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FEATURED CASE:

Fourth Circuit Upholds Qualified Immunity for Officer in Deadly Force Case: When Suspects Advance Despite Commands and Shots

***Rambert v. City of Greenville*, No. 22-1428 (4th Cir. July 12, 2024).**

The Fourth Circuit held that a Greenville City police office was entitled to qualified immunity for his use of deadly force against a decedent. The court found that the officer's actions were objectively reasonable under the circumstances, given that decedent was charging at him aggressively while ignoring commands to stop, in response to a potentially dangerous breaking-and-entering call. Moreover, the court determined that no clearly established law put the officer on notice that his conduct violated the Fourth Amendment, as no precedent squarely governed the specific facts he faced. This decision emphasizes the high bar for overcoming qualified immunity in police use-of-force cases, particularly in rapidly evolving, dangerous situations.

On July 9, 2019, Officer David Johnson ("Johnson") of the Greenville, North Carolina Police Department responded to a report of a breaking-and-entering in progress at around 4:00 AM. Upon arriving at the scene, Johnson heard yelling and encountered Sean Rambert ("Rambert"), who was running towards him while yelling indecipherably. Despite Johnson's repeated commands to get on the ground, Rambert continued to charge at Johnson. Johnson fired multiple shots at Rambert over the course of about 25 seconds as Rambert continued to advance towards him, even after being shot initially. Rambert later died from the gunshot wounds.

Rambert's estate sued Johnson and the City of Greenville under 42 U.S.C. § 1983, alleging excessive force in violation of the Fourth Amendment, as well as state law claims. The defendants moved for summary judgment, arguing Johnson was entitled to qualified immunity. The district court denied summary judgment, finding genuine disputes of material fact existed regarding the reasonableness of Johnson's conduct. The defendants appealed the denial of qualified immunity to the Fourth Circuit Court of Appeals.

Question of Law:

Was Officer Johnson entitled to qualified immunity on the Fourth Amendment excessive force claim based on the undisputed facts and body camera footage of the encounter with Rambert?

Holding:

Yes, Officer Johnson was entitled to qualified immunity on the Fourth Amendment excessive force claim. The court held that Johnson's use of force was objectively reasonable under the circumstances and did not violate clearly established law.

Analysis:

The court's analysis proceeded in two parts, addressing both prongs of the qualified immunity test: whether a constitutional violation occurred and whether the right was clearly established.

On the first prong, the court applied the *Graham v. Connor* factors to assess the objective reasonableness of Johnson's use of force. The court emphasized the severity of the suspected breaking-and-entering crime, the immediate threat Rambert posed by charging at Johnson while yelling and ignoring commands, and Rambert's active resistance. The court referenced *Sigman v. Town of Chapel Hill*, where it had previously held that an officer's decision to fire was not unreasonable when faced with a suspect advancing despite commands to halt in a volatile atmosphere.

Addressing the plaintiffs' arguments, the court rejected the notion that Rambert's lack of a visible weapon or potential mental health crisis made Johnson's use of force unreasonable. The court cited *McLenagan v. Karnes* to support that officers need not actually detect a weapon before using force. It also noted that no precedent required officers to refrain from force against aggressive suspects merely because of a possible mental health episode.

On the second prong, the court examined whether the law clearly established that Johnson's conduct violated the Fourth Amendment. The court systematically analyzed the cases cited by the plaintiffs, including *Clem v. Corbeau*, *Estate of Armstrong v. Village of Pinehurst*, *Wilson v. Prince George's County*, and *Bygum v. City of Montgomery*. In each instance, the court distinguished the facts from the present case, emphasizing that none involved a suspect actively charging an officer and continuing to advance after being shot.

The court also addressed the plaintiffs' argument that the final two shots violated clearly established law, analyzing *Harris v. Pittman*, *Brockington v. Boykins*, and *Waterman v. Batton*. While these cases established that deadly force may become unjustified if circumstances change to eliminate the threat, the court found they did not apply here. It emphasized that the danger had not dissipated before Johnson's final shots, as Rambert continued trying to get up and advance towards Johnson.

The court rejected the plaintiffs' attempt to collectively use these cases to establish a violation, citing Supreme Court precedent requiring that existing precedent "squarely governs" the specific facts at issue (*Kisela v. Hughes*). It stressed that qualified immunity protects all but the plainly incompetent or those who knowingly violate the law (*Mullenix v. Luna*).

In conclusion, the court found that Johnson's conduct was objectively reasonable given the rapidly evolving, dangerous situation he faced. Moreover, no clearly established law put Johnson on notice that his actions violated the Fourth Amendment under these specific circumstances. This analysis led the court to reverse the denial of qualified immunity on the Fourth Amendment claim against Johnson.

Rambert v. City of Greenville

SHORT SUMMARIES:

1st Circuit – First Amendment – Qualified Immunity – First Amendment Auditors/Journalists - COVID

The question presented: "On a motion to dismiss a case, see Fed. R. Civ. P. 12(b)(6), does qualified immunity protect public officials who baselessly threatened a citizen-journalist with legal action if he did not remove a video on a matter of public concern that he made and posted on Facebook without breaking any law?1 We answer no,. . ." A parent and citizen journalist upset that his daughter's play was sold out due to COVID restrictions still in place in March 2022 confronted the school's hierarchy. In doing so, with camera in hand and recorder on, he engaged a couple of folks in conversation. He then posted the video of the conversation on-line, which apparently annoyed the school HR director who wrote him and threatened to invoke a Massachusetts statute banning secret recordings if he did not take the video down. The lower court dismissed the suit, but the panel reversed. Lots of discussion of immunity and First Amendment retaliation.

Berge v. School Committee of Gloucester

4th Circuit – Probable Cause - Immunity

So, a guy who's obviously been slashed with a wound in the chest cries for help, but doesn't do much more to identify his attacker. Police send chopper to medivac him, but since ambulance has arrived, determine the chopper is not needed for medical purposes. They convert the chopper from medical use to police use and use the chopper's infrared scanning to look for hot cars in the vicinity and find one. A car parked in a driveway. Police arrive at the location and see a man in the driver's seat with the door open of a car in the driveway, with rear lights lit and front headlights off. The police pull into the driveway and approach. The man shuts the door. The police then confront the man and ask for ID. After some back and forth they handcuff the man and put him in a patrol car. At about that time the man's parents come out of the house and confirm its their son and he tells them he was only looking for his headset. All done after about 8 minutes. Oops, not done. Officers are sued and when their quest for dismissal receives the lower court's blessing based on the totality of the circumstances, the man appeals. The panel reverses. Long story short, probable cause means probable cause and there was nothing from these facts that could link the man with the victim or the scene of the crime using a probable cause standard.

Milla v. Brown

11th Circuit – Incorporation by Reference – 12b6 Dismissal

A person upset at the force used while being arrested for DUI sues the officer and the city. The suit according to the court was a bare bones recital of allegations supporting the claim. The defendants moved to dismiss and included videos of the event. Plaintiff objects (I guess video evidence sometimes throws a wrench in the works of a lawsuit). Lower court reviews the video and dismisses. The panel on appeal discusses how the video can be incorporated by reference, even if it was not referred to in the claim. Pretty good case for using video evidence to support a 12b6 motion. Great work by City of Atlanta Law Department!

Johnson v. Atlanta