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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

EMILY JOHNSON and ESTELLE :
DAVIS, :
Plaintiffs, :
v. :
JOHN PAPASPANOS, in his individual :
capacity, and JILL WILLIAMS, in her :
individual capacity, :
Defendants. :

Case No. **12-cv-1537 EFM**

Division: Kansas City

**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

While serving and protecting the citizens of Kansas City, Officer John Papaspanos and Officer Jill Williams performed their police duties admirably and commendably in the face of the grave danger created by Ms. Emily Johnson and Ms. Estelle Davis. Nonetheless, Ms. Johnson and Ms. Davis accuse Officer Papaspanos and Officer Williams of using excessive force during an incident at Ms. Davis's home on March 18, 2011. During their preliminary investigation of a domestic violence assault involving a knife, Officers Papaspanos and Williams discovered that there was an open warrant out for Ms. Johnson's arrest. Officer Papaspanos's attempt to peacefully arrest Ms. Johnson was impeded when Ms. Johnson screamed, struck Officer Papaspanos in the face, and tried to flee. To make matters worse, Ms. Davis hysterically screamed at the officers and rushed toward them in an attempt to interfere with the arrest. Despite the immediate threat posed by Ms. Johnson and Ms. Davis, Officers Papaspanos and Williams used minimal force to regain control of the situation. Officer Papaspanos took Ms. Johnson to the ground and Officer Williams pushed Ms. Davis away. Because of the officers' fine police work, neither Ms. Johnson nor Ms. Davis suffered serious injuries.

A police officer's use of force is not excessive if it is objectively reasonable under the circumstances. Here, Ms. Johnson was suspected of severe crimes, including domestic violence and theft. Additionally, she posed a threat to the officers by hitting Officer Papaspanos in the face, potentially being armed with a knife, and attempting to flee into the house. Meanwhile, Ms. Davis tried to interfere with Ms. Johnson's arrest by yelling and approaching the officers. In light of the increasingly chaotic situation created by Ms. Johnson and Ms. Davis, Officer Papaspanos and Officer Williams used objectively reasonable amounts of force to ensure their safety and complete their police duties.

Justice will be served by granting Officer Papaspanos's and Officer Williams's motion for summary judgment because the officers incontrovertibly did not use excessive force here. Even accepting all of the plaintiffs' factual allegations as true, the defendants used objectively reasonable force in response to the unlawful actions of Ms. Johnson and Ms. Davis. Thus, the plaintiffs' claims fail as a matter of law. Accordingly, summary judgment can easily be granted for Officer Papaspanos and Officer Williams.

STATEMENT OF UNDISPUTED FACTS

On the evening of March 18, 2011, Officer Papaspanos and Officer Williams were dispatched to the home of Ms. Davis at 1950 Key Lane in Kansas City for a report of a domestic violence assault in progress involving a knife. (Incident Record, dated Mar. 18, 2011 ("IR"), attached as Exhibit ("Ex.") 7). Ms. Davis had called 911 to report that her granddaughter, Ms. Johnson, was fighting with Mr. Brown, who was Ms. Johnson's boyfriend at the time. (Transcript of 911 recording from Mar. 18, 2011 at 8:42 PM ("911 Tr."), attached as Ex. 6). Ms. Davis also told the 911 dispatcher that someone had a knife. (911 Tr.). Officers Papaspanos and Williams arrived at 1950 Key Lane moments later and entered the home. (Deposition of John Papaspanos, dated Apr. 28, 2013 ("Papaspanos Dep."), attached as Ex. 4, at 4:1-5:10).

From their training and experience, Officers Papaspanos and Williams knew that domestic violence situations were particularly dangerous due to their chaotic and emotional atmosphere. (Papaspanos Dep. 10:11-19). Although Ms. Johnson told the officers that Mr. Brown had recently stormed out of the house, they did not know if and when he would return or who had a knife. (Papaspanos Dep. 4:21-24, 7:18-8:8). Officer Papaspanos took the lead in interviewing Ms. Johnson while Officer Williams checked Ms. Johnson's identification in accordance with police protocol. (Deposition of Jill Williams, dated Apr. 28, 2013 ("Williams

Dep.”), attached as Ex. 5, at 5:2-17). The identification check revealed that there was an open arrest warrant out for Ms. Johnson for a misdemeanor theft charge for stealing up to \$1,000 worth of property. (Williams Dep. 5:18-21; Papaspanos Dep. 6:21-7:5).

Officer Papaspanos informed Ms. Johnson that she was under arrest, however instead of cooperating, Ms. Johnson started to back away from the officers. (Deposition of Emily Johnson, dated Apr. 26, 2013 (“Johnson Dep.”), attached as Ex. 2, at 11:13-21, 13:8-14:10). Ms. Johnson became agitated, yelled at the officers, and told them to leave. (Papaspanos Dep. 7:21-25). Ms. Johnson’s violent response not only upset her four-year-old daughter who was in the home as well, but also alarmed the officers, who had reason to fear for their own safety since they were dispatched to the house for a possible knife attack. (Papaspanos Dep. 7:18-8:8). Ms. Johnson attempted to avoid arrest by saying that she was not dressed to go outside and that she could not leave her daughter. (Johnson Dep. 12:13-17). Before Officer Papaspanos could address these issues, Ms. Johnson turned to walk away. (Johnson Dep. 13:8-14:10). To prevent Ms. Johnson from entering the kitchen and possibly retrieving a knife, Officer Papaspanos grabbed Ms. Johnson’s wrist. (Johnson Dep. 13:8-14:10; Papaspanos Dep. 7:18-8:8). Ms. Johnson tried to pull her arm back in an effort to get free. (Johnson Dep. 13:8-14:10). She also repeatedly yelled at Officer Papaspanos to let her go. (Johnson Dep. 13:8-14:10). While trying to flee, Ms. Johnson struck Officer Papaspanos in the face. (Johnson Dep. 14:11-18; Papaspanos Dep. 8:23-25).

At five feet, ten inches tall and 200 pounds, Ms. Johnson was nearly identical in height and weight to Officer Papaspanos, and posed a serious physical threat to the officers. (Johnson Dep. 3:11-14; Papaspanos Dep. 9:9-17). Having been hit in the face by a dangerous suspect who was moving toward an area likely to contain a weapon, Officer Papaspanos used a takedown maneuver to ensure his safety. (Papaspanos Dep. 9:18-24). Ms. Johnson had already managed to

flee a considerable distance into the house, and by the time that she and Officer Papaspanos fell to the ground, they were already inside of the kitchen. (Papaspanos Dep. 9:18-24). Once on the ground, Ms. Johnson continued to yell, move her arms, and shake her body, which caused Officer Papaspanos to require an additional minute to handcuff her. (Papaspanos Dep. 9:18-27).

Meanwhile, Ms. Davis was observing the situation unfold, and inexplicably became worried that the police were trying to kill her granddaughter. (Deposition of Estelle Davis, dated Apr. 22, 2013 (“Davis Dep.”), attached as Ex. 3, at 7:9-18). Ms. Davis prayed to “Jehova” to help Emily, “because you never know with the police . . . [t]hey will kill you, they will shoot you and they don’t care.” (Davis Dep. 7:9-18). Acting on her irrational belief, Ms. Davis began yelling and screaming. (Johnson Dep. 13:8-14:10; Williams Dep. 8:14-22). While hysterically praying to Jehova, Ms. Davis moved toward Officer Papaspanos, who was struggling on the floor with Ms. Johnson. (Davis Dep. 7:19-8:3). To prevent any interference with Ms. Johnson’s arrest, and to ensure everyone’s safety, Officer Williams told Ms. Davis to keep back. (Williams Dep. 9:22-26). Ms. Davis repeatedly refused to comply, and once Ms. Davis got within four feet of Officer Papaspanos, Officer Williams was left with no choice but to push her away. (Davis Dep. 9:7-9; Williams Dep. 9:27-10:2). Ms. Davis states that Officer Williams pushed her with a baton, while Officer Williams maintains that although she had her baton out, she only touched Ms. Davis with her free hand. (Davis Dep. 8:4-19; Williams Dep. 10:11-11:8).

After her arrest, Ms. Johnson complained of injuries, and the officers promptly transported her to the University of Kansas Medical Center. (Johnson Dep. 16:3-7; IR). While struggling on the floor with Officer Papaspanos, Ms. Johnson had bruised her head and cut herself above her eye. (Emily Johnson Emergency Room Records, dated March 18-19, 2011 (“ER Records”), attached as Ex. 9). Although Ms. Johnson needed a few stitches, a routine CT

scan was normal and only revealed minor swelling. (ER Records; Emily Johnson Radiology Report, dated March 19, 2011, attached as Ex. 8). Ms. Johnson was instructed to take Motrin for pain. (ER Records). Ms. Johnson did not seek any follow-up treatment. (Johnson Dep. 16:14-16).

Ms. Davis claims she visited a doctor as well for a small bruise that was about the size of a coin. (Davis Dep. 10:6-9, 12:6-10). Despite her vivid recollection of the night of March 18, 2011, Ms. Davis can neither remember when nor where she sought medical treatment. (Davis Dep. 10:10-19). Nonetheless, Ms. Davis claims the doctor told her to take hot showers and use over-the-counter pain medication as needed. (Davis Dep. 11:1-7). Ms. Davis also claims to be emotionally injured as a result of the incident, though she has not seen a doctor for this condition. (Davis Dep. 12:19-13:15).

Ms. Johnson was charged with resisting arrest due to her struggle with Officer Papaspanos. (Johnson Dep. 15:13-18). Through counsel, Ms. Johnson negotiated a plea deal in which she pled guilty to theft, and the resisting arrest charge was dropped. (Johnson Dep. 15:7-18). Ms. Davis was fortunate to avoid criminal charges despite her interference with the police. (Williams Dep. 11:22-27). Officer Papaspanos and Officer Williams had no further contact with Ms. Johnson or Ms. Davis and continue to bravely serve the citizens of Kansas City as police officers. (Papaspanos Dep. 2:21-23; Williams Dep. 2:19-21).

ARGUMENT

Officer Papaspanos and Officer Williams are entitled to summary judgment because viewing the evidence in the light most favorable to Ms. Johnson and Ms. Davis, a reasonable trier of fact could not enter judgment for the plaintiffs. Summary judgment is appropriate where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). While the court must consider all evidence in the light most

favorable to the nonmoving party, *Williams v. Weber*, 905 F. Supp. 1502, 1504 (D. Kan. 1995) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986)), Rule 56 mandates summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial,” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Here, even accepting all of the plaintiffs’ factual allegations as true, Officers Papaspanos’s and Williams’s actions cannot be construed as unlawful uses of force under 42 U.S.C. § 1983. Accordingly, Rule 56 requires summary judgment in favor of the defendants.

Officer Papaspanos and Officer Williams used objectively reasonable amounts of force against Ms. Johnson and Ms. Davis, respectively. Ms. Johnson was accused of the severe crimes of domestic violence and theft, posed an immediate danger to the officers when she assaulted Officer Papaspanos, and resisted arrest by shaking her arms, screaming, and attempting to run away. Under the totality of the circumstances, Ms. Davis acted in a threatening manner when she attempted to interfere with Ms. Johnson’s arrest. A claim under 42 U.S.C. § 1983, that law enforcement officers used excessive force during an arrest, is analyzed under the Fourth Amendment and its “reasonableness” standard. *Graham v. Connor*, 490 U.S. 386, 395 (1989). Determining whether the force used is “reasonable” requires a “balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.” *Id.* at 396 (citation omitted). The reasonableness test cannot be precisely defined or mechanically applied. *Id.* Instead, it requires careful attention to the facts and circumstances of the particular case, including (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether she is actively resisting arrest or attempting to evade arrest by flight. *Id.*

Additionally, courts examine “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Id.* at 397. Here, the three *Graham* factors show that Officer Papaspanos used an objectively reasonable amount of force while arresting Ms. Johnson. The crimes at issue – domestic violence and theft – are severe, Ms. Johnson was an immediate danger to the police officers and her four-year-old daughter when she became uncooperative, and Ms. Johnson resisted arrest by shaking her body and fleeing from the living room to the kitchen. Additionally, under the totality of the circumstances, Officer Williams acted appropriately to prevent Ms. Davis from interfering with Ms. Johnson’s arrest, especially because the situation was rapidly deteriorating due to Ms. Johnson’s chaotic resistance. Moreover, the injuries claimed by the plaintiffs – assuming the allegations are truthful – are minor and self-inflicted. Since Ms. Johnson and Ms. Davis cannot establish essential elements of their § 1983 claim, summary judgment must be entered for Officers Papaspanos and Williams.

A. OFFICER PAPANOS USED AN OBJECTIVELY REASONABLE AMOUNT OF FORCE TO ARREST MS. JOHNSON BECAUSE SHE (1) WAS SUSPECTED OF THE SEVERE CRIMES OF DOMESTIC VIOLENCE AND THEFT, (2) POSED A THREAT BY STRIKING AN OFFICER AND POTENTIALLY HAVING A KNIFE, AND (3) RESISTED ARREST BY ATTEMPTING TO FLEE.

Officer Papaspanos’s use of force was objectively reasonable because Ms. Johnson was accused of severe crimes (domestic violence and theft), she presented a threat to the officers and others in the home by reacting violently to the news that she would be arrested, and she resisted arrest by thrashing, screaming, and attempting to flee. A police officer’s actions must be objectively reasonable in light of the facts and circumstances of the situation. *Graham*, 490 U.S. at 397. Although there is no mechanical test to determine the reasonableness of an officer’s actions, factors to consider include (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether the suspect is

actively resisting arrest or attempting to flee. *Id.* at 396. First, the crimes at issue here, domestic violence and theft, are severe because officers must exercise caution to protect themselves while interacting with the accused individual. Second, Ms. Johnson was an immediate danger to not only Officers Papaspanos and Williams, but also to her daughter and grandmother, when she struck Officer Papaspanos in the face and potentially possessed a knife. Third, Ms. Johnson resisted arrest by violently shaking her body and trying to retreat from the living room into the kitchen. Thus, all three *Graham* factors support a finding that Officer Papaspanos's use of force to arrest Ms. Johnson was objectively reasonable under the circumstances.

1. Domestic violence and theft are significant crimes, and Officer Papaspanos used an amount of force to arrest Ms. Johnson that corresponded appropriately to the severity of these offenses.

Officer Papaspanos acted reasonably to detain Ms. Johnson because the two crimes at issue, domestic violence and theft, are both severe due to their potentially violent nature. The severity of the crimes at issue, in conjunction with the surrounding circumstances of the case, should be analyzed to determine if the force used by police was reasonable. *Graham*, 490 U.S. at 396. Crimes often classified as non-severe include minor city ordinance violations and traffic offenses. *See, e.g., Casey v. City of Fed. Heights*, 509 F.3d 1278, 1281 (10th Cir. 2007) (holding that unlawfully removing a court document is a minor offense); *Hull v. Wollmershauser*, No. 07-CV-417-TCK-TLW, 2009 WL 1587333, at *6 (N.D. Okla. June 5, 2009) (finding the crime of walking on the wrong side of the road to be trivial); *Newell v. City of Salina*, 276 F. Supp. 2d 1148, 1153 (D. Kan. 2003) (determining that public drunkenness is not a severe crime).

Police officers responding to a complaint of domestic violence are justified in assuming the crime at issue is severe because they have no way of knowing the dangerousness of the situation prior to arrival. *Huntley v. City of Owasso*, 497 F. App'x 826, 830 (10th Cir. 2012).

Moreover, under Kansas law, domestic battery may be a felony in some circumstances. *See* Kan. Stat. Ann. § 21-5414 (2012). Officers in *Huntley* responded to a 911 call from a woman who reported that there were weapons in her home and that her husband had knocked her down. 497 F. App'x at 828. Moments after arrival, the first officers on the scene found the husband to be a threat, and used a takedown to arrest him. *Id.* Although the husband insisted that he was being cooperative, the court concluded that the officers' use of force was objectively reasonable because the officers were responding to potentially felonious domestic violence. *Id.* at 830.

Here, Officers Papaspanos and Williams responded to Ms. Davis's home due to a 911 call strikingly similar to the one placed in *Huntley*. Like the officers in *Huntley*, who responded to a domestic dispute in which the individuals involved might have access to weapons, Officers Papaspanos and Williams arrived at Ms. Davis's home with the knowledge that two individuals were fighting and possibly armed with knives. Although Mr. Brown had already fled the premises when Officers Papaspanos and Williams entered the home, they would be naïve to quickly let their guard down since the 911 call indicated a possible felony taking place. As in *Huntley*, the officers could not know the precise severity of the situation at the time, and therefore this factor supports Officer Papaspanos's use of a takedown to arrest Ms. Johnson after she reacted violently to the news that there was a warrant out for her arrest.

Additionally, even a non-violent crime may still be considered a severe crime that requires officers to act cautiously. *Henry v. Storey*, 658 F.3d 1235, 1239-40 (10th Cir. 2011). In *Henry*, the plaintiff was driving a vehicle that had been erroneously reported stolen. *Id.* at 1238. Police officers who stopped the vehicle ordered the plaintiff out at gunpoint, and after determining that the vehicle was not actually stolen, released the plaintiff. *Id.* The plaintiff brought an excessive force claim against the police officers, which suggested that officers should

only aim their weapons at the occupants of a reportedly stolen vehicle when the officers have reason to believe that the vehicle was stolen by force or violence. *Id.* at 1239-40. The court rejected this notion, holding that the officers were justified in drawing their firearms. *Id.* at 1239. The court noted that the “mere fact that a vehicle was stolen by non-violent means does not obviate officers’ need to proceed with caution.” *Id.* at 1240.

Here, in addition to knowing that Ms. Johnson had just been involved in a violent domestic dispute, Officer Papaspanos also learned that Ms. Johnson was accused of stealing up to \$1,000 of property. (Papaspanos Dep. 6:21-7:5). Officer Papaspanos had no way of knowing the circumstances surrounding the theft. Like the police officers in *Henry*, who had reason to proceed with caution when approaching the driver of a reportedly stolen vehicle, Officer Papaspanos would understandably want to exercise caution while arresting Ms. Johnson, who was not only suspected of being armed with a knife, but was also now accused of stealing up to \$1,000. While auto theft is more severe than the theft at issue here, Officer Papaspanos’s force was reduced accordingly. Unlike the officers in *Henry*, who detained the suspect at gunpoint, Officer Papaspanos did not draw a weapon.

The plaintiffs may argue (1) that Ms. Johnson was the victim of domestic violence, not the perpetrator, and (2) that the theft at issue here is not severe because it was classified as a misdemeanor. First, Ms. Davis stated in her 911 call that both Ms. Johnson and Mr. Brown were engaged in fighting. (911 Tr.). Ms. Davis also told the dispatcher that “someone has a knife.” (911 Tr.). Thus, Officers Papaspanos and Williams would have reason to consider Ms. Johnson a suspect for potentially felonious domestic violence upon arriving at the house. Second, there is no bright line rule to support the contention that all misdemeanors are not severe. While many misdemeanors are minor, such as mere traffic offenses, Ms. Johnson was suspected of both

domestic violence and theft. Officer Papaspanos used an objectively reasonable amount of force considering the crimes at issue. Accordingly, this factor weighs against a finding that Officer Papaspanos used excessive force.

2. Ms. Johnson posed an immediate threat to the safety of the officers because there was reason to believe a knife was in the vicinity and Ms. Johnson struck Officer Papaspanos in the face.

Ms. Johnson was an immediate danger to the police officers, her daughter, and her grandmother due to her violent response to Officer Papaspanos's attempt to arrest her. A suspect who poses a danger to police officers and others is subject to an increased amount of force. *Graham*, 490 U.S. at 396. Whether the officers were in danger at the precise moment that they used force is essential in determining whether it was excessive. *Thomas v. Salt Lake Cnty.*, 584 F.3d 1304, 1314 (10th Cir. 2009) (citation omitted). In other words, "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396.

A police officer who has a reasonable, albeit mistaken, belief that a suspect is dangerous may be justified in using more force than was actually necessary. *Cavanaugh v. Woods Cross City*, 718 F.3d 1244, 1249 (10th Cir. 2013). In *Cavanaugh*, police officers were dispatched to the home of a suicidal person possibly possessing a knife. *Id.* at 1247. When a police officer spotted the individual outside the home, she disobeyed orders and attempted to flee into the house. *Id.* The police officer responded by firing his taser at her back, causing her to fall down and strike her head on a concrete step, which resulted in severe bleeding and pressure on her brain that required surgical intervention. *Id.* at 1248. Nonetheless, the court concluded that the officer was justified in using some level of force because the suspect ignored his commands, may have possessed a knife, and was entering an area where she could endanger others. *Id.* at 1252.

Here, Ms. Johnson posed an immediate threat to the officers and others in the home because she responded violently when Officer Papaspanos informed her that she would be arrested. Ms. Johnson's actions were more dangerous than those of the suspect in *Cavanaugh* because while both individuals disobeyed police orders, were thought to possess a knife, and attempted to flee to an area where other people were present, Ms. Johnson also struck an officer in the face during her arrest. Therefore, like the police officer in *Cavanaugh*, who was justified in tasing the suspect in response to her resistance, Officer Papaspanos was certainly justified in using an even less intrusive type of force in the form of a takedown after he was hit in the face. Moreover, despite the fact that the suspect in *Cavanaugh* sustained serious brain injuries from the fall, the court declined to reverse a judgment in favor of the defendant police officers. Here, not only was Officer Papaspanos's use of force minor in comparison to the officer's use of force in *Cavanaugh*, but also Ms. Johnson's injuries are negligible in comparison to those received by the suspect in *Cavanaugh*, making a finding of excessive force in this case inconceivable.

Ms. Johnson argues that she was not a threat to the police officers, but instead was not dressed to go outside and did not want to leave her daughter alone. Unfortunately, Officer Papaspanos was unable to respond to these concerns because Ms. Johnson rapidly entered a violent, emotional state. Instead of calmly requesting to change her clothes or make alternate arrangements for her daughter, Ms. Johnson admits that she "wanted to get out of there" and "start[ed] backing away from the officers." (Johnson Dep. 13:8-14:10). Ms. Johnson further concedes that Officer Papaspanos did not reach for her wrist until after she turned to walk away from the police. (Johnson Dep. 13:8-14:10). Since Officer Papaspanos only used force after Ms. Johnson began to flee to the kitchen and possibly retrieve a knife, his actions were not excessive. Ms. Johnson created a dangerous situation when she violently protested her arrest and struck

Officer Papaspanos. Since she posed an immediate threat, especially considering the expectation of a knife being readily available, this factor fails to establish any evidence of excessive force.

3. Ms. Johnson resisted arrest by retreating into her home, striking Officer Papaspanos in the face, yelling, screaming, and violently shaking her body.

Officer Papaspanos used a reasonable amount of force to arrest Ms. Johnson because she resisted by flailing her arms, shaking her body, screaming, striking Officer Papaspanos in the face, and attempting to flee from the living room to the kitchen. When a suspect is actively resisting arrest or making an attempt to flee, officers are justified in using an increased amount of force. *Graham*, 490 U.S. at 396. Indeed, the Fourth Amendment recognizes the right of police officers to use the requisite amount of force or physical coercion needed to complete an arrest. *Hinton v. City of Elwood, Kan.*, 997 F.2d 774, 781 (10th Cir. 1993) (citation omitted).

An officer's use of force to restrain a suspect, even if not the least intrusive choice he could have made, is reasonable in response to a suspect's escalating opposition. *Giannetti v. City of Stillwater*, 216 F. App'x 756, 766 (10th Cir. 2007). The police officers in *Giannetti* required a suspect to change into a prison jumpsuit after her arrest when they became suspicious that she was under the influence of drugs and posed a danger to herself or others. *Id.* at 759-60. During the changing process, the suspect actively resisted by kicking, thrashing at officers, and striking an officer in the jaw. *Id.* The suspect lost consciousness during the incident and died a short time later due to suffocation caused by being forcibly restrained in a vulnerable position. *Id.* at 761. Despite the suspect's death, the court still found the officers' actions objectively reasonable due to the grave danger posed by the suspect. *Id.* at 767. The court noted that in retrospect, a less severe form of force might have been appropriate, but at the time the officers "had to accommodate a rapidly deteriorating situation." *Id.*

Here, Ms. Johnson resisted arrest by shaking her body and arms in an attempt to escape from Officer Papaspanos. Since the officers in *Giannetti* were justified in using so much force that it killed the suspect, Officer Papaspanos must have been justified in simply taking Ms. Johnson to the ground after she hit him in the face and attempted to flee. Moreover, at five feet, ten inches tall, and 200 pounds, Ms. Johnson is a formidable individual who Officer Papaspanos feared had a knife. Like the officers in *Giannetti*, Officer Papaspanos had to make a quick decision in response to an increasingly dangerous situation. While it is easy to argue that, in hindsight, Officer Papaspanos could have chosen a different method to detain Ms. Johnson, officers involved in a dangerous encounter do not have the luxury of such perfect information.

Additionally, force is not excessive under the Fourth Amendment if it is reasonably used to prevent a suspect from running away or evading capture. *Casey*, 509 F.3d at 1282. In *Casey*, a police officer's use of force was found to be excessive because the officer tackled a non-threatening suspect, who was not attempting to flee, without first telling the individual that he was under arrest or ordering him to stop. *Id.* at 1280. Other officers who arrived on the scene tasered the suspect, handcuffed him tightly, and repeatedly banged his head into the ground. *Id.*

Here, Officer Papaspanos advised Ms. Johnson that she was under arrest, she reacted violently, and Officer Papaspanos responded with the least intrusive force possible in light Ms. Johnson's significant resistance. Unlike the police officer in *Casey*, who never told the suspect that he was being arrested, Officer Papaspanos clearly told Ms. Johnson that she was under arrest. Moreover, unlike the peaceful suspect in *Casey*, Ms. Johnson reacted to her arrest by screaming, hitting a police officer, and trying to escape. Despite Ms. Johnson's disturbing actions, Officer Papaspanos refrained from drawing a weapon, and merely took Ms. Johnson to the ground in order to protect his safety and to stop Ms. Johnson from fleeing. Furthermore,

unlike the officers in *Casey*, who assaulted the suspect by repeatedly banging his head into the concrete, Officer Papaspanos remained composed and handcuffed Ms. Johnson as quickly as possible, which took an additional minute because Ms. Johnson continued to actively resist.

Ms. Johnson argues that Officer Papaspanos's force was excessive because she sustained a cut above her eye and slightly injured her head during the scuffle. However, these minor injuries were the direct result of her active resistance. Under *Giannetti*, Officer Papaspanos's use of force would not be excessive even if it resulted in much more serious injuries or death. Like the suspect in *Giannetti*, Ms. Johnson flailed her arms and struck an officer in the face. Officer Papaspanos acted professionally and admirably in response to such grave danger and provocation. Officer Papaspanos only used force after Ms. Johnson started to flee and resist arrest. He used a minimal amount of force to subdue Ms. Johnson even though he was faced with an increasingly threatening situation. Moreover, the injuries Ms. Johnson received were minor and the direct result of her continued resistance once on the floor. Accordingly, this factor does not support Ms. Johnson's claim that Officer Papaspanos used an excessive amount of force during her arrest.

* * *

Ms. Johnson was suspected of severe crimes, posed an immediate threat to the safety of police officers and others, and resisted arrest. In light of these factors, Officer Papaspanos's use of a takedown to arrest Ms. Johnson was objectively reasonable. Officer Papaspanos acted with the knowledge that Ms. Johnson was accused of dangerous crimes, potentially possessed a knife, and was attempting to flee into the house where she could cause further harm. Since Ms. Johnson posed a grave danger to Officer Papaspanos, such that all three *Graham* factors support his use of force, Ms. Johnson's § 1983 claim fails.

B. OFFICER WILLIAMS’S USE OF FORCE WAS OBJECTIVELY REASONABLE UNDER THE TOTALITY OF THE CIRCUMSTANCES BECAUSE MS. DAVIS ATTEMPTED TO INTERFERE WITH AN ARREST AND POSED AN IMMEDIATE THREAT TO THE OFFICERS.

Officer Williams used an objectively reasonable amount of force on Ms. Davis under the totality of the circumstances because as Ms. Davis attempted to interfere with Ms. Johnson’s arrest, Officer Williams merely pushed Ms. Davis away and caused her no real harm. A rapidly developing situation, which exposes police officers to danger, renders force objectively reasonable under the totality of the circumstances. *McNeil v. Anderson*, 258 F. App’x 205, 208 (10th Cir. 2007). Moreover, “[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,” is indicative of excessive force. *Graham*, 490 U.S. at 396 (quotation omitted).

Obstructing the legal process by interfering with the police is a crime under Kansas law, and individuals who engage in such behavior are subject to arrest. *Demster v. City of Lenexa, Kan.*, 359 F. Supp. 2d 1182, 1186 (D. Kan. 2005). In *Demster*, police officers responded to a residence due to a reported disturbance. *Id.* at 1184. At the scene, officers arresting a suspect were yelled at and approached by the suspect’s wife and daughter, who believed that the police were assaulting their loved one. *Id.* Other officers grabbed and restrained the wife and daughter to prevent them from interfering with the arrest. *Id.* In dismissing § 1983 claims brought by the wife and daughter after they were arrested for obstructing the legal process, the court found that the plaintiffs knowingly attempted to interfere with police officers and were therefore subject to arrest and criminal charges. *Id.* at 1186.

Here, as Officer Papaspanos struggled with Ms. Johnson, Ms. Davis attempted to interfere with the arrest. Like the plaintiffs in *Demster*, who screamed at officers and then approached them during an arrest, Ms. Davis yelled at Officer Papaspanos and tried to get close

to him. Ms. Davis candidly admits that she “started yelling” at Officer Papaspanos while he was arresting Ms. Johnson. (Davis Dep. 7:9-18). Ms. Davis further concedes that she “started to go over to them,” and it was not until this point that Officer Williams stopped her. (Davis Dep. 7:19-8:19). Indeed, Ms. Davis was within four feet of Officer Papaspanos when Officer Williams intervened. (Davis Dep. 9:7-9). Officer Williams maintains that she pushed Ms. Davis away with her hand, while Ms. Davis alleges that Officer Williams used a baton. (Williams Dep. 11:3-5; Davis Dep. 8:4-19). Even assuming that Officer Williams did use her baton, this was not an excessive use of force because Ms. Davis’s actions of screaming and approaching the officers were a violation of Kansas law and posed an immediate threat to the officers. Officer Williams decided to merely push Ms. Davis toward a wall, even though an arrest for obstruction would have been reasonable. Since the officers in *Demster* were justified in grabbing, restraining, and ultimately arresting individuals for yelling at and approaching officers completing an arrest, Officer Williams must have been justified in simply pushing Ms. Davis away.

Moreover, “a claim of excessive force requires some actual injury that is not de minimis, be it physical or emotional.” *Cortez v. McCauley*, 478 F.3d 1108, 1129 (10th Cir. 2007). For example, a police officer’s use of a baton is not excessive if her safety is threatened, the force is applied briefly, and the suspect only sustains minor bruising. *Winship v. Lumpkin*, 166 F.3d 1223, 1999 WL 13046, at *3 (10th Cir. Jan. 14, 1999). *See also Pride v. Does*, 997 F.2d 712, 714-17 (10th Cir. 1993) (holding that a police officer’s use of force was objectively reasonable even though it caused bruising and psychological distress). In *Cortez*, police officers responded to a home to investigate a report of child abuse. 478 F.3d at 1112-13. During their investigation, the officers grabbed the homeowner by the arm, handcuffed him, placed him in the back of a police car, and ignored his complaints that the handcuffs were too tight. *Id.* at 1126. Although the

handcuffs left red marks on the suspect's wrists for several days, the court had "little difficulty" concluding that grabbing the suspect and placing him in a police car is permissible under the Fourth Amendment. *Id.* at 1128. Additionally, the court found a lack of evidence supporting a claim of excessive force in the summary judgment record. *Id.* at 1129.

Like the plaintiff in *Cortez*, whose excessive force claim based on minor injuries was dismissed, Ms. Davis's § 1983 claim based on arm pain, slight bruising, and emotional distress should be dismissed as well. As in *Cortez*, there is a lack of evidence here supporting an excessive force claim. First, Ms. Davis states that she remembers neither when nor where she sought medical treatment. (Davis Dep. 10:10-19). Ms. Davis also has not seen a doctor for her alleged emotional injuries. (Davis Dep. 13:6-15). These issues leave a gaping hole in the summary judgment record. Second, even if Ms. Davis did see a doctor, the injuries here are very minor. Although Ms. Davis describes the pain as severe, she also says that a doctor told her that hot showers and aspirin would be an effective treatment. (Davis Dep. 11:1-5). However, upon a follow-up question from defendants' counsel during her deposition, Ms. Davis then contradicted herself and said that the doctor recommended Tylenol. (Davis Dep. 11:6-7). Finally, Ms. Davis claims that her emotional injuries caused by the incident have resulted in "horrible nightmares" where she is attacked by a police officer. (Davis Dep. 12:19-13:15). However, Ms. Davis's testimony, where she states, "you never know with the police . . . [t]hey will kill you, they will shoot you and they don't care," indicates that she suffered from this emotional condition before March 18, 2011. (Davis Dep. 7:9-18). Thus, Ms. Davis's alleged emotional injuries were not caused by the actions of Officers Papaspanos and Williams on March 18, 2011; instead, they are the result of preexisting irrational beliefs. Given Ms. Davis's contradictory testimony, a lack of medical evidence to support her alleged pain, and injuries that in the light most favorable to the

plaintiff consist of only minor bruising and emotional harm, there is no support for the claim that Officer Williams used excessive force against Ms. Davis.

Finally, physical contact is inherent in police work, and a jury need not decide whether such contact was reasonable in every situation. *Friedman v. Jensen*, 940 F.2d 1538, 1991 WL 151790, at *4 (10th Cir. Aug. 9, 1991). “Such a rule would paralyze law enforcement and be a virtual abdication of the court’s duties to cut off litigation on motions for summary judgment in proper cases.” *Id.* In *Friedman*, a man over the age of 80 attempted to interfere with a sheriff’s deputy who was seizing evidence pursuant to a warrant. *Id.* at *2. The deputy elbowed the elderly man in the chest to push him away. *Id.* Although the force was strong enough to propel the man backwards and cause his knees to buckle, the court dismissed the man’s excessive force claim at the summary judgment stage. *Id.* The court found the following persuasive: the plaintiff did not complain of injury or seek medical assistance at the time, the deputy did not touch the plaintiff more than once, and the plaintiff initiated the confrontation by approaching the deputy and trying to interfere with police business. *Id.*

This case is indistinguishable from *Friedman*. Like the plaintiff in *Friedman*, Ms. Davis attempted to interfere with police work and did not promptly seek medical treatment for her alleged injuries. Like the deputy in *Friedman*, Officer Williams made contact with the plaintiff only one time and did so to prevent an obstruction of the legal process. Since an elbow to the chest that thrusts an elderly man across the room is a greater use of force than a single baton push, summary judgment for the defendants can easily be granted here as it was in *Friedman*.

Finding Officer Williams’s actions to be excessive would jeopardize the safety and well-being of law enforcement officers because Officer Williams physically could not have used a lesser amount of force to ensure the safety of herself and her partner. If a police officer cannot

simply push an individual approaching in a menacing manner, what can she do to deflect an incoming threat? Here, even assuming that Officer Williams used a baton, the force was used very briefly, in response to an immediate threat, and caused minimal injuries. Accordingly, Officer Williams's actions were objectively reasonable under the totality of the circumstances.

CONCLUSION

Summary judgment should be granted for Officer Papaspanos and Officer Williams because, viewing the evidence in the light most favorable to Ms. Johnson and Ms. Davis, the officers used objectively reasonable amounts of force. Ms. Johnson was suspected of severe crimes, including domestic violence and theft. Also, Ms. Johnson posed a threat to Officers Papaspanos and Williams because she hit Officer Papaspanos in the face and the officers had reason to believe she possessed a knife. Furthermore, Ms. Johnson resisted arrest by shaking her arms, screaming, and trying to retreat into the house. Finally, under the totality of the circumstances, Ms. Davis acted in a threatening manner by screaming at Officer Papaspanos and moving toward him in an attempt to interfere with Ms. Johnson's arrest. In light of Ms. Johnson's and Ms. Davis's dangerous actions, Officer Papaspanos's use of a takedown on Ms. Johnson and Officer Williams's push of Ms. Davis were objectively reasonable uses of force. Even accepting all of the plaintiffs' factual allegations as true, Officer Papaspanos and Officer Williams are entitled to summary judgment as a matter of law.

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment of Defendants John Papaspanos and Jill Williams was served this day via email to counsel for plaintiffs at the following address:

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