

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
TEXAS, SHERMAN DIVISION

Kevin Tarver v. Michael Hernandez, et al.

Tarver v. Hernandez, Civil No. 4:21-CV-970-SDJ (E.D. Tex. Jan. 5, 2026) · No. Civil No. 4:21-CV-970-SDJ ·
Decided January 5, 2026

SUMMARY

The United States District Court for the Eastern District of Texas considers Officers Michael Hernandez’s and Doug Downing’s Rule 12(b)(6) motion to dismiss a 42 U.S.C. § 1983 excessive-force action arising from the death of Darius Tarver during a police encounter. The court concludes that the officers are entitled to qualified immunity, determining that the taser deployment and shootings were objectively reasonable under the Fourth Amendment and that the claims therefore should be dismissed.

CASE DETAILS

COURT	United States District Court for the Eastern District of Texas, Sherman Division
WRITING FOR THE COURT	Sean D. Jordan
JURISDICTION	United States District Court for the Eastern District of Texas, Sherman Division
DECIDED	January 5, 2026
DOCKET	Civil No. 4:21-CV-970-SDJ
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants Michael Hernandez and Doug Downing moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the estate administrator's 42 U.S.C. § 1983 excessive-force claims. The court had previously dismissed the City of Denton and deferred ruling on the officers' motion pending a Rule 7(a)(7) response to their qualified-immunity defense.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true but disregards unsupported legal conclusions and asks whether the complaint states a facially plausible claim. When qualified immunity is asserted at the pleading stage, the plaintiff bears the burden of showing both a constitutional violation and violation of

	clearly established law. The court considered incorporated body-camera video where it contradicted the complaint's allegations.
PRECEDENTIAL VALUE	unpublished
PARTIES	Kevin Tarver, as administrator of Darius Tarver's estate v. Michael Hernandez, Doug Downing

TOPICS

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[qualified immunity](#)
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QUESTIONS PRESENTED

1. Whether Officer Hernandez's first and second deployments of a taser violated Tarver's Fourth Amendment right to be free from excessive force.
2. Whether Officer Downing's two uses of deadly force violated Tarver's Fourth Amendment right to be free from excessive force.
3. Whether the officers were entitled to qualified immunity because their conduct was objectively reasonable under the Fourth Amendment.
4. Whether the officers were entitled to qualified immunity because the alleged constitutional violations were not clearly established at the time of the encounter.
5. Whether Tarver's mental distress required the officers to accommodate his condition or delay using force under the circumstances.

HOLDINGS

1. Officer Hernandez's first use of the taser was objectively reasonable under the totality of the circumstances and did not violate the Fourth Amendment. He was therefore entitled to qualified immunity.
2. Officer Hernandez's second use of the taser was objectively reasonable and did not violate the Fourth Amendment.
3. Officer Downing's two uses of deadly force were objectively reasonable under the Fourth Amendment, and he was entitled to qualified immunity.
4. Even assuming a constitutional violation, neither officer violated a clearly established Fourth Amendment right because the plaintiff identified no controlling or persuasive precedent placing the unlawfulness of the officers' particular conduct beyond debate.
5. The officers were not required under clearly established law to accommodate Tarver's mental distress by delaying or avoiding otherwise reasonable force when he was armed, noncompliant, and posed a threat

to the officers or others.

KEY QUOTATIONS

“Facing an armed, agitated, mentally unwell suspect who had made threatening comments and ignored police commands to drop his weapons, as well as warnings that he would be tased, it was objectively reasonable for Officer Hernandez to deploy his taser and doing so did not violate the Fourth Amendment.” (Part III.A.1.a)

“With all three Graham factors supporting the reasonableness of Officer Downing’s actions, and considering the totality of circumstances preceding both shootings, the Court concludes that Officer Downing’s uses of deadly force were reasonable.” (Part III.A.2)

“The Court understands that guidance to confirm that, when law enforcement officers confront mentally distressed suspects, they are not hamstrung from employing appropriate force, including lethal force, when a non-compliant, armed suspect poses a threat to himself, the officers, or others.” (Part III.C)

FACTUAL BACKGROUND

Darius Tarver, a twenty-three-year-old University of North Texas student, experienced a mental-health crisis after a motor-vehicle accident and hospital visit. Officers responded to a 911 call and encountered Tarver at night near a dimly lit apartment stairwell; Tarver repeatedly ignored commands to drop a frying pan and meat cleaver, made threatening comments, and advanced toward the officers. Officer Hernandez tased Tarver twice, and Officer Downing shot him once after Tarver lunged at Hernandez with the cleaver and twice more after Tarver stood, retrieved the frying pan, and charged the officers. Tarver died shortly thereafter.

PROCEDURAL HISTORY

Kevin Tarver sued the City of Denton and Officers Hernandez and Downing under § 1983, alleging that officers violated Darius Tarver's Fourth Amendment rights through excessive use of force during a police response to a mental-health crisis. The court previously granted the City's motion to dismiss and deferred the officers' motion while requiring a qualified-immunity reply. After reviewing the Rule 7(a)(7) response and supplemental briefing, the court granted the officers' motion and dismissed all claims against them with prejudice.

DISPOSITION

dismissed

CASES CITED

- Tarver v. City of Denton, 633 F. Supp. 3d 864, 873 (E.D. Tex. 2022)
- Scott v. Harris, 550 U.S. 372, 380-84 (2007)
- Hartman v. Walker, 685 F. App'x 366, 368 (5th Cir. 2017) (per curiam)
- Carnaby v. City of Houston, 636 F.3d 183, 187 (5th Cir. 2011)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-80 (2009)

- *Jacquez v. Procunier*, 801 F.2d 789, 791 (5th Cir. 1986)
- *Wicks v. Mississippi State Employment Service*, 41 F.3d 991, 995 n.16 (5th Cir. 1995)
- *Victoria W. v. Carpenter*, 369 F.3d 475, 482 (5th Cir. 2004)
- *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)
- *Camreta v. Greene*, 563 U.S. 692, 705 (2011)
- *Batyukova v. Doege*, 994 F.3d 717, 724-25, 727 (5th Cir. 2021)
- *Cloud v. Stone*, 993 F.3d 379, 383, 385 (5th Cir. 2021)
- *Barnes v. Felix*, 605 U.S. 73, 79-81, 89-90 (2025)
- *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 326-27, 330, 332-34, 341 n.105, 342 (5th Cir. 2020)
- *Graham v. Connor*, 490 U.S. 386, 395-97 (1989)
- *Est. of Parker v. Mississippi Department of Public Safety*, 140 F.4th 226, 239-40 (5th Cir. 2025)
- *Singleton v. Casanova*, No. 22-50327, 2024 WL 2891900, at *5, *12 n.17 (5th Cir. June 10, 2024)
- *Pratt v. Harris County*, 822 F.3d 174, 181 (5th Cir. 2016)
- *Manis v. Lawson*, 585 F.3d 839, 843 (5th Cir. 2009)
- *Betts v. Brennan*, 22 F.4th 577, 582-85 & n.6 (5th Cir. 2022)
- *Trammell v. Fruge*, 868 F.3d 332, 342 (5th Cir. 2017)
- *Buchanan v. Gulfport Police Department*, 530 F. App'x 307, 313-14 (5th Cir. 2013) (per curiam)
- *Solis v. Serrett*, 31 F.4th 975, 983 (5th Cir. 2022)
- *Mullenix v. Luna*, 577 U.S. 7, 12-17 (2015)
- *Long v. Slaton*, 508 F.3d 576, 581-82 (11th Cir. 2007)
- *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 612-17 (2015)
- *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)
- *Ramirez v. Knoulton*, 542 F.3d 124, 129 (5th Cir. 2008)
- *County of Los Angeles v. Mendez*, 581 U.S. 420, 427-28 (2017)
- *Brosseau v. Haugen*, 543 U.S. 194, 198-99 (2004)
- *Saucier v. Katz*, 533 U.S. 194, 206 (2001)
- *Harmon v. City of Arlington*, 16 F.4th 1159, 1165-67 (5th Cir. 2021)
- *Plumhoff v. Rickard*, 572 U.S. 765, 779 (2014)
- *Malley v. Briggs*, 475 U.S. 335, 341 (1986)
- *District of Columbia v. Wesby*, 583 U.S. 48, 64 (2018)
- *Ashcroft v. al-Kidd*, 563 U.S. 731, 741-42 (2011)
- *Morrow v. Meachum*, 917 F.3d 870, 874-75 (5th Cir. 2019)
- *Rich v. Palko*, 920 F.3d 288, 294 (5th Cir. 2019)
- *Vann v. City of Southaven*, 884 F.3d 307, 310 (5th Cir. 2018) (per curiam)
- *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 383 n.1 (5th Cir. 2009)
- *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (per curiam)
- *Darden v. City of Fort Worth*, 880 F.3d 722, 725-31 (5th Cir. 2018)

- Newman v. Guedry, 703 F.3d 757, 762-63 (5th Cir. 2013)
- Ramirez v. Martinez, 716 F.3d 369, 378 (5th Cir. 2013)
- Bush v. Strain, 513 F.3d 492, 501 (5th Cir. 2008)
- Cobbins v. Sollie, No. 22-30692, 2023 WL 4015303, at *6 (5th Cir. June 14, 2023) (per curiam)
- Henderson v. Harris County, Henderson v. Harris County, 51 F.4th 125, 134 (5th Cir. 2022)
- Anderson v. McCaleb, 480 F. App'x 768, 773 (5th Cir. 2012) (per curiam)
- Salazar v. Molina, 37 F.4th 278, 285 (5th Cir. 2022)
- Romero v. City of Grapevine, 888 F.3d 170, 176 (5th Cir. 2018)
- Flores v. Harris, No. H-17-3817, 2019 WL 1426313, at *17 (S.D. Tex. Mar. 29, 2019)
- Kisela v. Hughes, 584 U.S. 100, 101-06 (2018)
- Frederick v. Motsinger, 873 F.3d 641, 643-47 (8th Cir. 2017)
- Bates v. Chesterfield County, 216 F.3d 367, 372 (4th Cir. 2000)
- Sanders v. Minneapolis, 474 F.3d 523, 527 (8th Cir. 2007)
- Menuel v. Atlanta, 25 F.3d 990 (11th Cir. 1994)