

In a pair of unsigned summary rulings issued yesterday (October 18) without noted dissent, the U.S. Supreme Court reversed two federal appeals courts that had permitted excessive force lawsuits to proceed against officers in separate cases arising from California (9th Circuit) and Oklahoma (10th Circuit). The Court ruled the officers should be granted qualified immunity, which shields government officials from liability unless it is proven they violated a “clearly established” right. Both lawsuits dealt with police responses to an emergency 911 call.

Neither **Bond** nor **Rivas-Villegas** changes any constitutional rule on use of force/deadly force or how force will be analyzed. Both **Bond** and **Rivas-Villegas** again make clear to the lower courts that Fourth Amendment qualified immunity denials must be based on prior cases that have some specificity to the case at hand which put every reasonable officer on notice that their actions violated the Fourth Amendment.

Rivas-Villegas v. Cortesluna, U.S Supreme Court case decided on October 18, 2021 (case is appealed from the 9th Circuit)

Facts:

A 911 operator received a call from a crying 12-year-old girl reporting that she, her mother, and her 15-year-old sister had shut themselves into a room at their home because her mother’s boyfriend, Cortesluna, was trying to hurt them and had a chainsaw. The girl told the operator that Cortesluna was “ ‘always drinking,’ ” had “ ‘anger issues,’ ” was “ ‘really mad,’ ” and was using the chainsaw to “ ‘break something in the house.’ ” A police dispatcher relayed this information along with a description of Cortesluna in a request for officers to respond. Officer Rivas-Villegas heard the broadcast and responded to the scene along with four other officers. The officers spent several minutes observing the home and reported seeing through a window a man matching Cortesluna’s description. One officer asked whether the girl and her family could exit the house. Dispatch responded that they “ ‘were unable to get out’ ” and confirmed that the 911 operator had “ ‘hear[d] sawing in the background’ ” and thought that Cortesluna might be trying to saw down the door.

After receiving this information, Rivas-Villegas knocked on the door and stated loudly, “ ‘police department, come to the front door, Union City police, come to the front door.’ ” Another officer yelled, “ ‘he’s coming and has a weapon.’ ” A different officer then stated, “ ‘use less lethal,’ ” referring to a beanbag shotgun. When Rivas-Villegas ordered Cortesluna to “ ‘drop it,’ ” Cortesluna dropped the “ ‘weapon,’ ” later identified as a metal tool. Rivas-Villegas then commanded, “ ‘come out, put your hands up, walk out towards me.’ ” Cortesluna put his hands up and Rivas-Villegas told him to “ ‘keep coming.’ ” As Cortesluna walked out of the house and toward the officers, Rivas-Villegas said, “ ‘Stop. Get on your knees.’ ” Plaintiff stopped 10 to 11 feet from the officers. Another officer then saw a knife sticking out from the front left pocket of Cortesluna’s pants and shouted, “ ‘he has a knife in his left pocket, knife in his pocket,’ ” and directed Cortesluna, “ ‘don’t put your hands down,’ ” “ ‘hands up.’ ” Cortesluna turned his head toward the instructing officer but then lowered his head and his hands in contravention of the officer’s orders. Another officer twice shot Cortesluna with a beanbag round from his shotgun, once in the lower stomach and once in the left hip.

After the second shot, Cortesluna raised his hands over his head. The officers shouted for him to “ ‘get down,’ ” which he did. Another officer stated, “‘left pocket, he’s got a knife.’” Rivas-Villegas then straddled Cortesluna. He placed his right foot on the ground next to Cortesluna’s right side with his right leg bent at the knee. He placed his left knee on the left side of Cortesluna’s back, near where Cortesluna had a knife in his pocket. He raised both of Cortesluna’s arms up behind his back. Rivas-Villegas was in this position for no more than eight seconds before standing up while continuing to hold Cortesluna’s arms. At that point, another officer, who had just removed the knife from Cortesluna’s pocket and tossed it away, came and handcuffed Cortesluna’s hands behind his back. Rivas-Villegas lifted Cortesluna up and moved him away from the door. Cortesluna later sued under 42 U. S. C. §1983, alleging that Rivas-Villegas used excessive force. A federal trial court concluded that the force used by both officers was reasonable and that the officers were entitled to qualified immunity. The U.S. Court of Appeals for the Ninth Circuit reversed. They ruled that it was excessive force for Officer Rivas-Villegas to press his knee into the back of a suspect lying face down on the ground, hard enough to cause an injury and did not grant qualified immunity to him.

Holding:

Reversed the Ninth Circuit and granted qualified immunity to Officer Rivas-Villegas, thereby dismissing the case. The Supreme Court emphasized that an official is entitled to qualified immunity when his conduct does not violate clearly established rights, and he would have been aware of those rights. Even if cases in the courts of appeals can qualify as “clearly established” law, the justices continued, the facts of the case on which the Ninth Circuit relied were too different from the facts of this case for Rivas-Villegas to be “on notice that his specific conduct was unlawful.”

In granting qualified immunity to Officer Rivas-Villegas, the Court noted that “specificity is especially important in the Fourth Amendment context, where...it is sometimes difficult for the officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.”

City of Tahlequah v. Bond, U.S Supreme Court case decided on October 18, 2021 (case is appealed from the 10th Circuit)

Facts:

On August 12, 2016, Dominic Rollice’s ex-wife, Joy, called 911. Rollice was in her garage, she explained, and he was intoxicated and would not leave. Joy requested police assistance; otherwise, “it’s going to get ugly real quick.” The dispatcher asked whether Rollice lived at the residence. Joy said he did not but explained that he kept tools in her garage. Officers Josh Girdner, Chase Reed, and Brandon Vick responded to the call. All three knew that Rollice was Joy’s ex-husband, was intoxicated, and would not leave her home. Joy met the officers out front and led them to the side entrance of the garage. There the officers encountered Rollice and began speaking with him in the doorway. Rollice expressed concern that the officers intended to take him to jail; Officer Girdner told him that they were simply trying to get

him a ride. Rollice began fidgeting with something in his hands and the officers noticed that he appeared nervous. Officer Girdner asked if he could pat Rollice down for weapons. Rollice refused.

As the conversation continued, Officer Girdner gestured with his hands and took one step toward the doorway, causing Rollice to take one step back. Rollice, still conversing with the officers, turned around and walked toward the back of the garage where his tools were hanging over a workbench. Officer Girdner followed the others close behind. No officer was within six feet of Rollice. The video is silent, but the officers stated that they ordered Rollice to stop. Rollice kept walking. He then grabbed a hammer from the back wall over the workbench and turned around to face the officers. Rollice grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. The officers backed up, drawing their guns. At this point, the officers can be heard (on video) yelling at Rollice to drop the hammer. He did not. Instead, Rollice took a few steps to his right, coming out from behind a piece of furniture so that he had an unobstructed path to Officer Girdner. He then raised the hammer higher back behind his head and took a stance as if he was about to throw the hammer or charge at the officers. In response, Officers Girdner and Vick fired their weapons, killing Rollice. Rollice's estate filed suit against, among others, Officers Girdner and Vick, alleging that the officers were liable under 42 U. S. C. §1983, for violating Rollice's Fourth Amendment right to be free from excessive force. A federal district judge ruled that the officers' use of force was reasonable and that the officers were entitled to qualified immunity. The U.S. Court of Appeals for the Tenth Circuit reversed. They ruled that the officers' conduct created the situation that led to the shooting, so that their use of force was unconstitutional even if it was reasonable at the moment it was employed. The Tenth Circuit concluded the officers were not entitled to qualified immunity.

Holding:

Reversed the Tenth Circuit and granted the officers qualified immunity, thereby dismissing the case. The Court did not decide whether this use of deadly force was constitutional or whether or not the analysis undertaken by the Tenth Circuit is proper. Instead, the Court looked at whether the law was clearly established with respect to the deadly force used on Rollice.

In its qualified immunity analysis, the Supreme Court pointed out that they have repeatedly told courts not to define clearly established law at too high a level of generality. It is not enough that a rule be suggested by then-existing precedent; the "rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" Such specificity is "especially important in the Fourth Amendment context," where it is "sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." The Tenth Circuit contravened those settled principles here. Not one of the decisions relied upon by the Court of Appeals—*Estate of Ceballos v. Husk*, 919 F. 3d 1204 (CA10 2019), *Hastings v. Barnes*, 252 Fed. Appx. 197 (CA10 2007), *Allen*, 119 F. 3d 837, and *Sevier v. Lawrence*, 60 F. 3d 695 (CA10 1995)—comes close to establishing that the officers' conduct was unlawful.

The Supreme Court explained that they did not need to decide whether the officers' use of force was unconstitutional because the officers "plainly did not violate any clearly established law." "Not one of the decisions" on which the Tenth Circuit relied, the court stressed, "comes close to establishing that the officers' conduct was unlawful."

****Bottom Line for both cases:**

The lower courts continue to misconstrue Supreme Court direction on granting qualified immunity in cases where it is uncertain that “every reasonable official would have understood that what he is doing violates that right.” The Supreme Court reminds us that qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.” Neither *Bond* nor *Rivas-Villegas* changes any constitutional rule on use of force/deadly force or how force will be analyzed. Both *Bond* and *Rivas-Villegas* again make clear to the lower courts that Fourth Amendment qualified immunity denials must be based on prior cases that have some specificity to the case at hand which put every reasonable officer on notice that their actions violated the Fourth Amendment.