

Four Minutes, Two Taser Deployments, and a Fatal Shot: *Burke v. Pitts* Reaffirms That Qualified Immunity Has Limits

Description

The United States Court of Appeals for the Tenth Circuit recently released a ruling for *Burke v. Pitts*, a case that arose after a response to a domestic disturbance call ended with multiple Taser discharges and a fatal shooting within four minutes of officer arrival.¹ The United States Court of Appeals for the Tenth Circuit affirmed the district court's denial of qualified immunity for the officers, holding that, under clearly established law, the officers' use of force was objectively unreasonable.

Summary of the Facts

On June 1, 2029, Bartlesville Police Department dispatched Officer Jessica Pitts and Officer William Lewis to Willis Gay Jr.'s home for a domestic disturbance. Willis told Officer Pitts and Officer Lewis that his son Thomas had been upset, was acting erratically, and may be on drugs. He informed them that Thomas was unarmed but kept making movements towards his back pocket and requested that Thomas be removed from his home. The officers entered the home with Willis' consent and found Thomas bug-eyed and sweaty. He did not react to their presence and was holding an unknown object, which was allegedly a ventriloquist puppet. Officer Lewis instructed Thomas to put down the object that he was holding and simultaneously pointed his taser at Thomas. Without giving Thomas any further commands, Officer Lewis tased Thomas, and Officer Pitts drew her firearm. Thomas began to retreat backwards into a bedroom. He started to lay down on the ground but stood back up, causing Officer Lewis to tase Thomas at least once more. Since the Taser did not incapacitate Thomas, Officer Lewis tried to grab him. Thomas pushed him away and moved towards the bedroom door and reached towards his back pocket. Officer Pitts perceived this as a threat and shot him twice, killing him.

Taylor Burke, the special administrator of Thomas Gay's estate, brought a lawsuit against the officers in their individual capacities under 42 U.S.C. § 1983. The claim alleged excessive force based on the tasing and the fatal shooting. When the case reached the district court, both officers moved for summary judgment, asserting qualified immunity. They alleged that the tasing and shooting of Thomas were objectively reasonable under the Fourth Amendment. The district court disagreed and ruled in favor of Burke, holding that the law was clearly established and that excessive force violated it, denying the officers qualified immunity. The officers then appealed to the Tenth Circuit, challenging the denial of qualified immunity.

United States Court of Appeals for the Tenth Circuit

On appeal to the Tenth Circuit, the court upheld the denial of qualified immunity for the officers. The court held that officers violated Thomas's clearly established, Fourth Amendment rights. On appeal, the officers argued that the district court erred in their factual determinations. The Tenth Circuit emphasized that it was bound by the district court's factual view at summary judgment, unless those findings were blatantly contradicted by the record to the point of being visible fiction. Citing *Teetz as next friend of Lofton v. Stepien*, the court emphasized that the blatant contradiction exception does not apply without documentary evidence such as photographs or videos that 'utterly discredit[s]' the version of events

found by the district court.² However, the officers asserted that the autopsy report supported Officer Pitts's testimony. Specifically, they argued it supported her claim that Thomas was shot straight on since he "suffered an 'anterior'?front?shot to his right thigh with a backward and upward trajectory ... [a]nd a second shot to his left upper chest with a backward, downward, and rightward bullet trajectory."³ However, they did not produce an expert witness to corroborate their findings on the autopsy report that Thomas was shot straight on. The officers also challenged the record stating that Thomas was unarmed when shot. Officer Pitts stated that she believed the black object that Thomas reached for was a gun. The court rejected this argument since neither incident report mentioned a 'black object.' Moreover, Willis informed the officers that Thomas was unarmed before they entered his house and further testified that there was nothing in his hand when he was deposed. Therefore, the court rejected the officers' attempt to recast the facts, holding that the autopsy report and the officers' own testimony did not indisputably contradict the district court's conclusion that Thomas may have been unarmed and moving toward the doorway.

The court then examined the district court's denial of qualified immunity, choosing to treat the tasing and the shooting as separate events. The Court relied on the framework governing claims of excessive force outlined in *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, 471 U.S. 1 (1985). Under this framework, excessive force claims are analyzed under a standard of objective reasonableness.⁴ This requires evaluating the severity of the crime, whether the suspect poses an immediate threat, and whether the suspect is actively resisting or attempting to flee.⁵ Additionally, the Court acknowledged the Supreme Court's recent analysis of the framework for deadly use of force cases in *Barnes v. Felix*, 605 U.S. 73 (2025). In *Barnes*, the high Court rejected the moment-of-threat doctrine, which considered only "whether an officer was in danger "at the moment" of the threat that resulted in [the] use of deadly force."⁶ Ultimately, the Supreme Court held that the use of deadly force must be assessed under the totality of the circumstances, which includes examining all prior facts, events, and decisions by the officer leading up to the use of deadly force.⁷

With that framework, the court first applied the *Graham* objective-reasonableness analysis, examining the severity of the crime, whether Thomas posed an immediate threat, and whether he was actively resisting or trying to flee. The court also considered whether Officer Pitts and Officer Lewis recklessly created the need to use deadly force and carefully scrutinized whether the record truly supported a claim that Thomas was armed or lunging toward officers at the moment force was used. Here, the officers had prior knowledge that Thomas was unarmed before entering the house. Thomas also never threatened any violence towards the officers. Moreover, Officer Lewis did not give any command other than for Thomas to put down the object that he was holding. Although it is unknown whether the object was a ventriloquist puppet or something else, it was confirmed to definitely not be a weapon. Since he was not given more than six seconds to comply with the command, the court found that Officer Lewis's tasing was not objectively reasonable. Regarding the shooting, Thomas was moving towards the doorway rather than rushing Officer Pitts. At no point did either officer try any de-escalation tactics. Although he was moving his hand toward his back pocket, there was no weapon or a black object in Thomas's hand when he was shot. Therefore, Officer Pitts's shooting was also not objectively reasonable. The court concluded a jury could find that deadly force was excessive, especially where alternative tactics could have been used and the officers' conduct arguably escalated the encounter.? Thus, the Tenth Circuit affirmed the district court's finding that after being told someone was unarmed, both the tasing and shooting an unarmed person violated the Fourth Amendment and that this violation was clearly established at the time. As a result, the Tenth Circuit affirmed the denial of qualified immunity to the officers on the excessive-force claim, allowing the case

to proceed toward trial on those factual assumptions.

Key Takeaways

Burke emphasizes the need for officers to make precise threat assessments, have consistent documentation, and show tactical restraint in high-stakes encounters. Officers can justify deadly force solely when a subject poses an immediate threat of serious harm. Thus, it is crucial for officers to continually update their threat assessment in real time and be prepared to explain why a specific movement or gesture reasonably appeared to create an immediate danger. Further, officers need to ensure that reports are accurate and detailed, because inconsistencies between initial reports and later testimony can severely undermine credibility.

[1] *Burke v. Pitts*, 157 F.4th 1326,1331 (10th Cir. 2025).

[2] *Teetz as next friend of Lofton v. Stepien*, 142 F.4th 705, 720 (10th Cir. 2025).

[3] *Burke v. Pitts*, 157 F.4 1326, 1334 (10th Cir. 2025).

[4] *Graham*, 490 U.S. at 388.

[5] *Id.* at 396.

[6] *Barnes*, 605 U.S. at 73.

[7] *Id.* at 80-81.

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