

No. 26-69

IN THE
Supreme Court of the United States

JASON GREEN,

Petitioners,

v.

KENNY PERKINS and JOEY KEITH,
Individually as Deputy Sheriffs for the
Adair County Sheriff's Department,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether qualified immunity was appropriately granted.

PARTIES TO THE PROCEEDING

Petitioner is Jason Green, who was the Plaintiff-Appellee below.

Respondents are Kenny Perkins and Joey Keith. The Respondents were sued in their individual capacities as Deputy Sheriffs for the Adair County Sheriff's Department for Adair County, Kentucky. The Respondents were the Defendants-Appellants below.

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INTRODUCTION

The Petition for a Writ of Certiorari filed by Petitioner Jason Green (“Green”) sets forth a flawed description of the proceedings below, ignores facts in the record, and suggests that the Panel of the Sixth Circuit Court of Appeals failed to follow precedent. In each instance, Green misses the mark.

This matter stems from an incident that occurred on August 9, 2021 when Green’s mother called 911 reporting that Green was “on drugs” and “packing gas right now with a lighter.” Dispatch then advised Deputy Perkins and Deputy Keith (the Respondents in this matter): “Both units, also be advised, the male is packing a gas can and a lighter and the caller just advised he is spreading gas everywhere.”

Upon arriving on scene, the Deputies observed Green in the yard. Green ran towards a field and poured gasoline on himself. According to Green, his mother was holding on to him to prevent him from fleeing from the Deputies. The Deputies, who were advised that Green possessed a lighter based on the statements of Green’s mother to dispatch, deployed their tasers to get Green on the ground to protect everyone from harm. Green then filed an action asserting claims under 42 U.S.C. § 1983.

Green argues in his Petition – and has argued throughout these proceedings – that because no lighter was recovered from the scene, the use of force (*i.e.*, the taser deployment) by Deputies Perkins and Keith was in violation of his Fourth Amendment Rights.

“Excessive force claims ... are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred.” *Taylor v. Brandon*, No. 3:2014cv00588, 2018 U.S. Dist. LEXIS

237219, *8 (W.D. Ky. Jan. 29, 2018) (quoting *Cty. of Los Angeles v. Menendez*, 581 U.S. 420, 428 (2017)). That objective reasonableness is “judgment from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Raimey v. City of Niles*, 77 F.4th 441, 448 (6th Cir. 2023) (citing *Martin v. City of Broadview Heights*, 712 F.3d 951, 958 (6th Cir. 2013)). Green fails to acknowledge this precedent.

The Panel correctly applied precedent and correctly determined that the Deputies are entitled to qualified immunity as to Green’s federal claims. Specifically, the Panel correctly noted that Green failed to point to any precedent that would put the Deputies on notice that their actions would violate Green’s constitutional rights. Green failed to point to such precedent because none exists. The Petition should be denied.

STATEMENT OF THE CASE

A. Green’s Statement of Facts is Contrary to the Record.

According to Green’s Petition, the Panel “did not conceal or misstate any of the facts.” If that is true, one may question why Green then ignores the facts that the Panel correctly stated in petitioning this Court for relief.

As set forth in the Panel’s Opinion, Green lived with his mother, Vickie Smith, and stepfather, Charles Smith. On the afternoon of August 9, 2021, after using methamphetamine and marijuana, Green became upset with his parents. Though the reason for his anger remains unclear, Green responded by picking up a container of gasoline which he then poured on himself and splashed sporadically.

This behavior prompted his mother to call 911. Green's mother told the police dispatcher that Green was high on drugs, but that he did not have any weapons. When asked what Green would "harm himself with", Green's mother told the dispatcher that Green was "packing gas" and "a lighter." She later reiterated that Green was "just spreading gas" and had "a lighter in his hands." She explained she wanted Green to go to rehab.

Deputies Perkins and Keith were then dispatched to the scene. Dispatchers initially told the Deputies that Green was "wild" and had "no known weapons." Before the Deputies arrived on scene, dispatchers twice informed the Deputies – based on the statements made by Green's mother – that Green was "packing a gas can and a lighter" and that he was "spreading gas everywhere."

Notably, Green suggests in his recitation of the "facts" that the Deputies received a report that Green "might possess a lighter" from secondhand reports. Green attempted this same tactic before the Panel and it was aptly rejected. *See App. A to Petition, Pg. 4a-5a* ("Green claims that Vickie Smith told the dispatcher she presumed he had a lighter. But the 911 recording blatantly contradicts that assertion. *See Scott v. Harris*, 550 U.S. 372, 380 (2007). And even if it did not, the information relayed to Perkins and Keith certainly was not qualified.").

Hearing police cars in the distance, Green grabbed a Bible and made the decision to run while still holding the gas container. When the Deputies arrived, they found Green attempting to flee but his attempt was thwarted by his mother who grabbed his shirt. Green then jumped down from the fence and doused himself in gasoline. The Deputies ordered Green to drop the

gasoline container. According to Green, he complied. Green's mother then stepped between Green and the Deputies, who had their tasers trained on Green. Green's mother pleaded with the Deputies not to shoot, but to handcuff Green instead. The Deputies directed Green's mother to move away. She then stepped "maybe" "a couple of feet away."

The Deputies then deployed their tasers. The Deputies testified that they fired because Green was either "flicking" or "sparking" a lighter and that tasing Green was necessary to get him on the ground and to protect him from harming his mother. Green and his parents later claimed, despite the 911 call to the contrary, that Green never had a lighter. No lighter was recovered from the scene.

Green was ultimately indicted for wanton endangerment and other offenses. Green was acquitted and then filed this action.

B. Procedural History.

In his Petition, Green improperly states the rationale of the Panel in its reversal of the District Court and grant of qualified immunity. Specifically, Green states that the Panel reversed the District Court's denial of qualified immunity as to Green's federal claims based upon the Deputies' "purported 'perception' of a lighter." Green further argues that this "perception theory" appears nowhere in the record prior to the case advancing to the Sixth Circuit.

First, the Panel's Opinion is clear. The Panel, in applying the applicable precedent, correctly determined that Green failed to point to any clearly established law that provided a fair warning that the Deputies' use of a taser ran afoul of the Fourth Amendment; that failure continues.

Second, there is no “perception theory”. The Deputies argued before the District Court and the Sixth Circuit the same thing, *i.e.*, the use of force must be objectively reasonable based on judgment from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight. The Panel correctly applied this standard in its Opinion.

THE PETITION SHOULD BE DENIED

I. THE SIXTH CIRCUIT’S OPINION COMPORTS WITH PRECEDENT.

In his Petition, Green misapplies the appropriate standard by focusing on irrelevant disputes of fact and analyzing the Deputies’ actions with 20/20 hindsight. Green continues to focus on the fact that no lighter was recovered but fails to account for the information the Deputies had when the incident at issue occurred. Fatal to Green’s Petition, however, is the fact that he again fails to cite to any clearly established law that provided a fair warning that the Deputies’ use of a taser under these circumstances ran afoul of the Fourth Amendment.

A. Green Fails to Establish Any Clearly Established Right.

In *Lawrence v. Madison Cnty*, 176 F. Supp. 3d 650, 660 (E.D. Ky. 2016), the Court held that,

the qualified immunity doctrine “protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

(citing *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). According to the Court in *Lawrence*, *Pearson* requires the Court to answer two questions in determining whether qualified immunity exists: (1) whether the defendant violated a constitutional right and (2) whether that right was clearly established at the time. If the answer to either question is no, summary judgment dismissing Green’s claims is required. Green bears the burden of demonstrating that the Deputies are not entitled to qualified immunity. *Id.*

This Court recently reaffirmed this. In *Zorn v. Linton*, 146 S. Ct. 926 (2026), the Court was confronted with whether an officer was entitled to qualified immunity relative to a claim filed under Section 1983 for excessive force related to the forceable removal of a protestor from the Vermont state capitol. In reversing the Second Circuit’s denial of qualified immunity, the Court reiterated that “[a] right is clearly established when it is ‘sufficiently clear that every reasonable official would have understood that what he is doing violates that right.’” *Zorn*, 146 S. Ct. at 930 (quoting *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (*per curiam*)).

“A right is not clearly established if existing precedent does not place the constitutional question ‘beyond debate.’” *Id.* “To find that a right is clearly established, courts generally ‘need to identify a case where an officer acting under similar circumstances ... was held to have violated’ the Constitution. *Id.* (quoting *Escondido v. Emmons*, 586 U.S. 38, 43 (2019) (*per curiam*)). That 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.” *Id.* (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018)).

Green uses his Petition to suggest that the Panel failed to consider the totality of the circumstances related to whether Green's constitutional rights were violated. Though such a suggestion is provably false, Green completely ignores the actual holding of the Panel, *i.e.*, the Deputies are entitled to qualified immunity because Green failed to point to any clearly established law that provided a fair warning to the Deputies that their actions ran afoul of the Fourth Amendment. Green again fails to point to any such law and the Petition should therefore be denied.

B. The Sixth Circuit Analyzed the Totality of the Circumstances.

Green's argument concerning *Barnes v. Felix*, 605 U.S. 73 (2025) and *Graham v. Connor*, 490 U.S. 386 (1989) are misguided as these decisions actually bolster the Panel's Opinion. In *Barnes*, this Court was confronted with the use of deadly force and held that determining the reasonableness of the use of force requires an analysis of the "totality of the circumstances." *Barnes*, 605 U.S. at 79-80. The Court specifically noted that the "totality of the circumstances" approach requires an assessment of "all the relevant circumstances, including facts and events leading up to the climactic moment." *Id.* at 76. Similarly, in *Graham*, this Court confirmed that the reasonableness inquiry is an objective one "in light of the facts and circumstances confronting them". *Graham*, 490 U.S. at 396-97.

Here, Green's argument is nonsensical. Green claims that the Panel failed to consider the "totality of the circumstances" by arguing that the failure of the Deputies to recover a lighter means there was no potential for harm. In doing so, Green makes an argument based upon 20/20 vision of hindsight and not "all the relevant circumstances, including facts and

events leading up to the climactic moment.” *Barnes*, 605 U.S. at 76. Unlike Green, the Panel correctly analyzed the Deputies’ actions without the benefit of 20/20 vision of hindsight and considered the circumstances leading up to the event, *i.e.*, Green’s mother expressly informed dispatch that Green was packing gasoline and a lighter and dispatch then relaying to the Deputies that Green possessed gasoline and a lighter. The Panel likewise considered the actions of Green after arrival of the Deputies, *i.e.*, Green attempting to flee, his mother grabbing his shirt and stepping between Green and the Deputies, and Green pouring gasoline. The totality of the circumstances, which the Panel analyzed, do not support Green’s position. They rebut it. The Petition should be denied.

II. THERE IS NO CIRCUIT CONFLICT.

Green next suggests that the Panel’s Opinion, will result in a circuit split. It will not as the Panel correctly applied “the totality of the circumstances” standard as required under this Court’s precedence. *See Barnes*, 605 U.S. at 76; *Graham*, 490 U.S. at 396-97.

Green’s argument concerning cases from other circuits is therefore inapposite. The Panel did not rely solely on pre-arrival information as suggested by Green. Rather, the Panel conducted a totality of the circumstances analysis as set forth above and determined that Green failed to point to any clearly established law that provided a fair warning to the Deputies that their actions ran afoul of the Fourth Amendment. Green again fails to point to any such law.

Finally, Green’s argument that the Panel failed to consider other Sixth Circuit precedent is provably false as the Panel’s Opinion considered the very cases that Green purports to rely upon in his Petition.

In each instance, the Panel correctly observed that the facts of those cases “involve suspects that were not reasonably viewed as a threat – an assumption that does not fit these facts.” *See* App. A to Petition, Pg. 11a-13a (citing *Landis v. Baker*, 297 F. App’x 453, 461 (6th Cir. 2008); *Kijowski v. City of Niles*, 372 F. App’x 595, 600 (6th Cir. 2010); *Browning*, 18 F.4th at 526; *Cockrell v. City of Cincinnati*, 468 F. App’x 491, 496 (6th Cir. 2012)). Moreover, the only case with facts similar to those at issue here suggests that if the Deputies believed Green was holding a lighter – which they did – then their use of the taser was objectively reasonable given the fact that Green had the apparent capability of setting himself on fire and harming others in the process. *See Ramirez v. Guadarrama*, 3 F.4th 129, 136 (5th Cir. 2021). The Petition should therefore be denied.

CONCLUSION

For the foregoing reasons, Deputies Perkins and Keith respectfully request that Green’s Petition be denied.

Respectfully submitted,

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