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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT <http://www.ca2.uscourts.gov/>). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 17<sup>th</sup> day of April, two thousand and eight.

PRESENT: HON. BARRINGTON D. PARKER,  
HON. RICHARD C. WESLEY,  
*Circuit Judges,*  
HON. MIRIAM GOLDMAN CEDARBAUM,<sup>1</sup>  
*District Judge.*

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Christine Costello, on her own behalf, and on behalf of  
her daughter Amber Costello, a minor,

*Plaintiff-Appellant,*

v.

**SUMMARY ORDER  
No. 06-5138-cv**

Town of Warwick, Thomas McGovern, Chief of Police,  
sued in his individual capacity, and Ronald Donnatin,  
sued in his individual capacity,

*Defendants-Appellees.*

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<sup>1</sup> The Honorable Miriam Goldman Cedarbaum, of the United States District Court for the Southern District of New York, sitting by designation.

1 For Plaintiff-Appellant: Michael H. Sussman, Goshen, NY.

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3 For Defendants-Appellees Ronald Donnatin and Thomas McGovern:  
4 Cynthia Dolan, Boeggeman, George, Hodges & Corde, P.C.,  
5 White Plains, NY.

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7 For Defendant-Appellee Town of Warwick:  
8 Paul E. Svensson, Hodges Walsh & Slater, LLP,  
9 White Plains, NY.

10  
11 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND DECREED that  
12 the judgment of the district court is hereby AFFIRMED.

13 Christine Costello appeals the October 11, 2006 judgment of the United States District  
14 Court for the Southern District of New York (Robinson, *J.*). We assume the parties' familiarity  
15 with the underlying facts and procedural history of the case.

16 We review a grant of summary judgment *de novo*, "construing the facts in the light most  
17 favorable to the non-moving party." *Vietnam Ass'n for Victims of Agent Orange v. Dow Chem.*  
18 *Co.*, 517 F.3d 104, 115 (2d Cir. 2008) (internal quotation marks omitted). 42 U.S.C. § 1983  
19 imposes liability on any person who under color of state law "subjects . . . any citizen of the  
20 United States or other person within the jurisdiction thereof to the deprivation of any rights,  
21 privileges, or immunities secured by the Constitution and laws" of the United States. We analyze  
22 the appellant's claim that Police Officer Ronald Donnatin ("Donnatin") violated Anthony  
23 Costello's ("Costello") Fourth Amendment right to freedom from the use of excessive force  
24 according to the Fourth Amendment's reasonableness standard. *Salim v. Proulx*, 93 F.3d 86, 88-  
25 89 (2d Cir. 1996). To survive summary judgment, the appellant was required to raise a material  
26 question of fact as to whether Donnatin's decision to use deadly force was "objectively  
27 reasonable," or in other words, whether he had "probable cause to believe that [Costello] pose[d]  
28 a significant threat of death or serious physical injury to [himself] or others." *Cowan ex rel.*

1 *Estate of Cooper v. Breen*, 352 F.3d 756, 762 (2d Cir. 2003) (internal quotation marks omitted).

2 Contrary to the appellant’s assertions, whether Donnatin’s decision was objectively reasonable  
3 “depends only upon [his] knowledge of circumstances immediately prior to and at the moment  
4 that he made the split-second decision to employ deadly force.” *Id.* (internal quotation marks  
5 omitted).

6 Minutes before Donnatin’s decision to shoot, Costello sat in the driver’s seat of his car,  
7 which was boxed in between the cars of a police officer and a detective. Although six police  
8 officers were standing next to or close to the car, Costello put the vehicle into drive and stepped  
9 on the gas. The car then moved forward and backwards, and hit the car in front of it. It appeared  
10 to Donnatin, who was standing near the passenger side door of Costello’s car, that Costello was  
11 then “going to back the car up” again. At this moment, it was objectively reasonable for  
12 Donnatin to believe that at least one police officer was underneath Costello’s car, that other  
13 officers may have been hurt, and that Costello would continue to use his car to inflict serious  
14 bodily harm on the other arresting officers.

15 The appellant’s arguments to the contrary are without merit. Whether the police officers  
16 whom Costello knocked over with his car were actually “out of any danger” is not dispositive.  
17 We evaluate the reasonableness of Donnatin’s decision based on his own knowledge of the  
18 circumstances immediately prior to his split-second decision to shoot and conclude that under the  
19 circumstances presented, Donnatin’s conduct was reasonable. *See Graham v. Connor*, 490 U.S.  
20 386, 396 (1989) (“The ‘reasonableness’ of a particular use of force must be judged from the  
21 perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”).  
22 Moreover, contrary to appellant’s assertions, Donnatin was not required to have acted in self-

1 defense or to have confronted a fleeing felon in order for his decision to use deadly force to be  
2 objectively reasonable.

3 Furthermore, the district court did not err in granting summary judgment to the Town of  
4 Warwick on the municipal liability claim. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694-  
5 95 (1978) (holding that a local government may not be sued under § 1983 on the theory of  
6 *respondeat superior*). Nor did it abuse its discretion when it declined to exercise supplemental  
7 jurisdiction over the appellant's remaining state law claims after the dismissal of all federal  
8 claims. *See* 28 U.S.C. § 1367(c)(3); *Adams v. Suozzi*, 517 F.3d 124, 129 (2d Cir. 2008).

9 We have considered the appellant's remaining arguments and find them to be without  
10 merit. Accordingly, the judgment is AFFIRMED.

11

12 FOR THE COURT:  
13 Catherine O'Hagan Wolfe,  
14 Clerk of Court

15  
16 By: \_\_\_\_\_