



No Immunity for an Officer Who Handcuffed a Jogger Watching a Traffic Stop



February 2020

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Article Source : http://www.patc.com/weeklyarticles/2020_chestnut_v_wallace_chapman.pdf

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In *Chestnut v. Wallace*, ___ F.3d ___, 2020 WL 360458 (8th Cir. Jan. 21, 2020), Plaintiff/Appellee Kevin Chestnut sued Defendant/Appellant St. Louis (Missouri) Police Officer Dawain Wallace for violating his Constitutional Rights. Specifically, Chestnut sued Officer Wallace because Officer Wallace stopped, frisked, and handcuffed him simply because Chestnut had been watching another police officer perform traffic stops in a park. The United States District Court for the Eastern District of Missouri denied Officer Wallace's motion for summary judgment based upon his claim that he was protected from this suit based upon the doctrine of qualified immunity. Officer Wallace, then, timely appealed the District Court's denial of his motion for summary judgment to the United States Court of Appeals for the Eighth Circuit. The relevant facts are as follows.

One evening around dusk, Chestnut paused his jog in a St. Louis park to watch St. Louis Metropolitan Police Department Officer Leviya Graham perform a traffic stop. Chestnut watched the stop for five or ten minutes and, then, resumed his jog.

Shortly thereafter, Chestnut stopped again to observe Officer Graham perform another traffic stop. During this second stop, Chestnut stood in a grassy area between the jogging trail and the sidewalk and leaned against a tree. Chestnut testified that he stood thirty to forty feet away and across the street from where Officer Graham was conducting the stop. Chestnut asserted that he was watching the stops out of curiosity because there had "been a lot of difficulty in citizen/police interaction" as of late. The parties pointed out that this specific park had been the site of testy exchanges between police and citizens.

Eventually, Chestnut caught Officer Graham's attention. Accordingly, Officer Graham radioed dispatch for assistance, reporting that a suspicious person had been following her to her car stops. Officer Graham described Chestnut as a white male in a yellow shirt who was leaning against a tree across the street from her.

Officer Dawain Wallace responded to the call and arrived on scene. From his police car, Officer Wallace saw someone matching Chestnut's description and shined his spotlight on him. Officer Wallace testified that, at one point, either Graham or the dispatcher had said that Chestnut was "hiding in the treeline" and was "kind of peeking and lurking around a tree." Chestnut, on the other hand, testified that he purposely stood in a location where the headlights on Officer Graham's car illuminated him. Chestnut said that he intentionally made himself plainly visible, that he was standing still, and that he was not interfering.

After shining his spotlight, Officer Wallace got out of his car, approached Chestnut, and asked Chestnut for some form of identification. Chestnut had none on him, and so, Officer Wallace asked Chestnut for his name,

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address, and social security number. Officer Wallace maintained that he requested this information so that he could determine whether Chestnut had any outstanding warrants. Chestnut provided his name and his birthday, but Chestnut agreed to provide only the last four digits of his social security number. At that point, Officer Wallace frisked Chestnut for weapons but found none.

Nevertheless, Officer Wallace directed other officers who had arrived on scene to put Chestnut in handcuffs. Chestnut then provided his full social security number to Officer Wallace and asked to speak to one of Officer Wallace's supervisors. Officer Wallace used this information to perform a warrants check, and Officer Wallace learned that Chestnut had no outstanding warrants. After Officer Wallace's supervisor arrived and spoke with Chestnut, the supervisor directed that the handcuffs be removed, and he permitted Chestnut to leave. Chestnut estimated that the entire encounter with Officer Wallace lasted twenty minutes.

Subsequently, Chestnut sued Officer Wallace for damages under 42 U.S.C. § 1983, alleging that Officer Wallace detained, arrested, frisked, and handcuffed him without reasonable suspicion or probable cause to believe he had engaged in or was about to engage in unlawful conduct or that he was armed and dangerous. Thereafter, Officer Wallace moved for summary judgment on the ground of qualified immunity—a defense that protects an individual defendant from suit when his conduct does not violate clearly established constitutional rights. However, the District Court denied the motion. Officer Wallace, then, appealed the District Court's decision to the Eighth Circuit.

Before turning to the heart of Officer Wallace's appeal, the Eight Circuit noted that it had to determine whether Chestnut was arrested or merely detained. The Eighth Circuit stated that the distinction mattered under the Fourth Amendment because an arrest is valid only if there is probable cause to believe that a suspect has committed or is about to commit a crime, whereas a brief, investigatory detention can be based on only a reasonable suspicion that criminal activity is afoot. In addition, a detention can become an arrest if it lasts for an unreasonably long time or if officers use unreasonable force. Although the Eight Circuit noted that the line between the two can be hazy, the Eighth Circuit found that Chestnut's seizure was on the detention side of the line because Chestnut was in handcuffs for a mere twenty minutes. Accordingly, the Eighth Circuit concluded that Chestnut's detention did not become an arrest.

Officer Wallace argued on appeal that the District Court erred in denying him the protections of qualified immunity because the law was not clearly established when he detained Chestnut that he had violated the constitution by conducting an investigatory stop and briefly handcuffing a suspect with no identification after he followed a female police officer, seemingly obscures himself in a dark area of a public park after nightfall to watch her, and then failed to cooperate with the officer's investigation by refusing to provide his social security number. The Eighth Circuit disagreed.

First, the Eighth Circuit explained that Chestnut's refusal to supply his full social security number to a police officer during a consensual encounter should not have contributed to Officer Wallace's reasonable suspicion inquiry. The Eighth Circuit stated that, if a person's decision during a consensual police encounter to ignore the police and to go about his business cannot be considered in the reasonable-suspicion calculus (which it cannot), then a person's refusal to provide only some of the requested information cannot be either.

Moreover, the Eighth Circuit opined that it would make no sense to require an officer to allow someone who provided no information to walk away but then to permit an officer to detain someone who gives him only partial information. And, the Eighth Circuit did not believe that the encounter became non-consensual when Officer Wallace asked Chestnut for identifying information because interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure. So, a police officer is free to ask a person for identification without implicating the Fourth Amendment.

Second, the Eighth Circuit agreed with the District Court that, taking the facts in a light most favorable to Chestnut as it was required to do at the summary judgment stage, Officer Wallace violated Chestnut's Fourth Amendment rights. According to the Eighth Circuit, no reasonable officer could conclude that a citizen's passive observation of a police-citizen interaction from a distance was criminal. The Eighth Circuit stated that, if the Constitution protects one who records police activity (which it does), then surely it protects one who merely observes it—a necessary prerequisite to recording. Likewise, if officers cannot seize someone who criticizes or curses at them while they perform official duties (which the Eighth Circuit has held that they cannot), they cannot seize someone for exercising the necessarily included right to observe the police in public from a distance and without interfering.

Accordingly, the Eighth Circuit held that it was clearly established during the relevant time that Officer Wallace could not detain Chestnut without more indication of wrongdoing, and because Officer Wallace could not have reasonably believed that Chestnut was engaged or about to engage in criminal behavior, the Eighth Circuit determined that it was also beyond debate that Officer Wallace should not have believed that Chestnut was armed and dangerous, which would have justified him being frisked and handcuffed. By all accounts, Chestnut was calm during the incident and did not behave erratically, nor did Officer Wallace conduct even a basic investigation into the reasons for Chestnut's observations before frisking and handcuffing him.

The Eighth Circuit did acknowledge that, generally, law enforcement officers should be allowed to believe the information that they receive from or through a dispatcher, even if it later turns out that the facts as relayed are disputed or even untrue, and that that information alone can sometimes justify a detention. Furthermore, Officer Wallace argued on appeal that Chestnut was lurking in the trees (even though Chestnut says he was not) and argued that he could reasonably suspect that Chestnut had committed or was about to commit a crime. Thus, Officer Wallace said that he had a reasonable suspicion to place Chestnut in handcuffs.

Again, the Eighth Circuit disagreed and found that Officer Wallace's argument was not supported by the evidentiary record. Although Officer Wallace testified that he learned through dispatch that Chestnut was "hiding," "lurking," or "peeking" around trees, the audio recording of the radio conversations undermined Officer Wallace's testimony. According to the Eighth Circuit, the only relevant information relayed to Officer Wallace was that Officer Graham said that Chestnut was "suspicious" and was following her as she performed traffic stops.

However, a vague, conclusory statement that a person is suspicious is insufficiently specific to support his detention by the police, and merely observing police officers at work cannot give rise to a reasonable inference that criminal mischief is afoot. Officer Graham did say that Chestnut was "leaning against a tree," but the Eighth Circuit said that this statement seemed rather to indicate a casual observer, not a threatening presence, and there was no mention of "hiding" or "lurking" or "peeking" in the audio recordings. Accordingly, the Eighth Circuit affirmed the District Court's denial of Officer Wallace's motion for summary judgment based upon the issue of qualified immunity.