



THE UNITED STATES SUPREME COURT HOLDS THAT OFFICERS ARE IMMUNE FROM SUIT FOR SHOOTING A VICTIM THROUGH A WINDOW WITHOUT FIRST GIVING A WARNING



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In *White v. Pauly*, ___ U.S. ___, ___ S. Ct. ___, 2017 WL 69170 (Jan. 9, 2017), the United States Supreme Court set forth the issue before it as follows: “This case addresses the situation of an officer who—having arrived late at an ongoing police action and having witnessed shots being fired by one of several individuals in a house surrounded by other officers—shoots and kills an armed occupant of the house without first giving a warning.” *Id.* at * 1. The Supreme Court disagreed with both the District Court and the United States Court of Appeals for the Tenth Circuit and held that the officers were protected by the doctrine of qualified immunity from the Plaintiff’s excessive force claim because the shooting officer did not violate clearly established law. The relevant facts are as follows.

Daniel Pauly was involved in a road-rage incident on a highway near Santa Fe, New Mexico. It was in the evening, and it was raining. The two women involved called 911 to report Daniel as a “drunk driver” who was “swerving all crazy.” The women, then, followed Daniel down the highway; they were close behind him and had their bright lights on. Daniel, feeling threatened, pulled his truck over at an off-ramp to confront them. After a brief, nonviolent encounter, Daniel drove a short distance to a secluded house where he lived with his brother Samuel Pauly.

Sometime between 9:00 p.m. and 10:00 p.m., Officer Kevin Truesdale was dispatched to respond to the women’s 911 call. Officer Truesdale, arriving after Daniel had already left the scene, interviewed the two women at the off-ramp. The women told Officer Truesdale that Daniel had been driving recklessly and gave his license plate number to Officer Truesdale. The state police dispatcher identified the plate as being registered to the Pauly brothers’ address.

After the women left, Officer Truesdale was joined at the off-ramp by Officers Ray White and Michael Mariscal. The three agreed that there was insufficient probable cause to arrest Daniel. Still, the officers decided to speak with Daniel to: (1) get his side of the story, (2) “make sure nothing else happened,” and (3) find out if he was intoxicated. Officer White stayed at the off-ramp in case Daniel returned, and Officers Truesdale and Mariscal drove in separate patrol cars to the Pauly brothers’ address which was less than a half mile away. Neither officer turned on his flashing lights.

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When Officers Mariscal and Truesdale arrived at the address that they had received from the dispatcher, they found two different houses. The first house had no lights on inside, and the second one behind it was on a hill. The lights were on in the second house. The officers parked their cars near the first house. They examined a vehicle parked near that house but did not find Daniel's truck. Officers Mariscal and Truesdale noticed the lights on in the second house and approached it in a covert manner in order to maintain officer safety. Both used their flashlights in an intermittent manner. Officer Truesdale alone turned on his flashlight once they got close to the house's front door. Upon reaching the house, the officers found Daniel's pickup truck and spotted two men moving around inside the residence. Officer Truesdale and Mariscal radioed Officer White, and Officer White, then, left the off-ramp to join them.

At approximately 11:00 p.m., the Pauly brothers became aware of the officers' presence and yelled out "Who are you?" and "What do you want?" In response, Officers Mariscal and Truesdale laughed and responded: "Hey, (expletive), we got you surrounded. Come out or we're coming in." Officer Truesdale shouted once: "Open the door, State Police, open the door." Officer Mariscal also yelled: "Open the door, open the door."

The Pauly brothers heard someone yelling, "We're coming in. We're coming in." However, neither Samuel nor Daniel heard the officers identify themselves as state police officers. So, the brothers armed themselves—Samuel with a handgun and Daniel with a shotgun. One of the brothers yelled at the police officers that "We have guns." The officers saw someone run to the back of the house, and so, Officer Truesdale positioned himself behind the house and shouted "Open the door, come outside."

Meanwhile, Officer White had parked at the first house and was walking up to its front door when he heard shouting from the second house. Officer White half-jogged, half-walked, to the Paulys' house and arrived just as one of the brothers said: "We have guns." When Officer White heard that statement, he drew his gun and took cover behind a stone wall 50 feet from the front of the house. Officer Mariscal took cover behind a pickup truck.

A few seconds after the "We have guns" statement, Daniel stepped part way out of the back door and fired two shotgun blasts while screaming loudly. A few seconds after those shots, Samuel opened the front window and pointed a handgun in Officer White's direction. Officer Mariscal fired immediately at Samuel but missed. "Four to five seconds" later, Officer White shot and killed Samuel.

Samuel's estate and Daniel filed suit against Officers Mariscal, Truesdale, and White. One of the claims was that the officers were liable for violating Samuel's Fourth Amendment right to be free from excessive force. All three officers moved for summary judgment on qualified immunity grounds. Officer, White, in particular, argued that the Pauly brothers could not show that his use of force violated the Fourth Amendment and, regardless, that Samuel's Fourth Amendment right to be free from deadly force under the circumstances of this case was not clearly established.

The District Court denied the officer's motion for summary judgment based upon the doctrine of qualified immunity. A divided panel of the Court of Appeals for the Tenth Circuit affirmed. As to Officers Mariscal and Truesdale, the Tenth Circuit held that "[a]ccepting as true plaintiffs' version of the facts, a reasonable person in the officers' position should have understood their conduct would cause Samuel and Daniel Pauly to defend their home and could result in the commission of deadly

force against Samuel Pauly by Officer White.” 814 F.3d at 1076. The panel majority analyzed Officer White’s claim separately from the other officers because “Officer White did not participate in the events leading up to the armed confrontation, nor was he there to hear the other officers ordering the brothers to ‘Come out or we’re coming in.’” *Id.* Despite the fact that “Officer White . . . arrived late on the scene and heard only ‘We have guns’ . . . before taking cover behind a stone wall,” the majority held that a jury could have concluded that White’s use of deadly force was not reasonable. *Id.* at 1077, 1082. The majority also decided that this rule—that a reasonable officer in White’s position would believe that a warning was required despite the threat of serious harm—was clearly established at the time of Samuel’s death. The Tenth Circuit concluded that a reasonable officer in Officer White’s position would have known that, since the Paulys could not have shot him unless he moved from his position behind a stone wall, he could not have used deadly force without first warning Samuel Pauly to drop his weapon.

The officers petitioned the United States Supreme Court for certiorari. The Supreme Court granted the officers’ petition and vacated the judgment against them, concluding that Officer White did not violate clearly established law on the record described by the Court of Appeals panel.

The Supreme Court began its analysis by reiterating that qualified immunity attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The Supreme Court reminded that, while case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. In other words, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. That being said, “clearly established law” is not defined at a high level of generality; rather, clearly established law must be particularized to the facts of the case. Otherwise, plaintiffs would be able to convert the rule of qualified immunity into a rule of virtually unqualified liability simply by alleging a violation of extremely abstract rights.

The Supreme Court held that the lower courts had misunderstood the clearly established analysis because it failed to identify a case where an officer acting under similar circumstances, as Officer White, was held to have violated the Fourth Amendment. The Supreme Court noted that this was not a case where it was obvious that there was a clear violation of established law. Particularly, the lower courts had not concluded that Officer White’s conduct—such as his failure to shout a warning—constituted a run-of-the-mill Fourth Amendment violation. The Supreme Court summarized its holding and the doctrine of qualified immunity as follows: “Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one White confronted here.” *Id.* at * 5. Accordingly, the Supreme Court vacated the lower court’s decision and remanded the case for further proceedings.

Qualified immunity is a powerful doctrine that may be relied upon by officers to protect them from civil liability. As long as the officer is acting reasonably under the circumstances, the doctrine protects them, not only from liability, but also from the burdens of litigation and from having to defend himself or herself from civil charges.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*

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