

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
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No. 25-50719

MARIA TIJERINA, *Individually, and as Representative of* THE ESTATE
OF NEIDA TIJERINA, *Deceased, and as next friend of* J.P., R.D., A.R.,
and E.S.,

Plaintiff—Appellant,

versus

CITY OF SAN ANTONIO; JOHNNY J. AGUIRRE; JOSE CLAIRE;
NICHOLAS RODGERS,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:23-CV-916

Before WILLETT, ENGELHARDT, and DOUGLAS, *Circuit Judges.*

DANA M. DOUGLAS, *Circuit Judge:**

This case provides a tragedy of epic proportions. Angel Sanchez went to Neida Tijerina's apartment in San Antonio, armed with a shotgun and a bulletproof vest, threatening to kill himself. He refused to let Neida or her three children leave. Law enforcement responded to the scene the next day,

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

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and a hostage standoff ensued. One of the officers who responded was Officer John Aguirre, who eventually positioned himself on the roof of a nearby building along with Officers Jose Claire and Nicholas Rodgers. At one point, Sanchez came outside with a shotgun and pointed it in the direction of officers positioned nearby, just seconds after a call came over the police radio that Sanchez was coming outside and wanted to die. Officer Claire fired one shot, Officer Rodgers fired two, and Officer Aguirre fired nine shots until Sanchez fell to the ground. Sanchez survived and was later arrested. Neida, however, was discovered on the ground just inside the apartment door; she was later pronounced dead at the scene. Neida's mother brought suit on behalf of Neida's estate and her minor children against the officers and the City of San Antonio (the "City") for excessive force, municipal liability, and bystander injury. On summary judgment, the district court dismissed the claims against the officers, finding that they were entitled to qualified immunity, and dismissed the claims against the City because there was no underlying constitutional violation for municipal liability or bystander injury. We AFFIRM.

I

On July 25, 2021, Angel Sanchez held Neida Tijerina, his former girlfriend, hostage in her apartment with three of her four minor children. Sanchez was armed with a shotgun and had a military style ballistic vest. One of Neida's children later told detectives that Sanchez was saying that he was going to kill Neida and then himself; the children also heard Sanchez hitting Neida. The next day, Neida was eventually able to contact her cousin, who called 911 and reported the situation. Officer Aguirre stated in an affidavit that on July 26, 2021, he received a call over his police radio for a suicide in progress, with officers being dispatched to Neida's home. Aguirre responded to the call with other officers and was informed that there was a male suspect threatening suicide, armed with a gun and wearing a bulletproof

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vest, who was holding a woman and a few children hostage inside the apartment. A San Antonio Police Department (“SAPD”) helicopter was requested to fly over the area to narrow down which building Sanchez was in at the apartment complex. Aguirre stated that he was familiar with the apartment complex and the layout of the inside of the apartments because he had responded to other calls there in the past.

Once outside the apartment, Aguirre, along with other officers, moved to a small shed near Neida’s apartment where they could see her second story unit. Aguirre observed Sanchez come out of the apartment and point what he believed was a gun in the direction of the officers; the SAPD helicopter later confirmed that Sanchez had a gun in his hand. Aguirre eventually moved to the roof of a nearby recreation center in order to get a better view of the apartment and to gain better cover if fired upon by Sanchez. Officers Jose Claire and Nicholas Rodgers also took positions on the roof and were armed with rifles.

Lying in a prone position on the roof with his rifle in a stable position, Aguirre observed a woman, later identified as Neida, come out of the apartment on the second floor and down the stairwell that went straight from the small landing area outside the apartment to the ground floor. Sanchez came out of the apartment holding a baby in front of him while Neida went down to talk to officers, before both returned inside. Later, multiple statements came in over the radio confirming that everyone inside the apartment was “all in one room together” with the windows facing the back parking lot. Aguirre stated that based on his knowledge of the apartments, this meant the people inside the apartment were far away from his line of fire, aimed at the front door, if he needed to shoot. Another radio message stated that Sanchez was coming out of the apartment and wanted to die. Almost simultaneously with the end of that message, Sanchez opened the door while holding what looked like a sawed-off shotgun or rifle.

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Aguirre saw Sanchez turn and point the gun at the officers who were by the shed, and fired nine shots from his rifle, aimed at Sanchez's center mass. Two of the officers who were on the ground by the shed, Officer James Ybarra and Officer Brian Head, stated that they saw Sanchez point the gun toward them and feared for their lives. Officer Claire fired one shot, and Officer Rodgers fired two shots. Officer Claire stated in an affidavit that he did not see anyone else behind, next to, near, or around Sanchez when he fired. Officer Rodgers also stated that could not see anyone to either side of or behind Sanchez.

Sanchez was struck six times and fell to the ground just inside the apartment door. Upon entering the apartment and taking Sanchez into custody, officers found Neida lying face down on the floor just inside the front doorway, appearing to suffer from a gunshot wound. She was pronounced dead at the scene. Sanchez was convicted of Aggravated Assault Against a Public Servant and Aggravated Kidnapping and was sentenced to 30 years in prison on each charge.

Maria Tijerina, Neida's mother, filed suit on July 24, 2023, individually and on behalf of Neida's estate and as next friend of her minor children. The second amended complaint alleges (1) an excessive force claim under 42 U.S.C. § 1983 against Aguirre, Claire, Rodgers, and "unknown officers" of the SAPD, (2) municipal liability claims under 42 U.S.C. § 1983 against the City of San Antonio and the Chief of Police, (3) a bystander injury claim on behalf of the children against all defendants, and (4) a state claim for wrongful death against the City of San Antonio and the Chief of Police. The district court dismissed all claims against the Chief of Police; dismissed the claims against the City for wrongful death, municipal liability based on inadequate equipment, and the request for punitive damages; and dismissed the claims against the unknown individual officers under Federal Rule of

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Civil Procedure 12(b)(5). The City of San Antonio and Officers Aguirre, Claire, and Rodgers (“Officers”), moved for summary judgment.

The district court granted the Officers’ motion for summary judgment, finding that they were entitled to qualified immunity, and dismissed with prejudice the excessive force claims and the bystander-injury claims as bystander-liability claims, but dismissing without prejudice any state law claims against them to the extent they remained. The district court granted the City’s motion for summary judgment, finding that because there was no underlying constitutional violation, which was necessary for both the municipal and the bystander injury claims, dismissal with prejudice was appropriate. Tijerina timely appealed.

On appeal, Tijerina abandons all claims against Officers Claire and Rodgers, conceding that they did not exercise excessive or disproportionate force because they only fired one and two shots respectively. Nevertheless, Tijerina raises four issues on appeal. She argues that the district court erred in granting summary judgment (1) for Aguirre by improperly holding that he did not exercise excessive force, (2) for Aguirre by improperly holding that he was entitled to qualified immunity, (3) for Aguirre by improperly finding that he was not liable for bystander-injury, and (4) for the City of San Antonio by improperly finding there was no underlying constitutional violation. Aguirre argues that the district court did not err in granting summary judgment in his favor because he did not use excessive force when Sanchez posed an immediate and deadly threat to nearby officers. He also argues that his conduct was reasonable, and that he never directed any actions toward the children to meet the standard for a bystander excessive force claim. In the alternative, Aguirre maintains that he is entitled to qualified immunity for the excessive force claims because the law was not clearly established under these facts. The City argues that there was no underlying constitutional violation for *Monell* liability and, in the alternative, that the record supports affirming

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on other grounds in the absence of an identified municipal policy, custom, or practice.

II

Our court has jurisdiction over this appeal from a final decision under 28 U.S.C. § 1291. We review the summary judgment record de novo, “applying the same standard as the district court.” *Ibarra v. United Parcel Serv.*, 695 F.3d 354, 355 (5th Cir. 2012) (citing *Hernandez v. Yellow Transp. Inc.*, 670 F.3d 644, 650 (5th Cir. 2012)). Viewing all evidence and drawing inferences in the light most favorable to the non-moving party, Tijerina, we may affirm the district court’s order granting summary judgment when there is “no genuine dispute as to any material fact and [Appellees are] entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a); see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Issues are genuine when “the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party,” and a fact is material if, when resolved in favor of one party, it “might affect the outcome of the lawsuit.” *Hamilton v. Segue Software Inc.*, 232 F.3d 473, 477 (5th Cir. 2000). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.” *Anderson*, 477 U.S. at 255. In response to a “properly supported motion for summary judgment,” the burden shifts to the non-moving party to show, with specific evidence, that the motion should not be granted. *Edwards v. Cont’l Cas. Co.*, 841 F.3d 360, 363 (5th Cir. 2016) (quoting *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (citation modified)).

III

A

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When bringing a claim for excessive force under the Fourth Amendment, Tijerina must prove, “(1) injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.” *Dewille v. Marcantel*, 567 F.3d 156, 167 (5th Cir. 2009) (per curiam) (quoting *Tarver v. City of Edna*, 410 F.3d 745, 751 (5th Cir. 2005)). Because the Fourth Amendment protects the right to be free from unreasonable seizure, a fundamental element to § 1983 excessive-force claims under the Fourth Amendment is that the plaintiff was seized. See *Ballard v. Burton*, 444 F.3d 391, 402 (5th Cir. 2006); *Peterson v. City of Fort Worth*, 588 F.3d 838, 846 (5th Cir. 2009). Seizure under the Fourth Amendment requires an “intentional acquisition of physical control.” *Brower v. Cnty. of Inyo*, 489 U.S. 593, 596 (1989). “A seizure occurs even when an unintended person or thing is the object of the detention or taking, but the detention or taking itself must be willful.” *Id.* (citation modified). This brings Tijerina’s excessive force claim directly to the unanswered question within this circuit of “whether a seizure occurs when law enforcement intentionally targets a suspect but unintentionally strikes an innocent hostage.” *Est. of Parker v. Miss. Dep’t of Pub. Safety*, 140 F.4th 226, 239 (5th Cir. 2025).

We assume without deciding that Neida was seized for Fourth Amendment purposes. However, Tijerina’s claim for excessive force still fails. The record indicates that Aguirre waited to discharge his weapon until he believed Neida was far from the line of fire, and only after Sanchez pointed a gun at other officers such that he posed an imminent and deadly threat. In determining whether an officer used “excessive force,” the plaintiff must show “(1) injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.” *Dewille*, 567 F.3d at 167. The excessive force must be unreasonable considering the “severity of the crime at issue, whether the

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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,” and the threat of harm factor predominates where officers use deadly force. *Harmon v. City of Arlington*, 16 F.4th 1159, 1163 (5th Cir. 2021) (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

The reasonableness inquiry turns on the threat that Sanchez posed to officers and others on the scene. *Est. of Parker*, 140 F.4th at 239–40. Under that framework, all three *Graham* factors for the reasonableness inquiry tip in favor of Aguirre, greatly. Again, Tijerina concedes that the other two officers who fired one and two shots used reasonable force in the circumstances. Although Tijerina essentially asks our court to focus solely on the number of shots fired by Aguirre, or the quick-succession method in which he fired, comparing his actions to those of the other officers on the scene, our court instead must examine the totality of the circumstances for excessive-force claims. *Garza v. Briones*, 943 F.3d 740, 745, 748 (5th Cir. 2019) explaining that “fir[ing] sixty-one shots in eight seconds, standing alone, does not render [officers’] use of force objectively unreasonable”).

Sanchez held the family hostage for multiple hours prior to and after officers arrived on the scene. Officers were briefed with the knowledge that Sanchez had active warrants for a charge of aggravated assault with a deadly weapon. Aguirre responded to the call as a “suicide in progress,” and right before Sanchez came outside the police radio broadcasted that he was going to come out fighting and that he was ready to die. Sanchez came outside with a gun and pointed it in the direction of the officers, who later stated that they feared for their life. Aguirre knew that Sanchez was wearing a bulletproof vest. Sanchez was threatening to kill himself and was holding four people hostage. On the predominating factor, then, Sanchez posed an immediate threat to officers who feared for their lives when he pointed the gun at them

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while wearing a bulletproof vest, and Sanchez was actively resisting for the extended hostage standoff.

It is tragic that Neida was somehow in the line of fire and lost her life. She was, of course, one of the very people that the officers intended to save when they responded to her cousin's 911 call that day. But, when judging the reasonableness of the force used, our court considers only the facts that were knowable to Aguirre at the time. *White v. Pauly*, 580 U.S. 73, 76–77 (2017) (per curiam); *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015) (“[W]e have stressed that a court must judge the reasonableness of the force used from the perspective and with the knowledge of the defendant officer.”). The fact that Neida exited the apartment once before does not mean Aguirre should have known Neida would be anywhere near Sanchez, or that the quick-succession nine shots Aguirre fired in two seconds until he saw Sanchez fall was unreasonable, especially after the police radio confirmed multiple times that everyone had entered a room away from the doorway. *See Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (“It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.”). Neida's excessive-force claims therefore fail; we conclude that Officer Aguirre acted reasonably under the totality of the circumstances. “To hold that shooting in such circumstances violates the constitutional rights of a hostage whom the officers are trying to free would be to hamstring [] law enforcement officers in their efforts....” *Landol-Rivera v. Cruz Cosme*, 906 F.2d 791, 797 (1st Cir. 1990). Any other conclusion would both chill law enforcement officers in the performance of their duties and encourage hostage-taking and criminal activity in public settings so as to minimize police intervention. *Id.*

As to the claims against the City of San Antonio, under *Monell*, local governments can be liable for “constitutional violations resulting from

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official [municipal] policy or custom.” *Flores v. Cameron Cnty.*, 92 F.3d 258, 263 (5th Cir. 1996) (citing *Monell v. N.Y. City Dep’t of Soc. Servs.*, 436 U.S. 658, 690–91 (1978)). A claim for municipal liability requires “(1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose ‘moving force’ is that policy or custom.” *Valle v. City of Houston*, 613 F.3d 536, 541–42 (5th Cir. 2010) (quoting *Pineda v. City of Houston*, 291 F.3d 325, 328 (5th Cir. 2002)). Having already determined that Aguirre did not use unreasonable excessive force, and thus did not violate Neida’s constitutional rights, the *Monell* claims against the City fail. *Est. of Parker*, 140 F.4th at 245; *Loftin v. City of Prentiss*, 33 F.4th 774, 783 (5th Cir. 2022) (“[W]ithout a predicate constitutional violation, there can be no *Monell* liability.”). We AFFIRM the dismissal of the excessive force claims against all officers and the *Monell* liability claims against the City.

B

A bystander claim for excessive force “can only succeed when the officer directs the force toward the bystander—that is to say, when the bystander is not really a bystander.” *Harmon*, 16 F.4th at 1168. The *Harmon* court declined to find a bystander claim because the officer defendant in that case did not fire “indiscriminately” into the car where a passenger was present, and therefore the passenger was “not within the purview” of the officer’s gunfire. *Id.* The court contrasted these facts with those of *Coon v. Ledbetter*, where the officer fired “heavy buckshot” into a trailer while the suspect’s four-year-old daughter was inside, noting that the court in *Coon* accepted the child’s claim but rejected the wife’s claim because the wife was not inside the trailer. *Id.* (citing *Coon v. Ledbetter*, 780 F.2d 1159, 1160–61 (5th Cir. 1986)). *Coon* therefore gives us a guidepost for which type of plaintiff has a valid bystander claim for excessive force: a plaintiff who was inside a trailer while the officers fired into it had a constitutional claim, but a

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plaintiff who was outside the trailer did not because the officers did not direct any of their actions toward her. 780 F.2d at 1161. The facts in *Harmon* make it even more challenging for a plaintiff to bring a bystander claim for excessive force: even when the plaintiff was in the same vehicle while the officer fired into it, because the officer did not fire indiscriminately, the plaintiff was outside the purview of the officer's fire and therefore could not bring a bystander claim. *See* 16 F.4th at 1168.

The record shows that Aguirre fired all shots directly at Sanchez, after explicit notice that the children had moved into a different room. The Officers also point our court to one of the minor children's deposition testimony about where the children were located during the time of the shooting. J.P. testified that she was sitting on the floor in her mother's bedroom with her brothers when the gunshots occurred and drew a diagram confirming she was in the same room that Aguirre believed she was in. J.P.'s testimony confirms what the officers were told shortly before Sanchez emerged from the home, which was that the children were "outside the purview" of the gunfire. *Id.* Furthermore, at best, Tijerina places the hostages as "moving about the apartment throughout the standoff." Even though the children may have been "moving about" the building at the time of the shooting, Aguirre fired his weapon after receiving information that the children were, at the very least, out of harm's way, precluding a finding of bystander claim for excessive force. The facts in this record, where Aguirre directed his fire to Sanchez's center mass, do not meet the lofty standard for a bystander excessive force claim.

IV

The distressing circumstances of Neida Tijerina's death, resulting from an hours-long standoff, are devastating. It is a natural, understandable instinct to look back and wonder what could have happened if Aguirre had

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waited to see if Neida had moved from the bedroom into the doorway behind Sanchez, or if Aguirre had fired two shots instead of nine. The question before us today, however, is whether Aguirre used excessive force when he fired at Sanchez. When answering that question, we cannot discount the danger that Sanchez posed to the people in the apartment and to the officers on the scene. Sanchez engaged law enforcement officers in a long hostage standoff and came outside in a bulletproof vest, pointing his gun at officers on the scene. The evidence further shows that, at the time of the shooting, Aguirre understood that the hostages had moved into a different room and heard that Sanchez was coming outside wanting to die. It is not unreasonable or excessive for an officer to respond as Aguirre did here in response to such a severe and immediate threat. We therefore hold that there is no basis for an excessive force claim on these facts under the Fourth Amendment against Aguirre, nor for *Monell* liability and bystander liability against the City of San Antonio. We AFFIRM.