Police: Failure to Warn Before Reasonable Use of Deadly Force is Not an Automatic Bar to Qualified Immunity

Pedro Quiles v. City of Tampa, No. 14-12875 (11th Cir. Jan. 5, 2015).

The Eleventh Circuit reversed a lower court, holding that a police officer was entitled to qualified immunity despite failing to warn the suspect of the potential use of deadly force.

This case arises out of events during a routine traffic stop in 2011. As the suspect resisted the officer's attempt to take him into custody, he broke free and attempted to flee. A second officer, mistakenly believing that the suspect had taken off with the weapon of the first officer, fatally shot the suspect as he fled.

The decedent's estate subsequently filed suit, alleging that the shooting officer used excessive force in violation of the Fourth Amendment. The officer moved for summary judgment on the grounds of qualified immunity. The district court denied the motion, finding that the officer did not warn the suspect about the potential use of deadly force against him and that such warning was feasible under the circumstances. The police officer appealed the ruling.

HELD: The Eleventh Circuit reversed, holding *per curiam* that (1) the fatal shooting of the suspect by the police officer was objectively reasonable under the circumstances and as such, the use of deadly force was permitted under the Fourth Amendment; and (2) the failure of the police officer to warn the suspect of the potential use of deadly force against him does not preclude the officer's entitlement to qualified immunity.

DISCUSSION: In ruling for the appellant, the court found that the officer's actions were "objectively reasonable" under the circumstances, and thus, not "excessive" in violation of the Fourth Amendment. The court noted that the assessment of reasonableness must account for the fact that police officers are often forced to make "split-second" judgments about the amount of force necessary in a particular situation, and stated that it was "loath to second-guess the decisions made by police officers in the field." The court found that the officer's reasonable but mistaken belief that the suspect was armed and posed a serious threat of physical injury to others, warranted the use of deadly force. Citing *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007); *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997); *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010), the court stressed that the law does not require officers to wait until the moment a suspect uses a weapon before acting with deadly force. Viewing the evidence in the light most favorable to the Plaintiff, the court held that the officer's fatal shooting of the suspect was a reasonable use of force under the circumstances, and accordingly, that the officer did not violate the suspect's Fourth Amendment rights.

More importantly, relying on *Penley v. Weippert*, 605 F.3d 843 (11th Cir. 2010) and *Carr v. Tantangelo*, 338 F.3d 1259, 1269 n. 19 (11th Cir. 2003), the court clarified that whether or not a police officer warned a suspect prior to the use of deadly force is only a single, non-dispositive factor in determining reasonableness: "[A]n officer's failure to issue a seemingly feasible warning – at least, to a person appearing to be armed – does not, in and of itself, render automatically unreasonable the use of deadly force." Moreover, the court reiterated that all of the facts and circumstances of a case are relevant when evaluating the use of force.

On these facts, the court concluded that failure to warn prior to the reasonable use deadly force did not bar the officer's entitlement to qualified immunity.

http://media.ca11.uscourts.gov/opinions/unpub/files/201412875.pdf (last accessed Jan. 7, 2015).