

Villanueva v. State of California

No. 19-55225

United States Court of Appeals for the Ninth
Circuit

Filed January 28, 2021

No Qualified Immunity for Officers Shooting at Slow- Moving Vehicle

Nature of the Action

This case involves an appeal of the denial of qualified immunity for the use of deadly force against individuals inside a slow-moving vehicle following a high-speed chase. A 42 U.S.C. §1983 action was brought alleging the officers used excessive force when they shot and killed the driver and wounded the passenger. On appeal, the Ninth Court had to decide whether the officers' use of deadly force against the individuals violated their clearly established constitutional rights at the time of the incident.

Facts

Two undercover California Highway Patrol officers were on patrol in an unmarked black sedan looking for illegal street racing and "sideshow" events (where streets are blocked so cars can perform illegal maneuvers like burnouts and donuts). The officers found a sideshow taking place in the Santa Fe Springs Swap meet

parking lot. One of the participating cars was a Chevrolet Silverado pickup truck occupied by Villanueva and Orozco. After witnessing the Silverado perform an illegal maneuver, the officers entered the parking lot, intending to make a traffic stop. The officers started following the Silverado as it exited the parking lot and drove away. Villanueva sped away, at speeds of 50-70 mph on surface streets, running at least three red lights. The officers followed at a distance, intermittently using their sirens through intersections. After several minutes, Villanueva turned onto a dead-end street. The officers followed, where they saw the stopped Silverado.

The officers stopped, exited their vehicle, took cover behind the open doors and drew their firearms. At the same time, Villanueva attempted to reverse out of the street, using a three-point turn. After completing his turn, Villanueva, whose vehicle was now facing the officers, started driving forward. The officers, who were approximately 15' to 20' away, started firing. The shots killed Villanueva and injured Orozco. The Silverado then rolled slowly forward, ultimately colliding with the officer's vehicle at a very low speed.

Discussion

Officers are entitled to qualified immunity unless (1) they violated a federal constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.

The officers argued Villanueva threatened them with a deadly weapon, his truck, which was driving "recklessly" during the 3-point turn and accelerated at them. The plaintiffs argued the 3-

point turn was controlled, the truck was moving very slowly, not accelerating and not pointed at the officers. It is undisputed that the truck slowed and stopped before the 3-point turn. And even under the officers' view of the facts, the truck was moving forward at a speed of "up to" five miles an hour when they shot at it.

The Supreme Court rule for using deadly force against a fleeing suspect, allows the use of deadly force only if probable cause exists "*to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.*" The threat exists if the suspect committed a crime involving serious physical harm or threatened officers/others with a weapon capable of inflicting such harm. The Ninth Circuit has stated that a "moving vehicle can of course pose a threat of serious physical harm, but only if someone is at risk of being struck by it." And, the Supreme Court has never found the use of deadly force during a dangerous car chase violated the Fourth Amendment.

The Ninth Circuit determined it was clearly established, as of 1996, that an officer who shoots at a slow-moving car when he can easily step out of the way violates the Fourth Amendment, citing *Acosta v. City & Cnty. of S.F.*, 83 F.3d 1143 (9th Cir. 1996) ["a reasonable officer could not have reasonably believed that shooting at the driver of the slowly moving car was lawful" as he "would have recognized that he could avoid being injured when the car moved slowly by simply stepping to the side"]. The court in that case, as in this one, denied the motion for summary judgment based on the defense of qualified immunity.

In 2020, the Ninth Circuit found the use of deadly force to stop a slow-moving vehicle unreasonable when the officers could have easily stepped out of the vehicle's path to avoid danger. (See *Orn v. City of Tacoma*, 949 F.3d 1167, 1175 (9th Cir. 2020) [Orn's vehicle was moving at just five miles per hour. The officer could therefore have avoided any risk of being struck "by simply taking a step back."].) The court explained that deadly force against a stopped or slow-moving vehicle reasonable *only* when the driver was trying to evade arrest in an aggressive manner involving attempted or actual acceleration of the vehicle.

With the facts in dispute, the Court in this case found a reasonable jury could find excessive force and denied the motion for summary judgment.

Takeaway

As a result of the increased danger faced by officers and bystanders if a driver is shot and loses control of the car, many agencies already bar officers from shooting at moving cars as a permissible tactic.

When a moving vehicle is involved, protect yourself first by moving out of the way if possible, then take appropriate action. If that action involves the discharge of a firearm, you must be able to clearly articulate why you used deadly force, including how **"the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape."**

Stay Safe and Healthy!