



THE DOCTRINE OF QUALIFIED IMMUNITY. WHAT IS IT AND WHY DO I CARE?



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The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)(quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). A determination of qualified immunity must be made early in the litigation because qualified immunity shield an officer from standing trial and from facing the burdens associated with litigation. *Saucier v. Katz*, 533 U.S. 194, 200 (2001)(quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). In other words, the doctrine of qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions. When properly applied, it protects all but the plainly incompetent or those who knowingly violate the law. *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)(quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

Qualified immunity is an affirmative defense, and that means that the officer (or the defendant in a case) must raise or assert the defense at the initial stages of the litigation for the doctrine to apply. To defeat the defense, a plaintiff must establish two elements: (1) that the official violated a statutory or constitutional right, and (2) that the right was “clearly established” at the time of the challenged conduct. The court has discretion to determine in which order the questions should be answered; a negative answer to either one is enough to establish the defense of qualified immunity. *Hanes v. Zurick*, 578 F.3d 491, 493 (7th Cir. 2009).

Determining whether a right is “clearly established” at the time of the incident can be a complicated endeavor. *Volkman v. Ryker*, 736 F.3d 1084, 1090 (7th Cir. 2013). The United States Supreme Court has advised lower courts not to define “clearly established” law at a high level of generality, *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011), and the United States Court of Appeals for the Seventh Circuit has held that the plaintiff must show that the “contours” of the right he alleges was violated are “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Volkman v. Ryker*, 736 F.3d 1084, 1090 (7th Cir. 2013)(quoting *Hope v. Pelzer*, 536 U.S. 730, 739,

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(2002)). Accordingly, if the officer was acting reasonably or if the constitutional right was not clearly established at the time of the offense, qualified immunity can be a powerful tool to protect the officer from liability as he or she performs her job.

For example, in *Zimmerman v. Doran*, 807 F.3d 178 (7th Cir. 2015), the United States Court of Appeals for the Seventh Circuit affirmed the district court's decision granting summary judgment in a police officer's favor based upon the doctrine of qualified immunity. In *Zimmerman*, the Plaintiff sued members of the Carroll County, Illinois, Sheriff's Department alleging that the Deputies had falsely arrested him in violation of his Fourth Amendment rights. The Defendants arrested the Plaintiff for trespass because he had (allegedly) harvested trees from someone else's property without permission.

In resolving the case, the Seventh Circuit noted that the Plaintiff had failed to identify a factually similar case which held that a suspect could not or should not be arrested under circumstances similar to those in this case. Again, the Seventh Circuit reiterated that the dispositive question is whether the violative nature of the particular conduct is clearly established. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition.

Because the Plaintiff could not cite to a case or law standing for the proposition that the Plaintiff's constitutional right was clearly established at the time of his arrest, the Seventh Circuit affirmed the dismissal of the case against the Sheriff Deputies based upon the doctrine of qualified immunity. The Seventh Circuit agreed with the district court that the Sheriff Deputies acted reasonably with they arrested the Plaintiff for trespass under Illinois law. As such, the doctrine of qualified immunity protected the Defendants from having to defend themselves from this suit.

On the other hand, the doctrine of qualified immunity does not protect an officer who did not act reasonably in his or her actions. For example, the Seventh Circuit recently affirmed the district court's denial of an officer's motion for summary judgment on the issue of qualified immunity. In *Becker v. Elfreich*, ___ F.3d ___, 2016 WL 2754023 (7th Cir. May 12, 2016), the Plaintiff Jaime Becker sued Evansville, Indiana, police officer Zackary Elfreich for using excessive force against him during his arrest. Specifically, the Plaintiff alleged that, after he had surrendered, the Officer pulled him down three steps, placed his knee into the Plaintiff's back, and allowed the police dog to continue to bite him.

In affirming the denial of the Officer's motion for summary judgment and in concluding that the case could not be dismissed based upon the doctrine of qualified immunity, the Seventh Circuit explained that it was, of course, clearly established that a police officer may not use excessive force in arresting an individual. *Holmes v. Village of Hoffman Estate*, 511 F.3d 673, 687 (7th Cir. 2001). The Seventh Circuit went on to explain that, while the right to be free from excessive force is clearly established in a general sense, the right to be free from the degree of force employed in a particular situation may not have been clear to a reasonable officer at the scene. *Becker v. Elfreich*, 2016 WL 2754023, * 6 (7th Cir. May 12, 2016).

The Seventh Circuit, then, noted that, prior to the Plaintiff's arrest in 2011, it was well-established that police officers cannot continue to use force once a suspect is subdued. On summary judgment, the Court must take all reasonable facts in a light most favorable to the non-moving party, here in the Plaintiff's favor. As a result, the Seventh Circuit concluded that a reasonable officer should have

known that he cannot continue to drag an arrestee and allow a police dog to bite the arrestee once the arrestee has surrendered and is compliant. Accordingly, the Seventh Circuit agreed with the district court that the doctrine of qualified immunity did not protect the officer from liability in this suit. In sum, the doctrine of qualified immunity can be a powerful tool to protect a police officer, not only from the imposition of a monetary judgment but from having to defend himself or herself at all to charges that he or she violated someone's constitutional rights. As with most things in life, however, the police officer must have acted reasonably under the circumstances for the doctrine to apply. If the officer acted reasonably and if the constitutional right was clearly established at the relevant time, the doctrine of qualified immunity will protect that officer from having to defend himself or herself in federal court to a charge that he or she violated the plaintiff's constitutional rights.