THE RECENT EVOLUTION OF QUALIFIED IMMUNITY AND ITS USE AT TRIAL

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WHAT IS QUALIFIED IMMUNITY?

- Qualified immunity is an affirmative defense which shields police officers from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known, protects all but the plainly incompetent or those who knowingly violate the law. (Pearson v. Callahan, 555 U.S. 223, 231 (2009); Malley v. Briggs, 475 U.S. 335 (1986)).

WHAT MAKES A LAW "CLEARLY ESTABLISHED?"

- For a rule to be clearly established under the doctrine of qualified immunity, it is not enough that a rule be suggested by then-existing precedent; the rule's contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted.
- Generally, to satisfy "clearly established" prong of the qualified immunity analysis, a plaintiff must identify a case in which a public official or officer acting under similar circumstances was held to have violated Constitution, and explain why the case clearly proscribed conduct of that individual official or officer.
- An Officer's subjective belief is irrelevant.

WHEN IS QUALIFIED IMMUNITY ASSERTED?

- The entitlement is an immunity from suit rather than a mere defense to liability; and like absolute immunity, it is lost if a case is erroneously permitted to go to trial.
- Circuits are split if the case goes to trial as to whether qualified immunity is a question for the court or the jury to decide.

RECENT CASES EXAMINING QUALIFIED IMMUNITY

Vega v. Tokah, 142 S. Ct. 2095 (2022)

- Plaintiff was arrested on a charge of sexual assault but was not given Miranda warnings.
- A jury found Plaintiff innocent at the criminal trial.
- Plaintiff sued Defendant under §1983 and the trial court granted Defendant Qualified Immunity.
- The Ninth Circuit held that the use of an un-Mirandized statement against a defendant in a criminal proceeding violates the Fifth Amendment and may support a § 1983 claim against the officer who obtained the statement.

Vega v. Tokah, 142 S. Ct. 2095 (continued)

SCOTUS HOLDING:

1) A Miranda violation does not constitute the deprivation of a right secured by the Constitution that is enforceable under § 1983, and
2) Assuming Miranda's prophylactic rule protecting Fifth Amendment right against compelled self-incrimination constituted federal law securing a right within meaning of § 1983, such rule did not include right to sue for damages under § 1983.

Justice Alito reasoned that benefits of permitting the assertion of Miranda claims under § 1983 would be slight, and the costs would be substantial for the courts.

Rivas-Villegas v. Cortesluna, 142 S. Ct. 4 (2021)

- Police received a call of suspected domestic violence. The suspect was reportedly wielding a chainsaw toward his girlfriend and two children.
- Five officers responded to the home and commanded that Cortesluna come out of the house. He did so with a knife sticking out of his pocket.
- As he did not comply with commands to continue to show his hands, one of the officers fired two rounds of beanbags at Cortesluna. While on the ground, another officer placed a knee into his back while removing the knife from his pocket.
- Cortesluna alleged a Fourth Amendment violation pursuant to § 1983. Trial court granted summary judgment.

Rivas-Villegas v. Cortesluna, (continued)

- On appeal to the 9th Circuit, the court relied on the case of Lalonde v. City of Riverside, officers were responding to a neighbor's complaint that LaLonde had been making too much noise in his apartment. When they arrived at his apartment, he answered the door in his underwear with a sandwich in his hand.
- When Lalonde refused to let the officers inside, an officer knocked the sandwich from his hand and pulled him to the ground by his ponytail. They then sprayed him with pepper spray and knelt into his back. The court denied QI.
- The Rivas Villegas court held that the facts in Lalonde were not sufficiently analgous and thus there was no clearly established law.

City of Talequah, Oklahoma v. Bond, 142 S. Ct 9 (2021)

- Suspect was intoxicated in his ex-wife's garage and would not leave.
- Officers responded and met the suspect at the entrance of the garage. They asked if they could pat him down for weapons and he refused.
- Suspect began to move toward a tool bench contrary to officers' order to stop. He then grabbed a hammer and was in a stance preparing to throw it at the officers. He was ordered to drop the hammer but failed to do so.
- He then began to advance toward the officers and the officers fired lethal rounds and the suspect died.
- The trial court granted qualified immunity. The 10th Circuit reversed relying primarily on Allen v. Muskogee, 119 F. 3d 837 (1997).
- SCOTUS reversed noting that in Allen, officers responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to physically wrest a gun from his hands. Here, the officers engaged in a conversation with Rollice, the officers followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer.

French v. Merrill, 15 F.4th 116 (1st Cir. 2021)

- Officers at suspect’s home shortly before 5:00 a.m. in connection with a complaint of harassment. They observed lights on in the home and decided to conduct a “knock and talk” rather than immediately apply for a warrant. The officers entered the property, walked onto the front porch, knocked on the front door, and announced that they were police officers seeking to speak with French. No one answered and the officers left the property.
- Officer Gray remained and walked onto the neighbor's adjacent driveway, which provided an unobstructed view of the narrow strip of grass, the bedroom window, and the cellar window of the suspect’s home and observed a young man peering out the basement window. Then, still standing on the neighbor's driveway, Gray shined his flashlight through the window, which caused the young man to cover the window and turn off the basement lights. Gray then returned to the front porch of suspect's building and again knocked on the front door, but no one answered. At that point, Gray's incident report recounts that “still no one came to the door. More lights were quickly being turned off in the residence. Window coverings which looked like blankets were drawn over the open windows as well.”

French v. Merrill, (continued)

- Officer Morse returned and walked back onto the property and, peering through a drawn window covering, saw that a light remained on in the kitchen. Two more officers also joined and walked through the curtilage along the narrow strip of grass and located what they had reason to believe was French's bedroom window. They knocked forcefully on the window frame and yelled for the suspect to come out and talk. An officer also shined his light into the bedroom. At the same time, Officer Gray returned to the front porch, knocked on the front door, and told French to come outside. French eventually came to the door.
- Holding: The Court held that officers engaged in precisely the kind of warrantless and unlicensed physical intrusion on the property of another that Fla. v. Jardines, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013) clearly established as a Fourth Amendment violation and therefore were not entitled to qualified immunity.

Jefferson v. Lias, 21 F. 4th 74 (3rd Cir. 2021)

- Officer Staffer sees a vehicle speeding with the car alarm blaring. He suspects the vehicle may be stolen and begins to follow with activated sirens.
- The driver, Jefferson, was on probation and had an open container of alcohol. Fearing that he'd return to jail on a probation violation, he did not pull over and a chase ensued.
- Officer Lias joined the pursuit only with the knowledge that the vehicle may be stolen. He did not have information that the vehicle was being driven recklessly.
- Ultimately, Jefferson crashes the car into a fire hydrant. Officers surrounded his vehicle.
- Rather than surrender, Jefferson puts the car in reverse.
- On comes Officer Lias to the scene. He begins firing lethal rounds at Jefferson. Jefferson was struck in the arm by one of the rounds but survived.
- Officers granted qualified immunity on summary judgment.
- Holding: As to Plaintiff's 4th Amendment claim, the 3rd Cir. held that whether the force used by Lias was reasonable, was a question for the jury. Moreover, it was clearly established law that "[a] passing risk to a police officer is not an ongoing license to kill an otherwise unthreatening suspect." The court expanded its survey of existing law to other circuits.

Tyson v. Sabine, 42 F.4th 508 (5th Cir. 2022)

- Husband Wade was out of town and contacted the Sheriff to request a welfare check on his wife Melissa who was distraught.
- Sheriff Boyd arrived at Melissa's residence the following day. She extended her hand to Boyd to greet him, but Boyd instead hugged her.
- Boyd stayed at the home for approximately two hours during which he made sexually inappropriate comments and demands. He also observed some marijuana paraphernalia in this house and suggested he could arrest her for possession.
- Ultimately, she submitted to his sexual demands as she felt intimidated byhis authority.

Tyson v. Sabine, 42 F.4th 508 (continued)

- Boyd was indicted sexual assault and indecent exposure. Tyson sued.
- Amazingly, the district court concluded there was no constitutional violation. Her 4th Amendment claim failed because there was no seizure, the 8th Amendment claim failed because she was not a prisoner, and the 14th Amendment claim failed because Boyd did not actually touch her.
- The 5th Cir. held agreed there was no 4th Amendment violation. Boyd never told her she could not leave. An intimidating police presence alone does not constitute a seizure.
- The court did find a 14th Amendment violation. Boyd abused his power and violated Melissa's right to bodily integrity. Was that "clearly established" law?
- The court held that analogous precedent was not necessary in this case. Qualified immunity will not be granted when an officer commits a patently obvious violation of the Constitution. (Hope v. Pelzer, 122 S. Ct. 2508 (2002))

Jarvela v. Washtenaw Cnty., 40 F.4th 761 (6th Cir. 2022)

- Jarvela was suspected of drunk driving. He led officers on a high-speed chase into a wooded area where he foot-bailed from the vehicle.
- K9 was called to locate Jarvela. Jarvela was captured by the K9.
- The K9 bit into Jarvela's arm. While the K9 was engaged, the handler gave Jarvela commands to get on his stomach which he did not do. The handler delivered seven blows to Jarvela's back and then tazed him twice before he was handcuffed.
- The district court denied the handler's request for QI.
- As to the use of the K9, Jarvela argued that a K9 warning should have been given. The court held there is no existing law that a K9 warning must be given so there was no Constitutional violation. No need to go to the second prong.
- As to the physical contact, the court held that Jarvela was actively resisting and therefore the handler could use the amount of force necessary to ensure submission. Again, no Constitutional violation.

Green v. City of St. Louis, 52 F.4th 734 (8th Cir. 2022)

- St. Louis citizens were protesting an officer-involved-shooting.
- Police began to use tear gas to break up the protest.
- Plaintiff attended the protest but went to a nearby synagogue to await the scene dying down.
- As Plaintiff left and was walking to her car, she encountered a line of police officers. She was given permission to cross the line to reach her car, but she was mocked by the officers while doing so.
- A Bearcat rolled by and Plaintiff yelled out to others to take cover.
- The Bearcat initially passed Plaintiff but then made a U-turn and deployed tear gas near Plaintiff.
- The court denied qualified immunity to the officers who were in the Bearcat. It was well established that using tear gas against individuals not engaging in illegal activity but who had been engaging in First Amendment expression is unconstitutional.