

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 13, 2026

Christopher M. Wolpert
Clerk of Court

VISION BANK, Special Administrator of
the Estate of Christopher Poor, deceased,

Plaintiff - Appellee,

v.

No. 25-6140

CHANCE AVERY,

Defendant - Appellant,

and

THE CITY OF THE VILLAGE,

Defendant.

**Appeal from the United States District Court
for the Western District of Oklahoma
(D.C. No. 5:22-CV-00602-R)**

Submitted on the briefs:*

Scott B. Wood of Wood, Puhl & Wood, P.L.L.C., Tulsa, Oklahoma, for Defendant-Appellant.

J. Derek Ingle of Boettcher Devinney Ingle & Wicker, Tulsa, Oklahoma, and Brad W. Wicker of Boettcher Devinney Ingle & Wicker, Ponca City, Oklahoma, for Plaintiff-Appellee.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

Before **HARTZ, PHILLIPS**, and **MORITZ**, Circuit Judges.

MORITZ, Circuit Judge.

Officer Chance Avery accompanied Melissa Poor on a trip to retrieve personal belongings from a residence occupied by Christopher Poor, a man Melissa described as drunk and mean.¹ When Christopher entered the residence, he loudly asked where the police were while holding a baseball bat down by his side. Avery drew his gun and ordered Christopher to drop the bat. Christopher said he would. But about 11 seconds later, Avery fired three fatal shots at Christopher, who had taken a single step in Avery's general direction while continuing to hold the bat down by his side.

The district court denied Avery qualified immunity at summary judgment, and he appeals. We affirm. Based on the facts that the district court concluded a reasonable jury could find, Avery's use of force was objectively unreasonable in violation of the Fourth Amendment. And our precedent clearly establishes that an officer may not use deadly force against someone holding a baseball bat but making no hostile or aggressive motions with it.

Background²

One day in July 2020, Melissa went to the police station in the City of the

¹ We use Melissa and Christopher's first names to avoid confusion.

² Given the procedural posture, we take these facts from the district court's order. *See Teetz ex rel. Lofton v. Stepien*, 142 F.4th 705, 712 (10th Cir. 2025).

Village and asked that an officer accompany her while she retrieved some personal property from a residence. She reported that Christopher was at the residence, was “mean,” had “threatened to ram [her] vehicle,” had criminal charges pending against him, and had been drinking. App. vol. 4, 452. Avery was assigned to this civil-standby call and followed Melissa to the residence. Upon arrival, Avery activated his body-worn camera.

On the video, Melissa enters the home, walks through a living room and hallway and into a bedroom, and begins gathering belongings; Avery remains in the hallway outside the bedroom. Melissa tells Avery that Christopher is “drinking pretty hard” out in the garage. *Id.* (quoting App. vol. 1, 114 at 00:17–00:19). “Avery then steps just inside the bedroom doorway,” and Melissa tells Avery that Christopher is “just so mean” and that she “wish[es] [she] didn’t have to do this.” *Id.* (quoting App. vol. 1, 114 at 00:23–00:28).

About ten seconds later, there’s a loud, unidentified sound, and Christopher yells, “Where’s the goddamn police?” *Id.* at 453 (quoting App. vol. 1, 114 at 00:38–00:40). Avery instantly turns while pulling his gun out and tells Christopher to put down the baseball bat that he’s holding. “Avery, gun drawn, is now facing [Christopher], who is standing in the living room holding an aluminum baseball bat in his right hand.” *Id.* Christopher says, “I will, now that you’re here,” App. vol. 1, 114 at 00:42–00:45, “while tipping the front of the bat up and pointing it in Avery’s direction,” App. vol. 4, 453. Christopher then turns and walks away from Avery and into the living room. Avery radios for another unit, repeats his command for

Christopher to put the bat down, and follows Christopher into the living room. Christopher turns back toward Avery and states that he is putting the bat down; Avery repeats his command, saying, “Set it down.” *Id.* (quoting App. vol. 1, 114 at 00:48–00:50).

The following comments and events take place over, approximately, the next three to four seconds. Christopher transfers the bat from his right hand to his left, “points his right finger at Avery[,] and says[,] ‘You put that down, you’re in my f***** house.’” *Id.* (quoting App. vol. 1, 114 at 00:51–00:53). “At the same time, Avery says, ‘Set it down!’” for the second time. *Id.* (quoting App. vol. 1, 114 at 00:50–00:51). Melissa, standing behind Avery, can also be heard telling Christopher to set the bat down. *Id.* Then, almost simultaneously, three things happen: Christopher “takes a step and moves the bat from his left hand to his right hand[;] Avery says, ‘Set it down!’” for the third time; “and Avery fires three rapid shots at [Christopher],” killing him. *Id.* (quoting App. vol. 1, 114 at 00:52–00:54). Only 16 seconds elapsed from the moment that Christopher walked into the residence until Avery shot him.

Plaintiff Vision Bank, special administrator of Christopher’s estate, filed this 42 U.S.C. § 1983 action asserting a Fourth Amendment excessive-force claim against Avery.³ Avery moved for summary judgment, seeking qualified immunity. The

³ Plaintiff also asserted a municipal-liability claim against the City of the Village for failure to properly hire, train, and supervise. The district court granted summary judgment to the City on that claim, a ruling that isn’t at issue here.

district court denied Avery's motion, ruling that, based on the facts a reasonable jury could find, Avery's use of force was objectively unreasonable and violated the Fourth Amendment under clearly established law.

Avery appeals.

Analysis

Avery challenges the district court's denial of his motion for summary judgment on qualified-immunity grounds. Although we have jurisdiction over this interlocutory appeal under the collateral-order doctrine, such "jurisdiction is limited to a review of 'abstract questions of law,' namely, '(1) whether the facts that the district court ruled a reasonable jury could find would suffice to show a legal violation[] and (2) whether that law was clearly established at the time of the alleged violation.'" *Teetz*, 142 F.4th at 718 (quoting *Vette v. K-9 Deputy Sanders*, 989 F.3d 1154, 1162 (10th Cir. 2021)). We "lack jurisdiction to review the district court's factual conclusions concerning the reasonable facts and inferences the evidence could support." *Vette*, 989 F.3d at 1167–68.

There are certain exceptions to this jurisdictional limitation, and Avery invokes two here. First, he argues that "the 'version of events the district court h[eld] a reasonable jury could credit is blatantly contradicted by the record.'" *Clerkley v. Holcomb*, 121 F.4th 1359, 1363 (10th Cir. 2024) (cleaned up) (quoting *Lewis v. Tripp*, 604 F.3d 1221, 1225–26 (10th Cir. 2010)). The blatant-contradiction "standard is a very difficult one to satisfy." *Est. of Ward ex rel. Stamp v. Lucero*, 178 F.4th 604, 616 (10th Cir. 2026) (quoting *Vette*, 989 F.3d at 1162). A party must do more than

“point to ‘evidence that strongly supports their position.’” *Burke v. Pitts*, 157 F.4th 1326, 1333 (10th Cir. 2025) (cleaned up) (quoting *Ellis v. Salt Lake City Corp.*, 147 F.4th 1206, 1225 (10th Cir. 2025)), *petition for cert. filed* Mar. 2, 2026 (No. 25-1062). Instead, they must demonstrate that the district court’s factual determinations constitute a “visible fiction.” *Est. of Ward*, 178 F.4th at 616 (quoting *Vette*, 989 F.3d at 1164).

According to Avery, the body-camera footage of the incident blatantly contradicts the district court’s determination that a reasonable jury could conclude “[Christopher] was not charging Avery, he was not swinging the bat, and he was not raising it or otherwise engaging in motions that might suggest an imminent threat of serious physical harm.” App. vol. 4, 461. In support, Avery argues that the video shows Christopher “advancing toward . . . Avery while holding the bat.” Aplt. Br. 21. The video does show Christopher holding the bat, which is pointed downward toward the floor, as the district court acknowledged. But as for “advancing,” *id.*, the video at most shows Christopher taking a single step slightly toward Avery and slightly to the side, toward the front door.⁴ That Christopher took a single step in Avery’s general direction does not suggest the district court created a “visible fiction” when stating

⁴ Tellingly, the timestamp Avery points to for his blatant-contradiction argument—00:54 in the video—is the same second in which Avery fires all three shots. So it’s not possible to tell, at that moment in time, if Christopher is moving forward of his own volition or just falling to the ground. *Cf. Manning v. City of Tulsa*, 170 F.4th 1287, 1295 (10th Cir. 2026) (noting that portion of video cited by officer could not “help us determine the position of [suspect’s] hands *before* he was shot” because cited screenshot postdated officer’s gunshot), *cert. denied*, No. 25-1420, 2026 WL 2976652 (U.S. Oct. 5, 2026).

that a reasonable jury could find that Christopher didn't charge Avery, swing or raise the bat, or act in any other threatening manner. *Est. of Ward*, 178 F.4th at 616 (quoting *Vette*, 989 F.3d at 1164). We accordingly reject Avery's blatant-contradiction argument.⁵

Next, Avery contends that we can look beyond the district court's factual assessment because it "commit[ted] *legal* error en route to a *factual* determination." *Teetz*, 142 F.4th at 719 (quoting *Simpson v. Little*, 16 F.4th 1353, 1360 (10th Cir. 2021)). The precise nature of Avery's argument is unclear. *Cf. Burke*, 157 F.4th at 1336–37 & n.7 (criticizing officer's argument that district court committed legal error en route to factual determination as "not readily discernable" and "not well developed"). But to the extent that Avery contends the district court legally erred en route to its factual determination that a reasonable jury could conclude Christopher posed no immediate threat, we disagree. *See Love v. Grashorn*, 134 F.4th 1109, 1112 (10th Cir. 2025) (noting that immediate danger is question of fact), *cert. denied*, 146 S. Ct. 1452 (2026). Avery's argument broadly faults the district court for failing to consider the totality of the circumstances from the perspective of a

⁵ Plaintiff notes that blatant-contradiction arguments like Avery's "have become increasingly routine in qualified[-]immunity cases in a naked attempt to induce the [c]ourt to engage in a fact-based review." Aplee. Br. 21. In support, plaintiff cites a variety of cases in which Avery's counsel unsuccessfully advanced similar arguments on behalf of other clients. *See, e.g., Burke*, 157 F.4th at 1334–35; *Manning*, 170 F.4th at 1295. Although such past arguments aren't relevant here, we pause to emphasize, yet again, the extremely limited nature of the blatant-contradiction exception: only rarely will a district court's assessment of the facts a reasonable jury could find constitute a "*visible fiction*." *Burke*, 157 F.4th at 1333 (emphasis added) (quoting *Ellis*, 147 F.4th at 1225).

reasonable officer. However, the district court recited and applied the correct legal standards, so we see no legal error en route to the immediate-threat finding. *See Burke*, 157 F.4th at 1336 (“We see no legal error in the district court’s statement of the objective-reasonableness standard.”).

Having rejected Avery’s attempts to expand the scope of our review, we proceed with our usual jurisdictional limitations, sticking to legal issues. We review legal challenges to the district court’s denial of summary judgment de novo. *See id.* at 1337. Summary judgment is appropriate only “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 assessing qualified immunity at summary judgment, courts consider two issues: whether the facts viewed most favorably to the injured party “show the officer’s conduct violated a federal right” and “whether the right in question was clearly established.” *Teetz*, 142 F.4th at 719 (cleaned up) (quoting *Tolan v. Cotton*, 572 U.S. 650, 655–56 (2014)).

I. Constitutional Violation

Avery first argues the district court erred in concluding that, based on the facts a reasonable jury could find, he violated Christopher’s Fourth Amendment right to be free from excessive force. We analyze excessive-force claims under the Fourth Amendment’s reasonableness standard. *Id.* at 722. The inquiry is objective and turns on the totality of the circumstances. *Id.* But we take specific guidance from the three *Graham* 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 [the suspect] is

actively resisting arrest or attempting to evade arrest by flight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989).

We begin by noting that the third factor—actively resisting or evading arrest by flight, *id.*—does not support Avery’s use of force. As the district court explained, “Avery was not there to make an arrest, and [Christopher] was not attempting to flee,” so this factor “weighs in [p]laintiff’s favor.” App. vol. 4, 459; *see also Est. of Taylor v. Salt Lake City*, 16 F.4th 744, 764 (10th Cir. 2021) (weighing this factor against use of force where suspects couldn’t have resisted or evaded arrest that officers lacked probable cause to make). Indeed, “Avery concede[d] as much” below, and he does not take a different position on appeal. App. vol. 4, 459.

Turning to the first factor, the severity of the crime at issue, *Graham*, 490 U.S. at 396, the district court reasoned that it did not support Avery’s use of force “because there was no crime at issue,” App. vol. 4, 459. Instead, Avery was at Christopher’s home on a civil-standby call because he was accompanying Melissa while she “retrieve[d] some items.” *Id.* The district court relied for support on *Perea v. Baca*, where we weighed this factor “heavily against the use of anything more than minimal force” because officers weren’t pursuing the plaintiff on suspicion of criminal activity but instead “were performing a welfare check.” 817 F.3d 1198, 1202 (10th Cir. 2016). We also observed that although the plaintiff ran a stop sign after seeing the police, such a minor misdemeanor offense supported, at most, “the use of minimal force.” *Id.* at 1203. *Perea* therefore strongly supports weighing this first

factor heavily against the use of any force at all because Avery never suspected Christopher of any crime at all.

Resisting this conclusion, Avery points to *Bond v. City of Tahlequah*, 981 F.3d 808 (10th Cir. 2020), *rev'd on other grounds*, 595 U.S. 9 (2021). There, the officer suspected the plaintiff of misdemeanor trespass, and we recited and applied the same principle animating *Perea*: “[w]hen the severity of the crime is low, such as when the alleged crime was a misdemeanor or unaccompanied by violence, this factor weighs against an officer’s use of force.” *Bond*, 981 F.3d at 819. But we also noted that the plaintiff wasn’t “violent or otherwise belligerent at the beginning of [the] encounter with the officers.” *Id.* On that basis, Avery reads *Bond* as establishing “that even where the severity of the crime is low, a suspect’s behavior can tip the balance of *Graham*’s first factor in favor of an officer.” Aplt. Br. 17 (cleaned up).

We reject this argument for two reasons. First, Avery’s reading of *Bond*’s stray comment unhelpfully conflates *Graham*’s first and second factors—it typically makes more sense to consider violent or belligerent conduct in connection with whether a suspect posed a threat (the second factor) rather than in connection with the severity of the crime at issue (the first factor). Second, even if we accept Avery’s reading of *Bond* for purposes of argument, we don’t agree with his accompanying view that “at the beginning of their encounter,” Christopher “exhibited defiant[,] aggressive behavior” justifying an increase in force. *Id.* At the beginning of the encounter, Christopher twice agreed to put the bat down, stating once that he was doing so

because of Avery's presence. So the first Graham factor, like the third, weighs against the use of force.

That leaves the second and “most important” factor, *Burke*, 157 F.4th at 1338 (quoting *Teetz*, 142 F.4th at 723): “whether the suspect poses an immediate threat to the safety of the officers or others,” *Graham*, 490 U.S. at 396. In deadly force cases like this one, we assess the immediate-threat factor using what we refer to as the *Larsen* factors: “(1) whether the officers ordered the suspect to drop his weapon and whether the suspect complied with the order, (2) hostile motions made with the weapon toward the officer, (3) the distance separating the officer and the suspect, and (4) the manifest intentions of the suspect.” *Burke*, 157 F.4th at 1338 (citing *Est. of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008)). The overall question remains “whether [Avery] reasonably believed that he faced a threat of serious physical harm,” *Valverde*, 967 F.3d at 1061, a question that is typically “an issue of fact, not law,” *Love*, 134 F.4th at 1112.

The district court described the *Larsen* factors as painting a “mixed” picture. App. vol. 4, 459. Two factors supported Avery, at least in part: “[Christopher] did not put the baseball bat down despite Avery’s repeated commands,” and “[Christopher] and Avery were in a confined space only a few feet apart.” *Id.* at 461. But the district court also found that Christopher made no hostile motions with the bat and did not manifest any violent intentions: “[Christopher] was not charging Avery, he was not swinging the bat, and he was not raising it or otherwise engaging in motions that might suggest an imminent threat of serious physical harm.” *Id.* Under the totality of

the circumstances, the district court reasoned that a jury could find a reasonable officer in Avery's position would not have believed he faced an imminent threat of serious physical harm.

Given our limited jurisdiction and the factual nature of the immediate-threat inquiry, "we are bound by the district court's conclusion that the jury could reject the presence of an immediate danger." *Love*, 134 F.4th at 1112. Seeking to evade that limitation, Avery focuses on *Larsen*'s fourth factor, arguing that the district court legally erred by failing to even consider Christopher's manifest intentions. We disagree. Although the district court did not repeat the phrase "manifest intentions," it considered Christopher's intentions when it noted that Christopher didn't charge Avery, swing the bat, or engage in other threatening behavior. And Avery's remaining arguments on the immediate-threat factor invite us to reconsider the district court's assessment of the facts a reasonable jury could find, which we decline to do.

In sum, none of the *Graham* factors support Avery's use of force, and we affirm the district court's ruling that, based on the facts a reasonable jury could find, Avery's three fatal and unwarned shots constituted excessive force in violation of Christopher's Fourth Amendment rights.

II. Clearly Established

Avery next argues that any constitutional violation wasn't clearly established. "A right is clearly established if 'it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" *Clerkley*, 121 F.4th at 1366

(quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)). Plaintiffs ordinarily satisfy this prong of qualified immunity “by citing a factually similar Supreme Court or Tenth Circuit decision published before the events at issue occurred.” *Id.* “[W]e need not engage in ‘a scavenger hunt for prior cases with precisely the same facts’ to conclude that officials were ‘on notice of clearly established law.’” *Manning*, 170 F.4th at 1297 (quoting *Packard v. Budaj*, 86 F.4th 859, 869 (10th Cir. 2023)). At the same time, “[t]he 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.’” *Zorn v. Linton*, 607 U.S. 568, 572 (2026) (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018)).

Avery challenges the district court’s conclusion that this violation was clearly established by *Tenorio v. Pitzer*, 802 F.3d 1160 (10th Cir. 2015). *Tenorio* involved an intoxicated and potentially suicidal suspect armed with a kitchen knife. *Id.* at 1161–63. Three officers entered the living room and called for the individuals in the kitchen to come out. *Id.* at 1162. The suspect “walked forward into the living room at an average speed” with “a blank stare” while “holding the knife loosely in his right hand, his arm hanging by his side.” *Id.* at 1163 (cleaned up). One officer saw the knife and yelled for the suspect to put it down. *Id.* The suspect was about two-and-a-half steps into the living room when the officer shot him. *Id.* We found a constitutional violation, emphasizing that the suspect made no hostile motions with the small knife he was holding in one hand. *Id.* at 1164–66.

We also ruled that this violation was clearly established, based on *Zuchel v. City & County of Denver*, 997 F.2d 730 (10th Cir. 1993), and *Walker v. City of Orem*, 451 F.3d 1139 (10th Cir. 2006). *Tenorio*, 802 F.3d at 1165. In *Zuchel*, we affirmed a jury verdict that an officer used unreasonable force when he shot an individual suspected of causing a disturbance at a restaurant; the suspect was reportedly holding a knife and had taken three steps toward the officer, but he never brandished the knife or threatened the officer. 997 F.2d at 735–37; *see also Tenorio*, 802 F.3d at 1165 (summarizing *Zuchel*). Similarly, in *Walker*, we affirmed the denial of qualified immunity where an officer shot an individual who was suspected of vehicle theft and eluding police and was holding a knife to his own wrist but made no other threats. 451 F.3d at 1160. Relying on *Zuchel*, we found it clearly unreasonable to use deadly force “where an officer had reason to believe that a suspect was only holding a knife, not a gun, and the suspect was not charging the officer and had made no slicing or stabbing motions toward him.” *Id.*

Zuchel, *Walker*, and *Tenorio* are substantially similar to the facts here, particularly concerning the crucial immediate-threat aspect of the excessive-force inquiry. Each case—including this one—involved a suspect armed with something other than a gun who made no hostile motions and did not charge the officer. *See Zuchel*, 997 F.2d at 736; *Walker*, 451 F.3d at 1159–60; *Tenorio*, 802 F.3d at 1164–66.

Resisting this conclusion, Avery points out that *Zuchel* and *Walker* involved suicidal suspects, which he argues provides less support for the use of force than a

threat of harm directed outward. But Avery’s distinction between the risk of harm to self and the risk of harm to others breaks down when we consider that the suspects posed no imminent threat in any of these cases.⁶ Next, Avery highlights that the officers in *Walker* and *Tenorio* had drawn their guns prior to encountering the suspects, whereas he did not pull his gun out until he heard a loud sound and Christopher asked where the police were. *See Walker*, 451 F.3d at 1159; *Tenorio*, 802 F.3d at 1162. He also points out that he announced his presence, unlike the officer in *Tenorio*. *See* 802 F.3d at 1162. These, too, are minor distinctions, particularly considering how quickly all of these incidents occurred—here, 16 seconds, and in *Walker* and *Tenorio*, 12 and three seconds, respectively. *See Walker*, 451 F.3d at 1158; *Tenorio*, 802 F.3d at 1163.

Our application of this case law is nothing new—we applied it similarly in *Baca v. Cospers*, 128 F.4th 1319 (10th Cir. 2025).⁷ There, an officer was called to a domestic disturbance involving an elderly woman suffering from dementia; when the

⁶ Avery says it matters that Christopher wasn’t suicidal because of how officers are supposed to approach suicidal individuals. But that aspect of police encounters with the mentally ill goes to officers’ reckless creation of risk, a theory we don’t rely on in this case. *Cf. Allen v. Muskogee*, 119 F.3d 837, 840–41 (10th Cir. 1997) (“[A] reasonable jury could conclude on the basis of some of the testimony presented that the officers’ actions were reckless and precipitated the need to use deadly force.”).

⁷ Because *Baca*’s 2022 events postdate the 2020 shooting at issue here, we don’t rely on the facts of *Baca* itself to clearly establish the law. *See Clerkley*, 121 F.4th at 1366 (noting that clearly established law must predate events at issue). Instead, we discuss *Baca* to support our characterization and application of *Tenorio*, *Walker*, and *Zuchel*. *Cf. Manning*, 170 F.4th at 1298 n.7 (“We are free to cite precedent that postdates the underlying incident in determining the appropriate level of generality for purposes of the clearly established inquiry.”).

officer arrived, she was standing in the living room holding a knife in each hand, the blades of which faced the floor. *Id.* at 1321–23. The officer pointed his gun at her and yelled at her to put the knives down; she moved the knives around, but never in a threatening way, and took two steps toward the officer. *Id.* at 1323–24. The officer shot her twice in the chest, only 45 seconds after he’d arrived. *Id.* at 1324. We found a clearly established Fourth Amendment violation, stating that “*Tenorio, Zuchel, and Walker* compel[led] the . . . result” because the woman “was not charging [the officer] . . . and made no slicing or stabbing motions toward him.” *Baca*, 128 F.4th at 1328. Because the same can be said here, we conclude that the law was clearly established.

Conclusion

We affirm the district court’s order denying qualified immunity because under the facts the district court ruled a reasonable jury could find, Avery violated Christopher’s clearly established right to be free from excessive force.