

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

BIG STONE GAP DIVISION

**Z.F., AN INFANT, BY HIS NEXT
FRIEND, ALFRED FLEMING,**

Plaintiff,

v.

RYAN ADKINS,

Defendant.

Case No. 2:18-CV-00042

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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This case involves a police officer’s use of violent force against a middle-school student who posed no danger to anyone. Defendant Ryan Adkins is the school resource officer who tackled Plaintiff Z.F., then a 14-year-old child, in the hallway of his middle school. Adkins’s explanations for his actions defy rational belief; indeed, a video recording of the incident clearly demonstrates that Adkins’s use of force was grossly disproportionate under the circumstances. This Court should accordingly grant summary judgment in Z.F.’s favor.

STATEMENT OF UNDISPUTED FACTS

A. The Wise County School Resource Officer Program

The Wise County School Resource Officer (SRO) Program assigns deputies from the Wise County Sheriff’s Office to work directly in schools within the Wise County Public Schools system. Memorandum of Understanding: School Resource Officer Program (MOU), Declaration of Daniel B. Rice (Rice Decl.), Ex. B, at 1. A Wise County SRO’s primary responsibility is enforcement of the criminal law. *Id.* at 5; Deposition of Ryan Adkins (Adkins Dep.), Rice Decl., Ex. A, at 25:21-23. Wise County SROs “shall not become involved in school matters involving infractions of school rules or violations of school policies.” MOU at 6. Because such matters are “the exclusive concern of the school administrator,” SROs may not use force to ensure compliance with school rules. *Id.* at 7; *see also* Adkins Dep. 24:8-15.

Defendant Ryan Adkins is a deputy in the Wise County Sheriff’s Department who has served as the SRO at L.F. Addington Middle School since 2017. Adkins

Dep. 8:1-2, 7-9; 11:23-24; 12:1-5. In his two-plus years as an SRO, Adkins has been assigned (either full-time or part-time) to four of the five schools within Wise County at which SROs are stationed. *Id.* at 12:23-24, 13:1-3, 18:23-24, 19:1-3. And Adkins “[c]ould be assigned to other schools in the future.”¹ *Id.* at 20:7-9.

B. Adkins’s Use of Force Against Z.F.

Plaintiff Z.F. was an 8th-grader at L.F. Addington Middle School during the 2017-18 school year. Decl. of Plaintiff Z.F. (Z.F. Decl.), ¶ 2. He had turned 14 years old just a few weeks before April 18, 2018, the date of the incident that gave rise to this lawsuit. *Id.*

Shortly after noon on April 18, Adkins learned from L.F. Addington’s guidance counselor, Stacey Nichols, that someone had used the program Snapchat to circulate nude photos of L.D. (an L.F. Addington student) to other students. Adkins Dep. 29:23-24, 30:1-5. Ms. Nichols told Adkins that a student named K.C. had shared that information with her. *Id.* Adkins spoke with only two students at this time: L.D. and K.C. *Id.* at 30:11-13. L.D., Z.F.’s ex-girlfriend, told Adkins that she had previously sent nude pictures of herself to Z.F., but not to anyone else. *Id.* at 32:3-6. Adkins decided to secure Z.F.’s phone to investigate, *id.* at 34:24; 35:1-5, 18-24; 36:1-3, but acknowledges that he did not believe he had the legal justification to arrest Z.F., *id.* at

¹ For example, Adkins’s predecessor at L.F. Addington now serves as the SRO at Central High School, Adkins Dep. 18:10-22, where Z.F. currently attends as a 10th-grader.

36:8-11.

As Z.F. was finishing his lunch in the school cafeteria on April 18, Adkins approached his table and demanded that Z.F. turn over his cell phone. Z.F. Decl. ¶ 3. Z.F. asked why, but Adkins refused to say. *Id.*² Twice more, Adkins said, “give me your phone”; each time, Z.F. asked why. *Id.*; *see also* Cafeteria Video, Rice Decl., Ex. E, at 12:44:10 (capturing this interaction). Z.F. asked for an explanation because “[he] was taught that the U.S. Constitution prevents the police from taking people’s property with no good reason.” Z.F. Decl. ¶ 3.

Adkins then grabbed Z.F.’s jacket and led him toward the cafeteria exit. Z.F. Decl. ¶ 4; Cafeteria Video at 12:44:33. At this point, Z.F. felt that he “had no choice” but to go into the hallway with Adkins. Z.F. Decl. ¶ 4; *see also* Adkins Dep. 50:5-6 (describing Z.F. as “in investigative detention at that point”).³ Z.F. found it “very embarrassing” to be removed from the cafeteria by a police officer in front of his classmates. Z.F. Decl. ¶ 4.

After leading Z.F. into the front hallway, Adkins again demanded that Z.F. turn over his phone. Z.F. responded along the lines of, “no—because of the Fourth Amendment.” Z.F. Decl. ¶ 5; *see also* Adkins Dep. 51:14-15; Deposition of Z.F. (Z.F. Dep.), Rice Decl., Ex. C, at 72:17-24, 73:1-3. After Adkins repeated his demand, Z.F.

² Adkins asserts that he told Z.F. he needed the phone for “an investigation,” but Adkins does not dispute that he provided no details about the investigation. Adkins Dep. 37:15-16, 20-22.

³ Adkins did not read Z.F. his *Miranda* rights, however. Adkins Dep. 49:3-5.

told Adkins to call his dad. Z.F. Decl. ¶ 5. Z.F.'s parents had instructed him that if he ever felt uncomfortable around a police officer, he should tell the officer to call his dad. *Id.* Instead of asking how to get in touch with Z.F.'s dad, Adkins again ordered Z.F. to hand over his phone. *Id.* Once more, Z.F. said, "call my dad." *Id.* Adkins still did not do so. *Id.*⁴

Z.F. decided to ask his dad what to do. Z.F. Decl. ¶ 7. Because cell reception tended to be better farther down the hallway, Z.F. started walking slowly in that direction and told Adkins that he was going to call his dad. *Id.* Adkins grabbed Z.F.'s left arm and asked Z.F. what he was doing. Hallway Video, Rice Decl., Ex. F, at 12:45:04; Second Hallway Video, Rice Decl. Ex. G, at 12:45:04; Z.F. Decl. ¶ 7. Z.F. pulled his arm away from Adkins and replied, "I'm going to call my dad." Hallway Video 12:45:04; Z.F. Decl. ¶ 7. Z.F. then began dialing his dad's number as he continued stepping slowly down the hallway. Z.F. Decl. ¶ 7. A security video clearly shows that Z.F. was not attempting to flee the school. He was not moving toward any of the exit doors and had not even turned to face in that direction.⁵ Hallway Video at 12:45:06; *see also* Z.F. Dep. 18:5, 8-9 ("I did not go towards the door. . . . I was walking down the hallway."). Rather, Z.F. was looking down toward his phone as he attempted to call his dad. Hallway Video at 12:45:06; Z.F. Decl. ¶ 7. And

⁴ Adkins denies that Z.F. mentioned calling his dad. Adkins Dep. 51:22-24.

⁵ Despite this incontrovertible evidence, Adkins asserts that Z.F. was attempting to flee the school at this time. Adkins Dep. 55:7-14.

according to Adkins, Z.F. had not done anything to cause Adkins to believe that Z.F. posed a danger to anyone—including Adkins himself. Adkins Dep. 60:5-24, 61:1-3.

Even so, less than one second after Z.F. began using his phone, Adkins grabbed Z.F. with both arms and began forcibly restraining him. Hallway Video at 12:45:06. Adkins did not try to remove the phone from Z.F.’s hand before physically overpowering him. Z.F. Decl. ¶ 9. And even though the school principal and guidance counselor were standing only a few feet away, Adkins did not seek their assistance as an alternative to using force against Z.F. *Id.*

As Adkins wrapped his arms tighter and tighter around Z.F.’s body, Z.F. began to worry that Adkins would seriously injure him. Z.F. Decl. ¶ 8. Video footage plainly depicts Adkins pushing Z.F. toward one of the exit doors, causing the door to swing open. Hallway Video at 12:45:08; Z.F. Dep. 18:9-10 (“I was pushed sideways into the door.”).⁶ Z.F.’s head hit the door as he was pushed outward. Z.F. Decl. ¶ 8. Adkins then pulled Z.F. back into the hallway and continued to restrain him. Hallway Video at 12:45:11; Z.F. Decl. ¶ 8. Once inside, Adkins tripped Z.F. and threw him hard against the concrete floor. Hallway Video at 12:45:12; Z.F. Decl. ¶ 8; Adkins Dep. 65:16-18. Being attacked in this way was both “extremely painful” and “humiliating” for Z.F. Z.F. Decl. ¶ 8. Adkins understood that this technique could result in physical injury to Z.F. Adkins Dep. 65:6-8.

⁶ Adkins instead claims—implausibly—that Z.F. was trying to pull Adkins outside the building. Adkins Dep. 64:1-5.

Adkins—who is 6’1” and weighed about 265 pounds as of April 2018, Adkins Dep. 78:10-11, 80:15-18—kept Z.F. pinned to the ground for 23 seconds as he searched for Z.F.’s phone. Hallway Video at 12:45:13 to :36.⁷ Adkins placed his forearm on Z.F.’s neck during this time, Hallway Video at 12:45:17, even though Z.F. made no physical resistance, Adkins Dep. 80:19-24, 81:1-4. Adkins twisted Z.F.’s arm while trying to grab his cell phone, causing Z.F. to feel an intense pain in his shoulder. Z.F. Decl. ¶ 12.⁸ Z.F. also felt Adkins’s knee on his back. *Id.*⁹

After Adkins took Z.F.’s cell phone, he sat Z.F. down at a nearby bench and then took him to a back office to wait for Z.F.’s mother, Kathy Fleming, to arrive. Adkins Dep. 82:8-9, 85:4-6; Z.F. Decl. ¶ 13. Z.F. was “alone and physically shaking” as the time passed. Z.F. Decl. ¶ 13. He understood that he was not free to go to class or otherwise leave the office at this time. *Id.*

Once Ms. Fleming arrived, Adkins explained that someone had been sending around nude pictures of Z.F.’s ex-girlfriend, L.D., and that Adkins had seized Z.F.’s phone for an investigation of child pornography. Decl. of Kathy Fleming (Fleming Decl.) ¶ 4. According to Z.F., this was the first time that Adkins had given any sort of reason for wanting to view Z.F.’s phone. Z.F. Decl. ¶¶ 6, 14; *see also* Z.F. Dep. 64:5-

⁷ Adkins insists—contrary to the video evidence—that Z.F. remained on the ground for only “two to three seconds.” Adkins Dep. 79:12-18.

⁸ Adkins denies that he moved either of Z.F.’s arms while Z.F. was on the ground. Adkins Dep. 79:9-11.

⁹ Adkins denies that he placed his knee on Z.F. Adkins Dep. 80:12-14.

13. Z.F. did not have any nude pictures on his phone at any point on April 18. Z.F. Decl. ¶ 15. L.D. had sent him nude photos of herself through Facebook Messenger months before, but Z.F. deleted their Messenger conversation very soon after receiving those photos. *Id.* Z.F. did not save the photos, and he did not send them to any other person. *Id.*

Ms. Fleming gave Adkins permission to search Z.F.'s phone for nude photos of L.D. Fleming Decl. ¶ 5. The two of them looked through Z.F.'s phone together. *Id.* After thoroughly searching Z.F.'s phone, Adkins did not find any nude photos. Fleming Decl. ¶ 5; Z.F. Decl. ¶ 16; Adkins Dep. 90:15-24; 91:1-5, 9-11; 93:2-3. He concluded that “[i]t was very likely that somebody else sent them.” Adkins Dep. 100:24, 101:1.

Adkins returned Z.F.'s phone to him and indicated that he would not seek charges against Z.F. or otherwise pursue the matter further with him. Fleming Decl. ¶ 6; Z.F. Decl. ¶ 16; Adkins Dep. 95:23-24, 96:1. Rather than seeking to interview other potential suspects—two of whom were soon identified by L.D. and the school's guidance counselor—Adkins simply ended his investigation. Adkins Dep. 98:20-24; 99:1-13, 20-24; 100:1-24; 101:1-16.

C. Z.F.'s Injuries

Because Z.F. did not feel well enough to attend his afternoon classes on April 18, Ms. Fleming took him home for the rest of the day. Z.F. Decl. ¶ 17; Fleming Decl. ¶ 7. The next day, Z.F.'s back and shoulder were still hurting, and he was

experiencing nausea, headaches, dizziness, and blurred vision. Z.F. Decl. ¶ 18; Fleming Decl. ¶ 9. Z.F.'s parents took him to the Norton Community Hospital emergency department, Fleming Decl. ¶ 9, where he underwent X-rays (for his back) and a CT scan (for his head), Fleming Decl., Ex. B, at 1, 17, 19. The exam revealed that Z.F. had suffered a concussion, *id.* at 6, 9, 11-12, and that his back pain was “most likely caused by a strain of the muscles or ligaments supporting the spine,” *id.* at 2. Z.F. was prescribed two forms of pain medication. *Id.* at 8, 14.

Life became “nearly unbearable” for Z.F. in the weeks after April 18. Z.F. Decl. ¶ 19. According to Ms. Fleming, “it was as if my son had been transformed into a completely different person.” Fleming Decl. ¶ 11. The incident with Adkins caused Z.F. to become “stressed and anxious all the time.” Z.F. Decl. ¶ 19. Z.F. even developed a stomach ulcer that persisted for approximately two months. Fleming Decl. ¶ 11; Fleming Decl., Ex. C, at 1; Ex. D, at 1, 3. This period of time was “sheer torture” for Z.F. Fleming Decl. ¶ 11. He lost his appetite and often vomited up any food that he was able to swallow, causing him to lose at least 12 pounds by May 8. Z.F. Decl. ¶ 19; Fleming Decl. ¶¶ 12-13. And Z.F. was unable to sleep normally at night due to his severe anxiety levels and the intense stomach pain he was enduring. Z.F. Decl. ¶ 19; Fleming Decl. ¶ 15.

The incident with Adkins “really messed [Z.F.] up mentally.” Z.F. Decl. ¶ 19. Z.F. would “freak out and lose his temper in ways that he never had before.” Fleming Decl. ¶ 16; *see also* Z.F. Decl. ¶ 19; Fleming Decl., Ex. J, at 4 (“Client’s

mother reports he has angry outbursts that occur almost weekly.”); Fleming Decl., Ex. K, at 2-4, 17 (text messages from Z.F. to Kathy Fleming). He would even say things like, “I wish I wasn’t alive.” Fleming Decl. ¶ 16. Z.F.’s parents were “extremely concerned by this profound change in Z.F.’s behavior.” *Id.*

After the April 18 incident, Z.F.’s school attendance plummeted. Z.F. Decl. ¶ 20; Fleming Decl. ¶ 18; Fleming Decl., Ex. G, at 1-2 (indicating 26 absences or checkouts from April 18, 2018 to May 30, 2018). There were many days when Z.F. “just couldn’t do it mentally.” Z.F. Dep. 50:4-5. And on the rare occasions when he was able to attend school, he was “deeply unhappy” there. Fleming Decl. ¶ 19. The incident with Adkins was “a source of constant embarrassment” for Z.F. because it was discussed widely among his classmates, who ridiculed him over what happened. Z.F. Decl. ¶ 20; Fleming Decl., Ex. I, at 2, 6; *see also* Fleming Decl., Ex. K, at 2-3, 9 (text messages from Z.F. to Kathy Fleming). Z.F. no longer trusted the authority figures at his school, because they all appeared to side with Adkins instead of him. Z.F. Decl. ¶ 20. Z.F. often needed his mother or grandmother to come to school and calm him down during his anxiety attacks. *Id.*; Fleming Decl. ¶ 18; *see also* Fleming Decl., Ex. K, at 3-5, 11, 14, 18-19 (text messages from Z.F. to Kathy Fleming).

Even after Z.F. began attending Central High School in the fall of 2018, he “kept having terrible anxiety attacks,” to the point that it “felt like [his] brain was

going to explode.”¹⁰ Z.F. Decl. ¶ 21. His classmates kept bringing up the incident with Adkins in conversations with him. Z.F. Decl. ¶ 21; Fleming Decl. ¶ 19. As a result, Z.F. had trouble focusing in class and concentrating on his schoolwork. Z.F. Decl. ¶ 21; *see also* Fleming Decl., Ex. K, at 13, 15, 19 (text messages from Z.F. to Kathy Fleming). Z.F.’s anxiety sharply curtailed his 2018-19 school attendance levels. Fleming Decl. ¶ 19; Fleming Decl., Ex. H (Z.F.’s 2018-19 Student Attendance Report). Z.F. pleaded with his parents to homeschool him or switch him to a new school system. Z.F. Decl. ¶ 21; *see also* Fleming Decl., Ex. K, at 6-7, 10 (texts from Z.F. to Kathy Fleming); Fleming Decl., Ex. J, at 3.

Z.F. used to get “awful flashbacks” every time he saw his cell phone. Fleming Decl. ¶ 20; *see also* Z.F. Decl. ¶ 22 (“Just looking at the phone was traumatic for me.”); Z.F. Dep. 11:6-7. Z.F.’s parents had to buy him a new phone a few months after the incident because they “couldn’t allow Z.F. to keep being tormented like that on a daily basis.” Fleming Decl. ¶ 20. Likewise, Z.F. still gets painful flashbacks when he sees

¹⁰ Z.F. often texted his mother as these anxiety attacks were occurring. *See* Fleming Decl., Ex. K, at 1 (“I keep having anxiety attacks”); *id.* (“Like I threw up”); *id.* at 2 (“I can’t take it”); *id.* at 3 (“I physically can’t take it”); *id.* at 4 (“I’m about to snap”); *id.* at 5 (“I’m a sick nervous dead”); *id.* (“I can’t be here I just can’t”); *id.* at 10 (“My anxiety is driving me insane”); *id.* at 13 (“Ok anxiety is hitting hard”); *id.* (“Idk but it just keeps getting worse I’m sick and shaking and just what the hell”); *id.* at 15 (“Anxiety is going ballistic for some reason”); *id.* (“Yeah I can’t think straight and my stomach really hurts”); *id.* (“I just can’t control my mind”); *id.* (“I just can’t take this I’m gonna explode one way or another”); *id.* at 19 (“I’m sorry I thought I could do it but I just can’t focus and it keeps coming back”); *id.* (“I tried I just I feel like I’m on the edge”).

police officers or police cars. Z.F. Decl. ¶ 23; Fleming Decl. ¶ 21. Rather than viewing them as protectors of the community, Z.F. associates police officers with “the most traumatic experience of his life.” Fleming Decl. ¶ 21.

Z.F. has seen Adkins several times since April 2018, including at Central High School. Z.F. Decl. ¶ 24. Each time he encounters Adkins, Z.F. becomes “sick to [his] stomach.” *Id.*; *see also* Fleming Decl., Ex. K, at 12 (“Ryan is here I’m so freaking out [right now] flashbacks and shit”); Fleming Decl., Ex. I, at 2. On these days, Z.F. comes home “distraught and feeling ill.” Fleming Decl. ¶ 22. He lives in fear that Adkins will subject him to excessive force again. *Id.*; Z.F. Decl. ¶ 24.

On May 30, 2018, Z.F. began seeing a therapist, Thomas Palmer. Fleming Decl. ¶ 23; Z.F. Decl. ¶ 26. At that initial visit, Palmer diagnosed Z.F. with PTSD. Fleming Decl., Ex. I, at 1. Talking with Palmer has “helped [Z.F.] to cope with the trauma that [he] experienced last year as an 8th grader.” Z.F. Decl. ¶ 26. And on April 11, 2019, Z.F. received a psychiatric diagnostic evaluation for purposes of a medication-management program. Fleming Decl. ¶ 25. Z.F. was diagnosed with Generalized Anxiety Disorder, Unspecified Sleep-Wake Disorder, and Unspecified Depressive Disorder. Fleming Decl., Ex. J, at 5.

Z.F. began taking anti-anxiety medication approximately one year after the incident. Z.F. Decl. ¶ 25; Fleming Decl. ¶ 24. Although he is now better equipped to handle daily adversities, Z.F.’s anxiety levels are still far higher than they ever used to be. *Id.* Medical treatment “has not made all of [Z.F.’s] troubles go away—not by a

long shot.” Z.F. Decl. ¶ 25.

LEGAL STANDARD

Summary judgment must be granted “if the movant shows that 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(a). When parties cross-move for summary judgment, each motion must be considered “separately on its own merits to determine whether either of the parties deserves judgment as a matter of law.” *Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003) (quotation omitted). In considering a summary-judgment motion, a court must “view[] the facts and inferences reasonably drawn therefrom in the light most favorable to the nonmoving party.” *Woollard v. Gallahger*, 712 F.3d 865, 873 (4th Cir. 2013). But when the nonmoving party’s account “is ‘blatantly contradicted by the record’ so that ‘no reasonable jury could believe it,’ it should not be adopted by a court ruling on a motion for summary judgment.” *Harris v. Pittman*, 927 F.3d 266, 276 (4th Cir. 2019) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)). This is particularly true where “the record contains an unchallenged videotape capturing the events in question.” *Ikeo v. Shreve*, 535 F.3d 225, 230 (4th Cir. 2008).

ARGUMENT

I. Deputy Adkins Used Excessive Force When Tackling Z.F. in the Hallway of L.F. Addington Middle School

The Fourth Amendment “bars police officers from using excessive force to

seize a free citizen.” *Jones v. Buchanan*, 325 F.3d 520, 527 (4th Cir. 2003). This command “applies equally to the conduct of resource officers in schools.” *Z.F. v. Adkins*, No. 2:18-CV-00042, 2019 WL 1559022, at *3 (Apr. 10, 2019). A use of force is unconstitutionally excessive if “the intrusion on the individual’s Fourth Amendment interests” outweighs “the countervailing governmental interests at stake.” *Graham v. Connor*, 490 U.S. 386, 396 (1989) (quotation omitted). In making this determination, courts must assess whether an officer’s use of force was objectively reasonable, “with an eye toward the proportionality of the force in light of all the circumstances.” *Rowland v. Perry*, 41 F.3d 167, 173 (4th Cir. 1994).

The Supreme Court’s *Graham* decision mandates a particular focus on “three factors: ‘the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.’” *E.W. ex rel. T.W. v. Dolgos*, 884 F.3d 172, 179 (4th Cir. 2018) (quoting *Graham*, 490 U.S. at 396); *see also Z.F.*, 2019 WL 1559022, at *3 (“Three factors are particularly relevant to this inquiry[.]”). In applying *Graham* to the use of force on schoolchildren, the Fourth Circuit has made clear that “officers should exercise more restraint when dealing with student misbehavior in the school context.” *Id.* at 183. Indeed, “young age is a ‘uniquely’ or ‘highly relevant’ consideration under *Graham*.” *Id.* at 182. Courts also “consider the extent of the plaintiff’s injuries” in reviewing an excessive-force claim. *Hupp v. Cook*, 931 F.3d 307, 322 (4th Cir. 2019).

Deputy Adkins used grossly disproportionate force when he tackled Z.F.—a 14-year-old child—in the hallway of Z.F.’s middle school. Doing so was wholly unnecessary under the circumstances, and the attack inflicted lasting harm on Z.F. during a formative period of his childhood.

A. There was no justification for using such violent force.

In considering the strength of the government’s interest, each of the three core *Graham* factors weighs strongly against Adkins. The Fourth Circuit has recognized that *Graham*’s first factor—the severity of the crime at issue—“is intended as a proxy for determining whether ‘an officer [had] any reason to believe that [the subject of a seizure] was a potentially dangerous individual.’” *Estate of Armstrong ex rel. Armstrong v. Village of Pinehurst*, 810 F.3d 892, 900 (4th Cir. 2016) (quoting *Smith v. Ray*, 781 F.3d 95, 102 (4th Cir. 2015)) (alterations in original); *see also Yates v. Terry*, 817 F.3d 877, 885 (4th Cir. 2016) (deeming it “undisputed that these alleged violations are nonviolent”); *Henry v. Purnell*, 652 F.3d 524, 533 (4th Cir. 2011) (en banc) (noting that the officer-defendant had been attempting to arrest the plaintiff for a “non-violent crime”).

Adkins has stated that he tackled Z.F. in order to prevent him from leaving the school building—an act that was *not a crime*, let alone a severe crime meriting the violent response that Adkins undertook. According to Adkins, Z.F. could not be permitted to exit the building because “it is against school policy to leave school

grounds.” Adkins Dep. 66:18-19.¹¹ But the MOU between the Wise County Sheriff’s Office and the Wise County Public Schools system expressly prohibits SROs from enforcing violations of school rules and policies.¹² Rice Decl., Ex. B, at 6-7. And to this day, Adkins is not “aware of any criminal laws that forbid students from leaving the school building during the school day.” Adkins Dep. 107:4-7.

Even if Adkins had sought to rely on the child-pornography allegations as a basis for tackling Z.F., that still would not justify the degree of force used. The exchange of electronic messages between children is not a “dangerous” activity that requires urgent incapacitation. *Estate of Armstrong*, 810 F.3d at 900. Nor are the acts of possessing and distributing explicit photographs. That is especially true here, since Z.F. was not even *known* to have done anything unlawful. The Fourth Circuit has recognized that the government’s interest in using force is diminished when a suspect’s culpability is questionable. *See Hupp*, 931 F.3d at 322 (“Certainly, we may consider any lack of probable cause . . . as we evaluate the reasonableness of the force

¹¹ *See also id.* at 66:6-11 (“Q. Explain to me again exactly why you decided to force Z.F. to the ground while you were in the hallway. A. Because he was attempting to leave the hallway. He was attempting to go outside the building.”); *id.* at 66:21-24, 67:1 (“Q. Would you have attempted to subdue Z.F. . . . if he had not been attempting to, as you say, exit the building through the front door? A. No.”).

¹² Even if Z.F. had been violating a school rule at this time, two school administrators—L.F. Addington’s principal and guidance counselor—were standing just a few feet away from Z.F. Hallway Video at 12:45:03; Adkins Dep. 50:16-18. They were perfectly capable of addressing any infractions of school rules committed in their presence. *See Rice Decl., Ex. B*, at 7 (“The school disciplinary process will be able to function without police intervention.”).

used.”). Adkins has acknowledged that he did not have probable cause to arrest Z.F. in connection with the nude photos. Adkins Dep. 36:8-11. And after searching Z.F.’s phone, Adkins agreed that it is “very likely that somebody else sent [the photos].” *Id.* at 100:24, 101:1. Accordingly, “the lack of any crime committed by [Z.F.] weigh[s] heavily in favor of [his] excessive force claim.” *Hupp*, 931 F.3d at 322 (citing *Jones*, 325 F.3d at 528-31).

Likewise, *Graham*’s second factor—“whether the suspect poses an immediate threat to the safety of the officer[] or others,” 490 U.S. at 396—favors Z.F. exclusively. By his own admission, Adkins had no reason to believe that Z.F. was potentially dangerous. Z.F. had not uttered a threatening word to anyone; he was not carrying a weapon; he had not raised either of his arms; he was not intoxicated; and the school hallway was largely empty at this time. Adkins Dep. 50:11-21, 60:9-23; *see also id.* at 60:5-8 (“Q. Before you first began restraining Z.F., did you feel that he posed an immediate threat to your safety? A. No.”); *id.* at 60:24, 61:1-3 (“Q. Had [Z.F.] said or done anything that led you to believe that he posed a risk to the safety of any other person? A. No.”); *Hensley ex rel. N. Carolina v. Price*, 876 F.3d 573, 583 (4th Cir. 2017) (suspect “made no threatening statements or actions toward anyone in the moments immediately preceding the [use of force]”). Z.F. had also behaved in an entirely non-threatening manner in the cafeteria. Adkins Dep. 42:14-20, 43:16-24, 44:1-13. Once Adkins began to restrain Z.F. in the hallway, moreover, Z.F. made no effort to strike him. *Id.* at 61:4-6.

Graham's third factor clearly favors Z.F., as well, because he was not "actively resisting arrest or attempting to evade arrest by flight" when Adkins tackled him. 490 U.S. at 396. Indeed, Adkins has acknowledged that Z.F. "wasn't attempting to evade arrest," given that Z.F. was not placed under arrest at any point. Adkins Dep. 65:24, 66:1-5; *see also Wilson v. Prince George's Cty.*, 893 F.3d 213, 220 (4th Cir. 2018) ("Officer Gill had not attempted to arrest Wilson, and Wilson was not trying to evade arrest when Officer Gill [used force]."); *Jones*, 325 F.3d at 530 ("Deputy Keller does not even suggest that at the time he began to apply force, he had arrested, or attempted to arrest Jones, or that Jones was attempting to evade arrest.").

That Adkins's actions were severely disproportionate is overwhelmingly supported by a video recording from the hallway showing that Z.F. was *not* attempting to flee the school building when Adkins assaulted him. The video depicts Z.F. walking slowly down the hallway with his head faced downward toward his cell phone. Hallway Video at 12:45:06. Adkins had an unobstructed view of Z.F.'s unhurried movements during this time; Adkins even kept pace with Z.F. by taking small steps in sync with Z.F.'s own. *Id.* at 12:45:05. The situation became violent only when *Adkins* accelerated suddenly and wrapped both of his arms around Z.F., despite a complete absence of provocation. *Id.* at 12:45:06. Adkins soon escalated this maneuver by throwing Z.F. to the ground. *Id.* at 12:45:12.

Under the Fourth Amendment, "an officer must have a reason for using or escalating force." *E.W.*, 884 F.3d at 181. But Adkins's explanations for his rapid use

and escalation of force defy rational belief. As the video footage shows, Z.F. was not moving “quickly” away from Adkins, Adkins Dep. 54:24, and he was not advancing “towards the door,” *id.* at 56:8, 12. Accordingly, “any perception . . . that [Z.F.] had attempted or was attempting to flee would have been unreasonable.” *Smith*, 781 F.3d at 103.

Adkins also testified that he wrapped his arms around Z.F. only because Z.F. was “trying to pull [Adkins] out the door.” Adkins Dep. 64:3-8. After all, according to Adkins, Z.F. was “fully in control of his movements” until both parties ended up next to the front door. *Id.* at 61:12-14, 24; 62:1-4. But the video footage plainly shows that Z.F. was not touching Adkins when Adkins began restraining him with both arms. Hallway Video at 12:45:06. And just as clearly, the video recording establishes that Z.F. was not fully in control of his movements after Adkins grabbed him. Z.F.’s body breached the building’s doorway only because that is the direction in which Adkins—using his 6’1”, 265-pound frame—chose to push him. *Id.* at 12:45:07. To prevent Z.F. from leaving the building, Adkins need only have walked over to the nearest door and stood in front of it—which, the video shows, Adkins had plenty of time to do.¹³

At a minimum, once Adkins had forced Z.F. back inside the building—and

¹³ Further demonstrating the implausibility of Adkins’s account of the incident, Adkins has testified that he experienced “[n]o emotions at all”—not frustration, anger, or anything else—when he threw Z.F. to the ground. Adkins Dep. 52:9-19.

several feet away from the door—throwing Z.F. to the ground was entirely unnecessary. Adkins has testified that Z.F. was “still trying to get out the door” at this point. Adkins Dep. 69:5-6. But that assertion, too, is “blatantly contradicted by the record.” *Harris*, 927 F.3d at 276 (quoting *Scott*, 550 U.S. at 380); see Hallway Video at 12:45:11. “[N]o reasonable jury,” viewing undisputed video footage of the incident, could conclude that tackling Z.F. in these concluding seconds was essential to preventing his escape from the school building. *Smith v. Ozmint*, 578 F.3d 246, 254 (4th Cir. 2009) (quoting *Scott*, 550 U.S. at 380).

Finally, Adkins’s subsequent actions undermine any assertion that tackling Z.F. was necessary to preserve evidence relevant to a criminal investigation of paramount importance. Once Adkins found no nude pictures of L.D. on Z.F.’s phone, he understood that “[i]t was very likely that somebody else sent them.” Adkins Dep. 100:24, 101:1. And two other potential suspects were specifically identified for him. *Id.* at 98:20-24, 99:1, 100:9-16. Yet Adkins took no further action to discover or preserve evidence of any offense. He did not seek to interview these two students, examine their phones, or question anyone else; he simply decided that he was “done with the situation.” *Id.* at 99:12-13. If Adkins’ investigation was not critical enough to continue pursuing after only one suspect had been cleared, then it certainly cannot have justified tackling an unarmed, non-threatening, nonviolent 14-year-old student.

Even if Adkins had been pursuing a governmental interest of the highest order, physically forcing Z.F. to the ground was hardly the only (or even the most efficient)

way to obtain his cell phone. Adkins was standing a mere foot or two away from Z.F. when Z.F. began walking slowly in the other direction. Hallway Video at 12:45:05. Given that Z.F. concededly posed no threat to anyone, Adkins could have sought to grab the phone from his hand. Yet Adkins failed to pursue that obvious—and obviously less painful—alternative. To obtain Z.F.’s phone, Adkins also could have enlisted the help of the school principal and guidance counselor, both of whom were standing nearby. “Instead, tackling [Z.F.] was [Adkins’s] first and only means of effecting the [seizure].” *Barfield v. Kershaw Cty. Sheriff’s Office*, 638 F. App’x 196, 202 (4th Cir. 2016). Adkins made no “effort . . . to temper or to limit the amount of force” used against Z.F. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015).

In sum, it is “difficult to discern any legitimate law enforcement need for the force applied in this case.” *Jones*, 325 F.3d at 530. Adkins “took a situation where there obviously was no need for the use of any significant force and yet took an unreasonably aggressive tack that quickly escalated into a violent exchange.” *Smith*, 781 F.3d at 104; *see also* Adkins Dep. 95:3-5 (“I may could have done things different to where it wouldn’t have escalated to a point of that.”). As uncontested video footage establishes, any assertions to the contrary are “blatantly and demonstrably false.” *Harris*, 927 F.3d at 277 (quotation omitted).

B. The school context weighs heavily against Deputy Adkins’s use of force.

The sensitive context in which Adkins’s use of force occurred renders his

actions even more flagrantly unlawful. Adkins did not immobilize an adult while patrolling a public street—he took down a 14-year-old child in the hallway of a middle school.

Over two months before Adkins tackled Z.F., the Fourth Circuit explicitly clarified that “officers should exercise more restraint when dealing with student misbehavior in the school context.” *E.W.*, 884 F.3d at 183. The *E.W.* court even instructed that the use of “force is not reasonably expected in the school context because it is counterproductive to the mission of schools and school personnel.” *Id.* at 184; *see also id.* at 183 (“[F]orce is generally unnecessary in the school context.”). Put another way, “young age is a ‘uniquely’ or ‘highly relevant’ consideration under *Graham*,” *id.* at 182—one that typically renders the use of force unreasonable in schools. Adkins was well aware of this principle at the time of the incident. *See* Adkins Dep. 73:21-23 (“When dealing with a child, you know, obviously, you want to use the most minimal force as possible.”).

As the Fourth Circuit explained, “the school context presents unique considerations not present when officers patrol the streets.” *E.W.*, 884 F.3d at 183. The use of force “may undermine students’ perception of the school and their willingness to attend, thereby disrupting their education far beyond” any individual incident. *Id.* And being forcibly seized by the police “is often a source of stigma, which can lead to alienation and further disrupt long-term outcomes.” *Id.* at 184. Such “humiliating, scarring, and emotionally damaging experiences” can have a “long-

lasting impact . . . on these children and their ability to flourish and lead prosperous lives.” *Id.* at 188. Other jurisdictions have recognized these common-sense principles, as well.¹⁴

The April 18, 2018 incident at L.F. Addington was not the sort of extraordinary situation that might call for the use of violent force against a schoolchild. Because Z.F. concededly posed no danger to anyone, it would have been blatantly unconstitutional to tackle even an adult under the circumstances. And even if—contrary to the evidence—the amount of force used against Z.F. would have been appropriate for an adult, law enforcement “may have to take on otherwise unreasonable burdens under the Fourth Amendment to accommodate children’s unique needs.” *E.W.*, 884 F.3d at 183. Z.F.’s young age and the school context thus powerfully reinforce that Adkins “used unreasonable force disproportionate to the circumstances presented” when he took Z.F. to the ground. *Id.* at 185.

C. Deputy Adkins’s use of force inflicted severe and lasting injuries on Z.F.

Finally, courts also “consider the extent of the plaintiff’s injuries” in determining whether a use of force was excessive. *Hupp*, 931 F.3d at 322. Z.F.

¹⁴ See, e.g., *Scott v. Cty. of San Bernardino*, 903 F.3d 943, 950 (9th Cir. 2018) (a police use of force was “excessively intrusive in light of the girls’ young ages”); *Tekle v. United States*, 511 F.3d 839, 846 (9th Cir. 2007) (“[I]t should have been apparent that this eleven-year-old boy did not pose a threat and that the need for force accordingly was minimal.”); *Gray ex rel. Alexander v. Bostic*, 458 F.3d 1295, 1306 (11th Cir. 2006) (“[T]he handcuffing was excessively intrusive given Gray’s young age[.]”).

experienced immediate, serious, and long-lasting injuries from being tackled at school by Adkins—harms that weigh heavily against the reasonableness of Adkins’s use of force.

Z.F. had to be taken to the emergency room the day after Adkins threw him to the ground. Z.F. Decl. ¶ 18; Fleming Decl. ¶ 9. A CT scan revealed that Z.F. had suffered a concussion, causing him to experience nausea, headaches, dizziness, and blurred vision. *Id.* X-rays also indicated that Z.F.’s back had been injured, for which he had to take multiple kinds of pain medication. *Id.* In *E.W.*, by comparison, the Fourth Circuit held that a school resource officer had used excessive force by handcuffing a child even though she suffered only de minimis injury. 884 F.3d at 185. Z.F.’s injuries far exceeded those suffered by the juvenile in *E.W.* See Adkins Dep. 70:8-11 (“Q. Was the amount of force that you used on Z.F. greater than what would have been caused if you had handcuffed him? A. Yes.”).

The incident with Adkins also caused Z.F. to experience—for the first time in his life—severe anxiety. Z.F. Decl. ¶ 19; Fleming Decl. ¶ 11. Medical professionals diagnosed Z.F. with PTSD and Generalized Anxiety Disorder. Fleming Decl. ¶¶ 23, 25. He even developed a peptic ulcer that made his life “miserable.” Z.F. Decl. ¶ 19. Z.F. experienced constant stomach pain; he vomited regularly; his nausea drained his appetite, triggering rapid weight loss; he had difficulty sleeping; he was extremely tired during the day; he became prone to bursts of anger; and he was afraid to stay home alone. Z.F. Decl. ¶ 19; Fleming Decl. ¶¶ 11-17. Just glancing at his cell phone gave

Z.F. painful flashbacks. Z.F. Decl. ¶ 22; Fleming Decl. ¶ 20. To this day, Z.F. gets terrible anxiety attacks when he sees a police officer or thinks about how Adkins hurt him last year. Z.F. Decl. ¶ 23; Fleming Decl. ¶ 21.

Z.F.'s ongoing distress vividly demonstrates how the use of force against children can "lead to alienation" from the school environment and "disrupt long-term [educational] outcomes." *E.W.*, 884 F.3d at 184. Z.F.'s classmates ridiculed him following the April 18 incident, and he lost faith in his school's authority figures, who appeared to believe that his attacker had done nothing wrong. Z.F. Decl. ¶¶ 20-21; Fleming Decl. ¶ 19. Z.F. had trouble concentrating in class and focusing on his assignments. Z.F. Decl. ¶¶ 20-21. His school attendance plummeted as he experienced frequent anxiety attacks. *Id.*; Fleming Decl. ¶¶ 18-19. And he often needed his mother or grandmother to come to campus and calm him during the school day. *Id.* For Z.F., being tackled by a police officer at school was indeed a "humiliating, scarring, and emotionally damaging" experience that has "undermined [his] perception of the school" and "disrupt[ed] [his] education." *E.W.*, 884 F.3d at 183, 188. The considerable physical and emotional trauma that Z.F. has suffered from the tackling incident thus counsel strongly in favor of a finding of excessive force.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment should be granted.

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Dated: December 9, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2019, I electronically filed the foregoing brief with the U.S. District Court for the Western District of Virginia by using the Court's CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system. A courtesy paper copy of the brief and supporting exhibits will also be filed with the Court promptly upon electronic filing.

/s/ Daniel B. Rice

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