[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14512
Non-Argument Calendar

D.C. Docket No. 2:17-cv-00215-RWS

JANET TURNER O'KELLEY,
Individually and as Personal Representative of the Estate of John Harley Turner,
JOHN ALLEN TURNER,

Plaintiffs - Appellants,

versus

SHERIFF DONALD E. CRAIG,
SGT. TRAVIS PALMER CURRAN,
a.k.a. Travis Lee Palmer,
DEP. FRANK GARY HOLLOWAY,
DEP. KEELIE KERGER,
DEP. BILL HIGDON,
DEP TODD MUSGRAVE, et. al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(July 16, 2019)

Before MARCUS, ROSENBAUM, and JULIE CARNES, Circuit Judges.

PER CURIAM:

This case concerns a deadly encounter between John Harley Turner ("Harley") and several law-enforcement officers on the night of October 24, 2015. The officers made contact with Harley in the course of investigating a 911 call where a hunter reported that a resident, later determined to be Harley, had accused some hunters of trespassing on his land and had threatened them with bodily harm if they did not leave. Harley spoke with the officers from behind a closed gate on property he shared with his mother and her husband. Harley was armed and refused multiple commands to put the gun down, but he never threatened the officers or pointed the gun at them. After more than 30 minutes of fruitless negotiation, one of the officers lured Harley closer to the fence under the guise of inviting him to talk. As Harley approached, another officer, who had sneaked over the fence onto Harley's property, fired three rounds from a twelve-gauge shotgun filled with shot-filled beanbags, striking Harley. Harley returned fired, prompting the other officers to shoot and kill him.

Harley's mother and father, Janet Turner O'Kelley and John Allen Turner, respectively (collectively, "Plaintiffs"), filed suit under 42 U.S.C. § 1983, alleging several claims on his behalf, including (1) an unlawful-seizure claim against the officers who were involved in the events that led to Harley's death; and (2) a failure-

to-train claim against Donald Craig, the Sheriff of Pickens County. They also brought a state-law claim for wrongful death. The district court granted the Defendants' motion to dismiss, which invoked the defenses of qualified and official immunity. Plaintiffs now appeal.

I.

At around 8:30 p.m. on October 24, 2015, a hunter called 911 to report that he and other hunters had been threatened by a resident while coon hunting.[1] The hunter claimed that a person on a neighboring property had yelled at them through the woods, accusing them of trespassing and threatening them with bodily harm if they did not leave. After ensuring that the hunter was safe, the 911 operator reported the incident to law enforcement as a "completed domestic disturbance."

Pickens County Deputies Bill Higdon, Frank Holloway, and Keelie Kerger responded to the call. They spoke with the hunter and then proceeded to the subject property at 1607 Carver Mill Road, arriving at around 9:00 p.m.

Harley lived at 1607 Carver Mill in a cabin behind the main house, which was occupied by Harley's mother, Janet Turner O'Kelley ("Mrs. O'Kelley"), and her

[1] We present the facts as alleged in Plaintiffs' complaint, accepting them as true for purposes of this appeal. *See Gates v. Khokhar*, 884 F.3d 1290, 1296 (11th Cir. 2018) ("When ruling on a motion to dismiss, we accept the facts alleged in the complaint as true, drawing all reasonable inferences in the plaintiff's favor." (quotation marks and alteration omitted)).

husband, Stan O'Kelley ("Mr. O'Kelley"). The two residences were enclosed in a fence with a closed gate that blocked the driveway.

When the deputies arrived, they spoke with Mr. O'Kelley outside the closed gate. Mr. O'Kelley informed them that the 911 call was about his stepson Harley and that Harley was armed. The deputies sent Mr. O'Kelley to a neighbor's house.

Around this same time, Harvey, shirtless and armed with a pistol in a chest holster, approached the gate from the cabin with a flashlight talking loudly about trespassing. Shouting and with guns raised, the deputies ordered Harley to put his hands up and his gun down. The deputies did not immediately identify themselves as law-enforcement officers. Harley replied, "I already put the gun down," and asked, "Why are you trying to trespass?" One of the deputies responded, "We're not trespassing; we're cops."

Meanwhile, additional law-enforcement officers arrived on the scene. According to the complaint, State Troopers Rodney Curtis and Jonathan Salcedo "took up sniper positions" armed with rifles. Pickens County Deputies Travis Curran and Todd Musgrave joined the other deputies armed with shotguns, one of which was loaded with "less-lethal" beanbag rounds.

Harley began walking back towards his house with his hands above his head. He held the flashlight in one hand and the gun in the other. The deputies ordered him to put the gun down and get on the ground. Harley briefly turned around and

told the officers to just keep trespassers off his property. He then turned back and continued on his way, while the deputies, with guns still pointed at him, ordered him to come back to the fence.

Mrs. O'Kelley arrived at the property at around 9:05 p.m., just over 30 minutes after the 911 call and five minutes after the first deputies arrived. She saw that Deputy Curran had a shotgun, and she told the officers that there should be no shooting and that Harley would defend himself if they opened fire. The deputies would not let Mrs. O'Kelley talk to Harley, and they directed her away from the property.

A tense verbal back-and-forth ensued for approximately 30 minutes. The deputies repeatedly tried to get Harley to put his gun down. Harley paced back and forth, wearing his gun in the chest holster, and asserted that he simply wanted the officers to keep trespassers away from his property. Harley was distressed and perceived the officers as threatening him. Several times, he told them to "go ahead and shoot me." The deputies repeatedly assured Harley they would not shoot him.

In the middle of this back-and-forth, at around 9:12 p.m., Harley announced that he was tired and wanted to go to bed, and that he was going to his cabin to get a drink of water. While he was away, Deputies Curran and Higdon, armed with shotguns, crossed the fence into the property and took cover in order to "try to get a better position" for a shot on Harley.

Harley returned from his cabin with a flashlight in one hand and a jug of water in the other. His gun remained in his chest holster. He began talking to the deputies again, calling them trespassers and telling them: "I have never crossed this line, and y'all were the ones have been the fuckin' aggressors." Harley announced that he was tired and would like to go to bed.

At Deputy Curran's urging, Deputy Kerger invited Harley to come talk at the fence for the purpose of drawing him closer to a spot where Curran could get a good shot. Kerger told Harley that she did not have her gun, and she indicated that she could take a statement from him if he put his gun down. Harley responded, "I already did." Kerger pointed out that the gun was still on Harley's chest. They continued talking, with Kerger saying that she would not talk with him until he took his gun out of its holster and put it on the ground.

About thirty seconds later, an officer stated in a low voice, "He's coming back towards the fence." At that point, Deputy Curran fired three beanbag rounds from his shotgun. At least one round struck Harley and knocked him down. Harley drew his pistol and returned fire. The other officers opened fire, killing Harley.

II.

In October 2017, Plaintiffs filed a complaint in the U.S. District Court for the Northern District of Georgia, alleging two federal claims under 42 U.S.C. § 1983. First, Plaintiffs alleged an unlawful warrantless seizure of Harley within the curtilage

of his home, in violation of the Fourth Amendment, by Deputies Curran, Higdon, Holloway, Kerger, and Musgrave (the "Deputies"), and by Troopers Curtis and Salcedo (the "Troopers"). Second, Plaintiffs alleged that Sheriff Craig failed to adequately train deputies in arrest procedures and the use of force. They also alleged a state-law wrongful-death claim against the Deputies.

The defendants filed motions to dismiss, invoking the federal defense of qualified immunity against the illegal-seizure claim and the state defense of official immunity against the wrongful-death claim. As to the failure-to-train claim, Sheriff Craig maintained that it failed because there was no underlying constitutional violation and because Plaintiffs' allegations were vague and conclusory. The district court granted the motions to dismiss, and Plaintiffs now appeal.

III.

We review *de novo* the grant of a motion to dismiss, accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor. *Paez v. Mulvey*, 915 F.3d 1276, 1284 (11th Cir. 2019). "To withstand a motion to dismiss under Rule 12(b)(6), [Fed. R. Civ. P.], a complaint must include enough facts to state a claim to relief that is plausible on its face." *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016) (quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to

draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

IV.

Qualified immunity protects government officials from individual liability for job-related conduct unless they violate clearly established law of which a reasonable person would have known. *Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2013). "It serves the purpose of allowing government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation." *Carter v. Butts Cty.*, 821 F.3d 1310, 1318–19 (11th Cir. 2016) (quotation marks omitted). Because qualified immunity is a defense not only from liability, but from suit, the defense may be raised in a motion to dismiss. *Sebastian v. Ortiz*, 918 F.3d 1301, 1307 (11th Cir. 2019).

Officials invoking qualified immunity must show first that they were acting within the scope of their discretionary authority. *Id.* There is no dispute that the Deputies and Troopers were engaged in discretionary duties on the night of October 24, 2015. Accordingly, the burden shifted to Plaintiffs to show that qualified immunity did not apply. *See id.*

The qualified-immunity inquiry "turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken." *Pearson v. Callahan*, 555 U.S. 223, 244 (2009) (quotation marks

omitted). "To deny qualified immunity at the motion to dismiss stage, we must conclude both that the allegations in the complaint, accepted as true, establish a constitutional violation and that the constitutional violation was 'clearly established.'" *Sebastian*, 918 F.3d at 1307 (emphasis in original). We may address these two prongs in either order. *Pearson*, 555 U.S. at 236.

Plaintiffs contend that the Deputies and Troopers violated clearly established Fourth Amendment law when, in the absence of a warrant or exigent circumstances, they seized Harley within the curtilage of his home, trespassed on his property, and then used force against him that foreseeably caused his death.

A.

We start by considering whether the defendants transgressed Harley's Fourth Amendment rights on the night of October 24, 2015. Accepting the facts alleged in the complaint as true, we find that the Deputies did, but not the Troopers.

"[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). At the Amendment's "very core" is the right of an individual "to retreat into his [or her] own home and there be free from unreasonable governmental intrusion." *Id.* (quotation marks omitted). This protection extends to "the area immediately surrounding and associated with the home"—what courts refer to as the "curtilage"—which is regarded "as part of the home itself for Fourth Amendment purposes." *Id.* (quotation marks omitted).

Given the special protection afforded the home, searches and seizures within a home or its curtilage and without a warrant are presumptively unreasonable. *United States v. Walker*, 799 F.3d 1361, 1363 (11th Cir. 2015); *Bashir v. Rockdale Cty., Ga.*, 445 F.3d 1323, 1327 (11th Cir. 2006). This general rule is "subject only to a few jealously and carefully drawn exceptions," which are consent and exigent circumstances. *McClish v. Nugent*, 483 F.3d 1231, 1240 (11th Cir. 2007) (quotation marks omitted). Absent consent or exigent circumstances, probable cause alone is not enough to validate a warrantless search or arrest. *Bashir*, 445 F.3d at 1328. Nor may officers conduct a warrantless seizure under *Terry*[2] within the home without consent or exigent circumstances. *Moore v. Pederson*, 806 F.3d 1036, 1045 (11th Cir. 2015).

A variety of circumstances may give rise to an exigency sufficient to justify a warrantless entry, including law enforcement's need to provide emergency assistance, engage in "hot pursuit" of a fleeing suspect, or prevent imminent destruction of evidence. *Missouri v. McNeely*, 569 U.S. 141, 149 (2013). Likewise, we have held that "emergency situations involving endangerment to life fall squarely within the exigent circumstances exception." *United States v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002). "While these contexts do not necessarily involve

[2] *Terry v. Ohio*, 392 U.S. 1 (1968) (permitting brief, investigatory seizures based on reasonable suspicion).

equivalent dangers, in each a warrantless [entry] is potentially reasonable because there is compelling need for official action and no time to secure a warrant." *McNeely*, 569 U.S. at 149 (quotation marks omitted); *Feliciano v. City of Miami*, 707 F.3d 1244, 1251 (11th Cir. 2013) ("Exigent circumstances . . . arise when the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action." (quotation marks omitted)).

We look to the "totality of the circumstances" to determine whether officers "faced an emergency that justified acting without a warrant." *McNeely*, 569 U.S. at 149. In other words, we must "evaluate each case of alleged exigency based on its own facts and circumstances." *Id.* at 150 (quotation marks omitted).

The Deputies and Troopers offer different arguments in support of the judgment in their favor. The Deputies concede that Harley was seized within the curtilage of his home and that Deputies Curran and Hidgon entered the curtilage without a warrant. But they contend that their conduct was reasonable because they had probable cause to arrest, or at least reasonable suspicion to conduct a *Terry* stop, and that exigent circumstances validated the warrantless seizure and entry. Further, they contend that Curran's use of beanbag rounds was a reasonable response to what the deputy viewed as a "potential deadly encounter."

For their part, the Troopers maintain that the allegations in the complaint do not implicate them in any of the alleged Fourth Amendment violations. They also

dispute that Harley was within the curtilage of his home, and they contend that their actions—responding with lethal force once Harley opened fire—were objectively reasonable under the circumstances.

1. Troopers

We address the Troopers' arguments first. Ultimately, we agree that the complaint does not state a plausible Fourth Amendment claim against them.

It is well established that § 1983 "requires proof of an affirmative causal connection between the official's acts or omissions and the alleged constitutional deprivation." *Zatler v. Wainwright*, 802 F.2d 397, 401 (11th Cir. 1986). Such a "causal connection" may be established by showing that "the official was personally involved in the acts that resulted in the constitutional deprivation." *Id.* "[T]he inquiry into causation must be a directed one, focusing on the duties and responsibilities of each of the individual defendants whose acts or omissions are alleged to have resulted in a constitutional deprivation." *Williams v. Bennett*, 689 F.2d 1370, 1381 (11th Cir. 1982).

Here, Plaintiffs did not allege sufficient facts, accepted as true, to show that Troopers Curtis and Salcedo were personally involved in the acts that resulted in the alleged constitutional deprivations. Before the fatal shooting, the Troopers' participation in the events at 1607 Carver Mill was limited to taking "sniper positions" with rifles. Plaintiffs contend that Harley was seized soon after by various

commands, but the complaint indicates that it was the "the deputies" who "shouted at him to put the gun down and get on the ground" and then "ordered him to come back to the fence." Thus, despite the Troopers' presence on the scene, it does not appear from the complaint that they were personally involved in the acts that allegedly resulted in Harley's seizure. Nor did they enter the property or fire the beanbag rounds that provoked the firefight. While the Troopers did respond with lethal force once Harley opened fire, Plaintiffs do not contend that this use of force was itself unreasonable, nor could we find that it was. Because the Troopers' acts or omissions were not alleged to have resulted in a constitutional deprivation, we affirm the dismissal of the complaint as to them.

Plaintiffs respond that the Troopers are liable for failing to intervene and prevent an excessive use of force. But as the district court noted, "[t]his theory of liability is not alleged in the Complaint." For that reason, we decline to consider whether the Troopers could be held liable under a failure-to-intervene theory. In any case, the complaint's allegations do not establish that the Troopers had time and were in a position to intervene. *See Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 927 (11th Cir. 2000). Specifically, we cannot tell from the complaint whether the Troopers were even aware of Deputy Curran's plan to use force to end the encounter.

For these reasons, we affirm the judgment in favor of the Troopers.

2. Deputies

But as to the Deputies, we conclude that the complaint plausibly establishes that they violated Harley's Fourth Amendment rights. At the outset, we note that the parties agree on certain points. Plaintiffs and the Deputies agree that Harley was seized within the curtilage of his home—exactly when is not particularly important for the time being—and that Deputies Curran and Higdon entered the curtilage. Because the Deputies lacked a warrant, the parties also agree that the Deputies needed consent or exigent circumstances. For purpose of this opinion only, we assume without deciding that the parties are correct on these matters.

While the parties dispute the existence of probable cause or reasonable suspicion, we need not address that issue. Even assuming probable cause to arrest existed, no exception to the warrant requirement applied on the facts alleged.

Harley clearly did not consent, and no exigent circumstances existed here. The Deputies contend, and the district court concluded, that exigent circumstances existed because they faced an "emergency situation[] involving endangerment to life." *Holloway*, 290 F.3d at 1337. This exception applies "[w]hen the police reasonably believe an emergency exists which calls for an immediate response to protect citizens from imminent danger." *Id.*

But no reasonable officer would believe that Harley's conduct presented an *imminent* risk of serious injury to the Deputies or others. By the time the officers

arrived on the scene, the events that gave rise to the 911 call by the hunter were complete, the hunters were safely away from the property, and Harley was in his cabin. There had been no report of gunshots, only a verbal and conditional threat of bodily harm against a group of alleged trespassers who were no longer in the area. "This is not the stuff of which life- or limb-threatening emergencies that constitute 'exigent circumstances' are made." *Moore*, 806 F.3d at 1045; *cf. Holloway*, 290 F.3d at 1338 ("The possibility of a gunshot victim lying prostrate in the dwelling created an exigency necessitating immediate search.").

The lack of exigent circumstances is further reinforced by the relatively minor nature of the offense. *See Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984) ("[A]n important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made."). Even if we assume that Harley's threat of harm to the hunters constituted a "terroristic threat" within the meaning of O.C.G.A. § 16-11-37(b)(1), it appears that it would qualify as only a misdemeanor offense under the statute. *See* O.C.G.A. § 16-11-37(d)(1) (stating that "[a] person convicted of the offense of a terroristic threat shall be punished as a misdemeanor," unless the threat "suggested the death of the threatened individual"). In these circumstances, according to the Supreme Court, "application of the exigent-circumstances exception in the context of a home entry

should rarely be sanctioned." *Welsh*, 466 U.S. at 752–53 (noting that most courts "have refused to permit warrantless home arrests for nonfelonious crimes").

Nor did exigent circumstances arise at some point before Deputy Curran discharged his shotgun from within the curtilage of Harley's property. The mere presence of Harley's unconcealed gun did not give rise to exigent circumstances.[3] *Cf. United States v. Santa*, 236 F.3d 662, 669 (11th Cir. 2000) ("The mere presence of contraband, however, does not give rise to exigent circumstances." (quotation marks omitted)). Our Constitution protects "the right to keep and bear arms for defense of the home," *Dist. of Columbia v. Heller*, 554 U.S. 570, 632 (2008), and no facts alleged in the complaint suggest that the Deputies had reason to believe that Harley's possession of the gun was unreasonably dangerous or even unlawful. *Cf. United States v. Burgos*, 720 F.2d 1520, 1526 (11th Cir. 1983) (exigent circumstances permitted warrantless entry of a house "laden with arms and an unknown number of people inside," where the officers had observed the homeowner, who previously had purchased 192 guns without a proper license, take possession of "two large boxes filled with arms").

[3] The cases the Deputies cite as factually analogous both involved seizures in public places, so they are unpersuasive in evaluating the situation here, involving a seizure within the curtilage of a home. *See Embody v. Ward*, 695 F.3d 577 (6th Cir. 2012) (seizure in a public park); *Defert v. Moe*, 111 F.Supp.3d 797 (W.D. Mich. 2015) (seizure on a public street).

To be sure, that Harley was distressed, refused to put down the gun, and was generally uncooperative indicates a fraught situation. But it does not show an "*urgent* need for *immediate* action." *Feliciano*, 707 F.3d at 1251 (emphasis added). Before Deputy Curran discharged his shotgun, Harley did not engage in any violent or threatening behavior. He never pointed the gun at the Deputies or threatened them with it, and the gun remained in his chest holster for the vast majority of the encounter. Plus, he repeatedly informed the defendants that he simply wanted to end the encounter and go to sleep.

Moreover, Harley's failure to put down the gun, despite the Deputies' orders, did not create an exigency. If exigent circumstances did not exist at the time those commands were made, as we have concluded, Harley was not validly seized at the time those commands were made. And because he was not validly seized, he was not required to comply with the Deputies' commands. *See Moore*, 806 F.3d at 1045 (absent exigent circumstances or a warrant, a seizure inside the home is not valid and the occupant is "free to decide not to answer [the officer's] questions"). So his failure to comply with the Deputies' unlawful orders cannot, in and of itself, give rise to exigent circumstances.

Finally, as to the initial shooting by Deputy Curran, the allegations in the complaint indicate that Harley approached the fence as part of a ruse engineered by Curran—for the purpose of drawing Harley closer to a spot where Curran could get

a good shot—so the deputy's decision to fire upon Harley with beanbag rounds cannot be justified as a split-second response to a perceived threat.

Considering the totality of the circumstances, it was not reasonable for the Deputies to believe that they "faced an emergency that justified acting without a warrant." *McNeely*, 569 U.S. at 149. We therefore conclude Plaintiffs plausibly established that the Deputies violated Harley's constitutional rights when, in the absence of a warrant or exigent circumstances, they seized him within the curtilage of his home and entered the curtilage for the apparent purpose of conducting an arrest. Because this conduct was unlawful, "there [wa]s no basis for any threat or any use of force." *Jackson v. Sauls*, 206 F.3d 1156, 1171 (11th Cir. 2000); *see Zivojinovich v. Barner*, 525 F.3d 1059, 1071 (11th Cir. 2008) ("even *de minimis* force will violate the Fourth Amendment if the officer is not entitled to arrest or detain the suspect"). So we vacate the dismissal of Plaintiffs' § 1983 unlawful-seizure claim against the Deputies and remand for further proceedings consistent with this opinion.[4]

B.

We also conclude that clearly established law as of October 24, 2015, put the Deputies on notice that their conduct was unlawful. "The touchstone of qualified

[4] To the extent Plaintiffs contend they established an excessive-force claim even if exigent circumstances justified the seizure and entry, this is a "discrete claim," *Jackson*, 206 F.3d at 1171, that was not raised below, so we decline to address it on appeal.

immunity is notice." *Moore*, 806 F.3d at 1046. "The violation of a constitutional right is clearly established if a reasonable official would understand that his conduct violates that right." *Id.* at 1046–47.

In *Moore*, decided on October 15, 2015, we held that "an officer may not conduct a *Terry*-like stop in the home in the absence of exigent circumstances," consent, or a warrant. *Id.* at 1047, 1054. Thus, binding precedent clearly established, at the time of the encounter on October 24, 2015, that a seizure or entry within the home without a warrant or exigent circumstances violates the Fourth Amendment's prohibition on unreasonable searches and seizures. And the parameters of the exigent-circumstances doctrine were well-established before then, including, as relevant here, that circumstances do not qualify as exigent unless "the police reasonably believe an emergency exists which calls for an immediate response to protect citizens from imminent danger." *Holloway*, 290 F.3d at 1337.

Here, no reasonable officer could believe that he or she "faced an emergency that justified acting without a warrant." *McNeely*, 569 U.S. at 149. Based on the factual allegations in the complaint, which we must accept as true, this was not a situation where it would be "difficult for an officer to determine how the relevant legal doctrine"—here exigent circumstances—would apply. *Mullenix v. Luna*, 577 U.S. ___, ___, 136 S. Ct. 305, 308 (2015) (quotation marks omitted). There are no facts alleged in the complaint indicating that, notwithstanding Harley's possession

of a firearm, this was an "emergency situation[] involving endangerment to life." *Holloway*, 290 F.3d at 1337. Accordingly, qualified immunity is not appropriate at this stage, though the Deputies are free to raise the defense again in a motion for summary judgment.

V.

As for Plaintiffs' failure-to-train claim against Sheriff Craig, we affirm the dismissal of this claim. Supervisors cannot be held liable under § 1983 on the basis of vicarious liability. *Keith v. DeKalb Cty., Ga.*, 749 F.3d 1034, 1047 (11th Cir. 2014). "Instead, to hold a supervisor liable a plaintiff must show that the supervisor either directly participated in the unconstitutional conduct or that a causal connection exists between the supervisor's actions and the alleged constitutional violation." *Id.* at 1047–48. A plaintiff may prove such a causal connection in several ways, including when the supervisor's policy or custom results in deliberate indifference to constitutional rights. *Id.* at 1048.

Plaintiffs contend that Sheriff Craig exhibited deliberate indifference to his constitutional rights by failing to institute adequate policies and training to govern arrest procedures and the use of force by his deputies. But even if the facts alleged show that the Deputies were inadequately trained, to establish the Sheriff's liability under § 1983, Plaintiffs needed to show that the Sheriff "knew of a need to train and/or supervise in a particular area and . . . made a deliberate choice not to take any

action." *See Gold v. City of Miami*, 151 F.3d 1346, 1350–51 (11th Cir. 1998). Plaintiffs have not made this showing. They simply allege in conclusory fashion that the Sheriff's training policies were inadequate. But they do not offer any specifics of current training or whether the Sheriff was aware of any similar prior incidents, so we cannot infer that he was on notice that current training was inadequate. *See id.* Accordingly, Plaintiffs' allegations are insufficient to sustain a plausible claim against the Sheriff for failure to train under § 1983.

VI.

Finally, we consider whether the Deputies are entitled to official immunity under Georgia state law. Under Georgia's doctrine of official immunity, state public officials are not personally liable for discretionary acts performed within the scope of their official authority unless "they act with actual malice or with actual intent to cause injury in the performance of their official functions." Ga. Const. art. I, § 2, ¶ IX(d); *Murphy v. Bajjani*, 647 S.E.2d 54, 60 (Ga. 2007). Thus, "[t]o overcome official immunity, the plaintiff must show that the officer had 'actual malice or an intent to injure.'" *Smith v. LePage*, 834 F.3d 1285, 1297 (11th Cir. 2016) (quoting *Cameron v. Lang*, 549 S.E.2d 341, 344 (Ga. 2001)).

Plaintiffs argue that they overcame official immunity because they alleged an intentional unjustified shooting. "In a police shooting case, [the official-immunity] analysis often comes down to whether the officer acted in self-defense." *Id.* If a

suspect is shot in self-defense, then there is "no actual tortious intent to harm him." *Id.* (quoting *Kidd v. Coates*, 518 S.E.2d 124, 125 (Ga. 1999)). If, however, the suspect is shot "intentionally and without justification," then the officer "acted solely with the tortious actual intent to cause injury." *Id.*

Here, no deadly force against Harley was used until he opened fire on the Deputies. At that point, the Deputies' conduct was justified by self-defense and is, accordingly, shielded from tort liability by the doctrine of official immunity. *See Kidd*, 518 S.E.2d at 125–26.

Accepting the facts in the complaint as true, however, Plaintiffs plausibly alleged that the "less-than-lethal" shooting that preceded the firefight was intentional and without justification by self-defense, for similar reasons as explained above with regard to the § 1983 unlawful-seizure claim. In particular, because Harley appears to have approached the fence as part of a ruse engineered by Deputy Curran and assisted by Deputy Kerger, so that Curran could get a better shot at Harley, the shooting cannot reasonably be described as defense of self or others. We therefore vacate and remand for further proceedings on this claim.

Nevertheless, it appears from the allegations that only Deputies Curran and Kerger are proper defendants to this claim. The complaint alleges that they, and no other deputies, acted in concert to commit the tortious conduct that foreseeably caused Harley's death. *See, e.g.*, *Madden v. Fulton Cty.*, 115 S.E.2d 406, 409 (Ga.

Ct. App. 1960) ("persons acting in concert under certain situations may be liable for the acts of others"); Restatement (Second) of Torts § 876 (1979). The fact that the other deputies were present on the scene and marginally involved is not enough. *See Madden*, 115 S.E.2d at 409 ("If the participation is slight, there is no liability."). We therefore conclude that the remaining deputies (Higdon, Holloway, and Musgrave) are entitled to official immunity for this claim.

VII.

For the foregoing reasons, we vacate the dismissal of Plaintiffs' § 1983 unlawful-seizure claim against the Deputies and the state-law wrongful-death claim against Deputies Curran and Kerger. We affirm the dismissal of Plaintiffs' § 1983 claims against Sheriff Craig and Troopers Curtis and Salcedo, as well as the state-law wrongful-death claim against Deputies Higdon, Holloway, and Musgrave. We remand this case for further proceedings consistent with this opinion.

VACATED AND REMANDED IN PART; AFFIRMED IN PART.