

Hulbert v. Pope

Hulbert v. Pope was decided on June 14, 2023 by the Fourth Circuit Court of Appeals.

M.D.: Police Officers appeal the denial of Qualified Immunity in a First Amendment Lawsuit.

Issue:

Whether the officer's arrest of a protestor was legal or a violation of the protestor's First Amendment rights?

Facts:

The plaintiff and six other individuals picketed on a 15.5-foot-wide strip of public sidewalk at the intersection of two streets in downtown Annapolis, one block from the State House, separated only by a grassy square known as Lawyers' Mall, an area bordering the sidewalk that was frequently used for political demonstrations. An officer told the plaintiffs that they could not protest on the sidewalk and directed them to Lawyers' Mall instead. The Maryland legislature was set to soon convene just one block away, generating significant pedestrian traffic. The level of traffic congestion was low at the time; however, the picketers were brandishing large signs at an intersection where pedestrians had twice been struck by vehicles in the preceding year. At the time, it was dark, and the officer's supervisor had warned of a safety issue related to the demonstration. An hour later, the officer returned to the area and noticed that the picketers had come back and were demonstrating on the sidewalk. He approached the group and ordered them to back up onto Lawyers' Mall. Some members of the group initially complied, but the plaintiff's brother then declared that they were not moving. The officer repeated his command at least two more times, threatening to arrest those who did not comply. The officer arrested the plaintiff's brother. Multiple people in the area filmed the arrest, and the officer ordered them to back up off the sidewalk as well. The plaintiff was filming while standing relatively close behind the officer as he arrested the plaintiff's brother. After the plaintiff alone failed to comply, the officer placed him under arrest too.

The plaintiff sued, alleging a violation of his First Amendment rights. The trial court denied the officers plea of Qualified Immunity. The trial court found that the officer arrested the plaintiff because he did not comply with repeated orders to move to Lawyers' Mall, not because he was filming, as there was no evidence that the officer told the plaintiff that he could not film; the officer did not stop or arrest others who were filming. Instead, the trial court denied qualified immunity because it held that there was a genuine dispute of material fact as to whether the officer's interference with the plaintiff's filming served a significant governmental interest.

Holding:

Reversed, Case Dismissed. The Court ruled that, because a reasonable officer in the officer's position could have believed that the orders constituted lawful time, place, or manner restrictions on the picketers' First Amendment rights, the officer was entitled to qualified immunity. The Court concluded that the undisputed material facts established that the officer acted reasonably when he arrested the brothers for disobeying clear orders.

The Court first observed that, in this case, the picketers could continue their demonstration from Lawyers' Mall. The Court then found that even if the picketers were merely crowded along the sidewalk and not on the street, a reasonable officer could have inferred a safety risk from these facts. The Court

observed that the officer's solution—making the sidewalk a buffer between picketers and roadway— in turn placed a “relatively small” burden on the picketers' rights. The Court explained that “no law, clearly established or otherwise, required [the officer] to wait for an imminent traffic accident.” The Court then concluded that “it is difficult to imagine narrower orders that [the officer] could have given to realize the desired effect.” The Court noted that, although the officer told the picketers to move off the sidewalk, he allowed them to continue their demonstration mere steps away and did not seek any change to their manner or type of expression. Thus, the Court concluded that the officer was entitled to qualified immunity unless it was clearly established that ordering the plaintiff to move back while he was filming would violate his First Amendment rights. The Court then observed that neither the 4th Circuit, nor the Supreme Court, nor any other circuit has recognized an unlimited First Amendment right to film police free of otherwise reasonable limitations. In fact, the Court noted that the circuits that recognized a right to film explicitly noted that it “may be subject to reasonable time, place, and manner restrictions.” The Court wrote: “The right to film police, to the extent one existed, was not the right to a close-up.” Thus, a reasonable officer could conclude that ordering the plaintiff to move back less than fifteen feet and film from off the sidewalk was a permissible time, place, and manner restriction, as it left open “ample alternative channels for communication” because the plaintiff was allowed to continue filming from off the sidewalk, just a little farther away.

Bottom Line:

A reasonable officer could have believed that ordering the plaintiff and the other onlookers to stand farther away while the officer arrested the brother served a significant interest in reducing any possible risk to the officer's safety. The Court noted that “while the arrest effectively prevented [the plaintiff] from continuing to film, we are aware of no precedent suggesting that there is a First Amendment right to continue filming even after one has been formally arrested and subjected to custody.”

Not every time, place, or manner restriction will prove lawful, but there must be a balance to guard the sanctity of legislative proceedings and provide for the safety of the public.

Full Case at: <https://www.ca4.uscourts.gov/opinions/211608>