

U.S. Supreme Court Strengthens Qualified Immunity Protections For Peace Officers in Deadly Pursuit Case

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Peace officers whose enforcement actions “fall . . . in the hazy border between excessive and acceptable force” still may enjoy qualified immunity from liability under a U.S. Supreme Court decision issued earlier this week. Ruling in a controversial pursuit case involving a Texas public safety officer who killed a fleeing felon while trying to shoot his car, the Court held the officer was entitled to immunity because his belief the suspect posed an imminent threat to others was reasonable.

Qualified immunity protects law enforcement officers from personal liability in civil rights claims so long as the officer is found to have acted in an objectively reasonable manner. An officer generally will be said to have acted reasonably if he did not violate a suspect’s “clearly established” constitutional or statutory rights. Qualified immunity, as the Court has said, thus shields most law enforcement actions, protecting from liability “all but the plainly incompetent and those who knowingly violate the law.”

Court Rules Alleged Rights Violation Must Be “Beyond Debate”

In *Mullenix v. Luna*, a suspect fleeing arrest on an outstanding warrant led officers on an 18-minute pursuit at speeds reaching over 100 miles an hour. He twice called local police and threatened to shoot the officers if they did not stop pursuing him. Other officers set up spike strips, but Mullenix, a state peace officer, believed the suspect would try to hit or shoot at the officers before he could be stopped. He fired six rifle shots from an overpass at the suspect’s car, intending to hit the vehicle but not the driver. Four shots instead killed the driver. Moments later, the car struck the spike strip and a highway median and flipped over.

In the lawsuit that followed, the lower court said Mullenix violated a “clearly established rule” that a police officer may not use deadly force against a fleeing felon who does not pose a “sufficient” threat of harm to the officer or others. But there is no such broad rule. The Supreme Court rejected such general statements of liability, requiring in their place that the *specific* constitutional or statutory rule an officer is alleged to have violated must be “beyond debate” before it can be the basis for liability. Otherwise, the officer is entitled to qualified immunity.

Decision Simplifies Qualified Immunity Analysis

Courts in any qualified immunity case ask whether the officer’s actions were objectively reasonable under the circumstances. Here, Mullenix was not trained to shoot at moving cars; his supervisor had told him to wait to see if the spike strips would work; there was no information the officers positioned at the spike strips were in imminent danger; and he fired just moments before the car would have hit a spike

strip anyway. Yet, said the Court, “[t]he fact is that when Mullenix fired, he reasonably understood [the suspect] to be a fugitive fleeing arrest, at speeds over 100 miles per hour, who was armed and possibly intoxicated, who had threatened to kill any officer he saw if the police did not abandon their pursuit, and who was racing towards [another officer’s] position.” That calculus, even if subject to second-guessing by no one less than Justice Sonia Sotomayor in a blistering dissent, was enough for the Supreme Court to find the officer entitled to the protections of qualified immunity.

The Supreme Court in the last few years has been on the path of simplifying qualified immunity analysis in civil rights cases involving use of force. The Court reiterated in *Mullenix* that peace officers should not have to engage in complex legal analysis before deciding whether a use of force is appropriate during a vehicle pursuit. While peace officer conduct in such cases will continue to be judged by what is objectively reasonable under the circumstances, *Mullenix* tells us qualified immunity will protect an officer from liability unless the violation of a statutory or constitutional right has been made so clear through a prior court decision as to be beyond dispute. Very few enforcement actions will fall into that category.

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