United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 27, 2026
Lyle W. Cayce
Clerk

No. 25-10545

IRA DARLINA BAKER, *individually, as the administratrix of* THE ESTATE OF DARION DEV'ON BAKER, and *on behalf of* ALL WRONGFUL DEATH BENEFICIARIES OF DARION DEV'ON BAKER; MARIO BAKER; ARLANDRA WILLIFORD,

Plaintiffs—Appellees,

versus

RICHARD KEITH COBORN; MICHAEL JOSEPH MCHUGH,

Defendants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:19-CV-77

Before SMITH, WIENER, and HIGGINSON, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

Darion Baker and Gregory Dees stole a car in California and planned to drive it to Tennessee. While at a gas station in Stratford, Texas, they were confronted by police officers Richard Coborn and Michael McHugh. When Baker attempted to flee by car, the officers opened fire—killing him.

Baker's estate and family sued Coborn and McHugh under 42 U.S.C. § 1983, alleging the shooting constituted excessive force in violation of the

Fourth and Fourteenth Amendments. Defendants claimed qualified immunity ("QI"), and a panel of this court held that defendants were entitled to QI for shots fired before the car began moving. But the panel held that a jury could find that the shots fired after the car moved away from defendants were objectively unreasonable, violating the Fourth Amendment. The panel did not determine whether the violation was clearly established and remanded to the district court.

On remand, the district court held that the alleged violation was clearly established, denying QI. Coborn and McHugh appeal. Because Coborn's conduct, when viewed in the light most favorable to plaintiffs, constitutes a clearly established Fourth Amendment violation, we affirm.

I.

Baker and Dees approached Stratford after dark driving a stolen sedan. Coborn and McHugh were on patrol. The officers noticed that the sedan suddenly slowed as they passed it. Finding that suspicious, the officers followed the sedan to a gas station with an adjacent convenience store. After Baker and Dees entered the convenience store, the officers recorded the sedan's license plate. When dispatch verified that the sedan was stolen, the officers investigated further.

The officers parked near the store; Coborn went inside. Three young men approached Coborn and informed him that Baker and Dees were asking suspicious questions about how to get to Memphis on backroads in order to evade police checkpoints. Baker, Dees, and Coborn then exited the store. Baker got into the driver's side of the car while Dees began to pump gas.

The officers drove directly behind the sedan and activated their police lights. Upon seeing the officers, Dees dropped the gas nozzle and climbed into the front passenger seat. Coborn and McHugh exited their vehicle and approached the sedan with their guns drawn. Coborn approached the driver-

side door; McHugh positioned himself on the passenger side.

The officers shouted commands at Baker and Dees including "let me see your hands" and "roll the window down!" The sedan's side windows were darkly tinted, obstructing the officers' view inside. Coborn moved directly in front of the sedan.

Baker put the transmission into drive. The officers fired numerous shots into the vehicle (first round of shots), immediately after which Baker accelerated his car forward and to the left. The sedan moved past Coborn, who continued to fire while running toward the moving vehicle (second round of shots).

Baker was hit from behind by two gunshots. The fatal shot traveled through the middle of Baker's upper back and exited on the front left side of his chest. Dees was not injured.

Plaintiffs sued defendants under § 1983, alleging the shooting constituted excessive force in violation of the Fourth and Fourteenth Amendments. *Baker v. Coburn*, 68 F.4th 240, 244 (5th Cir. 2023).[1] Defendants invoked QI and moved for summary judgment. *Id.* The district court granted the motion, holding that (1) plaintiffs failed to establish that defendants' actions violated clearly established law with respect to the first round of shots and (2) the shots from the second round were objectively reasonable and therefore did not violate the Fourth Amendment. *Id.*

A panel of this court affirmed in part and reversed in part. *Id.* at 251. We agreed that plaintiffs had not shown that the first round was clearly unlawful but disagreed with the district court regarding the reasonableness of

[1] The case caption in the previous opinion contained a scrivener's error. 68 F.4th at 242 n.1.

the second round. *Id.* at 247–51. Because "the objective reasonableness of the officers' fear of Baker is dependent upon the acceptance of their [contested] account of the shooting" and because at summary judgment courts must take the facts in the light most favorable to the nonmovant, the question of objective reasonableness was best put to a jury. *Id.* at 249. The panel did not determine whether the violation was clearly established and remanded to the district court. *Id.* at 251.

On remand, the district court denied QI and summary judgment, holding that the alleged violation was clearly established and that genuine disputes of material fact remained. Coborn and McHugh appeal.

II.

"Because [the] claims arise under § 1983, and the denial of QI is a 'final decision' under § 1291, this court has jurisdiction over [the] appeal." *Lewis v. Walley*, 168 F.4th 327, 330 (5th Cir. 2026) (footnote omitted). Appellate courts review a denial of a motion for summary judgment *de novo*. *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 331 (5th Cir. 2020). Summary judgment is appropriate "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). Courts must view the evidence in the light most favorable to the nonmovant. *Newman v. Guedry*, 703 F.3d 757, 761 (5th Cir. 2012). "But we only review a denial of summary judgment based on [QI] 'to the extent that it turns on an issue of law.'" *Joseph*, 981 F.3d at 331 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985)). "[W]e may evaluate whether a factual dispute is *material* (i.e., legally significant), but we may not evaluate whether it is *genuine* (i.e., exists)." *Id.* (emphasis in original) (citing *Melton v. Phillips*, 875 F.3d 256, 261 (5th Cir. 2017)).[2]

[2] Baker contends that we lack jurisdiction because, on appeal, Coborn raises

III.

"The doctrine of [QI] protects public officials from liability for civil damages 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Jennings v. Patton*, 644 F.3d 297, 300 (5th Cir. 2011) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). Where a defendant asserts QI, "the burden shifts to the plaintiff to show that the defense is not available." *Trent v. Wade*, 776 F.3d 368, 376 (5th Cir. 2015).

"[A] plaintiff seeking to overcome [QI] must show: (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." *Carmona v. City of Brownsville*, 126 F.4th 1091, 1096 (5th Cir. 2025) (quoting *Converse v. City of Kemah*, 961 F.3d 771, 774 (5th Cir. 2020)). Because we held that the second round of shots, when viewed in the light most favorable to Plaintiffs, constituted a Fourth Amendment violation, *Baker*, 68 F.4th at 249, we focus on only the second prong of QI.

"Government officials enjoy [QI] from suit under § 1983 unless their conduct violates clearly established law." *Zorn v. Linton*, No. 25-297, 607 U.S. ---, ---, 2026 U.S. LEXIS 1471, at *3 (U.S. Mar. 23, 2026) (per curiam) (citation omitted). "A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is

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disputes of both fact and law. Though we do not adjudicate questions of fact at this stage, an appellant's request that we do does not strip us of jurisdiction, so long as they also raise an issue of law. *See Cole v. Carson*, 935 F.3d 444, 452 (5th Cir. 2019) (en banc) (explaining that we may consider "whether the district court erred in assessing the legal significance of the conduct that the district court deemed sufficiently supported for purposes of summary judgment"). Because Coborn raises a question of law on appeal (whether the second round of shots was a clearly established Fourth Amendment violation), we have jurisdiction. *See id.*

doing violates that right." *Id.* at *3–4 (citation modified). "A right is not clearly established if existing precedent does not place the constitutional question beyond debate." *Id.* (citation modified.) "To find that a right is clearly established, courts generally need to find a case where an officer acting under similar circumstances . . . was held to have violated the Constitution." *Id.* at *4 (citation omitted) (ellipses in original). "The relevant precedent must define the right with a high degree of specificity, so that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Id.* (citation omitted).[3]

Plaintiffs contend that *Lytle v. Bexar County*, 560 F.3d 404 (5th Cir. 2009), clearly established Coborn's conduct as violative of the Fourth Amendment. In *Lytle*, an officer shot at the back of a vehicle, killing a passenger.[4] The officer believed that the vehicle was stolen and knew that the driver had just engaged in a car chase. The driver collided with another vehicle, backed up toward the officer's cruiser, and drove multiple houses down the block before the officer fired. On those facts, we held that the officer acted unreasonably, violating the Fourth Amendment; we denied QI, noting that "[i]t has long been clearly established that, absent any other justification for the use of force, it is unreasonable for a police officer to use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others." *Id.* at 418.

Coborn responds that *Lytle* is no longer good law after *Mullenix v. Luna*, 577 U.S. 7 (2015) (per curiam). There, the Court instructed us not to define "clearly established" at a high level of generality, specifically in the

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[3] "Principles stated generally, such as that an officer may not use unreasonable and excessive force, do not suffice." *Zorn*, 2026 U.S. LEXIS 1471, at *4 (citation modified).

[4] Because *Lytle* was decided at the summary judgment stage, all facts were viewed in the light most favorable to the plaintiff, the non-moving party. 560 F.3d at 409.

context of an officer-involved shooting:

> The Fifth Circuit held that Mullenix violated the clearly established rule that a police officer may not 'use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others.' Yet this Court has previously considered—and rejected—almost that exact formulation of the QI question in the Fourth Amendment context.

Id. at 12 (citation modified). According to Coborn, post-*Mullenix*, plaintiffs cannot use *Lytle* as evidence of clearly established law.

Not so. *Mullenix* did not undermine *Lytle*'s holding that the evidence in that case, when viewed in the light most favorable to the plaintiff, constituted a Fourth Amendment violation, or even a clearly established Fourth Amendment violation. *Id.* at 17 (refusing to imply "that *Lytle* was either correct or incorrect"). *Mullenix* abrogated only *Lytle*'s formulation of the rule for clearly established law in cases involving fleeing suspects. *Id.* at 12.

To the extent that courts continue to cite *Lytle* for the very formulation of clearly established law in the context of officer-involved shootings that *Mullenix* overruled, that is error. But, while employing the necessary granularity required by QI, we may still analyze the factual similarities between this case and *Lytle* to determine whether *Lytle*'s holding (that when the facts were viewed in the light most favorable to the plaintiff, the officer violated the Fourth Amendment) clearly established Coborn's conduct as unconstitutional.[5]

Lytle clearly established the conduct in this case, when viewed in the light most favorable to plaintiffs, as a Fourth Amendment violation. Just as

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[5] *See, e.g.*, *Estevis v. Cantu*, 134 F.4th 793, 797–98 (5th Cir.) (comparing facts to those in *Lytle* post-*Mullenix*), *cert. denied*, 146 S. Ct. 300 (2025); *Salazar v. Molina*, 37 F.4th 278, 283 (5th Cir. 2022) (same).

in *Lytle*, a suspected felon (Baker) attempted to flee from police officers in a stolen vehicle after ignoring their verbal commands, and, as the vehicle drove away, an officer (Coborn) fired at it. 560 F.3d at 412–13. But unlike in *Lytle*, there was not a police chase taking place in a residential neighborhood in which a fleeing car crashed into a bystander. *Id.* at 413. Instead, Coborn fired at the slowly moving vehicle as he ran after it in an empty parking lot.

"It is unclear how firing at the back of a fleeing vehicle some distance away was a reasonable method of addressing the threat." *Id.* at 412. *Lytle*'s holding that the facts there, when viewed in the light most favorable to the plaintiff, constituted a Fourth Amendment violation put Coborn on notice that his conduct here, when viewed in the light most favorable to plaintiffs, was a clearly established Fourth Amendment violation.

* * * * *

At this early, summary judgment stage, plaintiffs have established a genuine dispute of material fact. Coborn is not entitled to QI for the second round of shots.[6] The facts, when viewed in the light most favorable to plaintiffs, constitute a clearly established Fourth Amendment violation. We express no view, however, as to the ultimate merits of any claim. Any such merits will be determined beyond the summary judgment stage. The order denying summary judgment is AFFIRMED.

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[6] Coborn avers that "the District Court erred in dividing the shots into two groups and denying [QI] for some shots without considering the totality of the circumstances." Indeed, courts must consider the "totality of the circumstances" when ruling on Fourth Amendment QI. *Barnes v. Felix*, 605 U.S. 73, 80 (2025). "But an exercise of force that is reasonable at one moment can become unreasonable in the next if the justification for the use of force has ceased." *Lytle*, 560 F.3d at 413. Though Coborn did not use clearly unreasonable force when firing at the vehicle as he stood in front of it during the first round of shots, *Baker*, 68 F.4th at 247, a disputed fact is whether he "could have had sufficient time to perceive that any threat to him had passed by the time he fired" the second round. *Lytle*, 560 F.3d at 414.