IN THE COURT OF APPEALS
STATE OF GEORGIA

KAREN DELOACH COLLINS, as Personal Representative of the Estate of BENNY DELOACH, former Sheriff of Appling County, Deceased,	*	
Appellant/Defendant,	*	
v.	*	**Appeal No. A23A0741**
MATTHEW SCHANTZ,	*	
Appellee/Plaintiff.	*	

BRIEF OF APPELLEE

COMES NOW Matthew Schantz, Plaintiff in the court below and Appellee herein, and hereby responds to the Brief of Appellant, showing the Court as follows:

SUMMARY OF ARGUMENT

The same Superior Court judge who sent Matthew Schantz to prison for fleeing the police correctly ruled in Schantz's favor on his civil claims arising from the incident. There are genuine issues of material fact as to whether Sheriff Deloach was justified in shooting and seriously injuring a fleeing traffic offender who posed no imminent lethal threat. Viewing the facts in the light most favorable to Schantz as the non-moving party, the trial court properly denied summary judgment on his claims for battery, negligence, and the violation of his rights under the Georgia Constitution.

STATEMENT OF THE CASE

A. Statement of Proceedings Below

Appellee accepts Appellant's statement of proceedings below with the following addition, which is a footnote from the trial court's decision:

> The Court would be remiss not to first acknowledge that Plaintiff initially filed suit in Federal Court. The federal §1983 excessive force claim turned on the defense of qualified immunity. The U.S. District Court for the Southern District of Georgia granted summary judgment to Deloach on the 4th Amendment Claims finding that Deloach had qualified immunity. The District Court declined to exercise jurisdiction over the remaining state claims and dismissed those without prejudice. The Court of Appeals for the 11th Circuit upheld this decision… In dismissing the state claims, the District Court made no ruling on their merits and in fact did not reach those claims having expressly declined to exercise jurisdiction over same. Although the factual basis for the claims in Federal Court are identical to those at issue here, Schantz is not collaterally estopped from bringing the instant case because the battery and negligence claims were not adjudicated in the prior case. Further the analysis required in our state law claims differs from that relied upon by the federal courts.

(V2-10).

B. Statement of Facts Material to Appeal

On the afternoon of June 17, 2016, Matthew Schantz was driving his new motorcycle to the beach, where he planned to meet up with his mother, an optometrist who was driving from work in her own car. While Matthew may have been a spoiled young man who behaved foolishly, the evidence shows that he was not a lethal threat and should not have been shot for running away from the sheriff of Appling County – who was more than fifty years his senior and should have known better. It is

undisputed that Matthew committed inexcusable traffic violations after Appling County deputies attempted to stop him not having a license tag for his motorcycle, and he was willing to own up to that by pleading guilty and agreeing to serve prison time for those violations. However, he should not have been subjected to the additional unconstitutional punishment of being shot and seriously injured when he stopped at a roadblock, turned his bike around, and started to speed off in the opposition direction. The material facts are set forth in the following two paragraphs.

Matthew's testimony is that he was fleeing the sheriff when shot, and that at no time did he ever drive his motorcycle toward the sheriff as he stood in the road holding a shotgun. (V2-747, 751-753, 768-771, 773-775, 790-791, 888). The only officer who claims to have witnessed the shooting other than Sheriff Deloach was Lt. Robert Eunice, who is "adamant" that he only heard one shot even though the parties agree that there were two shots fired, which may impact the weight given to his testimony by the jury. (V2-999). Oddly, the sheriff claims that the first shot was just a warning shot, even though it would be reckless to discharge a firearm as a warning unless there is justification for deadly force – in which case shooting into the air would do nothing to stop a truly lethal threat. (V2-612, 620). Matthew, however, says that the first shot was fired in his direction rather than up in the air, testifying that he saw the sheriff pointing the gun at him in his peripheral vision and he heard the ping of a projectile strike against metal and payment below. (V2-752,

769-771, 773, 791). The fact that Matthew saw this from the corner of his eye rather than straight in front of him further supports his testimony that he was not driving toward the sheriff but in a perpendicular path, crossing from one side of the road to the other in preparation for a U-turn.

As Matthew was completing the turn, the sheriff fired again, causing a shower of buckshot to penetrate the side of his helmet, face, and neck along with various parts of the motorcycle. Trajectory analysis indicates that the shot came from behind, and the amount of spread between the buckshot pellets indicates that the shot was fired from a distance as the bike was being driven further away from the sheriff – not toward him. (V2-610-614). Interpreting the evidence and reconstructing the scene in accordance with standard investigative techniques, Plaintiff's law enforcement expert concludes that the physical findings are consistent with Schantz's version of the incident and are not consistent with Defendant's claim that the shot was fired while the motorcycle was being driven toward him. (V2-606-625, 626-628). With or without expert testimony, there are conflicts in the evidence that can only be resolved by a jury.

ARGUMENT AND CITATION OF AUTHORITY

I. Because the trial court correctly found genuine issues of material fact as to whether Sheriff DeLoach used deadly force without justification under Georgia law, he is not entitled to official immunity as a matter of law.

A defendant who files a motion for summary judgment bears the initial burden

of piercing the allegations of the Complaint by pointing to evidence in the record suggesting that there are no facts to support the plaintiffs' case. *Lau's Corp., Inc. v. Haskins*, 261 Ga. 491, 405 S.E.2d 474, 475-76 (1991). Not until the defendant has pierced the allegations of the Complaint does the burden then shift to the plaintiff to demonstrate that the material facts – when viewed in the light most favorable to the plaintiff – give rise to a genuine dispute that must be resolved by a jury.

A. A jury could find that Sheriff Deloach's use of excessive force amounted to battery, negligence, and a violation of the Georgia Constitution

It is axiomatic that the unjustified use of deadly force constitutes the state law tort of battery, just as the use of more force than reasonable under the circumstances is negligence. *See* O.C.G.A. §51-1-13 and §51-1-14 (recognizing cause of action for battery); O.C.G.A. §16-3-21(justification for self-defense). In addition to its own version of the Fourth Amendment (Ga. Const. Art. 1, §1, ¶1), the Georgia Constitution also has a separate provision which stating that no person shall "be abused in being arrested…" Art. 1, §1, ¶17. That provision – which has been construed as imposing a duty on an arresting officer to refrain from unlawfully assaulting a suspect – implicitly incorporates the state's criminal and tort law on assault, battery, and self-defense when it comes to drawing the line between lawful and unlawful force. While there are cases which have declined to find a private right of action to sue for violations of the Georgia Constitution, at least one Court of Appeals decision (also handled by the undersigned counsel) has upheld a state

constitutional claim in the context of a police shooting. *See Porter v. Massarelli*, 303 Ga. App. 91, 692 S.E.2d 722 (Ga. App. 2010).

The Georgia Supreme Court makes clear that the legal justification for a police shooting must be evaluated under O.C.G.A. §16-3-21, which is the state's self-defense statute:

> [A]n officer who, in the performance of his official duties, shoots another in self-defense is shielded from tort liability by the doctrine of official immunity. One who acts in self-defense does not act with the tortious intent to harm another, but does so for the non-tortious purpose of defending himself. OCGA § 51-11-1… **Thus, if Appellees shot Gaddis intentionally and without justification, then they acted solely with the tortious "actual intent to cause injury."** *See Gardner v. Rogers*, 224 Ga. App. 165, 169(4), 480 S.E.2d 217 (1996). On the other hand, if Appellees shot Gaddis in self-defense, then they had no actual tortious intent to harm him, but acted only with the justifiable intent which occurs in every case of self-defense, which is to use such force as is reasonably believed to be **necessary** to prevent death or great bodily injury to themselves or the commission of a forcible felony. OCGA §§16-3-21(a), 51-11-1.

Kidd v. Coates, 271 Ga. 33, 34, 518 S.E. 2d 124, 125 (1999) (emphasis added).

Construing all facts and inferences in favor of Matthew Schantz as required by O.C.G.A. §9-11-56, reasonable jurors could conclude that it was not "necessary" for Sheriff Deloach or any other officer to shoot at a motorcycle being driven *away* from them "to prevent death or great bodily injury to themselves" or others. While Defendant's arguments are legitimate, they need to be made to a jury.

There is not only a jury question as to the factual dispute between Sheriff Deloach and Matthew Schantz, but also as to which version of Sheriff Deloach's

account should be believed. In his deposition, Deloach testified that he fired his shotgun twice: once as a warning shot (which is frowned upon in modern law enforcement training because it might provoke defensive return fire from an otherwise nonviolent suspect without doing anything to eliminate an actual lethal threat), and then a second shot directly at Matthew because the motorcycle was allegedly being driven directly toward Deloach (despite physical evidence that the bullets which struck Matthew's helmet and bike were fired from behind him). (V2-435, 446-447). But in a self-serving affidavit subsequently filed with his summary judgment motion, Deloach changed his story and said he was not only shooting to protect himself but also to protect other motorists from Matthew's alleged reckless driving – claiming he had heard over the radio that Matthew "was running red lights" and "driving recklessly." (*Compare* V2-479).

Plaintiff/Appellee responded to this afterthought by producing a recording of police radio traffic which makes no reference of running red lights,[1] as well as Matthew's own affidavit stating as follows:

> 1. While I did ride my motorcycle at speeds in excess of 100 miles per hour on the open four-lane road to put distance between myself and the police, I did not drive recklessly, erratically, or in any way that would put other people at danger. I was an experienced motorcycle

[1] Presumably Deloach learned later that Schantz (and a pursuing officer) had run a single red light earlier in the pursuit, but he did not know that at the time of the shooting. After-acquired information cannot be used to justify a decision to use deadly force, which can only be evaluated based on the information known to the officer at the time deadly force is used.

> racer with over fifteen years of track and highway experience, and at no point was I not in control of the bike nor was I ever outside my comfort zone as a rider.
>
> 2. This was not a high-speed chase where the police were led on a long distance pursuit. Instead, I would characterize it as a series of brief encounters where I tried to avoid contact with the police, which I accomplished in a safe manner when the opportunity presented itself by accelerating in short bursts to put them behind me. I was so far ahead of them that they never came close to catching me, and I was maintaining a diligent lookout at all times. The police were only in my sight for the first few minutes when they tried to pull me over, and once I left Baxley and was alone on the open road and never saw any police again until I got to the first roadblock. When I saw that roadblock ahead, I turned off on a side road and doubled back the other direction on a parallel road, and I don't believe they even saw me. I did not see them again until I came to the second roadblock, where I was shot by Defendant when I was driving away from him as described in my deposition.
>
> 3. The one time that I went through a red light was done in a safe manner. I slowed down and made sure the road was clear before I went through the intersection. At no time did I run anyone off the road or otherwise threaten the safety of other motorists. The only time I ever crossed the center line was when I came to the second roadblock as described in my deposition, when I had to pass a parked police vehicle that was blocking the right side of the road, after which I turned around and was shot as I was riding away from the Defendant. At the time I was shot, nobody was in my path or otherwise at imminent risk of harm. I was not a lethal threat to anyone at the time and place I was shot. To the contrary, I was clearly trying to avoid the police, not threaten them, and it should have been obvious that I was just trying to get away without anyone getting hurt.

(V2-601-603).

While both affidavits were filed in the prior federal action for purposes of summary judgment in that case, there are two major differences between them: (1)

Deloach's affidavit is inconsistent with his deposition testimony, while Schantz's is not; and 2) Schantz is alive to be cross-examined about his affidavit at trial, and Deloach is not. For the latter reason, Schantz filed a motion in limine in the court below to exclude Deloach's self-serving affidavit as hearsay for purposes of both summary judgment and trial, but there has not yet been a ruling on that motion. (V2-565-578). However, even if Sheriff Deloach's affidavit is not excluded, it is still sufficient to create a genuine issue of material fact precluding summary judgment on the state law claims that are the subject of this action.

B. Because there are substantive differences between state and federal law, the disposition of the prior federal action has no impact on this case.

While there are both federal and state law remedies for the use of excessive force by a police officer, the elements of those claims and the defenses applicable to them are not the same. While the federal claim in the prior lawsuit was based on the Fourth Amendment and turned on the defense of qualified immunity, the state law claims asserted herein are based on the common law torts of battery and negligence, along with Georgia's statutory limitations on the use of deadly force for defense of self and others – which are subject to a different type of immunity analysis than that applicable to federal civil rights actions.

Under the doctrine of collateral estoppel, a claim is not barred by a prior adjudication unless *all four* of the following conditions are satisfied:

1) There must be an identity of issues between the first and second actions;
2) The duplicated issue must have been actually and necessarily litigated in the prior court proceeding;
3) Determination of the issue must have been essential to the prior judgment; and
4) The party to be estopped must have had a full and fair opportunity to litigate the issue in the course of the earlier proceeding.

In re Sanders, 315 B.R. 630, 633-34 (Bankr. S.D. Ga. 2004) (citing *Sterling Factors, Inc. v. Whelan,* 245 B.R. 698, 704 (N.D. Ga. 2000)) (applying Georgia law). The battery and negligence claims alleged herein are not collaterally estopped because the same issues were not decided in the prior case – the District Court having expressly declined to reach them so that they could be refiled in state court.

In a federal civil rights action brought under 42 U.S.C. §1983 and the Fourth Amendment, the intentional use of deadly force by a police officer is viewed as a seizure of the person which is evaluated under a standard of objective reasonableness. *Graham v. Connor*, 490 U.S. 386 (1989); *Tennessee v. Garner*, 471 U.S. 1 (1985). If a reasonable officer could have believed that that the use of force at issue was within a range of reasonable options, there is no constitutional violation even if better options were available. *Id.*

Most importantly, there is a judge-made defense to liability under Section 1983 that is not available under state law: namely qualified immunity, which shields individual officers from monetary damages even where they do violate constitutional

rights if there is no prior case law that would give a reasonable officer notice that what he did was unlawful under the particular facts and circumstances of the case. *Anderson v. Creighton*, 483 U.S. 635 (1987); *Hope v. Pelzer*, 536 U.S. 730 (2002). Qualified immunity is thus determined by whether the black letter law governing the conduct in question is clearly established, without regard for the officer's subjective motive or whether he was acting in good faith.

On the other hand, Georgia law requires that deadly force not only be reasonable, but that it also be "necessary" for the defense of self or others. O.C.G.A. §16-3-21(a). In other words, if there were available alternatives other than the use of deadly force then the shooting would be a tort under Georgia law even if it were subject to qualified immunity under federal law. Moreover, Georgia law does not confer qualified immunity to officers based on whether they violated clearly established law. Rather, Georgia has an official immunity defense which is based not on the clarity of the law but upon whether the conduct was ministerial or discretionary – or, in the context of a discretionary function like the use of force, whether the officer acted with actual malice in using more force than necessary. *Merrow v. Hawkins,* 266 Ga. 390, 467 S.E. 2d 336 (1996)*; see also Adams v. Hazelwood*, 271 Ga. 414, 520 S.E. 2d 896 (1999).

The Supreme Court made clear in *Kidd v. Coates*, supra, that the defense of official immunity does not apply where an officer shoots someone intentionally *and*

without justification – irrespective of the officer's subjective feelings when doing so – presumably because the officer is charged with knowledge of what constitutes justification to take a life, and a deliberate decision to take such action is sufficient for a jury to infer malice. In short, if an officer shoots someone in self-defense, he is not acting with actual malice and is entitled to official immunity. On the other hand, if he uses deadly force without justification, he is acting with actual malice and is not entitled to official immunity. 271 Ga. at 34, 518 S.E. 2d at 125.

The holding in *Kidd* means that the immunity determination requires a jury to examine the underlying facts of the shooting and decide whether it was justified. Because the existence of actual malice in such cases cannot be determined as a matter of law, the defendant officer in a police shooting case cannot be entitled to official immunity as a matter of law. Since the shooting itself was intentional, a jury must decide whether the trigger was pulled with intent to cause injury (i.e., with actual malice) or with intent to legitimately defend oneself. Under *Kidd* and *Gardner v. Rogers*, *supra*, this is a jury question if – as in the case at bar – there is evidence from which a jury could find that the shooting was intentional and unjustified. "[I]f [Deloach] shot [Schantz] intentionally and without justification, then [he] acted solely with the tortious 'actual intent to cause injury'" and he is not entitled to official immunity. *Dekalb County v. Bailey*, 319 Ga. App. 278, 736 S.E.2d 121 (2012) (citing *Gardner*, 224 Ga. App. at 169).

While the ultimate holding of *Kidd* was that the shooting was justified in that case and thus the officer had official immunity, the holding of *Gardner* was that there was a jury question. 224 Ga. App. at 169, 480 S.E.2d 217; *see also Porter v. Massarelli*, 303 Ga. App. 91, 93, 692 S.E.2d 722, 724 (2010) (no official immunity for officer who testified that he shot motorist who was attempting to run over him during a traffic stop when there was jury question as to whether officer acted reasonably). *Porter* has been cited with approval by several courts – including federal courts which *did* exercise supplemental jurisdiction over pendent state claims. *See Bohanan v. Paulding Cnty.*, 479 F. Supp. 3d 1345 (N.D. Ga. 2020) (Judge Murphy); *Dyksma v. Pierson*, No. 4:17-cv-00041-CDL, slip op. at 29 (M.D. Ga. 7/16/18), *affirmed per curiam*, No. 18-13337 (11th Cir. 4/18/19) (Judge Land).

Because of the clear differences between state and federal law, there is no identity of issue between the two cases. Because collateral estoppel does not apply unless all the forementioned elements are met, this element alone is sufficient to defeat the collateral estoppel argument. *Sanders*, 315 B.R. at 633-34. But none of the other elements are not satisfied either. There is no "duplicated issue" in this case that was "actually and necessarily litigated in the prior court proceeding," and thus there is no issue to be determined in this case that was "essential to the prior judgment." *Id.* Finally, "there was not a full and fair opportunity to litigate" the state law claims in the prior action because they were not addressed at all, having

been expressly dismissed without prejudice so they could be considered by the state court system, which is presumed to have more knowledge of Georgia law:

> As a final matter, Shantz [sic] brought also brought state law claims for negligence, battery, and violations of the Georgia Constitution. Because this Court finds that Shantz's [sic] only claims that invoke federal jurisdiction should be dismissed, it declines to exercise pendent jurisdiction over the remaining state claims. *See ... Wilder v. Irvin*, 423 F. Supp. 639, 643 [(N. D. Ga. 1976)] (finding pendent jurisdiction was not appropriate where **there was not considerable overlap between the state and federal claims** and where **the state claim "would inject new issues** and a large amount of facts unrelated to the other portion of the case involving the federal claim."

Schantz v. Deloach, No. 2:17-cv-00157-LGW-BWC at *25-26 (February 4, 2020) (emphasis added, internal citations omitted). In short, the federal court showed proper deference to this Court on all issues of Georgia law.

II. The trial court correctly recognized that damages can be recovered for a public official's breach of duty under the Georgia Constitution.

Like the federal Constitution, the Constitution of the State of Georgia contains a Bill of Rights which limits the power of law enforcement officers over individual citizens by enumerating certain rights which officers must respect in the performance of their duties. (Ga. Const. Art. 1, §1). Simply stated, officers like Sheriff Deloach owe a duty to the public to obey the Georgia Constitution, and to refrain from violating it in their interactions with citizens. But while Georgia has no equivalent of 42 U.S.C. §1983 which creates a private right of action for violations of the federal Constitution, its statutory tort law scheme expressly recognizes a

private right of action for any breach of legal duty resulting in injury to a citizen. As stated in the previous section of this brief, this Court has already recognized such a right of action in the context of police shootings. *Porter*, 303 Ga. App. 91, 692 S.E.2d 722.

Porter has not only been cited for its holding on official immunity under Georgia law, but also for the proposition that violations of the Georgia Constitution are actionable as torts:

> … Defendants point out that at least one panel of the Georgia Court of Appeals has cast doubt on whether a plaintiff may bring claims directly under the Georgia Constitution. *See Draper v. Reynolds*, 629 S.E.2d 476, 478 n.2 (Ga. Ct. App. 2006) (noting "that Georgia does not have an equivalent to 42 U.S.C. § 1983"). But another panel of the Georgia Court of Appeals declined to grant summary judgment on a plaintiff's claims under the Georgia Constitution. *Porter v. Massarelli*, 692 S.E.2d 722, 726–27 (Ga. Ct. App. 2010). The Court thus assumes for purposes of this motion that Plaintiffs may assert claims under the Georgia Constitution.

Dyksma v. Pierson, No. 4:17-cv-00041-CDL at *29, fn. 6 (M.D. Ga. 7/16/18), *affirmed per curiam*, No. 18-13337 (11th Cir. 4/18/19).

In any event, one of the cases cited by Appellant is consistent with Appellee's position when it states that "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." *Davis v. Standifer*, 275 Ga. App. 769, 772, fn. 2 (2005) (emphasis added. That case does not hold that state constitutional violations are never

actionable; rather, it acknowledges that a constitutional violation may be a tort, in which case it is subject to the defense of official immunity. That is Appellee's position as well, although a jury could determine that Sheriff Deloach is not entitled to official immunity in this case for the reasons discussed in the preceding section.

The notion that violation of a constitutional right gives rise to an action in tort is consistent with the principle, enshrined by the Legislature, that "[f]or every right there shall be a remedy; every court having jurisdiction of the one may, if necessary, frame the other." O.C.G.A §9-2-3. While it is an oft-stated platitude of federal law that the United States Constitution is not 'a font of tort law',[2] our Legislature suggests that is not the case when it comes to the rights of citizens and duties of state actors under Georgia's Constitution. *Id.* That concept is also embraced by our tort law, which expressly provides as follows:

> A tort is the unlawful violation of a private legal right other than a mere breach of contract, express or implied. A tort may also be the violation of a public duty if, as a result of the violation, some special damage accrues to the individual.

O.C.G.A. §51-1-1. Accordingly, a tort is committed when either a legal right is violated or a legal duty is breached. Furthermore,

> When the law requires a person to perform an act for the benefit of another or to refrain from doing an act which may injure another, **although no cause of action is given in express terms, the injured party may recover for the breach of such legal duty if he suffers damage thereby**.

[2] *See, e.g., Paul v. Davis*, 424 U.S. 693, 700–01 (1976).

O.C.G.A. §51-1-6 (emphasis added).

Because the foundational document of Georgia law – the Bill of Rights contained in the State Constitution – commands officers of the state to refrain from unreasonable seizures (Art. 1, §1, ¶1) and abuse of suspects in the course of an arrest (Art. 1, §1, ¶17), the above code section explicitly recognizes a private right of action under which "the injured party may recover for the breach of such legal duty if he suffers damage thereby." By way of comparison, the language of 42 U.S.C. §1983, a state actor who subjects a party "to the deprivation of any rights, privileges, or immunities secured by the [federal] Constitution and laws" "shall be liable to the party injured in an action at law." There is materially no difference between §51-1-6 (which explicitly creates a private right of action for damages caused by breach of a public duty) and Section 1983 (which explicitly provides a private right of action for damages caused by "the deprivation of any rights … secured by the Constitution").

Nothing in Georgia's tort law suggests that the breach of a constitutionally imposed duty is treated any differently than any other legal duty. While the Constitution does confer immunity from tort liability upon public officials subject to certain exceptions, the same exceptions apply for state actors irrespective of whether the duty in question is imposed constitutionally, statutorily, or by some other standard of care. Accordingly, a public duty may arise from a statute or

constitutional provision, and the violation of that duty may give rise to a tort claim which is subject to all manner of tort defenses, including immunity.

For purposes of §§51-1-1 and 51-1-6, "[a] public duty is one owing to a general class of persons, regardless of any relationship that may exist between the actor and any class member." Adams & Adams, Ga. Law of Torts (1998 ed.), §1.2(b) (citing *Georgia R. & Banking Co. v. Sewell*, 57 Ga. App. 674(6), 196 S.E. 140 (1938)). O.C.G.A. §51-1-7 goes on to explain the circumstances under which breach of public duty becomes an actionable tort:

> Injury suffered in common with the community, though to a greater extent, will not give a right of action to an individual for the infraction of some public duty. In order for an individual to have such a right of action, there must be some special damage to him, in which the public has not participated.

O.C.G.A. §51-1-7.

O.C.G.A. §§51-1-6 and 51-1-7 are similar to Section 1983 in that they themselves are not sources of substantive rights, but merely authorize suit for violations of independent rights and duties enunciated elsewhere. Just as Section 1983 provides a mechanism for enforcing rights and privileges guaranteed by federal law, §§51-1-6 and 51-1-7 recognize that a claim for damages can be brought to enforce duties "found in another legislative enactment." *Walker v. Oglethorpe Power Corp.*, 341 Ga. App. 647, ___, 802 S.E.2d 643, 656-57 (2017). By definition, the phrase 'legislative enactment' includes constitutional provisions as well as

statutes.

While general statements of legal principle may not give rise to a cause of action unless they articulate a standard of care, the Georgia Bill of Rights' prohibition of unreasonable seizures (Art. 1, §1, ¶1) does impose a reasonableness standard which is specific enough to define the contours of a public duty enforceable in tort. *Compare Wells Fargo Bank, N.A. v. Jenkins*, 293 Ga. 162, 164, 744 S.E.2d 686, 688 (2013) (statute in question did not "articulate or imply a standard of conduct or care, ordinary or otherwise") (citing *Cruet v. Emory University*, 85 F. Supp. 2d 1353, 1355 (N.D. Ga. 2000) ("In order for a plaintiff to invoke OCGA § 51–1–6, there must be the alleged breach of a legal duty with some ascertainable standard of conduct."). That is consistent with the Legislature's pronouncement in O.C.G.A §9-2-3 that for every right, Georgia law provides a remedy, and the paramount source of legal rights is the Constitution.

CONCLUSION

For the reasons set forth above, Appellee Matthew Schantz requests that the Order of the trial court be affirmed and the case be remanded to the Superior Court of Appling County for a trial by jury.

Respectfully submitted this 18th day of January, 2023.

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

This submission does not exceed the 8400-word count limit for civil cases imposed by Court of Appeals Rule 24. According to Microsoft Word's word-count function, the body of this brief from the first sentence to the last contains 5,162 words and is printed in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I certify that on this day, I served the foregoing **Brief of Appellee** upon the following counsel of record via electronic filing and First Class U.S. Mail to:

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This 18th day of January, 2023.

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