

IN THE SUPREME COURT OF IOWA

No. 23-0217

Polk County No. LACL150440

BRIAN NORRIS, et al.

Plaintiff - Appellee

v.

TRUDY PAULSON,

Defendant - Appellant

CITY OF DES MOINES,

Defendant.

**APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HON. SARAH CRANE, PRESIDING JUDGE**

APPELLANT'S FINAL BRIEF

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ISSUES PRESENTED FOR REVIEW

I. THE PLAINTIFF'S IOWA CONSTITUTIONAL CLAIMS HAVE BEEN ELIMINATED THROUGH THE IOWA SUPREME COURT'S DECISION IN *BURNETT V. SMITH*

Burnett v. Smith, 990 N.W.2d 289 (Iowa 2023)
Carter v. State, 990 N.W.2d 308 (Iowa 2023)
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II. THE COURT ERRED IN RULING FOR PLAINTIFF ON HIS COMMON LAW ASSAULT CLAIM

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ROUTING STATEMENT

Appellant believes that given the issues in this case and recent Iowa Supreme Court precedent this matter should be heard by the Iowa Supreme Court. The matter involves important issues of public policy, specifically the use of force by police officers, that required clear delineation of the uses of force. Such issues are of high relevance to law enforcement, and, of course, the public at large.

REQUEST FOR ORAL ARGUMENT

As stated immediately above this matter involves important issues of public policy, specifically the use of force by police officers, that required clear delineation of the uses of force. Such issues are of high relevance to law enforcement, and, of course, the public at large. For that reason, Oral Argument should be granted.

STATEMENT OF THE CASE

This is an interlocutory appeal by a police officer following the denial of summary judgment. Appellant seeks to reverse the decision of the district court denying the Motion for Summary Judgment. This appeal when filed centered on the court's denial of Summary Judgment on three claims: (1) Unreasonable seizure under the Iowa Constitution; (2) a common law assault claims; and (3) an unreasonable seizure against the City of Des Moines under the Iowa

Constitution. However, since this appeal the Court's decision in *Burnett v. Smith*, 990 N.W.2d 289 (Iowa 2023) overturned its prior *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017). Cases immediately following the decision in *Burnett* made clear that a private right of action for monetary damages under the Iowa Constitution does not exist. See, *White v. Harkrider*, 990 N.W.2d 647, 652 (Iowa 2023) (alleged violations of due process rights under Iowa Constitution cannot proceed in wake of *Burnett*); *Carter v. State*, 990 N.W.2d 308 (Iowa 2023) (no monetary claims allowed under Art. I §§8, 9); *Venckus v. City of Iowa City*, 990 N.W.2d 800, 803 (Iowa 2023) (Iowa constitutional tort claims cannot go forward) Two of the Plaintiff's three claims, Claim I and Claim III were based upon a private right of action for monetary damages under the Iowa Constitution. Therefore, as briefly described below these claims cannot go forward and the district court's decision reversed. After these cases, only the Plaintiff's Count II remains at issue, the common law assault allegation. For the reasons asserted below this claim too should have been decided at summary judgment in the Defendant officer's favor. The District Court's ruling should be reversed, and directions given to the district court to enter judgment in favor of the Defendant, Officer Paulson.

STATEMENT OF THE FACTS

Bryan Norris, (hereinafter Norris or Appellee), was at the time of these events residing in a homeless camp in Des Moines, Polk County, Iowa. (Petition ¶1, App. 122)

Trudy Paulson (hereinafter “Paulson” or "Appellant") was and is a certified peace officer in the State of Iowa. (Petition ¶3, App. 122) Paulson was employed by the Des Moines Police Department. (Petition ¶4, App. 122)

Defendant, City of Des Moines, Iowa (hereinafter Des Moines), is a municipal corporation organized and authorized to operate under the laws of Iowa and acting under the color of State law and operating the Des Moines Police Department. (Petition ¶5, App. 122)

On September 13, 2019, Officer Paulson along with fellow Des Moines Police Officers Shawna Isaac and Sgt. Yanira Scarlett were following up after complaints concerning a homeless camp which would include checking for outstanding warrants. (Trudy Paulson Interview, pg. 4, App. 187) The homeless camp was located south of the railroad tracks along the Racoon River south of the 2300 block of Terrace Rd. There were several people at the camp. (Paulson Body Camera 1:30 to 1:35, App. 352)

Officers spoke to those residing at the homeless camp and asked for identifying information to check for existing warrants. (Paulson Body Cam 1:35,

App. 352) Officers would do a warrant check using a system known as LENCIR (spelled in transcript as “lenser”). (Trudy Paulson Interview, pg. 4, App. 187)

Plaintiff Bryan Norris first appears in the frame of Officer Paulson’s body camera wearing a purplish-grey shirt, scarf, bicycle cap, and black shorts. (Paulson Body Cam 2:12, App. 352) All except Norris gave their correct names to the officers. Norris provided a false name “Bradley Roberts” from Florida and gave a social security number. (Paulson Body Cam 6:08, App. 352)

“Bradley Roberts” obtained no information using LENCIR. (Paulson Body Cam 9:20 and 12:50, App. 352) Paulson then asked “Bradley Roberts” if he possessed any identification with his name upon it. (Paulson Body Cam 19:15, App. 352) Paulson also asked “Bradley Roberts” for his age and his middle name, which he provided as “Tyler” and again asked for his social security number again. (Paulson Body Cam 27:32, 27:56, 31:26, App. 352)

Sergeant Scarlett told “Bradley Roberts” that they did not believe he is providing them with accurate information and that he could either provide his actual name or be taken to jail until such time they were provided such information. (Paulson Body Cam 31:55 to 32:30, App. 352; Isaac Body Cam 32:25, App. 353)

Paulson told Norris his actual identity would eventually be discovered so he may as well be forthcoming. (Paulson Body Cam 32:55, App. 352) Norris

then provided his actual name and date of birth. (Paulson Body Cam 33:11, App. 352)

Norris was generally known as “Stiches” by fellow residents of the homeless. (Gary Davis Interview Video at 34:14 to 34:18, App. 356) Paulson called in the name “Bryan Norris” and the information Norris had finally provided for the LENCIR system. (Paulson Body Cam 33:28, App. 352)

Shawna Isaac asked Norris whether he knew of an existing warrant, and if that was why he had given a false name to the officers. (Isaac Body Cam 33:24, App. 353) Isaac further asked Norris whether he was really from Florida or Iowa, Norris repeated he was from Florida. (Isaac Body Camera 33:32, App. 353)

The LENCIR results on Bryan Norris were provided to Officer Paulson showing Norris had an outstanding warrant. (Paulson Body Cam 34:40, App. 352)

Paulson informed Sergeant Scarlett of the outstanding warrant regarding Norris. (Paulson Body Cam 35:03, App. 352)

As the conversation was occurring between Paulson and Scarlett, Norris suddenly ran from the scene in the direction of the river and jumped into the river from a six-to eight-foot-high embankment, evading the three pursuing officers. (Paulson Body Cam 35:05 to 35:13, App. 352, Isaac Body Cam 35:01 to 35:08, App. 353)

Sgt. Scarlett and Officer Isaac went to where Norris jumped in and tried to keep track of where he was from the shore while radioing for assistance. (Id.)

Officer Paulson, seeing the other officers were also chasing and tracking Norris, went back to speak to the remaining individuals in the homeless camp. (Paulson Body Cam 35:14, App. 352)

Officer Isaac went in the direction that Norris had swam by cutting through the homeless camp. (Isaac Body Cam 35:35 to 35:42, App. 353)

Isaac followed the trail by the river coming to a rocky outcropping when she saw Norris return from the river near where he had originally jumped in the water. (Isaac Body Cam 36:53, App. 353) Isaac yelled out a warning to Paulsen that Norris was “coming up the hill”. (Isaac Body Cam 36:54, App. 353) Isaac warned Sergeant Scarlet that Norris was coming up the hill where he had gone into the water. (Isaac Body Cam 36:56, App. 353)

Isaac yelled to Paulsen and Scarlett that Norris was “coming up by the tents” and Isaac headed back in their direction. (Isaac Body Cam 37:04, App. 353)

Paulson called into dispatch to say that Norris had jumped into the river. (Paulson Body Cam 35:25 to 35:40, App. 352)

Sergeant Scarlett also went back and talked to the remaining individuals in the homeless camp where Officer Isaac attempted to track Norris. (Paulson Body Cam 36:00, App. 352)

Paulson engaged with individuals in the homeless camp, including two other individuals who were being detained for outstanding warrants. (Paulson Body Cam 36:27, App. 352)

Yelling could be heard in the distance. (Paulson Body Cam 37:06, App. 352) Paulson headed toward the river. (Paulson Body Cam 37:10, App. 352)

As Paulson headed toward the river, Norris, wet from being in the river, emerged from her left. (Paulson Body Camera 37:14, App. 352) Norris moved toward Paulson with a large shovel in his left hand. (Paulson Body Camera 37:15, App. 352)

Paulson commanded Norris to “put it down”. Paulson had her gun drawn and pointed in Norris’s direction. *Id.*

Norris was facing Paulson from a short distance away but had not dropped the shovel, Paulson commanded for a second time that Norris “put it down!” (Paulson Body Camera 37:17, App. 352) Paulson took a step away from Norris as the latter took a step toward Paulson, with the shovel in his left hand.

Others can also be heard yelling toward Norris “put it down”. Norris began to shift the shovel between his left and right hand and crouched near a chair.

(Paulson Body Camera 37:20 to 37:23, App. 352, Gary Davis Interview Video at 33:48 to 33:55, App. 356)

Norris was behind the chair in a crouched fighting position and swinging the shovel back and forth with both hands. (Paulson Body Camera 37:23, App. 352) Norris then switched the shovel to his right hand only and crouched lower to pick up something in his left hand. (Paulson Body Camera 37:24, App. 352)

As others continued to yell at Norris to “put it down”, Norris grabbed the other item. (Paulson Body Camera 37:26, App. 352, Gary Davis Interview Video at 33:48 to 33:55, App. 356)

Norris can be seen with the shovel in one hand and a knife in the other while shifting weight from side to side. (Paulson Body Camera 37:28-37:29, App. 352)

Norris resumed a fighter’s crouched stand while holding the knife and shovel. (Paulson Body Camera 37:30, App. 352) Paulson took a step toward Norris who continued shift his weight from his right to left. (Paulson Body Camera 37:31, App. 352)

Paulson issued a third command to Norris, “I will shoot you, put it down now!” (Paulson Body Camera 37:32 to 37:34, App. 352)

Norris continued to hold both weapons and shift his weight back and forth between his left and right leg. (Id.)

To John Hickman, a witness and resident of the homeless camp it appeared that Norris was getting “ready to charge”. (John Hickman audio interview 3:40 to 3:47, App. 354) Hickman stated that from his vantage point Norris had an aggressive look upon his face. (John Hickman audio interview 4:00 to 4:03, App. 354) Hickman thought the “officers did what they had to do”. (John Hickman audio interview 4:48 to 4:51, App. 354)

As others continued to yell at Norris, Paulson took an additional small step toward Norris her weapon remaining drawn. (Paulson Body Camera 37:35, App. 352)

Norris dropped the shovel, but not the knife, turned and took a step back toward the river away from Paulson. (Paulson Body Camera 37:38, App. 352)

Norris then stopped and turned back toward Paulson. (Paulson Body Camera 37:39, App. 352)

Norris took a step toward Paulson and the latter again commanded Norris to “put it down!” (Paulson Body Camera 37:40, App. 352)

Norris again turned toward the river and took a step away from Paulson, reversed and again came toward Paulson. (Paulson Body Camera 37:41-42, App. 352)

Paulson again commanded Norris, “Put it down!” (Paulson Body Camera 37:43, App. 352) Norris took a step toward Paulson while pumping the arm

holding the knife up and down at waist level. (Paulson Body Camera 37:44, App. 352)

Paulson then fired one shot with her weapon, which missed Norris. (Paulson Body Camera 37:45, App. 352; Isaac Body Cam 37:39, App. 353) Paulson immediately fired a second shot with her weapon and Norris fell to the ground. (Paulson Body Camera 37:46, App. 352; Isaac Body Cam 37:40, App. 353)

Paulson headed toward Norris stating to dispatch, “shots fired”. (Paulson Body Camera 37:48, App. 352) Officer Isaac can be seen nearby to the right of Paulson and left of Norris. (Paulson Body Camera 37:49, App. 352) Officer Scarlett reached Norris shortly before Officer Paulson does. (Paulson Body Camera 37:49, App. 352)

Norris was commanded to drop his knife. (Paulson Body Camera 37:55, App. 352) Norris yelled, “I’m so sorry.” (Paulson Body Camera 38:06, App. 352) Norris was struck with one bullet. Sgt. Scarlet gave first aid and attempted to cuff Norris and prevented him from falling down the embankment. (Trudy Paulson Interview pg. 16, App. 199)

Norris’s knife had a large and hooked blade. (Trudy Paulson Interview pg. 12, Photos of Knife App. 180-83, 195)

At the time Paulson believed Norris was approximately 15 feet away from her. Sgt. Scarlet was the first to render aid while handcuffing Norris. (Trudy Paulson Interview pg. 15, 16, App. 198-99) Sgt. Scarlet believed that Norris was 10 to 12 feet away from Paulson at the time the latter discharged her weapon. (Yarina Scarlett Interview pg. 14, App. 218)

John Hickman, a resident of the homeless camp stated he had known Mr. Norris for approximately one year and had told Hickman repeatedly that law enforcement “would never take [Norris] back to jail” and had stated it repeatedly. (John Hickman audio interview 0:55 to 1:13, App. 354) Robyn Reed, a resident of the homeless camp stated she believed Norris and the officers were separated by 10 to 15 feet at the time of the shooting (Robyn Reed audio interview 3:30 to 3:45, App. 355)

Measurements were taken after the event and revealed that Norris was approximately 20 or so feet away from Paulson at the time she fired her weapon. (Measurement Photos, App. 108-109, App. 222-224)

Norris was charged with a violation of Iowa Code §719.1(1)(F), “Interference with Official Acts – While Displaying a Dangerous Weapon” a Class D felony. (Charge September 13, 2019, Complaint, September 15, 2019, App. 231-32) Ultimately in Case No. FECR331485 Norris was charged with three criminal counts (Trial Information October 22, 2019, App. 234):

Count 1: Interference with Official Acts – While Displaying a Dangerous Weapon. (Class D Felony)

Count 2: Assault on a Peace Officer under Iowa Code §708.3A(2) toward Trudy Paulson (Class D Felony)

Count 3: Assault on a Peace Officer under Iowa Code §708.3A(2) toward Yanira Scarlett (Class D Felony)

Norris pled guilty to the charge of “Interference with Official Acts – While Displaying a Dangerous Weapon” a Class D felony, in return the other counts, also Class D felonies, were dismissed. (Petition to Plead Guilty (Felony), March 30, 2020, App. 237)

In his plea Norris stated, “On or about September 13, 2019, in Polk County, Iowa I knowingly resisted and/or obstructed Officer Trudy Paulson, whom I knew to be a peace officer while she was in the performance of her lawful duty and while displaying a dangerous weapon.” (Petition to Plead Guilty (Felony) March 30, 2020, App. 237)

In July 2019, Bryan Norris and another individual caused the death of a third person by shooting and stabbing the victim. (Petition to Plead, Attached Ex. A, State of Iowa v. Bryan Tyler Norris, No. FECR332617, May 10, 2021, App. 243-46)

In connection with the incident discussed directly above, Mr. Norris plead guilty to (1) Attempted Murder in violation of Iowa Code §707.11; (2) Voluntary Manslaughter in violation of Iowa Code §707.4; (3) Conspiracy to Commit a

Forcible Felony in violation of Iowa Code §705.3 and §902.8; and (4) Abuse of a corpse in violation of Iowa Code §708.14(1)(a) and (b) as well as §902.8. (Id.)

Mr. Norris was sentenced to a lengthy prison sentence regarding the criminal actions described above. (Order of Sentencing, FECR332617, June 15, 2021, App. 136-140, App. 243-254) These prior criminal acts were not known to Officer Paulson at the time of the incident involved in this lawsuit.

Officer Paulson had never previously discharged her firearm as a use of force in her career. (Paulson Interrogatory Answers No. 10, App. 290)

ARGUMENT

I. THE PLAINTIFF'S IOWA CONSTITUTIONAL CLAIMS HAVE BEEN ELIMINATED THROUGH THE IOWA SUPREME COURT'S DECISION IN *BURNETT V. SMITH*

Preservation of Issue: Appellant filed a motion for summary judgment with the District Court on September 6, 2022. Appellant preserved error on the issue raised on appeal by through the filing of the motion for summary judgment. On December 22, 2022, the District Court entered an Order denying the motion for summary judgment. The district court denied a timely motion of the Appellant to reconsider on January 30, 2023. On February 7, 2023, Appellant timely filed a Notice of Interlocutory Appeal from the District Court's Order which was granted by this Court on April 5, 2023.

Standard of Review: An appellate court reviews a district court’s grant of summary judgment for correction of errors at law. *Hedlund v. State*, 930 N.W.2d 707, 715 (Iowa 2019) (citing *Linn v. Montgomery*, 903 N.W.2d 337, 342 (Iowa 2017)). “Summary judgment is appropriate only when the record shows no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.” *Id.* (citing Iowa R. Civ. P. 1.981(3)). The summary judgment record is viewed by this Court in the light most favorable to the nonmoving party. *Id.* (citing *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717 (Iowa 2001)).

Argument:

Since this Court granted this interlocutory review this Court has made decisions that substantially affect the two claims Norris asserts under the Iowa Constitution. Both the First and Third Counts against Officer Paulson and the City of Des Moines are for damages under Article I, §8 of the Iowa Constitution.

On May 5, 2023, the Iowa Supreme Court abrogated its prior finding of a private right of action for money damages for claims under the Iowa Constitution. See, *Burnett v. Smith*, 990 N.W.2d 289 (Iowa 2023) overruling *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017) and disallowed claims for damages under the Iowa Constitution. A week later, the Iowa Supreme Court made clear the *Burnett* ruling applied to claims against municipalities. *White v. Harkrider*, 990 N.W.2d 647 (Iowa 2023) Shortly thereafter the Iowa Supreme

Court ruled on the same grounds in *Carter v. State*, 990 N.W.2d 308 (Iowa 2023) and *Venckus v. City of Iowa City*, 990 N.W.2d 800, 803 (Iowa 2023) (state constitutional torts not available against municipalities and their employees).

For this reason, the Court's summary judgment rulings on Count I and III must be vacated and the district court's decision overturned. The Plaintiff does not have a private right of action for damages under the Iowa Constitution. This leaves only the single common law claim of assault at issue in this appeal.

II. THE COURT ERRED IN DENYING SUMMARY JUDGMENT FOR THE DEFENDANT PAULSON ON PLAINTIFF'S CLAIM OF COMMON LAW ASSAULT

Preservation of Issue: Appellant filed a motion for summary judgment with the District Court on September 6, 2022. Appellant preserved error on the issue raised on appeal by through the filing of the motion for summary judgment. On December 22, 2022, the District Court entered an Order denying the motion for summary judgment. The district court denied a timely motion of the Appellant to reconsider on January 30, 2023. On February 7, 2023, Appellant timely filed a Notice of Interlocutory Appeal from the District Court's Order which was granted by this Court on April 5, 2023.

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Argument:

It has long been recognized in Iowa that under Iowa Code §804.8 “an assault only occurs if the peace officer does not reasonably believe the particular force was necessary in the circumstances.” *Johnson v. Civil Serv. Comm’n of City of Clinton*, 352 N.W.2d 252, 257 (Iowa 1984). Subsequently, this court recognized the statute as establishing an “objective reasonableness” standard for the use of force by arresting officers – utilizing the United States Supreme Court’s “qualified immunity” standard for excessive force claims. See *Chelf v. Civil Serv. Comm’n of City of Davenport*, 515 N.W.2d 353, 355-56 (Iowa 1994) citing *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

Courts have found §804.8 does not create a cause of action, but rather is a defense to what to what otherwise would be an assault and battery. See, *Daniels v. Tyler*, 56 F.Supp.3d 967, 974 (N.D. Iowa 2014) (individual officer claim only)

citing *Blacketer v. State, Div. of Narcotics Enforcement*, 2007 WL 4191979, p. 2 (Iowa Ct. App. Nov. 29, 2007) (slip op.)

“Police Officers are privileged to commit a battery pursuant to a lawful arrest subject to the limitation on excessive force”. *Lawyer v. City of Council Bluffs*, 240 F.Supp.2d 941, 955 (S.D. Iowa 2001). Therefore, if Trudy Paulson would have been entitled to qualified immunity for a Fourth Amendment claim of excessive force, she would also enjoy immunity provided by Iowa Code 804.8 for a state-law claim of assault and battery.

As the *Graham* factors apply to §804.8 claims, they should guide the analysis of Officer Paulson’s actions. *Chelf v. Civil Serv. Comm’n of City of Davenport*, 515 N.W.2d 353, 355-56 (Iowa 1994).

The Court failed to properly evaluate particular facts in viewing whether the actions of Officer Paulson were reasonable given the totality of the circumstances before she discharged her weapon. See, *State v. Dewitt*, 811 N.W.2d 460, 470 (Iowa 2012) citing *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. in 1872, 104 L.Ed.2d at 455– 56 (1989); *Wisham v. Rinehart*, 119 F.3d 1303, 1309 (8th Cir. 1997). The question of whether an officer has used excessive force "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 or attempting arrest by flight" *Kisela v Hughes*, 523 U.S. 155, 138 S.Ct. 1148, 1152, 200 L.Ed.2d 449 (2018); *Iowa Code §804.8(1)*(use of deadly force justified if reasonably believed necessary by peace officer).

On Page 6, of its Order the Court erred when it stated relative to the movement of Mr. Norris, "...the movement could be interpreted as an effort to maintain his balance as he stepped near the edge of the river's embankment and rotated back around". This is not the proper analysis in which to interpret whether Officer Paulson acted reasonably. As in Federal cases interpreting §1983, the question is whether the "perception" of Officer Paulson that Norris stepped toward her was reasonable, not whether there are other reasonable interpretations. See, *Loch v. Litchfield*, 689 F.3d 961, 966 (8th Cir. 2012), see also *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

The "perception" and its reasonableness under State law is found in the language of §804.8(1):

A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force is only justified when a person cannot be captured any other way and either

1. The person has used or threatened to use deadly force in committing a felony or

2. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

Officer Paulson's actions were reasonable from the totality of the circumstances of which she was aware at the time she discharged her weapon. See, *Plumhoff v. Rickard*, 134 S.Ct. 2012, 2020, 188 L.Ed.2d 1056 (2014), quoting *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Police officers are expected to act reasonably, not perfectly, and those officers are to have "fair leeway for enforcing the law". *Heien v. North Carolina*, --- U.S. ---, 135 S.Ct. 530, 532, 190 L.Ed.2d 475 (2014) quoting *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

Paulson's actions are to be "judged from the perspective of the officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. In conducting this inquiry, the court must give "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect pose[d] an immediate threat to the safety of the officers or others, and whether [the suspect] [was] actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

In this matter, Norris ran from three Des Moines Police Officers; had provided false identification; and then returned to threaten Officer Paulson bearing a knife that could cause serious injury or life-threatening harm. He has admitted to these facts in his plea bargain. Despite clear and repeated commands issued by Officer Paulson to “drop the knife” or face the consequences of being shot, Mr. Norris was close to Officer Paulson, while wielding a dangerous weapon.¹ He ignored repeated warnings and then took a critical step towards Officer Paulson. That is the basis upon which Officer Paulson shot Mr. Norris. All of this is clearly revealed in the body camera footage. Again, Mr. Norris, lied to officers, fled the scene, ignored repeated clear orders to disarm, and admitted to wielding a dangerous weapon within 20 feet of a law enforcement officer.

Paulson’s actions are supported by a long history of precedent starting with *Graham v. Connor*, 490 U.S. at 396. “[P]olice 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

¹ On page 7 of the Order the Court characterized Paulson's statements to Norris to drop his knife as "repeated comments". The status of Officer Paulson and the tone of her voice demonstrate that this is an erroneous characterization. Paulson was not engaging in a conversation with Mr. Norris, she was issuing Norris a clear directive as a police officer. These were clearly "commands" not comments and the Court's Order is not an accurate representation of the uncontested factual record as captured on Officer Paulson's body camera.

situation.” *Partlow v. Stadler*, 774 F.3d 497, 502 (8th Cir. 2014) quoting *Graham v. Connor*, 490 U.S. at 397.

The Eighth Circuit has repeatedly stressed that an officer’s reasonable belief of the danger of a suspect being armed is what matters, not whether that belief turns out to be correct. “[A]n officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.” *Thompson v. Hubbard*, 257 F.3d 896, 899 (8th Cir. 2001) (applying the *Graham* factors), see also *Billingsley v. City of Omaha*, 277 F.3d 990, 995 (8th Cir. 2002)(applying the *Graham* factors and holding that when a police officer never observed a weapon and the suspect was ultimately determined to be unarmed, a “police officer can still employ deadly force if objectively reasonable”) “[E]ven if [the suspect’s] motives were innocent, a reasonable officer on the scene could have interpreted [the suspect’s] actions as resistance”. *Loch v. City of Litchfield*, 689 F.3d 961, 966 (8th Cir. 2012) (utilizing *Graham* factors, as suspect approached officer even though people in vicinity of officer were yelling the suspect was not armed, it was not unreasonable for the officer to suspect the suspect was armed before the officer fired his weapon).

The Court's interpretation of *Kisela v. Hughes* was misplaced. While in that case an individual was shot six feet from a third party (her friend) while

holding a kitchen knife by her side, the woman was standing there calmly at the time of the shot. *Kisela*, 138 S.Ct. at 1152. Further, the individual shot in *Kisela* was not suspected of a crime, let alone the felony of displaying a dangerous weapon like Mr. Norris.² *Id.* at 1151. Of course, the suspect in *Kisela* had not lied to officers, fled from officers after they discovered a warrant, nor returned to the scene to confront one of the officers with a weapon.

The court's reliance upon *Sok Kong* was also misplaced. In *Sok Kong* an individual stood 30 feet away from officers, but also the officers had personally caused the situation in *Sok Kong* leading to the use of deadly force upon the suspect. *Sok Kong Trustee for Map Kong v. City of Burnsville*, 960 F.3d 985, 990 (8th Cir. 2020) Here, not only was the distance to Norris shorter than that of *Sok Kong*, the situation in which Officer Paulson found herself was solely the result of Norris's actions. It was Norris that fled and returned to the location of Officer Paulson, this time carrying a dangerous weapon. This is a significant difference from *Sok Kong*. Yet in *Sok Kong* those officers were granted summary judgment. The court erred in its interpretation.

² The Court appears to have failed to address the fact Norris pled guilty to the felony of interfering Paulson while displaying a dangerous weapon that posed a threat of serious physical harm to Officer Paulson in reaching its decision. This plea provides the convincing evidence that Officer Paulson acted reasonably and met the requirements of the affirmative defense under Iowa Code §804.8.

Iowa Court precedent is consistent with *Graham*. Whether a search or seizure is proper and reasonable is evaluated from the totality of the circumstances present to the officer at the time of the seizure. *State v. Pettijohn*, 899 N.W.2d 1, 29 (Iowa 2017) Further, the circumstances surrounding whether there was sufficient cause to perform a seizure is determined from the perspective of a reasonable officer. *Johnson v. McCarver*, 942 F.3d 405, 411 (8th Cir. 2019); *Bailey v. Lancaster*, 470 N.W.2d 351, 359 (Iowa 1991) (actions must be judge from the perspective of a reasonable officer on the scene).As shown and described above, the totality of the circumstances clearly supports Officer Paulson’s action, and she is entitled to immunity and judgment in her favor.

As demonstrated in the body cam footage, Officer Paulson repeatedly commanded Norris drop his weapon and warned that failure to do so would result in her using her firearm. Norris had ample and repeated opportunities to comply yet clearly refused. See, *Malone v. Hinman*, 847 F.3d 949, 953 (8th Cir. 2017), citing *Loch* at 967. Instead, Norris admitted to wielding a dangerous weapon in defiance of Paulson’s orders.

Norris may argue that Paulson had other alternatives available, this is irrelevant. What matters is that the force chosen was objectively reasonable based upon the perception of the Officer employing that force. See, *Meehan v. Thompson*, 763 F.3d 936, 940 (8th Cir. 2014). The facts and law clearly show that

Paulson's use of deadly force did not violate Iowa Code §804.8 as it was reasonable given what was before her at the time she acted.

Graham v. Connor's qualified immunity standard is the model in which to interpret Iowa Code §804.8. If Paulson was entitled to qualified immunity therefore, any claim against the municipality would also have to be ruled in favor of the City as no violation by Paulson necessarily equates to no violation by the City, and all "official capacity" claims must be ruled upon in the City's favor. See, *Moore v. City of Desloge, Mo.*, 647 F.3d 841, 849 (8th Cir. 2011), Iowa Code §670. The Court clearly erred in denying Summary Judgment to Officer Paulson on this count.

CONCLUSION

For reasons know to him at the time, Mr. Norris fled from officers while the latter were engaged in proper law enforcement activities. He ignored repeated orders to comply, he returned to threaten – as indicated in his felony plea – Officer Paulson with a deadly weapon. While ignoring Officer Paulson's instruction to disarm, Norris did not show any indication of de-escalating and continued to pose a threat of serious injury to Officer Paulson and others by wielding such a weapon and stepping toward her.

The actions of Officer Paulson were not a violation of any clearly established law, nor were her actions in violation of any statute or common law

as a police officer. The district court erred in denying her motion for summary judgment in this matter. The district court's ruling should be reversed with instructions by this court to dismiss the matter upon remand.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this brief contains 5,733 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f), because this page proof brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2010 in 14-point Times New Roman.

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The undersigned counsel certifies that I did file the attached Proof Brief with the Clerk of the Iowa Court via EDMS on October 2, 2023.

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I certify that as this brief was filed via EDMS the Appellant did not incur a cost in printing.

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