

On Monday, the Supreme Court issued a per curiam summary reversal of the Ninth Circuit's decision denying two officers qualified immunity in *Escondido v. Emmons*.

The case involves an officer's use of force during a possible domestic violence incident. Specifically, in May 2013, the police received a 911 call about a possible domestic disturbance at the Emmons' apartment, including the fact that there could be two children in the residence. Officer Houchin and officer Craig were the first to respond. The Emmonses were known to officer Houchin because he had responded to a separate 911 call a few weeks previously involving domestic violence that resulted in injuries to Mrs. Emmons caused by her husband.

The officers arrived at the apartment and knocked, but nobody answered the door. The officers were able to speak with Mrs. Emmons through a side window and tried to convince her to open the door and they heard a man in the apartment tell her to back away from the window. Other officers, including Sergeant Toth arrived on the scene during this exchange.

Officer Craig was standing alone just outside the door as an unknown man opened the door to leave the apartment. Officer Craig told him not to close the door so that the police could conduct a welfare check, but he nevertheless closed it and tried to push past officer Craig. At this point, officer Craig took him to the ground and handcuffed him. The entire incident was captured on officer Craig's body camera footage and shows that the man was not in any visible or audible pain. After a few minutes, officers helped him up and he was arrested.

The man, who turned out to be Mrs. Emmons' father, sued officer Craig and Sergeant Toth under Section 1983 for excessive force. The district court concluded that because only officer Craig used any force at all, summary judgment was appropriate as to Sergeant Toth. The district court granted summary judgment as to officer Craig, concluding that the law did not clearly establish that he could not take down an arrestee in these circumstances, particularly given that the officers were responding to a domestic disturbance and did not know if this individual was armed or dangerous. In a short unpublished opinion, the Ninth Circuit reversed as to both officers on the question of excessive force, remanding for a trial.

The Supreme Court reversed as to Sergeant Toth and vacated and remanded as to officer Craig. With regard to Sergeant Toth, the Court noted the Ninth Circuit's decision was not only erroneous, but also "quite puzzling in light of the District Court's conclusion that 'only Defendant Craig was involved in the excessive force claim' and that Mr. Emmons 'fail[ed] to identify contrary evidence.'"

As to officer Craig, the Court again noted that it has "repeatedly told courts not to define clearly established law at a high level of generality," quoting last term's per curiam decision, *Kisela v. Hughes*. Here, the Ninth Circuit failed the Court's instruction by defining the right in the case as the "right to be free from excessive force" and citing to only one case in the entire opinion, which described the right to be "free from the application of non-trivial force for engaging in mere passive resistance." The Supreme Court explained that the Ninth Circuit's failure to explain how the context of passive resistance applied to these facts and officer Craig's actions is a "problem" under its precedents and because of the Ninth Circuit's failure to identify a case

where an officer was acting under similar circumstances was held to have violated the Fourth Amendment, the Court remanded to the Ninth Circuit so that it could conduct a proper qualified immunity analysis.

This is another great opinion for local governments on the issue of qualified immunity. It should be particularly helpful in situations where the court does not analyze qualified immunity as to each individual defendant involved (or lumps in defendants who did not participate in the alleged excessive force with those who do) as well as in situations where courts provide little factual analysis and discussion for qualified immunity cases or cite to cases for only general propositions rather than analogizing a factually similar case. To read the decision, click here: https://www.supremecourt.gov/opinions/18pdf/17-1660_5ifl.pdf

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