

November 2015

United States Supreme Court Holds that Qualified Immunity Bars Fourth Amendment Claim in Deadly Police Pursuit Case

By J. David Marsey
dmarsey@rumberger.com

The United States Supreme Court recently held¹ that an officer's use of deadly force by shooting the driver of a vehicle during a high-speed pursuit did not violate a clearly established Fourth Amendment right, and therefore, the officer was entitled to qualified immunity. In finding the officer immune, the court reversed the lower courts' decisions and reaffirmed the need to conduct an analysis of the specific facts faced by the officer when comparing them to prior decisions interpreting the Fourth Amendment.

In this case, law enforcement officials attempted to arrest the subject of an outstanding warrant who fled the scene in a car. The suspect led officers from multiple agencies on a prolonged vehicle pursuit, reaching speeds in excess of 100 miles per hour. During the chase, the suspect called the dispatch center and reported that he had a firearm and would shoot officers if they did not abandon their pursuit. While officers prepared to deploy spike strips, another officer took a position on an overpass and fired six rounds from his service rifle in a stated attempt to disable the vehicle, but instead, hit the driver four times, killing him.

In reaching its decision, the Supreme Court specifically declined to analyze whether the force used under these circumstances was constitutional. Instead, it focused exclusively on whether the defendant officer was placed on notice of the unconstitutionality of his force application through prior judicial decisions. The Court reasoned, "[w]e do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate. . . We have repeatedly told courts. . . not to define clearly established law at a high level of generality. . . The dispositive question is whether the violative nature of *particular conduct* is clearly established." The lower appellate court denied the officer's immunity based on exactly the type of generality rejected here when it explained, "the law was clearly established such that a reasonable officer would have known that the use of deadly force, absent a sufficiently substantial and immediate threat, violated the Fourth Amendment."

The Court has analyzed the use of deadly force during police pursuits and has previously found either no Fourth Amendment violation or qualified immunity was appropriate where an officer:

¹ *Mullenix v. Leija*, 577 U.S. ____ (2015).

November 25, 2015

Page 2

(1) shot a fleeing suspect out of fear that he endangered other officers and citizens; (2) shot a fugitive who was intent on resuming a car chase that posed a deadly threat for others on the road; and (3) rammed the car of a fugitive whose reckless driving posed an actual and imminent threat to the lives of pedestrians who might be present and officers involved in the chase. Simply stated, the Supreme Court has never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, much less serve as a basis to deny an officer's qualified immunity.

Although this case does not authorize deadly force in all police pursuits - because that is clearly not the case - it is very important because it reiterates the Supreme Court's intent that the lower courts conduct specific factual analyses when comparing an officer's conduct to the existing body of Fourth Amendment law when determining immunity. This important concept is not limited only to police pursuit cases, but rather it extends to all use of force incidents resulting in Fourth Amendment claims. Only when officers are plainly incompetent or knowingly violate the law are they at risk for losing their qualified immunity. This decision should ease some concerns about an individual officer's risk of constitutional liability following the application of force.

J. David Marsey is a former police officer, investigator and prosecutor and is an attorney at the law firm of Rumberger, Kirk & Caldwell in Tallahassee, Florida. He defends and advises corporations, government entities and their employees on casualty, employment and constitutional issues throughout the state.