 1 hereto, at CCG00059] Redwine then turned left onto 12th Avenue and continued southbound until hitting Linwood Boulevard. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.3; 911 Audio Recording Track 1 at 09:08 - 09:58; 911 Transcript, Exhibit 1 hereto, at CCG00059]

61. Redwine turned right onto Linwood Boulevard, and continued on Linwood until he got to 6th Avenue. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.3; 911 Audio Recording Track 1 at 10:00 - 10:13; 911 Transcript, Exhibit 1 hereto, at CCG00059]

62. Redwine took the curve onto 6th Avenue and continued traveling southbound until 11th Street where he turned right, traveling the wrong direction down a one-way street. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at pp.3-4; 911 Audio Recording Track 1 at 10:28 - 10:30 & 10:58 - 11:05; 911 Transcript, Exhibit 1 hereto, at CCG00059]

63. From 11th Street, Redwine turned right onto Veterans Parkway and then left onto 13th Street heading towards Phenix City. [Turner Depo., Ex.1 (November 10, 2016 Interview with OPS) at p.4; 911 Audio Recording Track 1 at 11:08 - 11:30; 911 Transcript, Exhibit 1 hereto, at CCG00059]

64. Tillis told Redwine to go across the bridge because the cops “can’t follow you over the bridge.” [Tillis Depo. at 120:5-22; 125:8-11] Tillis also stated that Redwine was driving so crazy at that point that he (Tillis) just wanted to get out of the car. [*Id.* at 120:5-22] Wuenschel testified that she had never been in a car with somebody driving as fast and as reckless as Redwine was driving during the pursuit. [Wuenschel Depo. at 82:5 - 84:5]

65. Tillis knew the police were pursuing them and testified that Redwine knew that too. [Tillis Depo. at 125:15-23] Wuenschel also knew the police were behind them. [Wuenschel Depo. at 93:6-11]

66. Tillis testified that Redwine blew through stop signs and assumed he ran red lights during the pursuit. [Tillis Depo. at 125:24 - 126:7] Wuenschel testified that she was scared of Redwine running stop signs and red lights. [Wuenschel Depo. at 94:21 - 95:17]

B. *Officer Brown Joins The High Speed Pursuit*

67. Around 4:30 a.m., on November 6, 2016, Officer Brown was at CPD headquarters when he heard there was a police pursuit in Sector A. [Brown Depo., Vol. II, at 101:1-16]

68. CPD divides the Columbus into 3 Sectors -- A, B and C -- and assigns a squad to each sector. [Turner Depo. at 93:9 - 94:20] Regarding radio communications, an officer assigned to one sector can only hear radio traffic in the sector to which they are assigned. [April 22, 2019 Deposition of Allan H. Brown, Jr. (“Brown Depo., Vol. I”), filed concurrently with Defendants’ summary judgment motion, at 138:4 - 141:11 (Officer Brown explaining how radio

traffic is divided)] In other words, an officer assigned to Sector A can only hear radio communications in Sector A and cannot hear any radio communications going on in Sectors B or C. [*Id.*]

69. Officer Brown was assigned to Sector B that day, but recalls hearing that a police pursuit was taking place in Sector A and that the pursuit was heading south on a road leading towards CPD headquarters. [*Id.* at 138:4-15 & Brown Depo., Vol. II, at 101:1 - 102:8] Officer Brown was not on a call at that time, so he and another officer left headquarters to assist in the pursuit. [Brown Depo., Vol. II, at 101:1 - 102:8]

70. Officer Brown's dash-mounted camera ("Dashcam") was activated at 4:33 a.m. and captures the high speed pursuit from that time forward. The video ("Dashcam Video") shows that Officer Brown joined the high speed pursuit on 6th Avenue near 11th Street in Columbus. [Dashcam Video at 2:44]⁷

71. At the time Officer Brown joined the high speed pursuit, he did not know the identity of the Pontiac's driver or whether there were any passengers in the Pontiac. [Tillis Compl., ECF No. 1, at ¶30]

72. Officer Brown became the lead police vehicle on the 13th Street Bridge as the high speed pursuit proceeded into Phenix City, Alabama. [Dashcam Video at 3:46 - 3:51] Once Officer Brown took over as lead vehicle, he began to call out the location of the high speed pursuit and speed of the Pontiac over the radio. [*Id.*]

73. Redwine continued driving at high speeds to elude Officer Brown and other pursuing officers. [*Id.* at 4:02] Redwine reached speeds of 95 miles per hour and 98 miles per

⁷ A copy of the Dashcam Video has been manually filed on a USB flash drive concurrently with Defendants' summary judgment motion. The Dashcam Video is identified on the flash drive as "CPD-595_Nov.06.2016_04.33.30.avi". References to the video are denoted by the time reflected on the video counter.

hour as he continued on 13th Street (turning into 14th Street and then Crawford Road) in Phenix City. [*Id.* at 4:24 - 4:37]

74. After Redwine turned right onto Old Opelika Road, Officer Brown reported speeds of 80 miles per hour and 62 miles per hour as they approached Highway 280. [*Id.* at 5:11 - 5:30]

75. Redwine turned right onto Highway 280 and then exited right onto the Phenix City N Bypass/J.R. Allen Parkway traveling eastbound towards Columbus. [*Id.* at 5:44] Officer Brown continued pursuit and reported Redwine traveling at a speed of 75 miles per hour headed eastbound on J.R. Allen Parkway. [*Id.* at 5:52]

76. As the high speed pursuit continued on J.R. Allen Parkway, Officer Brown confirmed with Captain Turner that the Pontiac was a 7700 (stolen) vehicle. [*Id.* at 6:32]

77. Redwine continued racing eastbound down J.R. Allen Parkway, reaching 107 miles per hour before exiting onto Riverchase Drive in Phenix City. [*Id.* at 6:44]

78. Redwine turned right onto Riverchase Drive and sped into a residential neighborhood where he lost control of the Pontiac and wrecked into bushes in a residential front yard on 5th Avenue in Phenix City.⁸ [*Id.* at 7:50]

79. At that point, Officer Brown advised dispatch that Redwine had “wrecked out,” and was “spinning,” and asked dispatch to “start rescue.” [Wuenschel Compl., ECF No. 1, at ¶40; Sorrells Compl., ECF No. 1, at ¶24; Tillis Compl., ECF No. 1, at ¶44; Dashcam Video at 7:50 - 7:54]

80. Officer Brown did not know -- at any point during the pursuit -- the identity of the

⁸ The area surrounding the wreck site is approximately 200 feet from the Georgia/Alabama border and is residential, with houses becoming closer to the road along 5th Avenue. [See Google Maps, <http://www.google.com/maps> (search “3506 5th Avenue, Phenix City, Alabama”)]

Pontiac's driver or whether there were any passengers in the Pontiac. [Brown Depo., Vol. II, at 121:8-11 & 121:25 - 122:3]

81. Up to the point of the crash, the high speed pursuit had lasted 13 minutes, 40 seconds and covered 14.6 miles. [CPD Vehicle Pursuit Report, a copy of which is attached as Exhibit 2 hereto, at CCG00024]

V. Officer Brown Shoots In Self-Defense

82. After the Pontiac crashed, Officer Brown pulled up and positioned his vehicle, which was a marked Dodge Charger ("Charger"), a couple of feet behind the Pontiac's rear passenger side bumper. [Dashcam Video at 7:59 & Brown Depo., Vol. I, at 171:3-6] Wuenschel claims that Officer Brown "almost hit the side of the car and blocked us in." [Wuenschel Depo., Def. Ex. 3 (November 6, 2016 OPS Interview Transcript) at p.19]

83. Before his Charger even stopped, Officer Brown opened his door, dropped his seat belt and was in a position to get out as quickly as he could. [Brown Depo., Vol. I, at 175:23 - 177:22] He immediately got out of his Charger and ran up to get to the driver's side of the Pontiac to make an arrest. [*Id.* at 172:17-24; 175:23 - 177:22]

84. Officer Brown was not wearing a body camera. [*Id.* at 121:1-9]

85. Officer Brown wanted to get out of his Charger as quickly as possible because, in his experience, at the end of a chase when a vehicle wrecks out, the suspect runs. [*Id.* at 175:23 - 177:22] Officer Brown also thought the Pontiac was disabled by the crash. [November 14, 2016 Brown Interview with OPS, a copy of which is attached as Exhibit 3 hereto, at CCG00278-79]

86. In fact, Redwine did attempt to get out of the Pontiac immediately after the crash, but could not because the Pontiac was pressed against the bushes. [Wuenschel Compl., ECF No.

1, at ¶46; Tillis Depo., Ex. 3 (Transcript of November 6, 2016 SBI Recorded Interview) at page 14, lines 7-16 & Ex. 4 (Audio of November 6, 2016 SBI Recorded Interview)]^{9,10}

87. Also, according to Tillis, after Officer Brown pulled in behind the Pontiac, Redwine “looked at Hannah and he just said -- in the process of him trying to put it in reverse, he said it’s them or me.” [Tillis Depo., Ex. 6 (Transcript of December 5, 2016 SBI Recorded Interview) at page 12, lines 10-23]

88. Tillis also said that Officer Brown got out of his Charger, got behind the Pontiac with his gun drawn, and gave verbal commands for Redwine to “get on the ground.” [Tillis Depo., Ex. 3 (Transcript of November 6, 2016 SBI Recorded Interview) at page 10, lines 5-21 & Ex. 4 (Audio of November 6, 2016 SBI Recorded Interview)]¹¹

89. Wuenschel also stated that when Officer Brown got out of his patrol vehicle, he was saying “get out of the car.” [Wuenschel Depo., Def. Ex. 3 (November 6, 2016 OPS Interview Transcript) at p.19]

90. The Pontiac then briefly spun its tires forward before accelerating in reverse.

⁹ A copy of the recording has been manually filed on a USB flash drive concurrently with Defendants’ summary judgment motion.

¹⁰ Tillis now claims to not recall having given this recorded interview. [Tillis Depo. at 171:25 - 173:1; 183:8-15 & *generally* 174:19 - 194:24 & Def. Exs. 3 & 4] Tillis has yet to demonstrate, however, how his claimed lack of memory creates an issue of material fact as to the admissions he made therein. This is particularly true with respect to the admission that Redwine attempted to get out of the car since Tillis made similar statements to OPS on November 6, 2016, and when given an opportunity to review those statements, he declined to recant them. [Tillis Depo. at 204:15 - 206:16 & Ex. 5A (Transcript of November 6, 2016 OPS Interview (“November 6, 2016 OPS Interview Transcript”) reviewed and marked by Tillis to indicate testimony he attempts to recant)]

¹¹ Again, Tillis has yet to demonstrate how his claimed lack of memory creates an issue of material fact as to these admissions. In fact, Tillis also told OPS officials that Officer Brown got out of his Charger and ordered Redwine out of the vehicle. [Tillis Depo., Ex. 5A (November 6, 2016 OPS Interview Transcript) at p.7)] Specifically, he told OPS that he heard “get on the ground” and then saw Redwine “plopped down in the seat and hit it in reverse.” [*Id.* at p.7] Tillis has also attempted, without explanation, to recant the OPS statement regarding being ordered out of the car. [Tillis Depo. at 206:17 - 207:16]

[Dashcam Video at 8:00 - 8:02]

91. Officer Brown explained that he was at the center line of the Pontiac -- probably a little past it towards the driver's side door -- and inside of 10 feet of the back bumper when he saw the reverse lights illuminate on the Pontiac. [Brown Depo., Vol I, at 177:23 - 180:6] He believes he got to the centerline of the back of the Pontiac in half a second. [*Id.* at 177:23 - 180:6 & 204:14-25] Officer Brown then heard the engine rev and the tires screeching and squealing. [*Id.* at 189:1 - 190:3] He explained that the engine made a high pitched sound like Redwine had floored the gas. [*Id.*]

92. Tillis similarly told SBI Special Agent Green that Officer Brown was behind them when the Pontiac was going in reverse. [Tillis Depo., Ex. 6 (Transcript of December 5, 2016 SBI Recorded Interview) at page 14, lines 4-7]¹²

93. According to Tillis, Redwine "put the car in reverse and floored the gas pedal" and that the Pontiac "came backwards real fast." [*Id.* at Ex. 5A (November 6, 2016 OPS Interview Transcript) at p.14]

94. Tillis testified that before Redwine "slammed" the Pontiac into reverse and "punched it," Redwine said that he did not want to go back to jail and that "it was going to be them or him." [Tillis Depo. at 134:7-10 & Ex. 6 (Transcript of December 5, 2016 SBI Recorded Interview) at page 12, lines 10-20]¹³ Tillis similarly told CPD Detectives that Redwine said "fuck it" and something about not going back to jail before putting the car into reverse and driving in Officer Brown's direction. [Tillis Depo. at 168:25 - 170:16 & Ex.1, Officer Report, at

¹² Tillis tried to recant this testimony during his deposition by explaining that "behind" actually meant 15-20 feet back and to the right. [Tillis Depo. at 232:24 - 235:6] Again, however, Tillis admitted he told Special Agent Green the truth and was represented by counsel when he made his statement.

¹³ Tillis also testified that Wuenschel told him not to tell anyone that Redwine said "it's going to be me or them." [*Id.* at 271:19-21]

p.3]¹⁴ Tillis recalls the Pontiac's engine revving a lot before moving backwards and before the shooting started. [Tillis Depo. at 150:4-6]

95. Wuenschel also stated that after wrecking out, Redwine said “‘nah, fuck that. Fuck them, fuck everything,’ and put that bitch in reverse and tried to go.” [Wuenschel Depo. at 136:17 - 137:22 & Def. Ex. 3 (November 6, 2016 OPS Interview Transcript) at pp.5-6] She explained that Redwine “hit the gas and the car flew back.” [Wuenschel Depo., Def. Ex. 3 (November 6, 2016 OPS Interview Transcript) at p.20] She also stated that as the Pontiac was reversing, Officer Brown was coming towards it. [*Id.*]

96. According to Wuenschel, she was trying to get out of the car while Redwine was reversing. [Wuenschel Depo., Ex. 3 (November 6, 2016 OPS Interview Transcript) at p.4] She also stated that she told Redwine “please stop, please. He's gonna kill us. He has all rights to kill us.” [*Id.*] Wuenschel told OPS that in response, Redwine said, “nah, fuck that. You can either jump out or stay the fuck in the car.” [*Id.*] She also told police that Brown had “all right to” start shooting “because he feels like his life is in danger,” which Wuenschel acknowledged was “possible.” [*Id.* at pp. 4-5]¹⁵

97. Officer Brown realized he was behind the Pontiac when he saw it reverse, believed it was trying to run over him, and began firing his weapon as he moved back towards his patrol car. [Brown Depo., Vol. I, at 190:4-14] The Pontiac moved to the right as it reversed. [Tillis Depo., Ex. 5A (November 6, 2016 OPS Interview Transcript) at p.14 & CCG00192 (Diagram drawn by Tillis and described during deposition at 208:9 - 214:12)]

¹⁴ Tillis claims he cannot recall making the statement that the Pontiac reversed in Brown's direction, but he does not deny he said it. [Tillis Depo. at 169:15 - 170:7]

¹⁵ Wuenschel testified in her deposition that she now believes that Brown was not justified in shooting, but she does not deny she made the above statements. [Wuenschel Depo. at 129:2 - 131:3]

98. Officer Brown testified that everything at the crash scene on November 6, 2016 happened “so fast.” [Brown Depo., Vol. I, at 178:21 - 179:19] All he could see was the rear end of the Pontiac coming back at him and he believed the driver was trying to kill him. [*Id.*]

99. Other than the cars, the only major light source on the street was a lamp-post that was not on. [Report of Emanuel “Manny” Kapelsohn (“Kapelsohn Report”), a copy of which is attached as Exhibit 4 hereto, at pp.23-24]¹⁶

100. Officer Brown does not recall whether he gave verbal commands before firing his weapon. [Brown Depo., Vol. I, at 182:12-16] He explained that generally he would give verbal commands, but does not recall if he had time to get them out because everything happened so fast.¹⁷ [*Id.* at 186:9-18]

101. When asked whether he thought Officer Brown was in the path of the Pontiac, Tillis stated “[h]e could have been, yeah [h]e could have been, honestly.” [Tillis Depo., Ex. 5A (November 6, 2016 OPS Interview Transcript) at p.15] Tillis stated that Officer Brown had every right to shoot because Redwine could have ended up killing him with his car. [*Id.* at p.9]¹⁸ Furthermore, Tillis testified that when he spoke with CPD detectives on November 6, 2016, he asked about Officer Brown’s well-being and told the officers he thought Redwine had hit Officer

¹⁶ Kapelsohn has been proffered by Defendants as an expert, in pertinent part, in use of force, firearms, police tactics and shooting scene reconstruction. [*Id.* at pp.2-7 & attached Kapelsohn Curriculum Vitae]

¹⁷ No commands from Officer Brown can be heard on the Dashcam, but this does not create an issue of material fact because Tillis and Wuenschel both admit they heard commands and because as will be demonstrated in Defendants’ brief in support of summary judgment, commands were not necessary under the circumstances to justify deadly force, particularly given Officer Brown’s proximity to the Pontiac and how quickly it flew into reverse after Officer Brown got out of his Charger.

¹⁸ During his deposition, Tillis attempted to recant this testimony regarding Officer Brown’s location and right to shoot, but offers no justification for why his prior admission should be disregarded. [Tillis Depo. at 214:24 - 216:8 & 219:2 - 220:2] Nor is there any justification, particularly since as set forth next, Tillis believed the Pontiac actually hit and could have killed Officer Brown.

Brown with the Pontiac. [Tillis Depo. at 160:5 - 161:9 & Ex. 1 (Officer Report) at p.2] *Tillis also unequivocally admits that Redwine could have ended up killing Officer Brown with the Pontiac.* [Tillis Depo. at 216:2-4]

102. Once the Pontiac started moving backwards, Officer Brown began firing his service pistol.¹⁹ [Dashcam Video at 8:00 - 8:03] No shots were fired until after the Pontiac started moving backwards. [*Id.*]

103. Officer Brown was not aware of any passengers in the Pontiac before he started firing. [Brown Depo., Vol. II, at 235:7 - 236:4]

104. Although Wuenschel is captured on the Dashcam for a fraction of a second before the shooting, according to Plaintiffs' own proffered expert, William Harmening,²⁰ Officer Brown's view is "totally different" than what the Dashcam captures. [Harmening Depo. at 38:8 - 39:5; 405:3-13] This is because the Dashcam in Officer Brown's Charger was located to the right (*i.e.*, to the passenger side) of the rear-view mirror. [Kapelsohn Report, Exhibit 4 hereto, at p.21]

105. The first shots entered the Pontiac's rear window slightly to the right of center as it reversed out of Dashcam view. [Dashcam Video at 8:03 - 8:05]

106. Officer Brown fired several times as the Pontiac was backing up towards him and he was trying to get out of the way. [Brown Depo., Vol I, at 194:6-14] He was less than 10 feet behind the Pontiac when he fired the first shot. [*Id.* at 192:8-13]

¹⁹ Officer Brown's pistol was a Smith & Wesson M&P .45 caliber loaded with a 10 round magazine and an eleventh bullet in its chamber. [Brown Depo., Vol. I, at 46:18-21 & 257:23 - 258:19]

²⁰ Harmening holds himself out as an expert in use of force, police practices and investigative methods, which he claims includes bullet trajectory analysis and crime scene reconstruction. [Deposition of William Harmening ("Harmening Depo.") filed concurrently with summary judgment motion, at 8:14 - 10:12]

107. Also, according to Harmening, Officer Brown was to the rear and right of the Pontiac when he fired the first shots through the rear window of the vehicle.²¹ [Harmening Depo. at 142:14-21]

108. Harmening further testified that the location of the bullet casings ejected from Officer Brown's weapon can determine Officer Brown's distance from the Pontiac when he fired his weapon. [*Id.* at 142:22 - 143:4]

109. Based on the location of those casings, Harmening opines that Officer Brown was "very close" to the Pontiac when he fired his weapon. [*Id.* at 143:19 - 144:11]

110. More specifically, Harmening estimates that Officer Brown was five to seven feet behind and two to four feet to the side of the Pontiac when he fired into the rear window. [*Id.* at 145:3-14 & 146:7 - 147:3]

111. Redwine was struck by two of the first five shots that entered through the rear window of the Pontiac as it was backing up. [*Id.* at 273:5 - 274:12] These two shots were identified by Plaintiffs as the fatal shots. [*Id.* at 274:5-12 & Ex. 10 (Summary of Autopsy Report)]

112. Officer Brown continued firing as the Pontiac reversed right beside and past him. [Brown Depo., Vol I, at 211:15 - 239:6 (generally describing shooting as the car moved past him) & Brown Depo., Vol. II, at Exs. 3B, 3C and 4 (Diagrams drawn by Officer Brown showing shooting positions)] Officer Brown felt like the Pontiac came within inches of him as it passed. [Brown Depo., Vol I, at 217:17-21]

²¹ Officer Brown was closer to the Pontiac when it began to move in reverse than Harmening opines. But, as will be shown in Defendants' brief in support of summary judgment, this does not create in issue of material fact because deadly force would also have been justified if Officer Brown's positioning were as described by Harmening, particularly since as set forth next, Harmening believes Officer Brown was "very close" to the Pontiac when he fired.

113. According to Harmening, Officer Brown was two feet from the side of the Pontiac as it passed by him and he shot into the passenger side window.²² [Harmening Depo. at 260:1 - 261:13]

114. As the Pontiac passed him, Officer Brown thought that it could veer off to the side and hit him. [Brown Depo., Vol. I, at 229:11-18]

115. Officer Brown feared for his life when Redwine initially tried to run over him, and was just as much in fear for his life when the Pontiac passed by him because Redwine was so reckless and could have run over him by veering just a little bit or by a quick jerk of the steering wheel. [*Id.* at 227:10 - 228:9]

116. A total of 11 shots can be heard before about a 6 second pause. [Dashcam Video at 8:06 - 8:12] Officer Brown fired the first 11 shots in a total elapsed time from shot 1 to shot 11 of approximately 2.65 to 2.75 seconds. [Kapelsohn Report, Exhibit 4 hereto, at pp.9 & 20]

117. Officer Brown agrees that he fired 11 shots into the Pontiac before it passed him, but he does not recall the exact placement of each bullet other than that the direction of each was at the driver's seat. [Brown Depo., Vol. I, at 239:23 - 240:18]

118. Wuenschel was shot by one of the bullets fired from the first magazine. [Harmening Depo. at 368:21 - 369:5]

119. After the Pontiac passed Officer Brown, he changed magazines and reassessed for potential threats. [Brown Depo., Vol. I, at 236:16 - 237:8] He changed magazines near the beginning of the road (Riverchase Drive) where the street meets the grass [*id.* at 239:7-10] while

²² Again, Officer Brown was closer to the Pontiac. But, this does not create in issue of material fact because even at two feet, Officer Brown was in grave danger as any officer would be when dealing with a fleeing suspect under the circumstances presented that night, particularly where the suspect has shown a complete disregard for public safety by engaging in a lengthy high speed pursuit through residential neighborhoods and where the suspect continues to try to run even after crashing.

walking towards the Pontiac to make an arrest and to provide aid if necessary. [*Id.* at 244:17 - 245:13]

120. This resulted in approximately a 6 second pause, during which no shots were fired. [Dashcam Video at 8:06 - 8:12]

121. Officer Brown was in the middle of changing magazines and reevaluating the area when he heard a loud engine revving -- “just screaming.” [Brown Depo., Vol. I, at 252:24 - 253:7] Officer Brown estimates that he was about 15 feet away from the Pontiac when he heard the engine rev. [*Id.* at 253:8-20] He was walking towards the Pontiac, which was still moving in reverse, so the distance was not constant. [*Id.*]

122. Officer Brown did not know where his back-up was at that point, he could not see inside the Pontiac and he considered the fact that he had not had time to take a proper stance with his flashlight during the first series of shots which he thinks he took one-handed. [November 14, 2016 Brown Interview with OPS, Exhibit 3 hereto, at CCG00272]

123. Officer Brown then started firing his second magazine because the revving caused him to believe that Redwine was going to try to run over him again. [*Id.* at 252:24 - 253:7] He was blinded by the Pontiac’s headlights; but he was in front of the Pontiac and he fired at a point where he estimated the driver to be. [*Id.* at 255:4 - 257:7; Harmening Depo. at 361:23 - 362:15; November 14, 2016 Brown Interview with OPS, Exhibit 3 hereto, at CCG00296-98]

124. Officer Brown shot at the Pontiac with the second magazine for personal self-defense. [Brown Depo., Vol. II, at 167:8-25] He feared for his life even more than when he fired the first round of shots because he thought the driver of the Pontiac was trying to hit him for a second time. [November 14, 2016 Brown Interview with OPS, Exhibit 3 hereto, at CCG00296-98]

125. Captain Turner was coming around the curve to the scene of the crash and shooting in his unmarked police vehicle at this time. This is confirmed by the fact that Captain Turner heard shots being fired as he was coming around the curve while his car was still in motion and did not hear any shots after he stopped his vehicle after rounding the curve. [Turner Depo. at 32:16 - 33:24]

126. According to Defendants' expert Manny Kapelsohn, the revving Officer Brown heard could have been caused by the engine noise from Captain Turner's car. [Kapelsohn Report, Exhibit 4 hereto, at p.24]

127. Kapelsohn also offers three other possible explanations for the revving Officer Brown heard. First, he states that it is common for individuals involved in shootings to experience auditory exclusion. [*Id.* at pp.18-20 & 24-25] This occurs when the officer's hearing returns to normal following the temporary deafening caused by initial shots. [*Id.*] Once the hearing returns, the officer could believe that normal engine noise is actually revving. [*Id.*]

128. Second, Officer Brown could have heard an air conditioning motor or power steering motor from the Pontiac and believed that it was revving. [*Id.* at pp.24-25]

129. Third, Redwine's leg could have applied some pressure to the gas pedal causing a temporary revving.²³ [*Id.*] There is no evidence in the record that shows that the shots that hit Redwine in the first magazine were immediately incapacitating despite being fatal. [*Id.*]

130. Redwine was also hit with bullets fired from the second magazine and overall, received multiple gunshot wounds. [Harmening Depo. at 369:6-8 & Def. Ex. 11 (Autopsy Report)]

²³ The revving cannot be heard on the Dashcam. But, this does not create an issue of material fact because there is no evidence the revving would have necessarily been picked up, which is confirmed by the fact that no revving can be heard when the Pontiac is punched in reverse before the first shots. [Daschcam Video at 8:00 - 8:03]

131. Tillis was struck with one of the bullets fired from the second magazine. [*Id.* at 369:9-11]

132. Wuenschel was not shot by any of the bullets fired in the second magazine. [*Id.* at 368:21-23]

133. Officer Brown stopped firing after the Pontiac stopped moving and he observed Tillis, who he thought was the driver of the Pontiac, exit the vehicle at which point Officer Brown thought the threat was over.²⁴ [Brown Depo., Vol II, at 166:17-167:7; November 14, 2016 Brown Interview with OPS, Exhibit 3 hereto, at CCG00287-88]

134. The last 10 shots can also be heard on the Dashcam Video. [Dashcam Video at 8:12 - 8:15] The total elapsed time for these 10 shots, from first shot to last, was approximately 3.6 seconds. [Kapelsohn Report, Exhibit 4 hereto, at p.9]

135. Tillis and Wuenschel did not exit the Pontiac until after the second magazine was empty. [Harmening Depo. at 224:8-11]

VI. Medical Care To Tillis After The Shooting

136. After Tillis exited the Pontiac, Officer Brown called in “shots fired” over the radio, reporting that multiple parties were shot and at least two ambulances were needed. [911 Transcript, Exhibit 1 hereto, at CCG00060]

137. Captain Turner was the first law enforcement officer on the scene after the shooting and went to check on Tillis. He saw that Tillis was bleeding and told him that the ambulance was on its way. [Turner Depo., Ex. 1 (November 10, 2016 OPS Interview) at p.5]

²⁴ Officer Brown did not know that Redwine was the driver of the Pontiac at any point during the pursuit. [Brown Depo., Vol. I, at 260:14-19] Nor was he aware that there were any passengers in the Pontiac until after the shooting. [*Id.* at 247:19 - 248:18] All 21 shots by Officer Brown were made with the intention of shooting the threat, which was the driver of the Pontiac. [*Id.* at 226:4-9]

138. Tillis remembered an officer telling him that an ambulance was on its way. [Tillis Depo. at 171:4-24]

139. EMT and fire department personnel arrived at approximately 4:49 a.m., approximately 10 minutes after Officer Brown reported the crash and shooting and rendered appropriate medical care to Tillis. [Video from body camera of CPD Officer Mary Parish, which is being manually filed on a USB flash drive concurrently with Defendants' summary judgment motion, at 5:49 a.m.²⁵; SBI Summary of Radio Transmissions, a copy of which is attached as Exhibit 5 hereto, at CCG00096-97 (showing that high speed pursuit started at approximately 4:23 a.m. with Officer Brown requesting a rescue unit approximately 16 minutes later) & 911 Audio Recording Track 1 at 16:09 - 16:12]

VII. Plaintiffs' Claims

A. *Tillis Complaint*

140. Tillis' Complaint purports to allege the following substantive counts against Defendants:

(1) § 1983 Fourth and Fourteenth Amendment claims against Officer Brown for "excessive force by unlawful use of deadly force" [Tillis Compl., ECF No. 1, (Count V)];

(2) § 1983 Fourth and Fourteenth Amendment claims against Officer Brown for "unreasonable seizures" [*Id.* (Count VI)];

(3) § 1983 Supervisory Liability claims against Chief Boren in his individual capacity [*Id.* (Count VII)];

(4) § 1983 Fourth and Fourteenth Amendment claims against CCG and Chief

²⁵ This was actually 4:49 a.m. because Parish's body camera did not reflect the end of Daylight Savings, the time change for which took place earlier that night at 2:00 a.m., when clocks were to be set back one hour.

Boren in his official capacity [*Id.* (Count VIII)];

(5) § 1983 Fourth and Fourteenth Amendment claims against Officer Brown for “indifference to the serious medical needs of the Plaintiff” [*Id.* (Count IX)];

(6) § 1983 Fourth and Fourteenth Amendment claims against CCG and Chief Boren “for custom, policy or practice of use of excessive force” [*Id.* (Count X)];

(7) state law claims²⁶ against all Defendants for “[Officer] Brown’s unlawful actions,” which Tillis alleges include: (a) excessive use of force; (b) use of excessive force; (c) assault and battery; (d) failure to adhere to use of force policies; (e) failure to adhere to policies and/or procedures regarding the use of deadly force; (f) failure to adhere to policies and/or procedures regarding the use of deadly force for potential misdemeanor offenses; (g) unlawful use of force; (h) unlawful discharge of firearm; (i) unlawful seizure; and (j) violation of O.C.G.A. § 17-4-20 (b) [*Id.* (Count XII) at ¶247];

(8) state law claims against all Defendants for CCG’s and Chief Boren’s alleged improper hiring and training Officer Brown, and negligent retention of Officer Brown [*Id.* (Count XII) at ¶248];

(9) state law claims against all Defendants for CCG’s and Chief Boren’s alleged failure to implement and/or adhere to policies and procedures that Tillis alleges include: (a) the use of deadly force; (b) the use of deadly force against potential misdemeanor suspects; (c) unlawful seizure; (d) improper pursuit; and (e) other customs, policies and procedures that will be discovered during the course of the case [*Id.* (Count XII) at ¶249]; and

(10) state law claims for intentional infliction of emotional distress [*Id.* (Count

²⁶ All of Tillis’ state law claims appear to be plead under “Georgia and Alabama law (if applicable).” [*Id.* at ¶244]

XIII)].²⁷

141. Additionally, Tillis lists several “counts” that do not contain any specific substantive cause of action or are simply claims for damages. Count I of the Complaint is a “General Statement Regarding Claims” [*Id.* (Count I)]; Count II is a “Claim for Attorney Fees” [*Id.* (Count II)]; Count III “Seeks Damages for Violation of 42 U.S.C. § 1983” [*Id.* (Count III)]; Count IV is “Plaintiff’s General Statement Regarding Claims for Deprivation of Rights Protected by the Fourth and Fourteenth Amendments to the United States Constitution” [*Id.* (Count IV)]; Count XI is for “Punitive Damages” against Chief Boren and Officer Brown in their individual capacities [*Id.* (Count XI)]; Count XIV is for “State Law Claims - Damages” [*Id.* (Count XIV)]; and Count XV is for “State Law Claims - Punitive Damages” against Chief Boren and Officer Brown in their individual capacities. [*Id.* (Count XV) at ¶260]

B. *Sorrells Complaint*

142. Sorrells’ Complaint purports to allege the following substantive counts against Defendants:

(1) § 1983 Fourth and Fourteenth Amendment claims against Officer Brown for “excessive force by unlawful use of deadly force” [Sorrells Compl., ECF No. 1, (Count V)];

(2) § 1983 Fourth and Fourteenth Amendment claims against Officer Brown for “unreasonable seizures” [*Id.* (Count VI)];

(3) § 1983 Supervisory Liability claims against Chief Boren in his individual capacity [*Id.* (Count VII)];

(4) § 1983 Fourth and Fourteenth Amendment claims against CCG and Chief Boren in his official capacity [*Id.* (Count VIII)];

²⁷ Count XIII is purportedly based on the alleged unlawful pursuit, shooting, seizure, and detention of Tillis [*Id.* at ¶ 253], but it does not specify against which Defendant(s) it is brought.

(5) § 1983 Fourth and Fourteenth Amendment claims against CCG and Chief Boren “for custom, policy or practice of use of excessive force” [*Id.* (Count IX)];

(6) Alabama state law claims against all Defendants for the wrongful death of Sorrells’ decedent Christian Redwine [*Id.* (Count XI) at ¶¶188 & 209];

(7) Alabama state law claims against all Defendants for “[Officer] Brown’s unlawful actions,” which Sorrells alleges include: (a) excessive use of force; (b) use of excessive force; (c) assault and battery; (d) failure to adhere to use of force policies; (e) failure to adhere to policies and/or procedures regarding the use of deadly force; (f) failure to adhere to policies and/or procedures regarding the use of deadly force for potential misdemeanor offenses; (g) unlawful use of force; (h) unlawful discharge of firearm; (i) unlawful seizure; (j) failure to obtain and/or use relevant information during the course of and continuing a pursuit, detention and/or arrest [*Id.* (Count XI) at ¶206];

(8) Georgia state law claims against all Defendants for the wrongful death of Sorrells’ decedent Christian Redwine [*Id.* (Count XII) at ¶211]; and

(9) Georgia state law claims against all Defendants for “[Officer] Brown’s unlawful actions,” which Sorrells alleges include: (a) excessive use of force; (b) use of excessive force; (c) assault and battery; (d) failure to adhere to use of force policies; (e) failure to adhere to policies and/or procedures regarding the use of deadly force; (f) failure to adhere to policies and/or procedures regarding the use of deadly force for potential misdemeanor offenses; (g) unlawful use of force; (h) unlawful discharge of firearm; (i) unlawful seizure; (j) failure to obtain and/or use relevant information during the course of and continuing a pursuit, detention and/or arrest; and (k) violation of O.C.G.A. § 17-4-20 (b). [*Id.* (Count XII) at ¶229]

143. Additionally, Sorrells lists several “counts” that do not contain any specific

substantive cause of action or are simply claims for damages. Count I of the Complaint is a “Statement Regarding Claims Applicable” [*Id.* (Count I)]; Count II is a “Claim for Attorney Fees” [*Id.* (Count II)]; Count III “Seeks Damages for Violation of 42 U.S.C. § 1983” [*Id.* (Count III)]; Count IV is “Plaintiff’s General Statement Regarding Claims for Deprivation of Rights Protected by the Fourth and Fourteenth Amendments to the United States Constitution” [*Id.* (Count IV)]; and Count X is for “Punitive Damages” against “All Defendants Sued in Their Individual Capacity.” [*Id.* (Count X)]

C. Wuenschel Complaint

144. Wuenschel’s Complaint purports to allege the following substantive counts against Defendants:

(1) § 1983 Fourth Amendment claims against Officer Brown for excessive force [Wuenschel Compl., ECF No.1, (Count One)];

(2) § 1983 Fourth and Fourteenth Amendment claims against Officer Brown for “improper pursuit” [*Id.* Count Two)];

(3) § 1983 Supervisory Liability claims against Chief Boren for “maintain[ing] a system of inadequate training and retraining pertaining to the permissible use of force by officers” [*Id.* (Count Three at ¶103)];

(4) § 1983 Supervisory Liability claims against CCG for “maintain[ing] a system of inadequate training and retraining pertaining to the permissible use of force by officers” [*Id.*];

(5) § 1983 Supervisory Liability claims against Chief Boren for “maintain[ing] a system of inadequate training and retraining pertaining to motor vehicle pursuits by officers” [*Id.* (Count Four) at ¶126];

(6) § 1983 claims against CCG for “maintain[ing] a system of inadequate training and retraining pertaining to motor vehicle pursuits by officers” [*Id.*];

(7) state law claims for violation of Ga. Const., Art. 1, § 1, ¶¶ 1, 13, & 17 and the Alabama Constitution [*Id.* (Count Five) at ¶¶150-151];

(8) state law claims for battery under Georgia and Alabama law [*Id.* (Count Six)]; and

(9) state law negligence claims under Georgia and Alabama law [*Id.* (Count Seven)].²⁸

145. In the “Damages” section of her Complaint, Wuenschel seeks “economic and non-economic damages, pain and suffering, mental anguish and emotional distress which includes shock, indignity, humiliation, fright, nightmares, anxiety, and fear of additional personal injury[.]” [*Id.* at ¶160] Wuenschel seeks punitive damages from all Defendants. [*Id.* at ¶162]

* * * * *

150. Based on the foregoing material facts as to which there is no genuine issue to be tried, and as shown in the accompanying Brief supporting this motion, Defendants are entitled to summary judgment as to all of Plaintiffs’ claims.

²⁸ None of Wuenschel’s state law Counts identify against which Defendant(s) they are brought, or specify whether they are official and/or individual capacity claims.

Respectfully submitted this 1st day of August, 2019.

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CERTIFICATE OF SERVICE

I do hereby certify that I am counsel for Defendants and that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

This 1st day of August, 2019.

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