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Opinion of the U.S. Court of Appeals
for the Eleventh Circuit

April 22, 2024

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[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10062

Non-Argument Calendar

CURTRINA MARTIN,
Individually and as Parent and Next friend of,
G.W.,
a Minor,
HILLIARD TOI CLIATT,

Plaintiffs-Appellants

versus

UNITED STATES OF AMERICA,
LAWRENCE GUERRA,
SIX UNKNOWN FBI AGENTS,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cv-04106-JPB

Before LAGOA, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

Plaintiffs-Appellants Curtrina Martin, her minor child, G.W., and Hilliard Toi Cliatt (collectively, “Appellants”) appeal the dismissal of their action for violation of the Fourth Amendment to the United States Constitution. In October 2017, agents of the Federal Bureau of Investigation (“FBI”) executed a no-knock search warrant at Appellants’ house which was not the address identified in the warrant. The target address—which was reportedly the home of Jospeh [sic] Riley, a violent gang member—was located approximately a block away from Appellants’ house and shared similar conspicuous features with Appellants’ house.

Appellants initiated an action against the FBI agents pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and the United States under the Federal Tort Claims Act (“FTCA”), alleging that the FBI agents violated their Fourth Amendment rights and were also liable for damages under Georgia tort law. The district court granted summary judgment in favor of the FBI agents and the United States.

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After careful review of the record and the parties' briefs, we affirm the district court's grant of summary judgment and dismissal of Appellants' claims.

I. BACKGROUND

On October 18, 2017, during the predawn hours, a team of six unidentified FBI agents—led by special agent, Lawrence Guerra—executed a presumably valid search warrant at 3756 Denville Trace, SW, Atlanta, Georgia 30331, Appellants' home. The target location of the search warrant was 3741 Landau Lane, SW, Atlanta, Georgia 30331, which is located approximately three houses away from Appellants' house. Despite taking several precautionary measures to ensure proper execution of the search warrant, Guerra and the FBI agents inadvertently executed the search warrant at the wrong house.

A. The FBI's Operation Red Tape

In 2015, the FBI initiated Operation Red Tape—an operation concerning violent gang activity in Georgia. The Operation resulted in a criminal indictment and the issuance of arrest warrants for several individuals, including Riley. The FBI assigned Guerra to lead a Special Weapons and Tactics ("SWAT") team that was tasked with executing the arrest warrant for Riley at 3741 Landau Lane.

In preparation for the warrant execution, the FBI created a general operation order and a SWAT addendum to the operation order. The SWAT addendum contained photographs of Riley, a description of his violent

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history and gun possession, a photograph of 3741 Landau Lane, SW, Atlanta, Georgia 30331, an overhead map image of the neighborhood, and directions to 3741 Landau Lane. Prior to the warrant execution, Guerra reviewed a copy of the general operation order and the SWAT addendum.

B. Pre-Execution Preparation

The FBI has a standard operating procedure that its agents conduct a site survey or a drive-by prior to executing a high-risk warrant such as the one for Riley's arrest. However, the FBI does not have any policies governing how to locate or navigate to a target address nor does it prohibit using a personal GPS to locate a target address.

Shortly before the warrant execution, Guerra and another FBI agent, Gregory Donovan conducted a site survey of 3741 Landau Lane during daylight hours. They used the Google Maps application on Donovan's cellphone to navigate to 3741 Landau Lane.

During the site survey, Guerra took several photographs of 3741 Landau Lane. He also documented specific physical features of 3741 Landau Lane that he believed were unique to the house. He noted that the house was beige and split-level; it was located on a corner lot; it had a side-entry garage on a separate street that ran perpendicular to the front door; it had a very large tree in the front yard; and the house number appeared on a small mailbox and not on the front of the house.

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After Guerra completed the site survey, he identified a staging area where the SWAT team would meet prior to the warrant execution. Additionally, he made tactical notes of the order in which each SWAT team member would position themselves outside of 3741 Landau Lane and assigned tasks to each SWAT team member for the warrant execution.

In addition to completing the site survey, Guerra attended an operational briefing regarding the warrant execution. The briefing consisted of several presentations that included photographs of Riley and 3741 Landau Lane.

On the day of the warrant execution, Guerra and FBI special agent, Michael Lemoine, conducted a pre-raid drive-by of 3741 Landau Lane. It was completely dark outside when they conducted the pre-raid drive-by. Guerra used his personal GPS device to navigate to 3741 Landau Lane. Although he entered 3741 Landau Lane into his GPS device, it directed him and Lemoine to 3756 Denville Trace—Appellants' house. Appellants' house is approximately 436 feet from 3741 Landau Lane. Although Appellants' house is located on Denville Trace, it faces Landau Lane.

Guerra believed he was at 3741 Landau Lane because Appellants' house had many of the same features that he noted for the target address during his site survey. Similar to 3741 Landau Lane, Appellants' house was beige; it was located on the corner of the street; it was split-level; it contained a stairwell to the front door; there was a very large tree in front of the house; it had

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a side-entry garage on a separate street that ran perpendicular to the front door; and the house number did not appear anywhere on the house, but instead appeared on the mailbox. Although the mailbox is visible from the street, the house number is not.

Guerra and Lemoine noticed a black Camaro in Appellants' driveway that Guerra did not recall seeing when he completed his site survey of 3741 Landau Lane a few days earlier. They would later use the black Camaro and a large tree as reference points when searching for the target address for the warrant execution.

C. Search Warrant Execution

Around 3:30 a.m. on the day of the warrant execution, Guerra arrived at the staging area and briefed the SWAT team and officers from the Atlanta Police Department ("APD"). Guerra showed the SWAT team members photographs of 3741 Landau Lane and Riley, and he briefed the agents on his tactical plan regarding the warrant execution.

Following the briefing and while it was still dark outside, the SWAT team and APD officers—led by Guerra—headed towards the target address in a caravan of vehicles. When Guerra spotted the black Camaro, he stopped his vehicle in front of Appellants' house, believing that he was at 3741 Landau Lane, and the other vehicles followed suit. The SWAT team—dressed in full tactical gear and armed with rifles and handguns—quickly exited the vehicles and reported to their assigned locations surrounding Appellants' house. Guerra knocked and announced the presence of law

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enforcement before an agent breached the front door. Another agent deployed a flashbang at the entrance of the home. The SWAT team entered the house.

When the SWAT team entered Appellants' house, Cliatt—afraid that their home was being burglarized—ran towards the bedroom closet where he kept a shotgun for protection. As Cliatt ran towards the bedroom closet, Martin bolted towards the door to get her then seven-year-old son. However, Cliatt pulled Martin towards their bedroom closet, and the two hid in there.

A SWAT team member located Cliatt and Martin in their bedroom closet, dragged Cliatt out of the closet and onto the bedroom floor with guns pointed at him, and handcuffed him. During the same time, Martin fell in the closet, and another SWAT team member pointed a gun in her face while yelling at her to keep her hands up. No one handcuffed or touched Martin. Guerra entered the bedroom and realized that Cliatt did not have the same face and neck tattoos that he observed in the photographs of Riley, so he asked Cliatt for his name and address. Cliatt provided Guerra with his name and address.

While Guerra was in the bedroom questioning Cliatt, Lemoine noticed a piece of mail that had a different address than 3741 Landau Lane and notified Guerra that they were at the wrong address. Upon realizing that they were at the wrong house, Guerra immediately ended the raid: an agent lifted Cliatt off the ground and uncuffed him; Guerra told Cliatt that he would come

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back later and explain what happened; and the agents left the house.

After leaving Appellants' house, Guerra and the SWAT team executed the search warrant at 3741 Landau Lane where they arrested Riley. After executing the search warrant at the target address, Guerra returned to Appellants' house, apologized to them, documented the damages caused by the mistaken raid, provided them with the contact information for his supervisor, and advised them that the FBI would handle the damage repairs.

Shortly after the mistaken raid at Appellants' house, Guerra reported the incident to the appropriate FBI representative and completed an incident report. Guerra also stopped using his personal GPS for warrant executions and eventually threw it away.

D. Lawsuit

In September 2019, Appellants brought a *Bivens* claim against Guerra and the six unidentified FBI agents who participated in the raid, alleging that Guerra and the agents' mistaken execution of the search warrant at their house violated their Fourth Amendment rights. They also brought state law claims for negligence, negligent/intentional infliction of emotional distress, trespass and interference with private property, false arrest/false imprisonment, and assault and battery against the United States under the FTCA. Guerra and the government moved for summary judgment on Appellants' claims.

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The district court granted in part and denied in part the motion for summary judgment. Specifically, the district court granted summary judgment on Appellants' *Bivens* claim and state law claims for negligence, negligent infliction of emotional distress, and trespass. However, the district court denied summary judgment on the false imprisonment and assault and battery claims.

Following the district court's grant of partial summary judgment, the parties filed cross motions for reconsideration. The district court held that, given our recent decision in *Kordash v. United States*, 51 F.4th 1289 (11th Cir. 2022), the Supremacy Clause defense barred Appellants' remaining FTCA tort claims.

The district court entered judgment and Appellants timely appealed.

II. STANDARD OF REVIEW

We review the district court's grant of summary judgment *de novo*, *Holloman v. Mail-Well Corp.*, 443 F.3d 832, 836 (11th Cir. 2006), and denial of a motion for reconsideration for abuse of discretion. *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1254 (11th Cir. 2007). We also review *de novo* the district court's qualified immunity analysis. *Hardigree v. Lofton*, 992 F.3d 1216, 1223 (11th Cir. 2021). We may affirm a district court's grant of summary judgment for any reason supported by the record. *Mata Chorwadi, Inc. v. City of Boynton Beach*, 66 F.4th 1259, 1263 (11th Cir. 2023).

Summary judgment is appropriate when no genuine issue of material fact exists. *Sutton v. Wal-Mart Stores*

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E., LP, 64 F.4th 1166, 1168 (11th Cir. 2023). An issue of fact is not genuine unless a reasonable jury could return a verdict in favor of the non-moving party. *Baxter v. Roberts*, 54 F.4th 1241, 1253 (11th Cir. 2022) (quoting *Beal v. Paramount Pictures Corp.*, 20 F.3d 454, 459 (11th Cir. 1994)). At the summary judgment stage, we construe all facts and make all reasonable inferences in favor of the non-moving party. *Baxter*, 54 F.4th at 1253 (quoting *Stryker v. City of Homewood*, 978 F.3d 769, 773 (11th Cir. 2020)). However, we must only view the evidence in a light most favorable to the non-moving party to the extent that the non-moving party's position is supported by the record. *Id.* Therefore, simply because some alleged factual dispute exists between the parties does not mean summary judgment cannot be otherwise granted. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

III. DISCUSSION

A. The District Court Properly Determined that Qualified Immunity Protects Guerra from Suit.

Appellants argue that Guerra is not entitled to qualified immunity because his mistaken execution of the search warrant at their house was not a reasonable mistake and, therefore, his conduct violated the Fourth Amendment.

Qualified immunity protects government actors performing discretionary functions from civil liability. *Andujar v. Rodriguez*, 486 F.3d 1199, 1202 (11th Cir. 2007) (quotation marks and citation omitted). Government officials are entitled to qualified immunity unless

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their conduct violates “clearly established statutory or constitutional rights of which a reasonable person would have known.” *Merricks v. Adkisson*, 785 F.3d 553, 558 (11th Cir. 2015) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

To “resolv[e] questions of qualified immunity at summary judgment,” we conduct “a two-pronged inquiry.” *Tolan v. Cotton*, 572 U.S. 650, 655 (2014) (quotation marks and citation omitted). First, we ask “whether the facts, taken in the light most favorable to the party asserting the injury . . . show the officer’s conduct violated a federal right.” *Id.* at 655–56 (alterations adopted) (quotation marks and citation omitted). Next, we must decide “whether the right in question was ‘clearly established’ at the time of the violation.” *Id.* at 656 (quoting *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)). To determine whether a right is clearly established, we ask whether the law on the date of the alleged misconduct gave the defendant fair notice that their alleged misconduct was unconstitutional. *Hardigree*, 922 F.3d at 1224 (citing *Hope*, 536 U.S. at 741).

Here, it is undisputed that Guerra was acting within his discretionary authority, so the sole issue for our resolution is whether his actions violated clearly established law.

The Fourth Amendment, as applied to the states through the Fourteenth Amendment, protects individuals from unreasonable searches of their property. *Gennusa v. Canova*, 748 F.3d 1103, 1109–10 (11th Cir. 2014). “[A] Fourth Amendment search occurs ‘when the

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government violates a subjective expectation of privacy that society recognizes as reasonable.” *Id.* at 1110 (quoting *Kyllo v. United States*, 533 U.S. 27, 33 (2001)). However, officers who make “honest mistakes” during “the dangerous and difficult process of . . . executing search warrants” do not violate the Fourth Amendment. *Maryland v. Garrison*, 480 U.S. 79, 87 (1987). The officer is entitled to qualified immunity so long as he “engage[d] in reasonable efforts to avoid error.” *Hartsfield v. Lemacks*, 50 F.3d 950, 955 (11th Cir. 1995). Thus, the “touchstone of the Fourth Amendment is reasonableness.” *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (quotation marks omitted) (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)). Reasonableness is measured “by examining the totality of the circumstances.” *Id.*

In *Hartsfield*, we explained that an officer who makes “reasonable effort[s] to ascertain and identify the” target address of a valid search warrant complies with the Fourth Amendment even if error is ultimately not averted. 50 F.3d at 954–55 (quoting *Garrison*, 480 U.S. at 88–89). Appellants contend that Guerra failed to make reasonable efforts to identify 3741 Landau Lane before mistakenly executing the warrant at their house. Specifically, Appellants argue that Guerra did not conduct a site survey or drive-by of 3741 Landau Lane prior to the warrant execution. Assuming Guerra failed to conduct a survey or pre-raid drive-by, the other actions he took to identify 3741 Landau Lane were “consistent with a reasonable effort to ascertain and identify the place intended to be searched.” *See Hartsfield*, 50 F.3d at 955 (quoting *Garrison*, 480 U.S. at 88–89). He reviewed the operation order and SWAT addendum; he

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attended an operational briefing that consisted of several presentations displaying photographs of Riley and 3741 Landau Lane; and he selected a staging area and made tactical notes that considered the location and features of the target address.

Additionally, the fact that the target address and Appellants' house share several conspicuous features demonstrates that Guerra's execution of the warrant at the wrong house constituted an inadvertent mistake. Both houses are beige in color, located on a corner lot, have a large tree in the front, contain a stairwell to the front door, are split-level, and have a side-entry garage on a separate street that runs perpendicular to the front door. Further, Guerra and the SWAT team executed the warrant while it was still dark outside and difficult to ascertain the house numbers on the mailboxes. Guerra and the SWAT team had to enter a potentially dangerous situation to execute the warrant—the home of a violent gang member. Therefore, the decisions that Guerra made—albeit mistaken—in the rapidly-changing and dangerous situation of executing a high-risk warrant at night constitute the kind of reasonable mistakes that the Fourth Amendment contemplates. *See, e.g., Heien v. North Carolina*, 574 U.S. 54, 60–61 (2014) (“To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair lee-way for enforcing the law in the community’s protection” (internal quotation marks and citation omitted)); *Willingham v. Loughnan*, 321 F.3d 1299, 1303 (11th Cir. 2003) (“Officers facing split-second decisions in dangerous or life-threatening situations are seldom provided with fair warning,

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notice or guidance by a general requirement of ‘reasonableness.’”).

Guerra’s preparatory steps before executing the warrant complied with the FBI’s standard practices/procedures. The FBI affords its agents discretion in preparing for warrant executions: it has no official policy or practice with respect to how agents are to locate or navigate to the target address of a search warrant. Additionally, while it is standard FBI practice to conduct a drive-by or site survey prior to executing a warrant, those preparatory steps are fact-specific and left to the agent’s discretion.

In sum, based on the facts and circumstances of this case, we conclude that the law at the time did not clearly establish that Guerra’s preparatory steps before the warrant execution would violate the Fourth Amendment. Therefore, the district court did not err in granting qualified immunity.

B. The District Court Correctly Ruled that the Supremacy Clause and the Discretionary Function Exception Bar Appellants’ FTCA Claims.

Under the FTCA, a plaintiff may “bring certain state-law torts against” the United States. *Brownback v. King*, 592 U.S. 209, 210 (2021). The FTCA waives the federal government’s sovereign immunity for the wrongful or negligent acts or omissions of its employees if a private person, under the same circumstances, would be liable under the law of the state where the alleged act or omission occurred. *Swafford v. United*

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States, 839 F.3d 1365, 1369 (11th Cir. 2016) (citing 28 U.S.C. § 2674).

However, the FTCA exempts from liability state-tort claims arising from a government official’s performance of a duty or function that involves discretion. *Shivers v. United States*, 1 F.4th 924, 928 (11th Cir. 2021). The discretionary function exception to the FTCA’s waiver of sovereign immunity exists to “prevent judicial second guessing of . . . administrative decisions.” *Id.* (quoting *United States v. Gaubert*, 499 U.S. 315, 323 (1991)).

To determine whether the discretionary function exception applies in a given circumstance, courts employ a two-factor test: they examine (1) whether the alleged act was discretionary in nature meaning that the act “involved an element of judgment or choice[;]” and (2) whether the act represented the kind of conduct “that the discretionary function exception was designed to shield.” *Swafford*, 839 F.3d at 1370 (first citing *Berkovitz ex rel. Berkovitz v. United States*, 486 U.S. 531 (1988); and then citing *Gaubert*, 499 U.S. at 323). “The discretionary function exception applies *unless* a source of federal law ‘specifically prescribes’ a course of conduct.” *Shivers*, 1 F.4th at 931 (emphasis in original). The exception also applies irrespective of whether the government official abused his discretion. *Id.* at 930 (quoting 28 U.S.C. § 2680(a)).

Similar to the discretionary function exception, the Supremacy Clause ensures that states do not impede or burden the execution of federal law. *Denson v. United*

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States, 574 F.3d 1318, 1336–37 (11th Cir. 2009). The government may invoke the Supremacy Clause against state-tort liability if it demonstrates that the government “official’s acts have some nexus with furthering federal policy and can reasonably be characterized as complying with the full range of federal law.” *Kordash*, 51 F.4th at 1293 (internal quotation marks and citations omitted). A government official’s acts bear “some nexus with furthering federal policy” if he acted within the scope of his discretionary authority. *Id.* at 1294. Similarly, a government official’s acts could “reasonably be characterized as complying with the full range of federal law” if his acts complied with the relevant constitutional standard—the Fourth Amendment. *Id.*

When faced with the determination of whether the actions a law enforcement officer took comply with the Fourth Amendment, courts employ an “objective reasonableness” standard and consider whether “the facts available to the officer at the moment of the seizure or the search [make] a [person] of reasonable caution . . . belie[ve] that the action taken was appropriate.” *Croom v. Balkwill*, 645 F.3d 1240, 1249 (11th Cir. 2011) (quoting *Terry v. Ohio*, 392 U.S. 1, 21–22 (11th Cir. 1995)).

We conclude that the discretionary function exception bars Appellants’ tort claims for trespass and interference with private property, negligent/intentional infliction of emotional distress, and negligence. The government has satisfied both elements of the discretionary function exception. With respect to the first prong, the record—viewed in the light most favorable to Appellants—evinces that Guerra enjoyed discretion in how he

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prepared for the warrant execution. As we previously explained, the FBI did not have stringent policies or procedures in place that dictate *how* agents are to prepare for warrant executions.

Furthermore, the preparatory actions Guerra took before the warrant execution satisfy the second element of the discretionary function exception test. In *Mesa v. United States*, we explained that a federal officer's "decision as to how to locate and identify the subject of an arrest warrant prior to service of the warrant is susceptible to policy analysis." 123 F.3d 1435, 1438 (11th Cir. 1997). Although it is unfortunate that despite his preparatory efforts, Guerra executed the warrant at the wrong house, his actions, nevertheless, "fall squarely within the discretionary function exception." *Shivers*, 1 F.4th at 929.

The Supremacy Clause bars Appellants' remaining FTCA claims for false imprisonment and assault and battery. The district court initially denied summary judgment on Appellants' false imprisonment and assault and battery claims on grounds that the discretionary function exception could not defeat those claims because under the FTCA's private person standard, Georgia's citizen's arrest statute does not contemplate the good faith or reasonableness defenses that the government asserted. However, on the government's motion for reconsideration, the district court granted summary judgment on those claims, finding that our recent decision in *Kordash* mandates dismissal of those claims.

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In *Kordash*, we clarified that “the inquiry that determines if the Supremacy Clause bars state-law liability is whether a federal official’s acts ‘have some nexus with furthering federal policy and can reasonably be characterized as complying with the full range of [the Fourth Amendment].’” 51 F.4th at 1293 (quoting *Denson*, 574 F.3d at 1348). With respect to the first element, there is no doubt that Guerra acted within the scope of his discretionary authority when he prepared for and executed the search warrant. The analysis we must conduct to examine whether Guerra complied with the full range of the Fourth Amendment is the same as the inquiry we employed in the qualified immunity analysis to determine whether his actions violated the Fourth Amendment. *See id.* at 1294. As we already explained that Guerra’s actions did not violate the Fourth Amendment, the government has satisfied both elements of the Supremacy Clause analysis. Accordingly, the Supremacy Clause bars Appellants’ FTCA claims for false imprisonment and assault and battery.

IV. CONCLUSION

For the reasons set forth above, we **AFFIRM** the district court’s grant of summary judgment based on qualified immunity in favor of Guerra and dismissal of the FTCA claims against the United States on the grounds that the Supremacy Clause and the discretionary function exception bar those claims.

AFFIRMED.

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Appendix B

Order of the United States District Court
for the Northern District of Georgia

December 30, 2022

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Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CURTRINA MARTIN
et al.,

Plaintiff,

v.

UNITED STATES OF
AMERICA et al.,

Defendants.

CIVIL ACTION NO.
1:19-cv-04106-JPB

HILLARD TOI
CLIATT,

Plaintiff,

v.

UNITED STATES OF
AMERICA et al.,

Defendants.

CIVIL ACTION NO.
1:19-cv-04180-JPB

ORDER

Before the Court are the following motions: (i) the United States of America's ("United States") Motion for Reconsideration ("United States' Motion"), ECF No. 133; and (ii) Plaintiffs Curtrina Martin, Martin's minor child

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and Hilliard Toi Cliatt, III's (collectively "Plaintiffs") Motion for Reconsideration ("Plaintiffs' Motion"), ECF No. 134. Having fully considered the motions, the Court finds as follows:

I. BACKGROUND

Plaintiffs asserted claims against the United States under the Federal Tort Claims Act (the "FTCA") and against FBI Special Agent Lawrence Guerra ("Guerra") under the Fourth Amendment in connection with a warrant that was inadvertently executed at Plaintiffs' home.¹

On September 23, 2022, the Court entered an order granting summary judgment to the United States and Guerra on Counts III, IV, V and VI of the complaints and denying summary judgment as to Counts I and II ("Order"). As set forth in the Order, Guerra was dismissed from the action on qualified immunity grounds, and certain FTCA claims against the United States remained.

The United States seeks reconsideration of the Order on two grounds. First, it argues that the Eleventh Circuit Court of Appeals' opinion in *Kordash v. United States*, 51 F.4th 1289 (11th Cir. 2022), which was issued approximately one month after this Court issued its Order, is an intervening development in controlling law that requires dismissal of Plaintiffs' FTCA claims. Second, the United States contends that the Court

¹ Curtrina Martin and her child filed a joint complaint, and Hilliard Cliatt filed separately. The cases are now consolidated.

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incorrectly declined to apply certain privileges and immunities against Plaintiffs' FTCA claims.

Plaintiffs also seek reconsideration of the Court's Order. They assert that the Court misunderstood and erred in its assessment of their spoliation argument relating to a GPS unit Guerra destroyed after the incident.

II. ANALYSIS

"Courts may grant relief under . . . Local Rule 7.2E only if the moving party clears a high hurdle." *Chesnut v. Ethan Allen Retail, Inc.*, 17 F. Supp. 3d 1367, 1370 (N.D. Ga. 2014). Indeed, Local Rule 7.2(E) dictates that "[m]otions for reconsideration shall not be filed as a matter of routine practice" and may be filed only when "absolutely necessary." "Reconsideration is only 'absolutely necessary' where there is: (1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." *Bryan v. Murphy*, 246 F. Supp. 2d 1256, 1259 (N.D. Ga. 2003).

Thus, Local Rule 7.2E does not afford a dissatisfied party "an opportunity to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of [the order], introduce novel legal theories, or repackage familiar arguments to test whether the Court will change its mind." *Chesnut*, 17 F. Supp. 3d at 1370. In other words, a motion for reconsideration is not "an opportunity to show the court how it 'could have done it better.'" *Bryan*, 246 F. Supp. 2d at 1259 (quoting *Pres. Endangered Areas of Cobb's*

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History, Inc. v. U.S. Army Corps of Eng'rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995)).

1. Whether the opinion in *Kordash* is a development in controlling law that requires dismissal of Plaintiffs' remaining FTCA claims

The United States argues that the *Kordash* opinion, which was entered after the Court issued its Order in this case, is relevant to the question of whether the Supremacy Clause of the United States Constitution bars Plaintiffs' state law claims brought pursuant to the FTCA. The United States urges the Court to find that it does.

Plaintiffs challenge whether the United States has carried its burden for reconsideration on this ground. They assert that the argument for dismissal of the FTCA claims under the Supremacy Clause is not a new development in the law and is rather a "straightforward application" of the Eleventh Circuit's opinion in *Denson v. United States*, 574 F.3d 1318 (11th Cir. 2009), which was entered more than a decade ago. As support for their position, Plaintiffs point to the Eleventh Circuit's statement in *Kordash* that "the only difference between *Denson* and [*Kordash*] is that [the plaintiff in *Kordash*] split his claims into two lawsuits instead of joining them into one." *Kordash*, 51 F.4th at 1294. In short, Plaintiffs maintain that the United States had an opportunity to raise the Supremacy Clause argument sooner but failed to do so, and it cannot offer an argument for the first time in its motion for reconsideration.

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In response, the United States argues that the *Kordash* opinion represents an intervening development because unlike in *Denson*, the Eleventh Circuit directly stated in *Kordash* that the first prong of the test to determine if the Supremacy Clause applies is satisfied by a finding that the official was acting within the scope of his discretionary authority. The United States also contends that it could not have raised its Supremacy Clause argument sooner or waived it because the argument did not become ripe until the Court granted qualified immunity to Guerra.

The Court acknowledges that the United States could have possibly raised its Supremacy Clause argument earlier. However, *Denson* is not directly on point here, and the *Kordash* opinion does brings [sic] additional clarity to the question of whether the Supremacy Clause bars the FTCA claims under the circumstances of this case. As such, the Court finds that this development in controlling law warrants reconsideration of the Order.

With respect to the substantive question of whether Plaintiffs' FTCA claims are barred by the Supremacy Clause, the Court must decide whether (i) Guerra's actions had "some nexus with furthering federal policy"; and (ii) his actions "can reasonably be characterized as complying with the full range of federal law." *Kordash*, 51 F.4th at 1293 (citation omitted). "If the answer to these questions is yes, application of state law, to the extent it unavoidably conflicts with federal law, has no effect, as it would frustrate and impede the compelling

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federal interest of allowing federal officers to effectively discharge their duties.” *Denson*, 574 F.3d at 1348.

According to the opinion in *Kordash*, the first prong of the analysis is satisfied if the official was acting within the scope of his discretionary duty. *See Kordash*, 51 F.4th at 1294. The second prong is satisfied if the official’s actions are found to have complied with the applicable constitutional standard. *See id.* These conclusions can be derived from a qualified immunity analysis. *See id.*

Here, the first prong of the Supremacy Clause analysis is satisfied because, as set forth in the qualified immunity discussion of the Court’s Order, Plaintiffs do not dispute that Guerra was acting within the scope of his discretionary authority.

Plaintiffs, however, dispute that the second prong of the test is satisfied.² They contend that the Court did not conclude that Guerra complied with the requirements of the Fourth Amendment because the Court’s Order was based only on the second prong of the qualified immunity test, *i.e.*, whether Guerra violated clearly established law.

² Plaintiffs derive a three-part test from the *Kordash* opinion, including a requirement that the official “acted consistently with preeminent federal interests of protecting our international borders.” This formulation of the requisite analysis is incorrect and not supported by the *Kordash* and *Denson* opinions. The Court’s analysis relies on the two-prong test described in those opinions and evaluates Plaintiffs’ arguments as they relate to those prongs.

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Plaintiffs are correct that the Court's conclusion was based on the second prong of the qualified immunity test. The Court found that the law was not clearly established at the time of the incident such that Guerra would have known that his actions in this case would be deemed unreasonable and violative of the law.

In the process of reaching that conclusion, however, the Court expressly considered whether Guerra's actions violated the Fourth Amendment. Noting that the "ultimate touchstone of the Fourth Amendment is reasonableness," the Court conducted an extensive analysis of relevant cases as compared to the facts of this case and ultimately found that Guerra's actions "were reasonable under the circumstances." ECF No. 124 at 21. The Court emphasized that Guerra's mistake is not a basis to find that he acted unreasonably and in violation of the law. The Court also cited several cases where courts have granted qualified immunity in similar circumstances. In all, even though the Court's Order did not rest on the first prong of the qualified immunity test (whether Guerra violated the Fourth Amendment), the Court explicitly considered this question and found that Guerra did not violate the law.

Because Guerra was acting within the scope of his discretionary duty, and his actions did not violate the Fourth Amendment, both prongs of the Supremacy Clause analysis are satisfied. Accordingly, the Supremacy Clause bars Plaintiffs' state law claims brought pursuant to the FTCA, and Counts I and II of the complaints are dismissed.

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2. Whether the Court correctly declined to apply certain privileges and immunities against Plaintiffs' FTCA claims

The United States contends that the Court's rejection of certain state law defenses to the FTCA claims improperly creates a strict liability standard for FTCA claims. However, this argument is not based on any of the allowable grounds for reconsideration. It does not point to new evidence, clear error or an intervening change in law. To the contrary, the United States' discussion of the issue reflects mere disagreement with the Court's conclusion and simply repackages and extends already rejected arguments to see if the Court will change its mind. Accordingly, reconsideration of this point is not warranted.³

3. Whether the Court Misunderstood Plaintiffs' Spoliation Argument

Section III(C) of Plaintiffs' brief in opposition to summary judgment is titled "Spoliation [sic]." This section of the brief cites the legal standard for spoliation and discusses whether a reasonable factfinder could conclude that Guerra intentionally destroyed the GPS unit on which he states he relied to identify the subject home. As part of this discussion, Plaintiffs explained that they "have not yet moved for spoliation sanctions against Defendants because . . . the critical question for imposing

³ In any event, the United States' argument is moot given the Court's dismissal of the FTCA claims on Supremacy Clause grounds.

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sanctions is a factual one for the factfinder.” ECF No. 101 at 31 n.13. Plaintiffs further “propose[d] that [the spoliation] question be posed to the jury via special interrogatory (if proceeding via jury trial for the *Bivens* claim) or to the Court (in a FTCA trial).” *Id.* In light of Plaintiffs’ assertions, the Court noted in its Order that it did not “address the arguments in the ‘Spoliation’ section of Plaintiffs’ response brief because, as Defendants point out, Plaintiffs do not request any specific relief.” ECF No. 124 at 37 n.16.

Plaintiffs seize on this footnote to argue that the Court did not consider their argument that Guerra’s qualified immunity defense should be rejected because he intentionally destroyed the GPS unit.

As shown above, Plaintiffs did not argue that Guerra should be denied qualified immunity simply based on spoliation of evidence. Plaintiffs described their argument opposing Guerra’s qualified immunity defense as follows:

Factual issues preclude summary judgment of Plaintiffs’ *Bivens* claim because a jury could find Guerra did not engage in any reasonable or meaningful effort to lead the SWAT team to the correct house because he did not do the site survey or drive-by as he claimed that he did. And Defendant Guerra engaged in spoliation of key evidence that deserves sanctions.

ECF No. 101 at 15.

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The GPS unit was mentioned in Plaintiffs' brief in the context of their argument that if the unit were available, it would show that Guerra did not conduct the Site Survey and Drive-by of the location as he asserts and that his preparation to serve the warrant was therefore not reasonable. *See id.* at 15-16. Plaintiffs concluded that the question of whether Guerra completed these tasks created a genuine issue of material fact barring summary judgment. *See id.*

The Court's Order specifically addresses this argument and applies an inference that Guerra did not conduct the Site Survey and Drive-by. For example, the Court stated:

Here, the Court has reservations regarding whether Plaintiffs' argument that Guerra failed to complete the Site Survey and the Drive-By presents a genuine dispute of the facts. The evidence Plaintiffs offer in support of their contention requires inferential leaps that are not necessarily supported by the record.

To survive summary judgment, Plaintiffs must do more than raise metaphysical doubt regarding the facts. They must produce substantial evidence demonstrating that there is a genuine issue of material fact.

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Even if, for argument's sake, the Court credits Plaintiffs' argument that Guerra did not conduct the Site Survey and the Drive-By, the record contains undisputed evidence of several other steps that Guerra took to ascertain and identify the home described in the warrant. . . . These steps constitute considerably more than nothing. . . . The Court considers Guerra's overall preplanning to constitute significant precautionary measures to avoid mistake. The Court further finds that those measures were reasonable under the circumstances.

ECF No. 124 at 20-21 (citations and quotation marks omitted).

In sum, the Court acknowledged and contended with the consequence of the unavailable GPS data and still found that Guerra was entitled to qualified immunity. The only issue the Court did not address is whether sanctions should issue for Guerra's destruction of the device—an issue that Plaintiffs, themselves, deferred for a later date.

Like the United States' argument in section II(2) above, Plaintiffs' argument here appears to be an attempt to relitigate the underlying conclusion of the Court's Order with the hope that the Court will rule differently. That is not a proper basis for a motion for reconsideration. Consequently, Plaintiffs' Motion is denied.

*Appendix B***III. CONCLUSION**

In accordance with the Court's analysis herein, the Court **GRANTS** the United States' Motion (ECF No. 133) and **DENIES** Plaintiffs' Motion (ECF No. 134). As a result, Counts I and II of Plaintiffs' complaints are **DISMISSED**. Since these dismissals resolve the only remaining claims in this matter, the Clerk is **DI-RECTED** to close the case.

SO ORDERED this 30th day of December, 2022.

[signature] _____
J.P. BOULEE
United States District Judge

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Order of the United States District Court
for the Northern District of Georgia

September 23, 2022

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CURTRINA MARTIN
et al.,

Plaintiff,

v.

UNITED STATES OF
AMERICA et al.,

Defendants.

CIVIL ACTION NO.
1:19-cv-04106-JPB

HILLARD [sic] TOI
CLIATT,

Plaintiff

v.

UNITED STATES OF
AMERICA et al.,

Defendants.

CIVIL ACTION NO.
1:19-cv-04180-JPB

ORDER

This matter is before the Court on the United States of America (“United States”) and FBI Special Agent Lawrence Guerra’s (“Guerra”) (collectively “Defendants”) Motion for Summary Judgment (“Motion”). ECF No. 83. Having fully considered the papers filed

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therewith and the parties' oral argument, the Court finds as follows:

I. BACKGROUND

Plaintiffs Curtrina Martin, Martin's minor child and Hilliard Toi Cliatt, III (collectively "Plaintiffs") asserted claims against the United States under the Federal Tort Claims Act (the "FTCA") and against Guerra under the Fourth Amendment in connection with a warrant that was inadvertently executed at Plaintiffs' home.¹

In 2015, the FBI initiated an operation concerning violent gang activity in Georgia. The operation ultimately resulted in criminal indictments against thirty individuals, including Joseph Riley ("Riley"). Arrest and search warrants were thereafter issued for the indict-ees.

The FBI prepared an Operation Order, which, among other things, provided background information regarding the case and instructions on how to execute the warrants. For example, the Operation Order provided that seven search warrants and seventeen arrest warrants, including warrants for Riley's arrest and the search of his home located at 3741 Landau Lane SW, Atlanta, Georgia ("3741 Landau"), would be executed simultaneously on October 18, 2017, at 5:00 a.m.

The FBI also prepared a SWAT Addendum to the Operation Order, which described SWAT-specific

¹ Curtrina Martin and her child filed a joint complaint, and Hilliard Cliatt filed separately. The cases are now consolidated.

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tactical considerations. The SWAT Addendum instructed the teams to achieve a near simultaneous execution of the warrants to ensure surprise and included information specific to the SWAT team, such as breaching the front door and deploying flash bangs.

Based on the FBI's determination that Riley posed a high risk of violence, a SWAT team was designated to enter Riley's home and secure it for other FBI personnel to execute the warrants. The SWAT Addendum for 3741 Landau and Riley included a description and photograph of the home; an overhead image of the neighborhood with a pin denoting 3741 Landau; step-by-step directions to the property with a corresponding map; photographs of Riley; Riley's physical description; and information regarding Riley's alleged history of violence and gun possession.²

Guerra was assigned to lead the SWAT Team that would execute the warrants at 3741 Landau. He received the names of his SWAT team members as well as the Operation Order and SWAT Addendum.

To prepare for the warrant executions at 3741 Landau, Guerra testified that he conducted a site survey of 3741 Landau in October 2017 (the "Site Survey"). As part of the Site Survey, Guerra states that he noted that

² Some of the information in the SWAT Addendum was gathered by FBI Task Force Officer Joshua Thompson ("Thompson") during his surveillance of 3741 Landau for more than two hours on October 3, 2021. In addition to driving by the home and discreetly taking photographs of it, Thompson observed the home from a side street using binoculars.

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the residence was a beige split-level home located on a corner lot with a large tree; it had a tight stairway and stoop leading to the front door; and it had windows on either side that would make tactical entry difficult and leave agents vulnerable in case of gunfire.

Guerra states that after conducting the Site Survey, he identified a nearby parking lot to be used as a staging area for the team executing the 3741 Landau warrants. Guerra communicated the location of the staging area to the team via email on October 16, 2017. Guerra also wrote tactical notes, which specified the “stack” formation or order in which SWAT team members would position themselves outside the front door and who would breach the door, carry a shield and go upstairs or downstairs upon entry.

On October 17, 2017, Guerra attended a briefing regarding the operation, which included a presentation on the warrants to be served on Riley and executed at 3741 Landau the next day.

Guerra and FBI Special Agent Michael Lemoine (“Lemoine”) testified that at approximately 3:30 a.m. on October 18, 2017 (the morning the warrants were to be served), they traveled to 3741 Landau to determine whether any unexpected conditions existed at the target that could impact the operation (the “Drive-By”). Such conditions included evidence that the occupants were awake. Guerra testified that it was dark outside, and he dimmed his vehicle’s headlights to avoid detection. He stated that the personal GPS device that he used for navigation led him to a home he believed was 3741

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Landau. At that home, Guerra testified that he observed a tan split-level home on a corner lot with a large tree, which he recalled from his Site Survey. Guerra reported that he noticed the street sign for Landau Lane, a garage at the side of the home, a stoop in front of the home and four windows to the right of the stoop. Guerra and Lemoine both testified that they observed a black Camaro car in the driveway of the home, which Guerra noted as a future reference point. Lemoine and Guerra discussed that the black Camaro car was not present at the home during Guerra's previous visit.³

It turns out that Guerra and Lemoine were at Plaintiffs' home, located at 3756 Denville Trace SW, Atlanta, Georgia ("3756 Denville"), instead of at 3741 Landau. Plaintiffs' home, which also faces Landau Lane, is three or four houses down from 3741 Landau. The address of 3756 Denville is not affixed to the front of the home or anywhere else on the building. It is posted on the mailbox at the end of the driveway on the side of the house located on Denville Trace.

Guerra testified that he and Lemoine subsequently returned to the staging area to brief the other personnel participating in the operation. Shortly before 5:00 a.m., a caravan of federal agents and Atlanta Police Department officers left the staging area for 3741 Landau. It was still dark outside. When Guerra arrived at the home he believed to be 3741 Landau, he directed the driver of his vehicle to stop. Guerra was at 3756 Denville, but

³ Riley was not known to operate a black Camaro car or associate with anyone who did. The SWAT Addendum listed several other vehicles as associated with Riley, including a white Nissan car.

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neither he nor the other agents realized the error at that time.

Once the SWAT Team was in place, Guerra states that he knocked on the door and announced law enforcement's presence. Plaintiffs were asleep in their bedroom and stated that they did not hear the knock. After waiting ten to twenty seconds, Guerra directed an agent to breach the front door. Another agent deployed a flash bang. The team entered Plaintiffs' home at or about 5:00 a.m.

Plaintiffs hid in their bedroom closet after the agents entered the home but were quickly found. The agents removed Cliatt from the closet, dragged him to the bedroom floor and handcuffed him. No agent touched Martin.

Shortly after agents detained Cliatt, Guerra entered the bedroom and noticed that Cliatt did not have the same tattoos as Riley. Guerra then asked Cliatt to provide his name and address. Around that time, Lemoine noticed mail bearing a different address than 3741 Landau. Upon realizing that they were in the wrong home, the agents ended the search and uncuffed Cliatt. Guerra told Plaintiffs he would return to explain what happened. The agents were in the home for no more than five minutes.

At or about 5:07 a.m., Guerra and the team executed the warrants at 3741 Landau. Guerra thereafter returned to Plaintiffs' home and apologized for the error. He provided his business card and took photographs of the damage caused by the forced entry. Guerra also

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provided the name of the FBI's Chief Division Counsel who would be responsible for the incident.

Guerra testified that he stopped using his personal GPS device after the incident, and he threw it away not long after that. The device was therefore not available for Plaintiffs' inspection during discovery or for corroboration of Guerra's testimony.

The FBI's agency representative testified that when preparing to execute a gang-related warrant, an FBI agent typically conducts a site survey of the target location to the extent feasible. However, no FBI policy or procedure dictates how to locate or navigate to the target, whether to use a GPS device or what type of GPS device must be used, whether or how to conduct a site survey or drive-by of a target location or how long to wait before entering after knocking and announcing. These decisions are left to the personnel involved in the specific operation.

Plaintiffs dispute several facts relating to Guerra's preparation to serve and execute the warrants. They assert that the absence of corroborating geo location and meta data raises questions regarding the veracity of Guerra's testimony that he completed the Site Survey and the Drive-By. Specifically, Plaintiffs challenge that: (i) GPS data is not available for Guerra's device at the time he states he completed the Site Survey and the Drive-By but is available for the hours following the execution of the warrants; (ii) available geo location data for Lemoine's device calls into question whether he participated in the Drive-By; (iii) no metadata is available

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for the photographs that Guerra asserts he took of 3741 Landau during his Site Survey; (iv) Guerra and FBI Agent Gregory Donovan (“Donovan”) initially testified that they conducted the Site Survey together, but geo location data from Donovan’s cellular telephone indicates that he did not visit 3741 Landau during the relevant period; and (v) Guerra disposed of his personal GPS device after the incident, even though he gave Plaintiffs the contact information for the Chief Division Counsel and should have anticipated that there could be litigation regarding the incident. Plaintiffs conclude that a reasonable juror could determine, based on these facts, that Guerra did not conduct the Site Survey or Drive-By prior to executing the warrants.

Defendants respond that Guerra’s testimony regarding the Site Survey and Drive-By is corroborated by photographs of the home that only Guerra testified to have taken; an October 16, 2017 e-mail from Guerra to the team identifying the staging area, which Guerra asserts he identified as part of the Site Survey; and Guerra’s tactical notes written prior to the execution of the warrant and reportedly based on the Site Survey.

Defendants further explain that the FBI was unable to find geo location data for seven of the sixteen FBI personnel who participated in the warrant executions and that there is no evidence that such data was destroyed or withheld from Plaintiffs. Defendants also argue that geo location data that is available for Lemoine’s device shows that he arrived at the staging area at approximately 3:26 a.m. on the morning of October 17 and that he left the staging area between 3:31 a.m. and 3:42

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a.m., which would have been sufficient time for Guerra and Lemoine to complete the Drive-By and return to the staging area.⁴

Additionally, Defendants assert that Guerra executed the declaration in this case more than two years after the Site Survey, and at that time, both he and Donovan believed that they had conducted the Site Survey together in accordance with their common practice. Defendants explain that after they learned that geo location data indicated that Donovan was not present at the Site Survey, both agents corrected the declaration testimony during their depositions.

Defendants also contend that FBI policy did not require Guerra to preserve his personal GPS unit, and the obligation to preserve the unit materialized only when the unit became discoverable in litigation. Defendants maintain that Guerra provided the Chief Division Counsel's contact information to Plaintiffs to facilitate reimbursement for the damage to Plaintiffs' home and not because Guerra believed litigation would arise from the incident.

II. ANALYSIS

A. Legal Standard

“Summary judgment is appropriate when the record evidence, including depositions, sworn declarations, and other materials, shows that there is no genuine dispute

⁴ The record does not show where Lemoine went, and data is not available for his device between 3:43 a.m. and 4:48 a.m.

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as to any material fact and the movant is entitled to judgment as a matter of law.” *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013) (quoting Fed. R. Civ. P. 56) (quotation marks omitted). A material fact is any fact that “is a legal element of the claim under the applicable substantive law which might affect the outcome of the case.” *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). A genuine dispute exists when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Ultimately, “[t]he basic issue before the court . . . is ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” *Allen*, 121 F.3d at 646 (citation omitted).

The party moving for summary judgment bears the initial burden of showing that no genuine issue exists as to any material fact. *See id.* “[I]n deciding whether the movant has met this burden[,] the court must view the movant’s evidence and all factual inferences arising from it in the light most favorable to the nonmoving party.” *Id.*

After the movant satisfies this initial burden, the nonmovant bears the burden of showing specific facts indicating summary judgment is improper because a material issue of fact does exist. *Id.* “A mere ‘scintilla’ of evidence supporting the opposing party’s position will not suffice; there must be enough of a showing that the jury could reasonably find for that party.” *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990) (citation

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omitted). In the same vein, “some metaphysical doubt as to the material facts” is not sufficient to create a genuine dispute. *Garczynski v. Bradshaw*, 573 F.3d 1158, 1165 (11th Cir. 2009) (stating that “the non-moving party must produce substantial evidence in order to defeat a motion for summary judgment”) (citation omitted).

In sum, if the record taken as a whole cannot lead “a rational trier of fact to find for the non-moving party, there is ‘no genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

B. Qualified Immunity

The doctrine of qualified immunity protects government officials from civil liability for actions taken within the scope of their discretionary authority unless their conduct violated a plaintiff’s federal constitutional rights as demonstrated by clearly established law. *See Harbert Int’l, Inc. v. James*, 157 F.3d 1271, 1281 (11th Cir. 1998). “The defense of qualified immunity aims to strike a balance between ‘the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.’” *Taylor v. Taylor*, 649 F. App’x 737, 742 (11th Cir. 2016). Thus, the doctrine “‘gives government officials breathing room to make reasonable but mistaken judgments,’ and ‘protects all but the plainly incompetent or those who knowingly violate the law.’”

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Messerschmidt v. Millender, 565 U.S. 535, 546 (2012) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)).

The burden is on the defendant to raise the qualified immunity defense. *See Lewis v. City of W. Palm Beach*, 561 F.3d 1288, 1291 (11th Cir. 2009). Once the defendant does so, the burden shifts to the plaintiff to show that qualified immunity should not apply. *See id.*

Courts in the Eleventh Circuit “conduct a two-step inquiry to decide whether qualified immunity should be granted: (1) taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right[?]; and (2) if a constitutional right would have been violated under the plaintiff’s version of the facts, ... [was] the right . . . clearly established[?]” *Shuford v. Conway*, 666 F. App’x 811, 815 (11th Cir. 2016).

“Both elements must be satisfied for an official to lose qualified immunity.” *Fils v. City of Aventura*, 647 F.3d 1272, 1287 (11th Cir. 2011) (citation omitted). However, “the two steps do not have to be analyzed sequentially.” *Id.* If the law was not clearly established at the time of the incident, the court need not decide if the defendant actually violated the plaintiff’s rights. *See id.*; *Maughon v. City of Covington*, 505 F. App’x 818, 821 (11th Cir. 2013) (stating that “[the court] need not conduct [the] qualified immunity analysis in any specific order; rather, [the court is] permitted to exercise [its] sound discretion in deciding which prong of [the] inquiry to address first”).

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With these principles in mind, the Court turns to the substance of Plaintiffs' Fourth Amendment claim against Guerra.

Defendants contend that Plaintiffs' Fourth Amendment claims should be dismissed on qualified immunity grounds because Guerra was acting within the scope of his discretionary authority, and Plaintiffs have failed to show that the alleged constitutional right was clearly established at the time of the incident. Since Plaintiffs do not dispute that Guerra was acting within the scope of his discretionary authority,⁵ the burden shifts to Plaintiffs to show that qualified immunity is inappropriate here. *See Lewis*, 561 F.3d at 1291. To evaluate whether Plaintiffs have satisfied their burden in this regard, the Court turns first to the second prong of the qualified immunity test (clearly established law).

Even where an officer is found to have violated a plaintiff's Fourth Amendment right, the doctrine of qualified immunity bars recovery unless the plaintiff can show that the violated right was clearly established at the time of the incident. *See Smith v. LePage*, 834 F.3d 1285, 1297 (11th Cir. 2016). Thus, the plaintiff must show that at the time of the officer's conduct, the law was clear such that every reasonable official would have understood that the conduct would be unlawful under the circumstances. *See District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018). In other words, "existing law must have placed the constitutionality of the officer's conduct

⁵ The only discussion of discretion in Plaintiffs' brief relates to their argument that the discretionary function exception does not bar their claims under the FTCA.

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beyond debate. This demanding standard protects all but the plainly incompetent or those who knowingly violate the law.” *Id.* (internal citation and punctuation omitted).

To that end, the Supreme Court of the United States has “repeatedly stressed that courts must not ‘define clearly established law at a high level of generality, since doing so avoids the crucial question [of] whether the official acted reasonably in the particular circumstances that he or she faced.’” *Id.* at 590 (citation omitted). “It is not enough that the rule is suggested by then-existing precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.” *Id.*

A plaintiff demonstrates the requisite rule by citing “(1) case law with indistinguishable facts clearly establishing the constitutional right; (2) a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right; or (3) conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law.”⁶ *See Smith*, 834 F.3d at 1297 (citation omitted). When relying on case law, a “close factual fit between the pre-existing case and the present one is essential,” and “[g]eneral

⁶ Only binding precedent—decisions of the Supreme Court, the Eleventh Circuit, or the highest court of the state—can establish a constitutional right beyond debate. *See Echols v. Lawton*, 913 F.3d 1313, 1324 (11th Cir. 2019). However, “non-binding persuasive authority can be used to indicate that a particular constitutional right is *not* clearly established.” *Corbitt v. Vickers*, 929 F.3d 1304, 1319 n. 14 (11th Cir. 2019) (emphasis added).

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propositions from earlier decisions will not do.” *Cantu v. City of Dothan*, 974 F.3d 1217, 1232 (11th Cir. 2020). The key is whether the law gave the defendant “fair warning” at the time he engaged in the conduct that his actions were unconstitutional. *Id.*

Here, Plaintiffs point to the Supreme Court’s opinion in *Maryland v. Garrison*, 480 U.S. 79 (1987) and the Eleventh Circuit’s decision in *Hartsfield v. Lemacks*, 50 F.3d 950 (11th Cir. 1995) as clearly establishing that Guerra’s actions in this case violated Plaintiffs’ Fourth Amendment rights. In *Garrison*, police officers executed a search warrant on a home described as occupying the “third floor” of an apartment building. 480 U.S. at 81. After the police officers began searching the plaintiff’s apartment, which was located on the third floor of the building, they realized that there were two apartments on the floor and that they had entered the wrong home. *Id.* at 86-87. They discontinued the search at that point. *Id.* at 87.

In analyzing the case, the Supreme Court “recognized the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants.” *Id.* The Supreme Court noted, among other things, that the officer who obtained the warrant had verified the information obtained from a reliable informant, examined the exterior of the building and sought information from the utility company serving that address. *Id.* at 81. Ultimately, the Court found that because the “objective facts available to the officers at the time suggested no distinction between the plaintiff’s apartment and the

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target's apartment," the officers' search did not violate the plaintiff's Fourth Amendment rights. *Id.* at 88.

At issue in *Hartsfield* was whether an officer's mistake in serving a warrant on the wrong home was reasonable where (i) he did not verify that he was leading the other officers to the correct address as listed on the warrant; (ii) he did not perform any "precautionary measures" to avoid the mistake; (iii) the raid took place during the day, and the numbers on the houses were clearly marked; and (iv) the plaintiff's and the target's homes had distinguishable features and were located on different parts of the street, separated by at least one other residence. 50 F.3d at 955. The Eleventh Circuit explained that because the officer "did *nothing* to make sure that he was leading the other officers to the correct residence," he was not protected by the doctrine of qualified immunity. *Id.* (emphasis added). Also important to the court were the facts that the officer had visited the correct residence the day before the search and had obtained the search warrant based on his own observations of a drug transaction at the home. *Id.* The court emphasized that the officer's actions "were simply not 'consistent with a reasonable effort to ascertain and identify the place intended to be searched.'" *Id.* (citing *Garrison*, 480 U.S. at 88–89). The court concluded that it was "clearly established law that, absent probable cause and exigent circumstances, a warrantless search of a residence violates the Fourth Amendment, unless the officers engage in reasonable efforts to avoid error." *Id.*

The foregoing cases demonstrate that a central issue in determining whether the doctrine of qualified

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immunity applies in a Fourth Amendment search warrant case is where to draw the line between reasonable and unreasonable measures taken to avoid error. To assist in this inquiry, the Eleventh Circuit has cautioned that “[n]one of [its] precedents holds—or logically compels the conclusion—that an officer’s well-intentioned attempts to ascertain and identify the property described in a warrant are [un]reasonable simply because they lead to an error, or because more accurate means of ascertaining the property’s identity were available.” *White v. McClain*, 648 F. App’x 838, 841 (11th Cir. 2016). Indeed, “[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” *Heien v. North Carolina*, 574 U.S. 54, 60–61 (2014) (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

Based on these principles, the court in *White* found that an officer who “did attempt to ascertain and verify that he had the right house,” including by revisiting the block where the house was located and taking a photograph of what he thought was the correct house, was protected by the doctrine of quality [sic] immunity. *White*, 648 F. App’x at 842–43. That court discussed the Eleventh Circuit’s prior opinion in *Hartsfield* and disagreed that that opinion stood for the proposition “that an officer who attempts to ascertain and verify the identity of the place to be searched violates the Fourth Amendment if he fails to do everything possible to ensure that he is not mistaken.” *White*, 648 F. App’x at 843. To the contrary, the court focused on the steps the officer took in preparing to serve the warrant to

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determine whether the officer's actions were reasonable and passed muster. *See id*; *see also Norris v. Hicks*, 855 F. App'x 515, 523–24 (11th Cir. 2021) (finding that officers who carefully planned a high-risk raid at the home of a dangerous person were entitled to qualified immunity where they encountered unexpected circumstances that resulted in the warrant being executed at the wrong home).

Here, the Court has reservations regarding whether Plaintiffs' argument that Guerra failed to complete the Site Survey and the Drive-By presents a genuine dispute of the facts. The evidence Plaintiffs offer in support of their contention requires inferential leaps that are not necessarily supported by the record. For example, missing geolocation data for the morning of the Drive-By does not necessarily mean that the Drive-By did not occur, especially in light of the corroborating deposition testimony of Lemoine that the Drive-By did occur. To survive summary judgment, Plaintiffs must do more than raise “metaphysical doubt” regarding the facts. *Garczynski*, 573 F.3d at 1165 (citation omitted). They must produce substantial evidence demonstrating that there is a genuine issue of material fact. *See id*.

Even if, for argument's sake, the Court credits Plaintiffs' argument that Guerra did not conduct the Site Survey and the Drive-By, the record contains undisputed evidence of several other steps that Guerra took to “ascertain and identify” the home described in the warrant. *White*, 648 F. App'x at 841. Guerra reviewed the Operation Order and Swat Addendum; he attended an operational briefing; and he selected a staging area and made

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tactical notes with knowledge and in consideration of the location of the home. These steps constitute considerably more than “nothing.” *Hartsfield*, 50 F.3d at 955. The record also contains evidence of detailed planning by other agents, including Agent Thompson’s surveillance of 3741 Landau, upon which Guerra relied. The Court considers Guerra’s overall preplanning to constitute significant “precautionary measures” to avoid mistake. *Id.* The Court further finds that those measures were reasonable under the circumstances. *See Heien*, 574 U.S. at 60 (noting that the Supreme Court has “repeatedly affirmed” that “the ultimate touchstone of the Fourth Amendment is reasonableness”) (citation and punctuation marks omitted).

Moreover, the execution of the warrant occurred in the dark, and the house number was not affixed anywhere on the house. It was listed on a mailbox at the end of the driveway on another street, and Plaintiffs agreed during oral argument that checking the mailbox at that location in the midst of executing the warrant would have caused some delay in the operation. Such delay could have been problematic because the warrant was being served on a dangerous individual under the cover of darkness, and the simultaneous execution of multiple related warrants was important to the overall operation.

While, as Plaintiffs point out, 3741 Landau and 3756 Denville were dissimilar in some respects and were separated by three or four homes, Plaintiffs do not dispute that the two homes shared several conspicuous features, including a corner lot with a large tree and a tight stairway leading to the front door. In all, it is not the role of

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the Court (and, indeed, the Court is ill-equipped) to play Monday morning quarterback and dictate what additional steps Guerra should have taken in the universe of measures available to him.

That Guerra's efforts were ineffectual is not a basis to find that he acted unreasonably and in violation of the law. The Supreme Court emphasized in *Messerschmidt* that the doctrine of qualified immunity "protects all but the plainly incompetent or those who knowingly violate the law." *Messerschmidt*, 565 U.S. at 546 (citation omitted). The Court cannot conclude based on the record before it that Guerra was either incompetent or that he knowingly broke the law. To the contrary, the record supports the conclusion that Guerra simply made a mistake—based on reasonable but mistaken judgment. Guerra's actions are therefore excused under the law. *See id.*, *Heien*, 574 U.S. at 60–61 (stating that the Fourth Amendment allows leeway for mistakes by government officials).

Importantly, courts have granted immunity in cases that reflect preparations similar to the steps Guerra undertook in this case or for operations similar to the one at issue here. *See, e.g., Norris*, 855 F. App'x at 523–24; *White*, 648 F. App'x at 842–43; *cf. Hartsfield*, 50 F.3d at 955. Accordingly, the Court concludes that the law was not clearly established at the time of the incident that Guerra's preparatory steps would be insufficient or that they would otherwise be deemed unreasonable and violative of the law. In other words, Guerra's actions did not violate clearly established law, and he is therefore entitled to qualified immunity against Plaintiffs' claims.

*Appendix C***C. Federal Torts [sic] Claims Act**

Under the FTCA, the United States waived immunity for claims related to an injury

caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b)(1). Thus, the FTCA “simply allows those injured by the acts or omissions of a government employee to recover damages in the same way that they would if they were injured by the acts or omissions of a private person.” *Smith v. United States*, 14 F.4th 1228, 1232 (11th Cir. 2021). This means that a plaintiff must show that a private person would be liable for the act or omission under state law. “If a plaintiff fails to establish that state-law duty, . . . the United States retains its sovereign immunity and the suit cannot go forward.” *Id.*

1. The Discretionary Function Exception

The waiver of immunity under the FTCA is not absolute. For example, it does not extend to “the failure to exercise or perform a discretionary function or duty . . . , whether or not the discretion involved be abused.” 28 U.S.C. § 2680(a). This carve out is commonly referred to as the discretionary function exception to the FTCA. *See, e.g., Foster Logging, Inc. v. United States*, 973 F.3d

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1152, 1157 (11th Cir. 2020). “[T]he purpose of the exception is to prevent judicial second-guessing of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort.” *United States v. Gaubert*, 499 U.S. 315, 323 (1991) (citation and quotation marks omitted).

A court’s analysis of whether the discretionary function exception applies involves a two-part test:

First, a court examines the nature of the challenged conduct or act to determine whether it is “discretionary in nature,” meaning that it involves “an element of judgment or choice.” Second, if the challenged conduct involves an element of judgment or choice, a court then determines “whether that judgment is of the kind that the discretionary function exception was designed to shield.”

Foster, 973 F.3d at 1157 (citations omitted).

The first prong of the test focuses on “whether the controlling statute or regulation mandates that a government agent perform his or her function in a specific manner.” *Id.* at 1158 (quoting *Hughes v. United States*, 110 F.3d 765, 768 (11th Cir. 1997)). If it “specifically prescribes a course of action for an employee to follow, there is no judgment or choice involved.” *Id.* at 1157 (citation and quotation marks omitted). If it does not, the court will “presume[] that the particular act involved an element of judgment or choice.” *Zelaya v. United States*, 781 F.3d 1315, 1330 (11th Cir. 2015) (quoting *Autery v. United States*, 992 F.2d 1523, 1529 (11th Cir. 1993)).

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Under the second prong of the test, “[a] particular decision will be of the kind protected by the exception if it is the type of decision that one would expect to be inherently grounded in considerations of policy.” *Zelaya*, 781 F.3d at 1330. However, “when a government agent is permitted to exercise discretion in making a particular decision—whether that permission is express or implied—it must be presumed that the agent’s acts are grounded in policy when exercising that discretion.” *Id.* (citing *Gaubert*, 499 U.S. at 324).

In the context of a law enforcement official serving an arrest warrant, the Eleventh Circuit has “conclude[d] that the investigation of the whereabouts and identity of the subject of an arrest warrant prior to service of the arrest warrant is conduct that falls within the discretionary function exception.” *Mesa v. United States*, 123 F.3d 1435, 1438 (11th Cir. 1997). With respect to the first prong of the test, the court “readily” found that “decisions regarding how to locate and identify the subject of an arrest warrant” involve “an element of judgment or choice.” *Id.*

With respect to the second prong of the test, the *Mesa* court explained that

[t]he decision as to how to locate and identify the subject of an arrest warrant prior to service of the warrant is susceptible to policy analysis. For example, in deciding how extensively to investigate the location and identity of the subject, agents may weigh the urgency of apprehending the subject in light of such factors as the potential threat

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the subject poses to public safety and the likelihood that the subject may destroy evidence. A desire to keep the investigation secret—for tactical reasons, to protect confidential sources, to protect the agents involved, or for other reasons—may also factor into the decision as to how to locate and identify the subject of a warrant. In addition, agents may consider their available resources and decide how to allocate those resources among the many investigations for which they are responsible. All of these factors indicate that the decision regarding how to locate and identify the subject of an arrest warrant is fundamentally rooted in policy considerations, and that judicial second-guessing of this decision thus is not appropriate.

Id. See also *Vivas v. United States*, No. 1:20-CV-02217, 2021 WL 2582300, at *3 (N.D. Ga. Apr. 21, 2021) (stating that “decisions made by . . . officers in determining how and where to locate the subject of the warrant [served at the wrong home] are covered by the discretionary function exception”).

Applying the principles set forth in *Zelaya* and *Mesa* here, this Court finds that Guerra’s efforts in preparing to execute the warrant at 3741 Landau involved judgment and choice. There was no statute, regulation or even internal operating procedure prescribing Guerra’s course of action. To the contrary, Guerra’s actions involved multiple independent decisions regarding how to investigate the location where the warrant was to be served and direct the team in executing the warrant. As explained in *Mesa*, these decisions involve policy

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considerations and should not be subject to judicial second-guessing.

The Court is not convinced by Plaintiffs' argument that Guerra lacked discretion in executing the search warrant because the warrant identified a specific location. While it is true that the warrant named 3741 Landau as the place of execution, and the warrant therefore could not be served at another location, it is also true that Guerra had to make numerous decisions regarding *how* to execute the warrant. This is the epitome of discretion.

The Court is likewise not persuaded by Plaintiffs' attempt to distinguish the *Mesa* opinion from the facts of this case. Plaintiffs argue that *Mesa* involved only an arrest warrant, and the opinion was therefore limited to that narrow circumstance. However, the Eleventh Circuit did not expressly limit its opinion in that way, and its general discussion of the decision-making process to investigate the location of a subject is relevant here. *See Mesa*, 123 F.3d at 1438. As such, the *Mesa* opinion is *ap*posite.

For these reasons, the Court concludes that Guerra's actions are covered under the discretionary function exception to the FTCA. This means that the Court lacks jurisdiction to consider Plaintiffs' tort claims unless they are permitted by another provision of the FTCA.⁷

⁷ Plaintiffs noted that they wish to preserve for appeal their argument that the discretionary function exception should not apply to violations of constitutional rights. However, as Plaintiffs concede,

*Appendix C***2. The Law Enforcement Proviso**

Under § 2680(h) of the FTCA, the United States expressly declined to waive immunity for specific claims, including those arising out of assault, battery, false imprisonment and false arrest. However, this exception does not apply to (*i.e.*, immunity is waived for) six intentional torts where they concern acts or omissions of “investigative or law enforcement officers of the United States Government.”⁸ *Id.* The six enumerated torts for which immunity is waived are assault, battery, false imprisonment, false arrest, abuse of process and malicious prosecution. *Id.* This carve out for actions arising out of the conduct of law enforcement is known as the law enforcement proviso. *See Millbrook v. United States*, 569 U.S. 50, 52-53 (2013). The law enforcement proviso applies regardless of whether the discretionary function exception would otherwise deny jurisdiction over the claims. *See, e.g., Williams v. United States*, 314 F. App’x 253, 258–59 (11th Cir. 2009) (stating that the law enforcement proviso “waives sovereign immunity for battery claims against federal law enforcement officials, including battery claims arising out of those acts or omissions that fulfill a discretionary function”).

the Eleventh Circuit recently rejected that argument in *Shivers v. United States*, 1 F.4th 924 (11th Cir. 2021).

⁸ For purposes of this provision, “a law enforcement officer is any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of federal law.” *Williams v. United States*, 314 F. App’x 253, 258–59 (11th Cir. 2009).

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Here, Plaintiffs assert tort claims for false arrest/false imprisonment (Count I), assault and battery (Count II), trespass/interference with private property (Count III), negligent/intentional infliction of emotional distress (Count IV) and negligence (Count V). The claims for false arrest, false imprisonment and assault and battery clearly fall under the law enforcement proviso.⁹ Therefore, those claims survive, despite the Court's finding herein that they are excluded by the discretionary function exception. The remaining claims—for trespass, interference with private property, negligent/intentional infliction of emotional distress and negligence—are not covered by the law enforcement proviso and therefore remain excluded. Consequently, the Court lacks jurisdiction as to Counts III, IV and V of each complaint, and the United States is entitled to summary judgment on those claims. The Court has jurisdiction as to Counts I and II of the complaints and will now consider the merits of those claims.

3. Merits of the Claims

As set forth above, the United States can be liable under the FTCA only to the extent that a private person would be liable under the law of the place where the incident occurred. *See* 28 U.S.C. § 1346(b)(1). Since the incident occurred in Georgia, the Court must apply the law of Georgia as it pertains to liability of a private person under the facts of this case. *See Smith*, 14 F.4th at 1232.

⁹ The parties do not dispute that Guerra is a law enforcement officer of the United States Government.

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a. **Count I (False Arrest/Imprisonment)**

Under Georgia law, a false arrest is an “arrest under process of law, without probable cause, when made maliciously.” O.C.G.A. § 51-7-1. An arrest “under process of law” is one “made pursuant to a warrant.” *Ferrell v. Mikula*, 672 S.E.2d 7, 10 (Ga. Ct. App. 2008).

A false imprisonment, on the other hand, is “the unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty.” O.C.G.A. § 51-7-20. Thus, the “key distinction” between false arrest and false imprisonment “is whether the person was detained using a warrant or not.” *Ferrell*, 672 S.E.2d at 10. The *Ferrell* court expressly overruled any opinion that construed an arrest without a warrant as a false arrest. *Id.* at 13.

Whether the claim is for false arrest or false imprisonment, a defendant is liable for arresting or imprisoning a person without a warrant “unless he can justify under some of the exceptions in which arrest and imprisonment without a warrant are permitted by law.” *Collins v. Sadlo*, 306 S.E.2d 390, 391 (Ga. Ct. App. 1983) (citation, alterations and quotation marks omitted). “Where the arrest is without a warrant and is illegal, no amount of good faith or probable cause will excuse the defendants.” *Id.* (citation, alterations and quotation marks omitted).

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Here, Defendants argue that Plaintiffs do not have a false arrest claim because the arrest did not involve a warrant. They contend that Plaintiffs may assert only a false imprisonment claim. Defendants urge the Court to grant summary judgment on Plaintiffs' false imprisonment claim on the grounds that Guerra acted in good faith. Although Defendants acknowledge that the issue of good faith is typically a fact question, they contend that they should prevail in this case because the record is clear that no agent acted in bad faith.

Plaintiffs respond that the most analogous law applicable to private persons is Georgia's citizen's arrest law.¹⁰ Under that statute, "[a] private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion." O.C.G.A. § 17-4-60.

Plaintiffs argue that summary judgment is inappropriate here because Defendants cannot show that the arrest was proper under the citizen's arrest statute. They point out that Plaintiffs did not commit an offense in Defendants' presence, and they were not attempting to flee at the time Defendants entered their home.

Plaintiffs further contend that O.C.G.A. § 51-7-21, which Defendants cite as a basis for their good faith defense, applies only to law enforcement officers serving a warrant. Thus, Plaintiffs assert that the statute is not

¹⁰ The citizen's arrest law was in effect at the time of the incident but has since been repealed.

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applicable to an FTCA claim, which requires a private person analog law. Plaintiffs also argue that, in any event, the record does not support a good faith defense because Guerra did not exercise ordinary care in executing the warrant.

Additionally, Plaintiffs argue that Defendants waived their good faith defense. Plaintiffs maintain that Defendants may not raise a good faith defense at the summary judgment stage because they did not include the defense in their answer.

The Court agrees with Defendants that the record does not support a false arrest claim because the arrest in this case was not executed pursuant to a warrant that named Plaintiffs. *See Ferrell*, 672 S.E.2d at 10 (emphasizing that a false arrest claim is improper where there is no arrest warrant). The Court, however, disagrees that summary judgment is proper on Plaintiffs' false imprisonment claim.

First, it is not clear that the good faith defense, which constitutes Defendants' primary argument for summary judgment, applies here. O.C.G.A. § 51-7-21, which Defendants cite as support for their good faith defense, provides that "[i]f imprisonment is by virtue of a warrant, neither the party who procured the warrant in good faith nor the officer who executed the warrant in good faith shall be liable for false imprisonment even if the warrant is defective in form or is void for lack of jurisdiction." Thus, on its face, the statute relates to a law enforcement officer serving a warrant, not to an officer executing a warrantless arrest or to a private person

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detaining another. It is therefore doubtful that the statute applies in the instant FTCA context, which requires the Court to apply a private person analog law.¹¹

Further, the citizen's arrest statute, which Plaintiffs offer as the applicable private person analog law, does not appear to contemplate a good faith defense.¹² That statute authorizes an arrest if the offense was committed in the presence of the citizen or was within his immediate knowledge. *See* O.C.G.A. § 17-4-60. A citizen may rely on reasonable and probable grounds of suspicion only in circumstances that involve a felony and an offender who is attempting to escape. *See id.* Defendants have not cited any case law or otherwise shown that a good faith defense would generally apply to the citizen's arrest statute or where, as here, Plaintiffs committed no offense and were not attempting to flee.

Finally, Georgia law appears to preclude a good faith defense where an arrest without a warrant is "illegal." *Collins*, 306 S.E.2d at 391. *Collins* follows cases like *Vlass v. McCrary*, 5 S.E.2d 63, 65 (Ga. Ct. App. 1939), where the Georgia Court of Appeals expressed that "no amount of

¹¹ *Wilson v. Bonner*, 303 S.E.2d 134 (Ga. Ct. App. 1983), *Blocker v. Clark*, 54 S.E. 1022 (Ga. 1906), and *Stewart v. Williams*, 255 S.E.2d 699 (Ga. 1979), which Defendants cite in support of their good faith argument, all involve arrests by law enforcement officers serving warrants and are therefore of questionable relevance here.

¹² Defendants do not dispute that the citizen's arrest statute is a private person analog law. Their opening brief refers to the statute, *see* ECF No. 83-1 at 35, and their reply brief argues only that "[in] the absence of a private person analog, sovereign immunity has not been waived," ECF No. 107 at 15.

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good faith or probable cause will excuse . . . defendants,” if the arrest is without a warrant, and it is illegal. The *Vlass* court explained that “[n]o one who properly appreciates the sacredness of personal liberty, and the jealousy of the law in guarding the same, can doubt that, as a general rule, the law requires a warrant in order to render an arrest legal.” *Id.* Since the record shows that the 3741 Landau and Riley warrants were void as to Plaintiffs, and Defendants have not demonstrated that the arrest was otherwise legal, the Court disagrees that Plaintiffs’ false imprisonment claim should be dismissed as a matter of law. Accordingly, the Court denies Defendants’ Motion as to Count I of the complaints.¹³

b. Count II (Assault and Battery)

In Georgia, an assault is “[a]ny violent injury or illegal attempt to commit a physical injury upon a person.” O.C.G.A. § 51-1-14. A battery is “[a] physical injury done to another . . . , whatever may be the intention of the person causing the injury, unless he is justified under

¹³ In light of this conclusion, the Court need not resolve Plaintiffs’ argument that summary judgment should be denied because Defendants waived their good faith defense. The Court, however, notes that Plaintiffs have not shown prejudice from the alleged failure to raise the defense sooner. *See Edwards v. Fulton Cnty.*, 509 F. App’x 882, 887–88 (11th Cir. 2013) (stating that “a defendant does not waive an affirmative defense if the earlier omission from responsive pleadings does not prejudice the plaintiff” and finding that the district court properly rejected a claim of waiver where the plaintiffs had the opportunity to respond to the defense at summary judgment and the subject matter of the defense was addressed during discovery).

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some rule of law.” *Id.* § 51-1-13. The Georgia Court of Appeals has emphasized that “the intent to cause actual physical harm to another is not absolutely essential to the viability of a civil action for battery.” *Hendricks v. S. Bell Tel. & Tel. Co.*, 387 S.E.2d 593, 594 (1989). Further, “any unlawful touching is a physical injury to the person and is actionable.” *Id.*

Here, Defendants cite Georgia’s self-defense statute as justification for their actions. They also argue that the use of force was reasonable under the citizen’s arrest statute, and it was *de minimis*.

However, the self-defense statute is clearly inapplicable under the facts of this case. It is undisputed that Plaintiffs did not resist arrest or otherwise challenge the agents.

Likewise, the cases Defendants cite regarding the reasonable or *de minimis* use of force are inapposite. Those cases involve claims under the Fourth Amendment, where the quantum of force used by officers is relevant, whereas Georgia law precludes the application of the reasonable or *de minimis* principles in a battery case. *See Hendricks*, 387 S.E.2d at 594 (stating that a battery “may be accomplished by an unauthorized caress as well as by an unauthorized blow”). Defendants also have not shown that a reasonableness or *de minimis* defense would apply to the assault claim.

Finally, the *Williams* case, which Defendants cite to support their argument that the force used in this case was reasonable, involved an arrest of a fleeing suspect for whom a warrant had been issued. *See Williams v.*

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United States, 314 F. App'x 253, 258 (11th Cir. 2009). The circumstances of this case are quite different.

Based on the foregoing analysis, the Court finds that Defendants are not entitled to summary judgment on Plaintiffs' false imprisonment claim (Count I) and assault and battery claims (Count II).¹⁴

III. CONCLUSION

In accordance with the Court's opinion herein, the Court **GRANTS** Defendants' Motion (ECF No. 83) as to Counts III, IV, V and VI of the complaints and **DENIES** the Motion as to Counts I and II.¹⁵ Since the sole account against Defendant Guerra (Count VI) is dismissed, the clerk is **DIRECTED** to terminate Guerra from this action.¹⁶

In light of these rulings, the Court finds that this is an appropriate time for the parties to mediate this dispute. Accordingly, the parties are **DIRECTED** to mediate the remaining claims in this matter before a neutral third party within forty-five days of the date of this

¹⁴ For the reasons described in footnote 12, *supra*, the Court does not reach Plaintiffs' argument that Defendants waived their justification defense.

¹⁵ As explained above, Plaintiffs' claims for false arrest are not viable under the facts of this case. Thus, to the extent that Plaintiffs incorporate claims for false arrest in Count I of the complaints, the claims for false arrest are hereby dismissed.

¹⁶ The Court does not address the arguments in the "Spoliation" section of Plaintiffs' response brief because, as Defendants point out, Plaintiffs do not request any specific relief.

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Order. Within seven days of the date of this Order, the parties shall inform the Court whether they elect to mediate their dispute before a Magistrate Judge of this division; if so, the Court will make the necessary referral.

Given the Order to mediate this dispute, the Clerk is **DIRECTED** to **ADMINISTRATIVELY CLOSE** the case for docket management purposes. Administrative closure will not prejudice the rights of the parties to this litigation in any manner nor preclude the filing of documents.

The parties must file a status report by the conclusion of the forty-five day mediation period stating whether mediation was successful. If mediation was unsuccessful, the parties may file a motion to reopen the case with a proposed schedule to complete the remaining expert discovery in this case. Plaintiffs' motions for extension of time to complete expert discovery (ECF Nos. 114 and 119) are therefore **DENIED** without prejudice.

The Clerk is also **DIRECTED** to terminate Plaintiffs' motions to exclude Defendants' reply to Plaintiffs' Statement of Facts (ECF Nos. 109, 118) since Plaintiffs have withdrawn those motions.

SO ORDERED this 23rd day of September, 2022.

[signature]
J.P. BOULEE
United States District Judge

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Order of the United States Court of Appeals
for the Eleventh Circuit

May 30, 2024

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In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10062

CURTRINA MARTIN,
Individually and as Parent and Next friend of,
G.W.,
a Minor,
HILLIARD TOI CLIATT,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,
LAWRENCE GUERRA,
SIX UNKNOWN FBI AGENTS,

Defendants-Appellees.

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Appendix D

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cv-04106-JPB

Before LAGOA, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Hilliard Toi
Cliatt, Curtrina Martin and G.W [sic] is DENIED.

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Excerpt of Hilliard Toi Cliatt Deposition
Transcript pp. 1, 89-95 and 148-149

Reformatted from No. 1:19-cv-04106-JPB
ECF 83-2 pp. 2, 4-5, 12-13

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

HILLARD TOI CLI-)
 ATT,)
)
 PLAINTIFF)
)
 vs.)
)
 UNITED STATES OF)
 AMERICA)
 LAWRENCE GUERRA,)
 INDIVIDUALLY,)
 AND SIX UNKNOWN)
 FBI AGENTS,)
)
 DEFENDANTS.)

CASE NO.
 1:19-cv-04180-JPB

AND
 CURTRINA MARTIN,)
 INDIVIDUALLY AND)
 AS PARENT AND)
 NEXT FRIEND OF)
 G.W., A MINOR,)
)
 PLAINTIFFS,)
)
 vs.)
)
 UNITED STATES OF)
 AMERICA)
)

CASE NO.
 1:19-cv-04106-JPB

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LAWRENCE GUERRA,)
INDIVIDUALLY,)
AND SIX UNKNOWN)
FBI AGENTS,)
DEFENDANTS.)

The following remote videoconference deposition of Hiliard Toi Cliatt was taken pursuant to stipulations contained herein, the reading and signing of the deposition reserved, before Stephen Mahoney, Certified Court Reporter, 4921-4880-0199-0656, in the State of Georgia, on March 22, 2021 at 1:00 p.m.

Stephen Mahoney, CVR, CCR
Esquire Deposition Solutions
2700 Centennial Tower
101 Marietta Street
Atlanta, Georgia 30303
(404) 495-0777

Q. And where does that door lead?

A. To the balcony outside.

Q. Okay.

All right. I think that's enough to orient us because I want to talk about the incident that's the subject of -- of the lawsuit.

Can you describe in your own words what happened?

A. The entire incident?

Q. Yes.

A. Sure.

At what part do you want me to start at? When I was asleep? Before I got home? When -- when -- when -- what -- where do you have me start?

Q. Let's -- let's start at before you got home. What are you referring to there?

A. Before I got home, I was coming home from Durham, North Carolina. I had basically parked my truck, got all my stuff together, drove home approximately, I guess, seven miles. Got home as I normally do. Came in through the garage. Of course, everybody was asleep. Took a shower, got into bed.

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I guess when I finally had fallen asleep, I just heard a -- a loud cannon-type bang that startled me and disoriented me. It startled me so

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bad to where I was lying flat, and I felt like I just sprung up out of the bed but was still laying flat. I don't know if I landed on my feet off -- off the bed, or I landed back on the bed and then kind of got up.

And I was -- I just didn't know what was going on, what had happened, but I felt like it was some sort of home invasion going on. I looked over at Trina, and she was up, running around, and I was just kind of trying to get ourselves oriented on what was going on. Once I realized that -- I felt that it was some sort of home invasion -- I keep my shotgun in the closet, which is behind the bathroom per se.

So I was on one side of the bedroom, and Trina was on the opposite side, so we basically had to cross each other. Looks like she was running out of the room, and I was running toward the closet to get my shotgun, so before she could really cross me, I grabbed her, and I pulled her in the room with me.

As I was running and pulling her toward the bathroom area, I could hear footsteps on -- on the steps because it's wood, and I assume they had on boots or whatever, but I could hear it. And it sounded like people going downstairs and upstairs

around the same time. So I said to myself, that's a lot of people. And I was thinking about if I was going to have enough bullets to protect myself because I -- I'm thinking it's -- it's an actual gang of people who entered into the house.

And I kind of heard them coming down the hallway, and they had entered into the bedroom, so I -- something just didn't seem right, but I wasn't sure. And so I would hear them going like clear, clear, or something like that in reference to that. And I wanted to buy some time, so we went into the closet, and I closed the door because I was trying to figure out what was going on. Wait a second.

Give me one second. I apologize.

Q. Let me just -- let me just -- where did you go right now?

A. I went to the bathroom. I grabbed a tissue.

Q. Okay. Okay.

A. So I heard people enter into the bathroom, and I had this feeling of it's now or never, you got to make a decision, you know? Are you going to shoot it up with these people, or, you know, are you just going to just give in and just let them do what they're going to do? So as I was thinking, I was

like, I don't think it's a home invasion, because I'm hearing police talk [sic].

I mean, I'm reverting back to watching T.V. and hearing this type of lingo when they go into people's homes, you know, making sure that there's not a threat. saying clear, clear. So something was telling me don't do anything with this shotgun. Don't do it. It's not going to end well, but I wasn't sure.

So they knocked on the door and was telling me to come out, and I was like, who are -- you know, what's going on? Who are you? And they was like, open the door, it's the police or something of that nature, but I -- I still wasn't sure. I wasn't a hundred percent sure what was going on.

But my overall decision just said it's not going to end well. If you shoot through this door, everybody is going to die. So I reluctantly released the door because I -- I was blocking them -- them from opening it. They -- they have to press the door inwards to open it, and I was preventing that from happening.

So I opened the door, they snatch me out. Trina kind of fell because she was actually closer to the opening of the door than I was because -- so

they literally pulled me out. I believe she fell down in the closet. Not to mention she didn't have on any clothes. So I was embarrassed for her but yet fearful for my life at the same time.

They pulled me out of the closet, pulled me through the bathroom, and then they threw me down on the floor in the master bedroom. And all -- all the time I'm asking them, what's going on, this, that, and the third, and so when I'm laying on the ground, and I look up, I see all these you know, appearing military dressed guys with their automatic weapons all pointed at me. So I immediately just -- you know, I immediately just faced down.

And they started bombarding me with all these questions, and some of them I didn't hear, didn't know what they were referring to. And I was really confused. So I -- I remember him asking me what was my name -- like my vital information. What was my name? What was my address? Blah blah blah. And when -- when I gave them my address, it just kind of got quiet. You know, all the noise just ended.

And I heard him tell one of the officers to go check the address. And I hear him leaving out of the room or whatever. And I guess about a minute

or two, he came back in and whispered something to the lead officer and the lead officer, after that, he picked me

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up, took the handcuffs off of me, and he was just like, I'll be right back.

And him and his team started proceeding out of the house. And so I started following behind him, and I told Trina to check on [REDACTED] to make sure he's okay. And so I'm following them basically out of the house, trying to see what's going on. Why did they do what they did? And they -- they all kind of -- he forcefully, you know, told me, hey, you know, I'll be right back, you know?

No one would give me any explanation. And so I saw them all meet in my front yard, and he gave them some orders, and they started going, and they all jumped in these unmarked cars. And I was sitting outside on the front porch, and I watched them go down the street on the corner and basically do the same thing as far as entering into that house the way they -- I assume they did at mine.

And I said to myself at that point, damn, I think they hit the wrong house. I think that was the house they were supposed to get initially. They made a mistake. And so I watched them go in the house, round the people up inside the house, do what

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they had to do. I went back inside to check on Trina [REDACTED] and myself. And at some point, he did return back to the house, and he apologized, you know?

He gave me a card, said he had already contacted his superiors and to just give him a call, and they'll take care

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of everything. And that was basically it. I was just left there to -- with the door hanging off, with no type of security.

And I basically just stood there, you know, in front of the house all night until -- well, you know, until the sun came up. And that was basically the rundown of what happened to the best of my recollection.

Q. Okay. Thank you. I'll -- you know, I'll ask you more specific questions.

Have you ever experienced a home invasion before?

A. You mean as far as with the police or with -- well, I'll give you my answer, no, I haven't.

Q. Just because you asked that did -- have you experienced a home invasion without police?

A. No.

Q. Have you -- have you ever experienced a burglary in the home?

A. With me in it?

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Q. Did he ever show you the warrants that were involved in this case?

A. No.

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Q. Did he ever give you any understanding of why they were going to 3741 Landau?

A. No.

Q. Did you ever call the number on the business card that he gave you?

A. I did.

Q. And who did you speak with?

A. I'm not sure.

Q. Do you recall what you spoke about on that call?

A. Yeah. We spoke about, I guess, like damages pretty much. If I recall properly because I remember asking him before he left, are they going to repair the door? And he was like, no, we don't do that. So I do recall speaking to the person on the number about that, seeing if they was going to send somebody out to repair or what's the process because that was my main concern at that time.

Q. The property damage?

A. Security of a home. The door was not operational.

Q. And when you called the number, was there

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any representation made about repairing the – the property that was damaged?

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A. I remember asking, and she told me that I would have to take care of that. And then probably, you know, I could make an insurance claim and then some kind of way they would pay the insurance claim to the -- to my insurance company.

Q. You agree that there were a number of agents involved in coming to your home; correct?

A. Yes.

Q. What do you contend specifically that Agent Guerra did wrong?

MR. GREENAMYRE: Objection. Calls for a legal conclusion or attorney-client materials -- attorney-client conversations that we've had.

MR. ROSS: Are you instructing him not to answer?

MR. GREENAMYRE: You -- you can answer to it. But don't talk about anything that we have talked about, you -- you and me.

THE WITNESS: I have a simple answer. I mean, I don't -- I don't know what he did wrong. I don't -- besides, you know, coming to the wrong house. As far as his part in it, I

* * *

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Excerpt of Curtrina Martin Deposition
Transcript pp. 1, 51-54

Reformatted from No. 1:19-cv-04106-JPB
ECF 83-3 pp. 2, 4-5

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

HILLARD TOI	)	
CLIAAT,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
UNITED STATES OF	)	CASE NUMBER:
AMERICA	)	1:19-cv-04180-JPB
LAWRENCE GUERRA,	)	
INDIVIDUALLY,	)	
AND SIX UNKNOWN	)	
FBI AGENTS,	)	
	)	
DEFENDANTS.	)	
	)	
AND		
CURTRINA MARTIN,	)	
INDIVIDUALLY AND	)	
AS PARENT AND	)	
NEXT FRIEND OF	)	
G.W., A MINOR,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	CASE NO.
UNITED STATES OF	)	1:19-cv-04106-JPB
AMERICA	)	
	)	

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LAWRENCE GUERRA,)
INDIVIDUALLY,)
AND SIX UNKNOWN)
FBI AGENTS,)
DEFENDANTS.)

The following remote videoconference deposition of Curtrina Martin was taken pursuant to stipulations contained herein, the reading and signing of the deposition reserved, before Stephen Mahoney, Certified Court Reporter, 4921-4880-0199-0656, in the State of Georgia, on March 24, 2021 at 1:00 p.m.

Stephen Mahoney, CVR, CCR
Esquire Deposition Solutions
2700 Centennial Tower
101 Marietta Street
Atlanta, Georgia 30303
(404) 495-0777

Q. Do you agree that in this photo taken of 3756 Den-
ville, that we cannot see the mailbox of the home?

A. In the photo?

Q. Yes.

MS. LAMBERT: Can you make it bigger?

MR. ROSS: I can make it as big as you'd like me
to make it.

THE WITNESS: No, I don't see the mailbox.

BY MR. ROSS:

Q. Okay.

So the incident in this lawsuit happened on October
18th, 2017; is that correct?

A. Yes, sir, that is correct.

Q. Okay.

In your own words, can you tell me what you recall
about the incident?

A. Yes.

On that particular night, I was sleeping. I heard
banging noises, and initially, I thought it was something
outside, but the noises start to get closer. And then I

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started to see bright lights and hearing a lot of bangs, and I realized that whatever it was, they were -- it was in my -- inside my house.

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I woke up Hilliard -- Mr. Cliatt and told him that someone was breaking into our home. As I was running towards the door to get my son, I -- Hilliard pulled me towards the bathroom, which was located in our master bedroom. And then, from there, he pulled me into the closet which was located in our bathroom -- our master bathroom.

I kept yelling, I need to go get my son -- I kept yelling, I need to go get my son. And when we were in the closet, Hilliard -- Mr. Cliatt -- we start to get the shotgun that he had on the top shelf of the closet. I -- I was in -- I was laying right underneath him as if was if I was seeking security or protection.

As he was reaching up to get the shotgun -- as he was reaching up to get the shotgun, at the most hideous moment, the door opened, and there was a man. And at that time, they were dressed in, like, SWAT outfits and uniform and had masks on. So that's when they announced, finally, that it was the FBI, but I didn't see anything on their clothing that said SWAT or FBI or anything that indicated that they were police.

So in my mind, I didn't -- I didn't believe it because they hadn't announced themselves

initially. And we were good-standing abiding citizens. And we didn't do anything for someone like the FBI to come in our home. So at the time they -- they pulled Mr. Cliatt out the closet. And drag him out to the floor, handcuffed him. When they did that, I fell in the corner of the closet, half-dressed, only had on a little T-shirt. I didn't have on any underwear or anything like that.

I was -- the guy that was in the closet with me was pointing a gun at my face. And I just kept up like, just calling for my son, asking if my son was okay, where is he? And the guy that had his gun in my face just kept telling me to worry about keeping my hands up. And I could hear Mr. Cliatt being interrogated. They asked several questions, and when they were asking him the questions, I -- I -- I remember looking over because I can see on my left-hand side that they were all circled around him, and he was laying on the ground.

And one of the last questions out of many that they asked him was, what's your address? And when he said the address, I saw one officer walk out the room. I don't know where he went. Shortly came back and whispered in one of the other officer's ear, and then they announced that they had the wrong

address. Allowed us to get up.

The officer that was in the closet with me put his gun down to let me get up. Yelled out, she doesn't have any

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clothes on, let her through so she can put some clothes on. As I was walking in the room, everyone stormed out the house, and when I came back out, I can see them going to the next block to the correct address.

Later on, Mr. -- Officer Guerra? Guerra? I'm not sure if I'm saying his name correctly. Came back. He personally apologized to my son, telling him that it wasn't his fault, and they apologize and don't think that he did anything wrong. And he gave us a card and went outside.

Q. Do you recall what time you had gone to bed the -- the night of the incident?

A. No. I don't recall the time I went to bed, no.

Q. Do you recall what time you put GW to bed, or what time GW went to bed?

A. Well, at the time, he had a bedtime of 9:00.

Q. And what -- at 9:00 would you -- would he be in the room by himself?

A. Yes, sir. He would be in the room by

* * *