

**IN THE COURT OF APPEALS  
STATE OF GEORGIA**

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**CASE NUMBER A23A0741**

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**KAREN DELOACH COLLINS,  
As Personal Representative of the Estate of  
BENNY DELOACH, former Sheriff of Appling County, Deceased,  
Appellant (Defendant)**

**v.**

**MATTHEW SCHANTZ,  
Appellee (Plaintiff)**

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**Appeal from the Superior Court for the County of Appling, State of Georgia  
Civil Action No. SUC2021000280  
The Honorable Stephen D. Kelley, Presiding**

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**BRIEF OF APPELLANT**

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## **I. INTRODUCTION**

This case arises as the result of the shooting of Plaintiff Matthew Schantz by Benny DeLoach, the former Sheriff of Appling County, Georgia. The shooting occurred after Schantz led officers on a high speed chase from Appling County into Wayne County and as he returned towards Appling County. Plaintiff originally brought suit against DeLoach in the U.S. District Court for the Southern District of Georgia, alleging claims under 42 U.S.C. §1983, as well as Georgia law. (V2-66).

Following discovery, Defendant DeLoach moved for Summary Judgment on all claims in Plaintiff's Complaint on November 14, 2018. Following a hearing on the Motion for Summary Judgment on February 19, 2019 and supplemental briefing by the parties, the District Court, on February 4, 2020, granted Defendant's Motion for Summary Judgment on Plaintiff's federal claims and declined to exercise supplemental jurisdiction over the state law claims, dismissing them without prejudice. (V2-60-85). Plaintiff filed a Notice of Appeal to the Eleventh Circuit Court of Appeals which issued an opinion on October 26, 2021 affirming the District Court in its entirety. (V2-87-121).

Following the decision by the Eleventh Circuit, Plaintiff filed the present case against the Personal Representative of the Estate of Sheriff Benny DeLoach, who died

on August 10, 2020, while the case was pending in the Court of Appeals. (V2-14-22). Plaintiff makes claims for battery, negligence, and for violations of the Georgia Constitution. (V2-14-22, ¶¶ 17-23).

On July 26, 2022, Defendant moved for Summary Judgment on all claims in Plaintiff's Complaint raising the defense of official immunity. (V2-50-56). Defendant also argued that the Georgia Constitution does not have a corollary to 42 U.S.C. § 1983 which would allow a claim for damages for violations of the Georgia Constitution. (V2-50).

On October 25, 2022, the Court issued an Order denying Defendant's Motion for Summary Judgment. (V2-4-13). The Court rejected Defendant's official immunity defense, and also held that Plaintiff could pursue his constitutional claim for damages. *Id.* On October 31, 2022, the trial court issued a Certificate of Immediate Review. (V2-1043).

The key issues on appeal are whether Defendant was entitled to official immunity, based on *Kidd v. Coates*, 271 Ga. 33 (1999) and other relevant authority. Defendant contends that he was entitled to official immunity, given the undisputed fact that he was in fear for his own safety and the safety of others at the time he discharged his weapon. In addition, the Court erred in holding that Plaintiff had a



right to bring a private cause of action for damages under the Georgia Constitution. *See Howard v. Miller*, 222 Ga. App. 868 (1996).

## **II. Jurisdictional Statement**

This case is properly before this Court because the “Court of Appeals shall be a court of review and shall exercise appellate and certiorari jurisdiction in all cases not reserved to the Supreme Court or conferred on other courts by law.” Georgia Constitution Art. 6, § 5, Para. 3. Further, this case is not one exclusively reserved to the Supreme Court.

As allowed by O.C.G.A. § 5-6-34(b), Honorable Stephen D. Kelley signed a certificate of immediate review which was entered within 10 days of the order to be appealed. (V2-1043). File-stamped copies of the Order and Certificate were attached to the application for interlocutory appeal. Defendant timely filed her application within the statutory ten-day period after the certificate was entered. This Court granted the application. (V2-1044). Defendant timely filed a notice of appeal thereby preserving the issues for review by this Court. (V2-1-3).

### **III. Enumerations of Error**

- 1) The trial court erred in holding that Sheriff Benny Deloach was not entitled to official immunity when he shot at a fleeing felon who had led police officers on a high speed chase through two counties at speeds in excess of 100 mph and had endangered the safety of law enforcement officers and other travelers on the road, when the undisputed evidence shows that Sheriff Deloach was in fear for his own safety and the safety of others when Plaintiff attempted to flee again after stopping temporarily.
- 2) The trial court erred in holding that Georgia law provides a cause of action for damages for a violation of the Georgia Constitution.

### **IV. Statement of the Case**

#### **1. Statement of Facts**

On Friday, June 17, 2016, Plaintiff Matthew Schantz left Perry, Georgia to travel to St. Simons Island, Georgia. (V2-216). Prior to leaving at approximately 11:00 a.m., Mr. Schantz smoked marijuana. *Id.* In addition to smoking marijuana prior to leaving, he had marijuana on his person as he made the trip. *Id.* at 217. He was traveling on a 2004 750 GSX-R motorcycle which he had purchased three or four

days prior. *Id.* at 228, 293. In order to get to St. Simons from Perry, Plaintiff Matthew Schantz traveled down US Highway 341, commonly known as the Golden Isles Parkway. (V2-217-220).

As he traveled through Appling County, Georgia, Matthew Schantz noticed an officer pass him and make a U-turn in order to follow him. (V2-224-225). Mr. Schantz stated that the officer followed him “for probably a mile or two and then put on the blinker, got in the other lane and got behind [him], and that’s when [the officer] hit his blue lights.” *Id.* at 225. Mr. Schantz decided that he “just want[ed] to go to the beach with [his] mom, and [he didn’t] want to go to jail.” *Id.* at 231. Based on this thought, Mr. Schantz decided to take off from the officer. *Id.* at 233. Mr. Schantz did not have a tag on his motorcycle because he had just bought it a few days prior, but knew he had not made any other traffic violation at the time the officer attempted to pull him over. *Id.* at 226. Mr. Schantz testified that he thought the best way to go to the beach with his mother and avoid going to jail was to take off from the officer s and try to get to the beach. *Id.* at 231. However, Mr. Schantz testified to having marijuana on him at the time, and that is why he did not stop. *Id.* at 227-



228.<sup>1</sup> After Mr. Schantz took off from the officer, he was pursued by the officer. *Id.* at 233.

After Mr. Schantz pulled away, he testified that officers started attempting to pull in front of him to get him to stop, but he swerved around them. *Id.* Even with all these officers attempting to get Mr. Schantz to stop, Mr. Schantz chose to continue to try to evade police. *Id.* at 234. Mr. Schantz testified that once he got out of town he “sped up” from the speed he was going in town trying to evade officers. *Id.* at 233. In his deposition, Mr. Schantz specifically admitted that when he did not stop he was trying to elude the officers attempting to stop him. *Id.* at 243-244. Once Mr. Schantz was out of Baxley, Georgia, he remembered turning around and about four officers being behind him in pursuit of him. *Id.* at 245. It is Mr. Schantz’ testimony that he then took off and left the officers behind him because they could not keep up with him. *Id.* at 250. The objective of Mr. Schantz at that time was to go faster than the officers, and to get away. *Id.*

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<sup>1</sup> Mr. Schantz stated in his deposition that he has been charged with no tag and fleeing with intent to elude before this incident and spent a day or two in jail on that charge, and additionally, that he had ran from cops on foot in April 2016 in Cobb County trying to avoid being caught with marijuana. (V2-175, 194). Therefore, Mr. Schantz has a prior history of running from the cops, and knows that the situation only escalates if you do not stop.

Lt. Robert Eunice of the Appling County Sheriff's Office was on duty on the afternoon of Friday, June 17, 2016 and was in the Appling County Sheriff's Office monitoring radio traffic. (V2-308, ¶¶1-3). Lt. Eunice became aware that there was a chase in progress involving the blue and white motorcycle driven by Mr. Schantz. *Id.* at 308, ¶¶ 4, 5. Lt. Eunice joined the chase and became the lead pursuit vehicle as Schantz passed Rayonier on US Highway 341. *Id.* at 309, ¶ 6. Lt. Eunice recalls the chase involving Matthew Schantz reaching speeds well in excess of 100 mph. *Id.* at 309, ¶ 7. The chase was eventually discontinued once Schantz was no longer visible to the pursuing officers.

Captain Kenny Poppell of the Wayne County Sheriff's Office stated that on Friday, June 17, 2016, he got a call that a chase was coming out of Appling County, Georgia, and that the person being chased was on a motorcycle. (V2-353). Captain Poppell was in his unmarked vehicle headed towards Odum, Georgia when he heard about the chase, and not long after getting the call he saw a single headlight coming towards him. *Id.* at 354. Upon determining the speed of the motorcycle to be going extremely fast, Captain Poppell decided to turn around and drive in the same direction of the motorcycle in order to discern any markings or distinguishing facts about the motorcycle. *Id.* Captain Poppell had his speed up to 90 miles per hour when Mr. Schantz caught up to him on the motorcycle, and was able to get a description of Mr.



Schantz as Mr. Schantz passed Captain Poppell. *Id.* At this time, Captain Poppell also observed Mr. Schantz going “in and out of traffic.” *Id.* Additionally, Captain Poppell noted that Mr. Schantz was “laid down across fuel tank” because he “was just going fast at the time.” *Id.* at 356. When Mr. Schantz got to where Sunset Boulevard intersects U.S. Highway 341 he observed Mr. Schantz perform a U-turn and accelerated onto his back wheel only, and passed Captain Poppell on his back wheel only going back northbound on U.S. Highway 341. *Id.* Captain Poppell lost visual contact with Mr. Schantz when he rounded a curve and went down Tank Plant Road, so, Captain Poppell continued on to Odum to sit and see if Mr. Schantz came through Odum. *Id.* at 357. Captain Poppell then observed Mr. Schantz turn left onto Railroad Avenue from Tillman Street and accelerate on to his rear wheel again, which is how Mr. Schantz crossed two large speed bumps as well. *Id.* at 358. Mr. Schantz next was observed traveling over the railroad tracks and turning northbound toward Appling County. *Id.* at 358-359. Once Mr. Schantz was again going northbound towards Appling County, Mr. Schantz crossed into the southbound lane traveling northbound in order to pass marked law enforcement vehicles and had to perform racing maneuvers to avoid colliding with oncoming traffic. *Id.* at 359. During this chase, Sheriff DeLoach was listening to Appling County and Wayne County radio traffic, and was aware of the reckless maneuvers Mr. Schantz was doing, presenting an

immediate threat of serious harm not only to himself and officers, but also to all the innocent lives on those roads during that time. (V2-479, ¶¶ 18, 20.)

This pursuit ended when Mr. Schantz came to the intersection of U.S. Highway 341 and Brentwood Road/Shed Highway where Sheriff Deloach and Lieutenant Eunice were positioned on opposite sides and lanes. (V2-372-374). When Lieutenant Eunice heard Mr. Schantz approaching him and Sheriff Deloach he cranked up his truck and turned his lights on. *Id.* at 372. As Mr. Schantz approached, Lieutenant Eunice observed Mr. Schantz speeding up, so Lieutenant Eunice pulled his truck off the road and Mr. Schantz “zigzagged around” him. *Id.* at 372-373; (V2-255). At this point, Lieutenant Eunice backed up his truck into the westbound lane and began to initiate chasing Mr. Schantz, however, Mr. Schantz started sliding on the motorcycle and slid to a stop. (V2-373). While stopped, Mr. Schantz threw his hands in the air, then immediately went back to the throttle and the motorcycle jumped to go in Sheriff Deloach’s direction. *Id.* at 374. Lieutenant Eunice heard a shot after the motorcycle jumped and went in the direction of the sheriff, then he observed Mr. Schantz turn and ride until he loses control of the bike and lays it to rest. *Id.* at 376.

Sheriff Deloach was standing in front of his car when Mr. Schantz came to a stop after zigzagging around Lieutenant Eunice. (V2-432). Sheriff Deloach was aware of Mr. Schantz’ prior reckless driving, speeding and evasive maneuvers. (V2-



478, ¶ 9). Sheriff Deloach stated that he fired a warning shot into the air, which was right before Mr. Schantz stopped his motorcycle and put his hands up. (V2-435, 446). Mr. Schantz stated that he only put up his right hand at this time and kept his left hand on the clutch. (V2-260). Mr. Schantz headed towards Sheriff Deloach on the motorcycle when he put his hands back down on the throttle. (V2-447-449). Sheriff Deloach did not have time to say anything to Mr. Schantz between the time of the first warning shot and when Mr. Schantz lurched towards him on the motorcycle and Sheriff Deloach shot a second time. *Id.* at 447. When Sheriff Deloach fired the second shot, as Mr. Schantz accelerated towards him, Sheriff Deloach was trying to prevent injury to himself, other officers, and the general public. (V2-479, ¶¶ 18, 20). Sheriff Deloach meant no harm to Mr. Schantz and was only trying to stop him from injuring the Sheriff or others. *Id.* Sheriff Deloach stated that he did not know he had hit Mr. Schantz right away. (V2-448). Not long after Sheriff Deloach shot the second shot, Mr. Schantz laid his bike down and began running towards the woods. *Id.* at 451-453. Lieutenant Eunice told Mr. Schantz to stop and come to him after Mr. Schantz began running. *Id.* at 453; (V2-379-380). Mr. Schantz complied with Lieutenant Eunice's command at this point. (V2-457; V2-379-380).

Mr. Schantz agreed in his deposition that had he stopped when the officer originally attempted to pull him over then none of this would have happened. (V2-



225-226). Moreover, Mr. Schantz admitted to knowing that he did not heed the officers' clear mandate to stop when he knew that they wanted him to stop from the time Deputy Sullivan attempted to pull him over. *Id.* at 272. Additionally, Mr. Schantz' own expert agreed that any vehicle, including a motorcycle, traveling in excess of a hundred miles an hour, as Mr. Schantz was reported by different law enforcement officers to have been doing during this chase, is a potential threat to motorists on the road. (V2-520, 525) Further, Mr. Schantz' expert cannot say what direction Mr. Schantz was pointed when he accelerated after he stopped in front of Sheriff DeLoach. *Id.* at 549. Mr. Schantz ignored the officers' commands at every turn. He willfully fled, and he did not stop until he was shot. During the course of eluding the police, he drove recklessly – running other vehicles off the road, zigzagging around police, crossing the center line, running red lights, and reaching speeds over 100 mph. (V2-478, ¶ 9). He put Sheriff DeLoach in fear of being hit by his motorcycle due to his erratic driving and hitting the throttle while having his motorcycle pointed directly at Sheriff DeLoach. (V2-479, ¶¶ 18, 20). Even when Sheriff DeLoach fired the warning shot Mr. Schantz never exited his motorcycle or turned the engine off. To the contrary, seconds after Sheriff DeLoach shot the warning shot, Mr. Schantz put his hand back on the throttle and started his motorcycle

towards Sheriff DeLoach while Sheriff DeLoach had the shotgun in his hand. (V2-259).

## **2. Proceedings below**

Plaintiff filed the present case against the Personal Representative of the Estate of Sheriff Benny DeLoach, who died on August 10, 2020, while the case was pending in the Eleventh Circuit Court of Appeals. (V2-14-22). Plaintiff makes claims for battery, negligence, and for violations of the Georgia Constitution. (V2-14-22, ¶¶ 17-23).

On July 26, 2022, Defendant moved for Summary Judgment on all claims in Plaintiff's Complaint raising the defense of official immunity. (V2-50-56). Defendant also argued that the Georgia Constitution does not have a corollary to 42 U.S.C. § 1983 which would allow a claim for damages for violations of the Georgia Constitution. (V2-50).

On October 25, 2022, the Court issued an Order denying Defendant's Motion for Summary Judgment. (V2-4-13). The Court rejected Defendant's official immunity defense, and also held that Plaintiff could pursue his constitutional claim for damages. *Id.* On October 31, 2022, the trial court issued a Certificate of Immediate Review. (V2-1043).

File-stamped copies of the Order and Certificate were attached to the application for interlocutory appeal. Defendant timely filed the application within the

statutory ten-day period after the certificate was entered. This Court granted the application. (V2-1044). Defendant timely filed a notice of appeal thereby preserving the issues for review by this Court. (V2-1-3).

## V. Argument and Citation of Authorities

### A. *Standard of Review*

This appeal concerns whether the trial court erred by denying summary judgment, which is subject to de novo review.<sup>2</sup>

### B. *Argument*

1. *The trial court committed reversible error in holding that former Appling County Sheriff Benny Deloach was not entitled to official immunity.*

Official immunity generally provides county and state officers with immunity from certain state claims that may be brought against them. Ga. Const., Article I, § 2, ¶IX. More particularly, if a state claim arises out of the official's performance of a discretionary (as opposed to ministerial) function, then the official is immune from suit unless the plaintiff can show that the official performed the discretionary act with actual malice or an intent to injure. *Gilbert v. Richardson*, 264 Ga. 744, 753 (1994);

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<sup>2</sup>*Gen. Elec. Capital v. Gwinnett*, 240 Ga. App. 629, 630 (1999).



*Morgan v. Barnes*, 221 Ga. App. 653 (1996); *Williams v. Soloman*, 242 Ga. App. 807, 808 (2000). It is undisputed in this case that Sheriff Deloach was performing a discretionary act. (V2-11). Whether a government official is entitled to official immunity is a question of law. *Todd v. Brooks*, 292 Ga. App. 329 (2008).

Moreover, courts may no longer examine whether a Defendant acted with implied malice or a “reckless disregard for human life.” *Id.* at 392. Therefore, Sheriff Deloach is not liable in tort unless there is evidence that he performed the acts alleged “with actual malice or with actual intent to cause injury in the performance of [his] official functions.” *Kidd v. Coates*, 271 Ga. 33 (1999). Under the holding in *Kidd* it is not enough for Schantz to show that Sheriff Deloach intended to do the specific acts complained of; rather, he must show that Sheriff Deloach *acted intentionally to cause harm*. *Id.* at 33-34. “This definition of intent contains aspect of malice, perhaps a wicked or evil motive.” *Kidd v. Coates*, 271 Ga. 33, 34 (1999).

In deciding the issue of official immunity, the trial court held that “in a police shooting, official immunity is *not* available if the officer acted ‘intentionally and without justification.’” (V2-12). The Court further held that if Deloach shot Schantz intentionally and without justification, he acted solely with the tortious “actual intent to cause injury.” *Id.* at 12. The Court went on to hold that there are triable issues of

material fact as to whether Sheriff Deloach was justified when he discharged his weapon.

The trial court erred in holding that there were triable issues of material fact on the question of whether Sheriff Deloach was justified when he shot the Plaintiff.

When he fired his weapon, Sheriff Deloach was trying to prevent injury to himself, other officers, and the general public. (V2-479, ¶ 20.) This is undisputed. He meant no harm to Mr. Schantz and was simply trying to stop Mr. Schantz from injuring Sheriff Deloach or others. *Id.* Therefore, Sheriff Deloach is entitled to official immunity on Plaintiff's state law constitutional and tort claims.

"[P]olice officers are often forced to make split-second judgments -in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation. We do not judge, in hindsight, what [defendant] should have done under the circumstances. We decide whether he displayed a deliberate intent to commit a wrongful act, or a wicked or evil motive. Given this standard, we cannot conclude that [defendant's] actions showed malice rather than an effort to restrain the [plaintiff] and control an uncertain situation. The officers testified that their goal was to maintain control of the

situation and ensure officer safety." *Valades v. Uslu*, 301 Ga. App. 885 (2009).

The trial court relied on the case of *Kidd v. Coates*, 271 Ga. 33 (1999) in denying Defendant's Motion for Summary Judgment based on official immunity. However, *Kidd* actually supports Defendant's position that he is entitled to official immunity. In *Kidd*, Defendant law enforcement officers shot and killed an armed suspect after they saw him point a gun at them. *Id.* at 125-126). The trial court granted the officers' Motion for Summary Judgment on the basis of official immunity and on appeal the Georgia Supreme Court upheld the trial court holding that the evidence that the officers acted in self defense was undisputed. *Id.* at 126. The Court further held that there were no genuine issues of fact as to the officers' lack of actual tortious intent to harm the decedent. *Id.* Likewise, in the present case, it is undisputed that former Sheriff Deloach was in fear for his safety, and the safety of others when he discharged his weapon at Matthew Schantz. (V2-479, ¶¶ 18, 20). It is further undisputed that Schantz had led the officers on a two county high speed chase on a motorcycle where he often drove in excess of 100 mph. Plaintiff's own expert testified that a motorcycle traveling in excess of 100 mph was a potential threat to motorists on the road. (V2-520, 525). Therefore, the facts in this case clearly establish that Sheriff Deloach was in fear for his safety, and the safety of others and



the shooting of Matthew Schantz was justified. There is simply no evidence that Sheriff Deloach possessed a tortious intent to harm Schantz at the time of the shooting.

"In the context of Georgia's official immunity doctrine, 'actual malice' requires a deliberate intention to do wrong." It "does not include 'implied malice,' i.e., the reckless disregard for the rights or safety of others." Instead, actual malice requires more than "harboring bad feelings" or "ill will" about another; "rather, ill will must also be combined with the intent to do something wrongful or illegal."

"Moreover, [t]he phrase "actual intent to cause injury" has been defined in a tort context to mean an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury. This definition of intent contains aspects of malice, perhaps a wicked or evil motive." *Wyno v. Lowndes County*, 305 Ga. 523 (2019).

*Citations omitted.*

As the Eleventh Circuit Court of Appeals noted when comparing the present case to the Supreme Court decision in *Plumhoff v. Rickard*, 134 S.Ct. 2012 (2014):

"But there are many more similarities: (1) in this case and in *Plumhoff* the initial stop was for a relatively minor offense<sup>3</sup>—a missing tag here and an inoperable headlight in *Plumhoff* (2) in both cases, the initial stop quickly developed into a protracted high-speed car chase; (3) like the suspect in *Plumhoff* Plaintiff indisputably committed several traffic violations during the chase that Defendant reasonably could have perceived as posing a threat to other motorists, officers, and bystanders in the area, including running a red light in a downtown area, zigzagging and swerving around patrol cars, making U-turns and popping wheelies, and driving on the wrong side of the road; (4) it is undisputed that Defendant heard reports that Plaintiff was weaving through and heading

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<sup>3</sup>Plaintiff's argument that his shooting was unreasonable because he initially was signaled to stop for a minor tag violation is unpersuasive, given that the suspect in *Plumhoff* was signaled to stop for a minor headlight violation. We note further that by the time Plaintiff was shot, he had committed numerous violations beyond a missing tag—indeed, when Plaintiff was shot, he was a fleeing felon under Georgia law. See O.C.G.A. § 40-6-395(b)(5)(A)(I) (making it a felony to drive in excess of 20 miles an hour above the posted speed limit "while fleeing or attempting to elude a pursuing police vehicle or police officer"). Of course, Plaintiff's status as a fleeing felon does not necessarily justify the use of deadly force against him. *See Garner*, 471 U.S. at 11 ("The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape."). But Plaintiff's suggestion that Defendant shot him because of a minor tag violation is an extreme mischaracterization of the record.

into oncoming traffic, and thus endangering other motorists as the chase continued through Wayne County and thereby presenting a threat similar to that posed by the driver in *Plumhoff*, and (5) finally, like the officer in *Plumhoff* Defendant shot Plaintiff when he threatened to take off and resume the chase after momentarily stopping."

Likewise, the District Court for the Southern District of Georgia rejected Plaintiff's argument that he was an experienced motorcyclist who presented no danger to anyone.

" . . . Schantz admits much of this conduct, including driving more than 100 miles per hour and running a red light in an attempt to evade police. No factual dispute is created by his subjective characterization of such conduct as driving in a "safe manner" and not "in any way that would put other people at danger." Dkt. No. 41 ¶¶ 2-4. Moreover, even if we assume that Schantz's subjective characterization of driving 100 miles per hour and running a red light is true, those facts do not necessarily inculcate DeLoach. To be sure, DeLoach, who is sued here in his individual capacity, states in his uncontested affidavit that he heard over police radio that Schantz was driving in a reckless manner. Radio recordings from that day refer to a range of dangerous activity, such as



driving up to 130 miles per hour, dkt. no. 40, Ex. B., Track 12 at 0:08-0:09, riding "in and out of traffic," dkt. no. 40, Ex. C., 6-17-16 02.18.33PM Radio (SO) at 1:11-1:13, and "doing a wheelie," dkt. no. 40, Ex. C., 6-17-16 02.21.22PM Radio (SO) at 0:13-0:15. Thus, irrespective of whether Schantz considers himself such a special driver that he can do such things safely, DeLoach reasonably perceived Schantz to have driven in such a way that put others in danger at the time Schantz sought to flee from DeLoach's presence.<sup>4</sup> DeLoach had no way of knowing that Schantz was so special that he can "safely" drive at least 30 miles over the speed limit, run red lights, and flee from police through multiple counties."

Because the undisputed shows that former Sheriff Benny Deloach shot Matthew Schantz in self defense and based on his fear for the safety of others, he is entitled to official immunity from suit. There is no evidence that Sheriff Deloach acted with actual malice or with the actual intent to cause harm. It is respectfully requested that the Order of the trial court be reversed.

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<sup>4</sup>This is particularly true where, as here, Deloach witnessed some of Schantz's reckless behavior firsthand.

2. *The trial court committed reversible error by holding that there is a cause of action for damages under Georgia law for a violation of the Georgia Constitution.*

In denying Defendant's Motion for Summary Judgment on Plaintiff's claim for damages under the Georgia Constitution, the trial court stated

While it may be true that "[Georgia has] no equivalent to 42 U.S.C. § 1983, which gives a claim against a state officer individually for certain unconstitutional acts"<sup>5</sup> in *Porter v. Massarelli*, 303 Ga. App. 91, 95-96 (2010), the Court of Appeals reversed the trial court's order granting summary judgment. In doing so the Court of Appeals found that genuine issues of material fact existed as to whether a police officer acted with justification when he shot the driver of a vehicle during traffic stop. The court reasoned that and the existence of those issues precluded summary judgment in driver's action alleging violations of his rights to be secure against unreasonable seizure, and abuse of arrest under state constitution and state tort law for battery.<sup>6</sup>

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<sup>5</sup>*Howard v. Miller*, 222 Ga. App. 868, 871, (1996)

<sup>6</sup>In *Porter*, as is the case here, the plaintiff alleged that the officer's use of force violated his rights under Ga. Const. of 1983, Art. I, Sec. I, Par. XVII which protects one from abuse while being arrested.

However, there is no indication in the *Porter* case that the Defendant raised the issue of whether a claim exists under state law for damages because of a constitutional violation. In fact, in one paragraph discussing the constitutional claim, Defendant only argued " . . . that Summary Judgment on the claims was appropriate because his actions were reasonable and legally justified." *Porter*, 303 Ga. App. 96. Thus, Defendant did not argue that there was no damages claim under the Georgia Constitution.

In contrast, this Court has held on numerous occasions that there is no right to bring a private cause of action for damages under the Georgia Constitution. *See Howard v. Miller*, 222 Ga. App. 868, 871 (1996) ("[Georgia has] no equivalent to 42 U.S.C. §1983, which gives a claim against a state officer individually for certain unconstitutional acts."); *Davis v. Standifer*, 275 Ga. App. 769, 772, FN.2 (2005) ("Even where the Plaintiff alleges a state constitutional violation, if the 'underlying conduct complained of is tortious' and occurred within the scope of the state employee's official duties, the employee is protected by official immunity."); *Draper v. Reynolds*, 278 Ga. App. 401, 403 FN.2 (2006) ("Georgia does not have an equivalent to 42 U.S.C. § 1983 ...").

In fact, this Court as recently as June of 2022 held that Georgia does not have an equivalent to 42 U.S.C. § 1983 that would allow a claim against a state officer



individually for unconstitutional acts. *Hise v. Bordeaux*, 364 Ga. App. 138, 147, Fn 12 (2022). *See also, Wright v. Ward*, 2022 Westlaw 16700387 at \*7 (M.D. Ga. 11/3/2022 )(" . . . any claim based solely on the Georgia Constitution fails as there is no equivalent to § 1983 under Georgia law.")

Because Georgia does not have an equivalent to 42 U.S.C. § 1983, Plaintiff has no claim for damages for a violation of the Georgia Constitution and the Order of the trial court should be reversed.

## **VI. Conclusion**

For the foregoing reasons, Appellant respectfully requests that the Court reverse the trial court's denial of Defendant's Motion for Summary Judgment.

***Certification: This submission does not exceed the word count limit imposed by Rule 24.***

Respectfully submitted this 5<sup>th</sup> day of January, 2023.

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**ATTORNEY FOR APPELLANT**

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served all parties with a copy of the foregoing pleading, by depositing same in the United States mail with adequate postage thereon to assure delivery to:

Craig T. Jones, Esquire  
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This 5<sup>th</sup> day of January, 2023.

/s/ G. Todd Carter  
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