Qualified Immunity Update

Recent Developments in Qualified Immunity &
Qualified Immunity at Trial

Patricia Miller & Brachah Goykadosh

Basic Doctrine

- Qualified immunity shields government officials from liability.

- Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009).

Basic Doctrine

- Qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.” *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015).

- Qualified immunity “gives government officials breathing room to make reasonable but mistaken judgments[.]” *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012).

Function

- Qualified immunity operates "to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002).

- Qualified immunity recognizes the the costs of subjecting officials to the risks of trial. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).
  - distraction of officials from their governmental duties,
  - inhibition of discretionary action,
  - deterrence of able people from public service.

- Qualified immunity is important to society as a whole. *White v. Pauly*, 137 S. Ct. 548, 552 (2017).

Clearly Established Law

- Whether the law was sufficiently clearly established is itself an issue of law. *See Elder v. Holloway*, 510 U.S. 510, 516 (1994).

- Whether law is "clearly established" is a highly-specific question that must be "particularized" to the facts of a case; it is not a general abstract inquiry. *White v. Pauly*, 137 S. Ct. 548, 552 (2017).

- An official "cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018).

Clearly Established Law

- To demonstrate that the law was clearly established, a plaintiff must point to either to "cases of controlling authority in [the] jurisdiction at the time" or to "a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his [or her] actions were lawful." *Ashcroft v. al-Kidd*, 563 U.S. 731, 746 (2011).

- "These standards ensure the officer has fair and clear warning of what the Constitution requires." *Id.*

Objective Reasonableness

- The question is whether "*any* reasonable officer, out of the wide range of reasonable people who enforce the laws in this country, *could have* determined that the challenged action was lawful." *Figueroa v. Mazza*, 825 F.3d 89, 100 (2d Cir. 2016), citing *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

- The focus is not on the plaintiff's motivations but the sequence of events from the perspective of a reasonable officer at the scene. *Muschette v. Gionfriddo*, 910 F.3d 65, 71 (2d Cir. 2018).

Recent Supreme Court Decisions

- *City of Escondido v. Emmons*, 139 S.Ct. 500 (2019)
- *Kisela v. Hughes*, 138 S.Ct. 1148 (2018)
- *District of Columbia v. Wesby*, 138 S.Ct. 577 (2018)
- *Salazar-Limon v. City of Houston*, 137 S.Ct. 1277 (2017)
- *City & Cnty. of San Francisco v. Sheehan,* 135 S. Ct. 1765 (2015)

Recent Circuit Court Decision

- *Doe v. Jackson Local Sch. Dist. Bd. of Educ*., 2020 U.S. App. LEXIS 10238 (6th Cir. April 1, 2020)
- *Fijalkowski v. Wheeler,* 2020 U.S. App. LEXIS 7243 (4th Cir. March 9, 2020)
- *Corbitt v. Vickers*, 929 F.3d 1304 (11th Cir. 2019)
- *Muschette v. Gionfriddo*, 910 F.3d 65 (2d Cir. 2018)

Qualified Immunity at Trial

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANCISCO VARGAS,

Plaintiff,

-v-

DETECTIVE JOSEPH M. MARQUEZ,

Defendant.

14-cv-2511 (KBF)

VERDICT SHEET

KATHERINE B. FORREST, District Judge.

1. Did defendant Detective Joseph Marquez have a reasonable belief, even if mistaken, that plaintiff Francisco Vargas committed, was committing, or was about to commit an offense involving a controlled substance?

Yes _____ No _____

If you answered "yes," you are done. Do not answer any further questions. Sign this form on the last page and give it to the marshal.

Only proceed to Question 2 if you answered "no."

2. Do you find that the defendant falsely arrested the plaintiff on January 19, 2013?

Yes _____ No _____

If you answered "no," you are done. Do not answer any further questions. Sign this form on the last page and give it to the marshal.

Only proceed to Questions 3 and 4 if you answered "yes."

3. If you answered "yes" to Question 2, what amount of damages has the plaintiff proven he suffered as a result of the false arrest? (You must award at least $1 as nominal damages if you answered "yes" to Question 2.)

$ _____

4. If you find that punitive damages are appropriate as to false arrest, enter the amount that the plaintiff has proven he is entitled to here. (If you find that the plaintiff was falsely arrested, but do not find punitive damages appropriate, you may leave it blank or enter $0.)

$ _____

Please sign and date the form and tell the marshal that the jury has reached a verdict.

Dated: New York, New York
March ___, 2016

_____ _____
FOREPERSON

_____ _____

_____ _____

_____ _____

VERDICT SHEET #1

1. Do you find by a preponderance of the evidence that Mauricio Jaquez was pushing himself up from the floor when Sgt. Flores fired the final shot?

Yes _____ No _____

2. Do you find by a preponderance of the evidence that Mauricio Jaquez had a knife in his hand when Sgt. Flores fired the final shot?

Yes _____ No _____

Please sign and date the form and tell the marshal that the jury has reached a verdict.

Dated: New York, New York
April ____, 2016

_____ _____
FOREPERSON

_____ _____

_____ _____

_____

VERDICT SHEET #2

1. Do you find that plaintiff has proven by a preponderance of the evidence that defendant Sgt. Flores subjected Mauricio Jaquez to excessive force on April 12, 2009 when he fired the final shot?

Yes _____ No _____

If you answered "no," you are done. Do not answer any further questions. Sign this form on the last page and give it to the marshal.

Only proceed to Questions 2 and 3 if you answered "yes."

2. If you answered "yes" to Question 1, what amount of compensatory damages have the plaintiffs proven they suffered as a result of the excessive force? (You must award at least $1 as nominal damages if you answered "yes" to Question 3.)

$ _____

3. If you find that punitive damages are appropriate, enter the amount that the plaintiffs have proven they are entitled to here. (If you find that Mauricio Jaquez was subject to excessive force, but do not find punitive damages appropriate, you may leave it blank or enter $0.)

$ _____

Please sign and date the form and tell the marshal that the jury has reached a verdict.

Dated: New York, New York
April ___, 2016

_____ _____
FOREPERSON

_____ _____

_____ _____

_____

COURT EXHIBIT

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSTHEN NOBOA,

Plaintiff,

-against-

POLICE OFFICERS ALLAN WARD and JAMAR GODDARD,

Defendants.

SPECIAL INTERROGATORIES

15 Civ. 5159 (AMD) (RER)

Defendant Allan Ward

1) Did the defendant Allan Ward reasonably believe, even if mistaken, that the plaintiff had committed the crime of criminal possession of marijuana in the fifth degree?

YES ✓ NO _____

2) Did the defendant Allan Ward reasonably believe, even if mistaken, that the plaintiff had committed the crime of criminal trespass?

YES ✓ NO _____

Defendant Jamar Goddard

1) Did the defendant Jamar Goddard reasonably believe, even if mistaken, that the plaintiff had committed the crime of criminal possession of marijuana in the fifth degree?

YES ✓ NO _____

2) Did the defendant Jamar Goddard reasonably believe, even if mistaken, that the plaintiff had committed the crime of criminal trespass?

YES ✓ NO _____

Dated: Brooklyn, New York
January 10, 2017

_____
FOREPERSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN JOHNSON,

Plaintiff,

-v-

JEROME BURNS and MATTHEW WRIGHT,

Defendants.

15 Civ. 4789 (PAE)

VERDICT FORM

PLEASE CHECK (√) YOUR ANSWERS AND FILL IN THE BLANKS

All Answers Must Be Unanimous

False Arrest

1. Has plaintiff proved, by a preponderance of the evidence, that he was falsely arrested by any of the defendants?

(a)	Jerome Burns	YES_____	NO__✓__
(b)	Matthew Wright	YES__✓__	NO_____

[If you answered "No" to all parts of Question 1, then skip to Question 4. If you answered "Yes" to any part of Question 1, then answer Question 2 as to any defendant for whom you have given a "Yes" answer.]

2. Has plaintiff proved, by a preponderance of the evidence, that he suffered compensatory damages as a result of being falsely arrested by any of the defendants?

(a)	Jerome Burns	YES_____	NO__✓__
(b)	Matthew Wright	YES_____	NO__✓__

[Question 2 continues on the next page.]

If so, what amount of compensatory damages do you award?

Compensatory Damages: $_____

[If you answered "No" to Question 2 as to any defendant, then proceed to Question 3. If you answered "Yes" to Question 2 as to all defendants, then skip to Question 4.]

3. If you have found that plaintiff proved his claims against a defendant (Question 1), but have found that plaintiff has not proved compensatory damages, you must award nominal damages. What amount of nominal damages (not to exceed $1) do you award?

Nominal Damages: $0.50

[Proceed to Question 4 regardless of your answer to Question 3.]

Malicious Prosecution

4. Has plaintiff proved, by a preponderance of the evidence, that he was maliciously prosecuted by any of the defendants?

(a)	Jerome Burns	YES_____	NO__✓__
(b)	Matthew Wright	YES_____	NO__✓__

[If you answered "No" to all parts of Question 1 and all parts of Question 4—i.e., if you have not found for plaintiff on either his false arrest claim or his malicious prosecution claim—then skip the rest of the questions, sign your names on the last page, fill in the date, and inform the officer that you have reached a verdict. If you answered "Yes" to any part of Question 1 and "No" to all parts of Question 4, then skip to Question 7. If you answered "Yes" to any part of Question 4, then answer Question 5 as to any defendant for whom you have given a "Yes" answer.]

5. Has plaintiff proved, by a preponderance of the evidence, that he suffered compensatory damages as a result of being maliciously prosecuted by any of the defendants?

(a)	Jerome Burns	YES_____	NO__X__
(b)	Matthew Wright	YES_____	NO__X__

If so, what amount of compensatory damages do you award?

Compensatory Damages: $_____

[If you answered "No" to Question 5 as to any defendant, then proceed to Question 6. If you answered "Yes" to Question 5 as to all defendants, then skip to Question 7.]

6. If you have found that plaintiff proved his claims against a defendant (Question 4), but have found that plaintiff has not proved compensatory damages, you must award nominal damages. What amount of nominal damages (not to exceed $1) do you award?

Nominal Damages: $_____

[Proceed to Question 7 if you answered "Yes" to any part of Question 1 and/or "Yes" to any part of Question 5.]

Punitive Damages

7. If you have found that plaintiff proved either or both of his claims against a defendant—i.e. if you have answered "Yes" to either Question 1 or Question 4 or both, as to that defendant—has plaintiff proved, by a preponderance of the evidence, that he is entitled to punitive damages from that defendant?

(a) Jerome Burns YES_____ NO ✓

(b) Matthew Wright YES_____ NO ✓

If so, what amount of punitive damages do you award?

(a) Jerome Burns $ 0

(b) Matthew Wright $ 0

[Proceed to Question 8 if you answered "Yes" to any part of Question 1 and/or "Yes" to any part of Question 5.]

Additional Questions

8. If you have found that Mr. Johnson has proved either or both of his claims against a defendant—i.e., if you answered "Yes" to either Question 1 or Question 4 or both, as to that defendant—please answer the following additional questions as to that defendant:

Questions as to Matthew Wright:

(a) Did Matthew Wright reasonably believe, even if mistaken, that he observed Gilda Giscombe hand Kevin Johnson an amount of money on August 30, 2013?

YES_____ NO_____ Deadlocked

[Question 8 continues on the next page.]

(b) Did Matthew Wright reasonably believe, even if mistaken, that he observed Kevin Johnson hand an object or objects to Gilda Giscombe on August 30, 2013?

YES ✓ NO_____

(c) Did Matthew Wright reasonably believe, even if mistaken, that he witnessed Kevin Johnson sell heroin on August 30, 2013?

YES_____ NO_____ Deadlocked

(d) Did Matthew Wright inform Jerome Burns that he (Matthew Wright) observed Kevin Johnson sell heroin on August 30, 2013?

YES ✓ NO_____

Questions as to Jerome Burns:

(e) Did Jerome Burns observe Kevin Johnson drop heroin on the ground on August 30, 2013?

YES ✓ NO_____

(f) Did Jerome Burns recover heroin from or near Kevin Johnson on August 30, 2013?

YES ✓ NO_____

(g) Did Jerome Burns recover marijuana from Kevin Johnson on August 30, 2013?

YES ✓ NO_____

(h) Did Jerome Burns reasonably believe, even if mistaken, that any of the drugs that were recovered on August 30, 2013 belonged to Kevin Johnson?

YES ✓ NO_____

[Please sign your names in the space provided on the next page, fill in the date, and inform the officer that you have reached a verdict.]

Current Importance of Qualified Immunity

Scholarly Perspectives on Qualified Immunity