

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2026

Thomas B. Plunkett, III
Clerk

No. 25-11267

CYNDI FISCHER, *Individually and on behalf of* THE ESTATE OF JESSE
FISCHER, *Deceased*,

Plaintiff—Appellant,

versus

ROBERT PHILLIPS, *Individually*,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CV-1069

Before STEWART, HIGGINSON, and HO, *Circuit Judges*.

PER CURIAM:*

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Cyndi Fischer (“Fischer”) sued the City of Arlington, Texas (the “City”) and Arlington Police Officer Robert Phillips (“Officer Phillips”), pursuant to 42 U.S.C. § 1983 following the death of her son, Jesse Fischer (“Jesse”). Fischer alleged that Officer Phillips violated Jesse’s constitutional right to be free from unlawful seizures using deadly force. Both the City and Officer Phillips filed motions to dismiss. The district court granted both motions. Fischer timely appealed.¹ For the following reasons, we AFFIRM.

I.

A. Factual Background

On October 20, 2021, Officers Phillips and Powell² responded to a 911 call in which Jesse was reportedly slumped over in his car. Upon approaching the vehicle, the initial responding officer, Officer Powell, told Jesse to open his door and exit the vehicle so first responders could examine him. Instead, Jesse started his car’s ignition. Officer Powell told Jesse to turn off his car and, again, open his door. Jesse responded by asking if he was under arrest. Officer Powell did not answer. She then told Jesse to turn off his engine and stay parked. Jesse pulled away and began driving at a speed of approximately twenty miles per hour. Officers Powell and Phillips followed Jesse in separate vehicles. At that point, Officer Phillips commented he would pursue Jesse because he was swerving his car “all over the road” and driving “on the sidewalk,” suggesting that Jesse was possibly driving while intoxicated.

¹ After filing her appeal, Fischer moved to voluntarily dismiss the City. That motion has been granted. Accordingly, we only address Fischer’s arguments as to Officer Phillips.

² The record does not appear to include Officer Powell’s first name.

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After a few seconds, Jesse stopped at a red light. Officers Phillips and Powell exited their respective vehicles and began approaching Jesse's car again. Officer Phillips told Jesse to put his hands out of his window, throw his keys out of the car, and step out of his vehicle. Jesse hung both of his hands outside of the window and repeatedly asked: "What did I do?" Additionally, he stated that he knew his rights and that he "ha[d] a right to do what [he] did." Officer Phillips then told Jesse: "This is not going to end well for you if you do not drop those keys." Jesse responded: "This is not going to end well for you either. I got a lot of stuff going on now." Officer Phillips asked: "You got a lot of stuff going on, what you got going on?" What Jesse says next is inaudible, but Officer Phillips continued by saying: "Well right now I got to deal with you, so step out of the car and do it now." Officer Phillips also told Jesse that he was under arrest at that point "for evading." In Officer Phillips's body camera footage, Jesse is heard responding: "Evading? I'm going somewhere safe." Jesse then asked if Officer Phillips was the sergeant. Officer Phillips did not respond. Instead, he continued ordering Jesse to step out of the vehicle. He then spoke to Officer Powell and asked her: "Are you ready to move up? [Jesse] has his hands out." As Officers Phillips and Powell approached the car, Jesse pulled his hand back into his car. The officers then drew their guns and pointed them at Jesse. Officer Phillips began yelling at Jesse to put his hands back outside of the window. Jesse, still holding his keys, placed one hand outside of the window a second time. However, once the light turned green, Jesse began driving away at approximately twenty miles per hour, and the officers proceeded to follow Jesse once more.

As the pursuit resumed, Jesse continued driving under the speed limit and stopping at every stop sign. Although he stopped several feet past each stop sign's line, he otherwise obeyed all other traffic laws. Each time Jesse stopped, Officer Phillips attempted to leave his patrol vehicle and approach

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Jesse. However, he quickly returned to the car each time Jesse drove off. Eventually, Jesse drove until he appeared trapped in a cul-de-sac.

Once in the cul-de-sac, he began to make a leftward U-turn alongside the curb and toward the entrance. At that point, Officer Phillips stopped at the entrance of the cul-de-sac, blocking Jesse's only path of exit. Officer Powell stopped her vehicle behind and to the left side of Officer Phillips's car, further blocking the exit. Another car was parked alongside the leftmost curb of the cul-de-sac where the officers stopped, creating a barrier of vehicles that Jesse would have to ram to continue his flight from the officers. Jesse continued his U-turn toward the exit of the cul-de-sac, driving approximately five miles per hour in the direction of the officers' stopped vehicles. Though he was within ten to fifteen feet of the police vehicles, he did not stop his vehicle or slow his speed.

As Jesse completed the U-turn and drove toward the police vehicles, Officer Phillips got out of his car, unholstered and raised his pistol, and began yelling: "Don't you do it! Don't you—!" Officer Phillips then fired six shots at Jesse's windshield. Jesse fell out of the car wounded and covered in blood. The officers proceeded to handcuff Jesse and place him on his stomach. Then, Officer Phillips said, "I thought he was about to . . . run me over." Officer Powell eventually told Officer Phillips that he "did the right thing" because Jesse was "coming right at [her]." Jesse was rushed to the hospital and died from his injuries shortly thereafter.

On October 20, 2023, exactly two years later, Fischer sued Officer Phillips. She alleged that Officer Phillips used excessive force, thereby violating Jesse's Fourth Amendment rights. She also brought two Texas state-law claims: a wrongful death action and a survival action. On August 21, 2025, Officer Phillips filed a motion to dismiss and included body-camera footage that Fischer had referenced but not included as an exhibit with her

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complaint. He also included footage from his dashboard camera and Officer Powell's dashboard camera that the parties agree was incorporated by reference in Fischer's complaint. On October 30, 2025, the district court determined that Officer Phillips was entitled to qualified immunity and granted his motion to dismiss. Fischer timely appealed.

II.

We review a district court's decision to grant a motion to dismiss under Rule 12(b)(6) *de novo*. *McKay v. LaCroix*, 117 F.4th 741, 746 (5th Cir. 2024) (citation omitted). Under this standard, this court "accept[s] all well-pleaded facts as true and view[s] those facts in the light most favorable to the plaintiffs." *Meador v. Apple, Inc.*, 911 F.3d 260, 264 (5th Cir. 2018) (citation omitted). "Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, 'documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.'" *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (quoting *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008)). We "view all [well-pleaded] facts and video recordings incorporated into the pleadings in the light most favorable to the plaintiff." *Sanchez v. Nunemaker*, 179 F.4th 315, 318 (5th Cir. 2026) (citation modified). The event as depicted by the video "should be adopted over the factual allegations in the complaint if the video 'blatantly contradict[s]' those allegations so that no reasonable jury could believe those allegations." *Id.* (citation modified).

III.

Fischer raises two arguments on appeal. First, she argues that the district court erred in granting Officer Phillips qualified immunity on her excessive force claim. Next, she argues that the district court erred in

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dismissing her state-law wrongful death and survival actions. We address each argument in turn.

A. Federal Excessive Force Claim

Fischer first contends that the district court improperly granted Officer Phillips qualified immunity because she plausibly alleged that Officer Phillips violated Jesse's right to not be seized through deadly force.

"Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (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." *Santander v. Salazar*, 133 F.4th 471, 478 (5th Cir. 2025) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). "When confronted with a qualified-immunity defense at the pleadings stage, the plaintiff must plead 'facts which, if proved, would defeat [the] claim of immunity.'" *Id.* (quoting *Guerra v. Castillo*, 82 F.4th 278, 285 (5th Cir. 2023)).

"To prevail on an excessive-force claim, the plaintiff must show (1) an injury, (2) that resulted directly from an officer's use of force, and (3) that the force used was 'objectively unreasonable.'" *Aguirre v. City of San Antonio*, 995 F.3d 395, 406 (5th Cir. 2021) (quoting *Flores v. City of Palacios*, 381 F.3d 391, 396 (5th Cir. 2004)). Fischer's complaint specifically alleged that Officer Phillips used excessive force because "Jesse was not suspected of a violent crime, had not committed any reckless or dangerous driving, and was not presenting an immediate risk of harm or threatening any officer or other person, and was driving away slowly around [Officer] Phillips." Relying on *Lytle v. Bexar County, Texas*, 560 F.3d 404, 416 (5th Cir. 2009), she adds that "Jesse's driving was not so menacing that any use of force in an attempt to stop it would be objectively reasonable as a matter of law." In her view, Officer Phillips is not entitled to qualified immunity because "both

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the temporal and physical proximity to Jesse's slow-moving car attempting to pass [Officer] Phillips by driving around him did not place [him] in reasonable fear of being hit by the car." Here, the parties' dispute centers around whether Officer Phillips's decision to shoot into Jesse's vehicle was objectively unreasonable—that is, whether his use of deadly force was excessive.

In considering whether the amount of force used was excessive, we “must balance ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.’” *Id.* at 407 (citing *Tolan v. Cotton*, 572 U.S. 650, 656 (2014)). This requires consideration of “the totality of the circumstances, ‘including 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.’” *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

As an initial matter, the first and third *Graham* factors weigh in favor of a finding that Officer Phillips's use of force was not excessive. Here, Jesse was suspected of driving while intoxicated, and it is “this court’s repeated, unequivocal, and binding holding[] that DUI is a serious crime under *Graham*.” *Anderson v. Estrada*, 140 F.4th 634, 643 (5th Cir. 2025), *cert. denied*, 146 S. Ct. 825 (2025). Nor is there any question Jesse was actively evading arrest. Despite being told multiple times to stop and turn off his vehicle—and later being explicitly informed he was under arrest—he disregarded the officers’ commands and continued his flight. “Repeated attempts to withdraw from an officer or declining to follow an officer’s orders constitute active resistance.” *Id.* at 646.

The parties dispute focuses on the second *Graham* factor—whether Jesse posed an immediate physical threat. The parties first dispute the

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magnitude of the “chase” between Jesse and the officers. Fischer frames it as a brief, low-speed pursuit. She acknowledges that Jesse failed to obey the officers’ instructions to stop; however, she emphasizes that Jesse stopped at every stop sign and red light he encountered. She also notes that he was not speeding and did not cause any accidents between the officers or any other civilians. On the contrary, Officer Phillips argues that Jesse’s behavior throughout the pursuit was unpredictable, and that it was objectively reasonable for an officer to believe that Jesse posed a threat to himself, the officers, and the public by the time he fired shots inside the cul-de-sac.

The video recordings depict the events as they unfolded. They confirm that Jesse’s car makes both a wide right turn and scrapes the curb towards the beginning of the pursuit.³ The videos also confirm that Jesse refused to follow Officer Phillips’s instructions to drop his keys outside of the window and step out of the car. Furthermore, the videos capture the back-and-forth verbal exchange wherein Jesse tells Officer Phillips that things “would not end well” for him. Officer Phillips and Officer Powell continue following Jesse into a cul-de-sac towards the end of the pursuit. As Jesse rounds the circle, his vehicle ends up directly facing the officers. He continues moving forward, and only then does Officer Phillips shoot.

Nonetheless, having confirmed that Jesse’s death directly resulted from the shots Officer Phillips fired, we cannot say that Officer Phillips’s decision was objectively unreasonable. Before the officers and Jesse arrived at the cul-de-sac, Jesse had repeatedly refused to follow instructions, told a police officer that “things would not end well” for that officer, and drove off after being told he was under arrest. Jesse’s actions before entering the cul-

³ Even crediting Fischer’s assertion that Jesse initially turned wide to avoid hitting an officer, the video still shows that Jesse drives his car outside of the lane and scrapes the curb seconds later with no obstructions in his way.

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de-sac would likely lead an objective officer to believe that Jesse posed a threat to himself and others. Jesse's actions after driving into the cul-de-sac would likely lead to the same conclusion. Fischer's complaint alleges that Jesse was driving "to the side and away" from the officers. But the videos conclusively establish that Jesse's car was coming *towards* the officers at the moment shots were fired. Because the video convincingly contradicts Fischer's complaint, we adopt the events depicted in the video recordings. *See Sanchez*, 179 F.4th at 318. Jesse's car was not merely driving near, around, or beside the officers. It was coming directly towards the officers; thus, posing a direct threat to their safety.

Still, Fischer's complaint alleges that Jesse "was attempting to flee." She argues under *Lytle* that Officer Phillips acted unreasonably by shooting Jesse as he attempted to flee the cul-de-sac. But *Lytle* does not extend as far as Fischer asserts. It does not require us to hold that Officer Phillips was objectively unreasonable in shooting at a fleeing vehicle coming towards him. In *Lytle*, a panel of this court held that "a suspect that is fleeing in a motor vehicle is not so inherently dangerous that an officer's use of deadly force is *per se* reasonable. In assessing the reasonableness of a police officer's use of force, we must instead delve into the facts and circumstances of each case." *Lytle*, 560 F.3d at 416. The panel declined to say that the officer's actions were objectively reasonable where the pursuit had gone "only a quarter-to-half mile," where "there were no children or bystanders in the path of the vehicle," and where the officer fired "at the back of the vehicle from some distance." *Id.* at 416–17. Accordingly, the panel determined that a jury should consider whether the officer's actions were objectively reasonable.

Fischer is correct that *Lytle* instructs us not to simply bless Officer Phillips's actions because he claimed that he sensed danger. But *Lytle* also requires an examination of the specific facts of each case. Our examination of the facts—including the multiple recordings capturing the events—requires

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us to hold that Officer Phillips's actions were not objectively unreasonable. Furthermore, the fact that Jesse was unmistakably driving towards the officers is a critical difference here. We are not persuaded that *Lytle* requires us to hold that an officer acts unreasonably in shooting at a fleeing suspect when the vehicle is coming directly towards the officer.⁴

Other panels of this court have considered the reasonableness of deadly force to stop a fleeing suspect when the car is coming toward the officer. A notable example arises in *Fraire v. City of Arlington*, 957 F.2d 1268 (5th Cir. 1992). There, an officer observed a truck make “an extremely wide right turn, swinging into the inside lane and nearly colliding with oncoming traffic.” *Id.* at 1270. He followed the truck and continued observing the driver swerve into other lanes. *Id.* As the officer radioed for assistance, the truck turned onto a residential street and stopped in a driveway. *Id.* When the officer approached the truck and asked him to turn off the ignition, the driver put the truck in reverse and backed out of the driveway. *Id.* The officer began pursuing the truck and the two vehicles ultimately came to a cul-de-sac. *Id.* at 1271. The truck skidded to a stop and hit a curb, which caused the engine to die. *Id.* The officer continued to park his car “about [twenty-five] to [thirty] feet away” from the driver and the left of the curb. *Id.* He then began approaching the vehicle but retreated as he realized the truck was continuing to drive around the cul-de-sac. *Id.* As the truck came towards the officer, he fired one shot. *Id.* at 1272. Witnesses recalled the officer yelling “Stop,

⁴ The *Lytle* panel recognized a dispute over two material facts: (1) the car's distance from the officer when shots were fired and (2) the direction the car was traveling when shots were fired. *Lytle*, 560 F.3d at 412. Viewing the facts in the light most favorable to the plaintiff, that panel noted that the officer potentially fired into the back of a fleeing vehicle. Here, there can be no dispute that Jesse's car was coming in the direction of the officers. Even assuming that Jesse was attempting to flee and not purposefully driving towards the officers, his car was not driving away from the officers' direction as in *Lytle*.

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police’ or ‘[h]alt, police’ several times” before firing the shot at the last possible moment. *Id.*

On appeal, the panel held that the officer was entitled to qualified immunity because once the officer “entered the cul-de-sac and left his car, he was clearly in personal danger of being injured or killed.” *Id.* at 1274. The panel also relied on previous circuit caselaw reasoning that if the driver’s “action gave the officer cause to believe that he was under a threat of serious harm, then the officer’s use of deadly force was not a constitutional violation.” *Id.* at 1275 (citing *Young v. City of Killeen*, 775 F.2d 1349, 1353 (5th Cir. 1985)). Because the driver’s action of driving his car towards the officer led to the officer’s fear of being hit by the vehicle, qualified immunity was proper.

Hathway v. Bazany, 507 F.3d 312 (5th Cir. 2007) provides another example. There, an officer fired shots at a vehicle as it suddenly accelerated towards him. *Id.* at 316. By the officer’s account, he was “approximately eight to ten feet from the front right corner” of the vehicle when it began approaching him. *Id.* Though the sequence of the following events is unclear, the officer fired his gun at the suspect, and the vehicle struck him in the leg. *Id.* In considering whether the officer’s decision was reasonable, this court observed that the evidence indicated the officer “was in close proximity to a car that he had asked to pull over that then accelerated towards him, making perception of a serious threat reasonable.” *Id.* at 322. The court determined that given “the extremely brief period of time an officer has to react to a perceived threat like this one, it [was] reasonable to do so with deadly force.” *Id.*

Fraire and *Hathaway* support the district court’s decision to grant qualified immunity to Officer Phillips. The videos reveal that mere seconds elapsed between Jesse driving into the cul-de-sac and Officer Phillips firing

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the first shot at Jesse's car. True, there are no eyewitness accounts supporting the objective reasonableness of Officer Phillips's actions, but the video footage thoroughly depicts the events as they unfolded. The fact that Jesse did not appear to "suddenly accelerate" towards the officers is also not material here as Jesse was driving his car in the officers' direction. Officer Phillips fired shots because Jesse was driving towards the officers, circumstances resembling those addressed in both *Young* and *Fraire*. Moreover, given the brief time between Jesse beginning to make the turn and his car coming towards the officers, this situation is indeed comparable to "the extremely brief period of time an officer has to react" recognized in *Hathway*. Accordingly, given the clear video evidence in this case, we cannot say that it was objectively unreasonable for Officer Phillips to react with deadly force, even at the early stage of this case.

B. State-Law Claims

Fischer next argues that the district court erred by declining to exercise supplemental jurisdiction over her state-law claims against Officer Phillips. We review the decision to retain jurisdiction over state-law claims for abuse of discretion. *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 585 (5th Cir. 1992).

"Under 28 U.S.C. § 1367(c)(3), a district court may decline to exercise supplemental jurisdiction if it 'has dismissed all claims over which it has original jurisdiction.'" *Heggemeier v. Caldwell Cnty., Tex.*, 826 F.3d 861, 872 (5th Cir. 2016) (quoting 28 U.S.C. § 1367(c)(3)). "Whether a district court abuses its discretion after § 1367(c)(3) has been satisfied depends on 'common law factors of judicial economy, convenience, fairness, and comity.'" *Id.* (quoting *Enochs v. Lampasas Cnty.*, 641 F.3d 155, 158–59 (5th Cir. 2011)).

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Here, once the district court properly dismissed Fischer’s federal excessive force claim and the City’s § 1983 claim, there were no federal claims remaining. This court has “elucidated the general rule that ‘a court should decline to exercise jurisdiction over remaining state-law claims when all federal-law claims are eliminated before trial.’” *Heggemeier*, 826 F.3d at 872 (quoting *Brookshire Bros. Holding, Inc. v. Dayco Prods., Inc.*, 55 F.3d 595, 602 (5th Cir. 2009)). Accordingly, we hold that the district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Fischer’s remaining state-law claims.

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.