



Authority for California Cities Excess Liability
Litigation Review and Update
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Benjamin Oram, Esq.

MUNICIPAL ORDINANCES RE HOMELESS

City of Grants Pass v. Johnson

Supreme Court of the United States; Docket: 23-175

Opinion Date: June 28, 2024

Judge: Neil M. Gorsuch

Areas of Law: *Violation of Civil Rights based on City enforcement of anti-public camping ordinance.*

Summary Rules:

Enforcement of anti-camping ordinance by City does not violate Eighth Amendment since the Eighth Amendment focuses on treatment post-criminal conviction, and not institution of a new ordinance criminalizing conduct.

Facts:

The case involves the city of Grants Pass, Oregon, and its laws restricting public camping. The city's laws prohibit activities such as camping on public property or parking overnight in the city's parks. Violations can result in fines and, in the case of multiple violations, imprisonment. A group of homeless individuals filed a class action lawsuit against the city, arguing that these ordinances violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court agreed with the plaintiffs, citing a previous Ninth Circuit decision, *Martin v. Boise*, which held that cities cannot enforce public camping ordinances against homeless individuals when the number of homeless individuals exceeds the number of available shelter beds.

Analysis and Holding:

The Ninth Circuit affirmed the district court's decision, leading to the city's appeal to the Supreme Court. The Supreme Court reversed the Ninth Circuit's decision, holding that the enforcement of laws regulating camping on public property does not constitute "cruel and unusual punishment" prohibited by the Eighth Amendment. The Court reasoned that the Eighth Amendment focuses on the punishment a government may impose after a criminal conviction, not on whether a government may criminalize particular behavior in the first place. The Court also noted that the punishments imposed by the city of Grants Pass, such as fines and temporary bans from public parks, did not qualify as cruel and unusual under the Eighth Amendment. The case was remanded for further proceedings consistent with the Supreme Court's opinion.

POLICE – USE OF FORCE

Calonge v. City of San Jose

Ninth Circuit; Docket: 22-16495

Opinion Date: June 7, 2024

Judge: Friedland

Areas of Law: *Violation of Civil Rights following OIS connected to gun in the waistband.*

Summary Rules:

Officer not entitled to qualified immunity after he shot a man believed to have a gun, because there was no evidence presented a significant threat based on his conduct, e.g. mere possession of a gun, without more, is not enough to justify use of deadly force.

Facts:

The case involves Rosalina Calonge, who sued Officer Edward Carboni and the City of San Jose under 42 U.S.C. § 1983, alleging that Officer Carboni used excessive deadly force when he shot and killed her son, Francis Calonge. The incident occurred when police officers responded to 911 calls reporting a man with a gun. They located Francis Calonge, who had what appeared to be a gun in his waistband. Officer Carboni shot and killed Calonge after following him for about a minute as he walked down a street.

The United States District Court for the Northern District of California granted summary judgment in favor of Officer Carboni, ruling that he was entitled to qualified immunity because the plaintiff had failed to identify specific caselaw clearly establishing that Officer Carboni's conduct violated the Fourth Amendment.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reversed the district court's decision. The appellate court found that, construing the facts in the light most favorable to the plaintiff, a reasonable jury could decide that Officer Carboni violated Calonge's Fourth Amendment right to be free from excessive force. The court also concluded that the relevant law was clearly established at the time, so Officer Carboni was not entitled to qualified immunity. The court resolved three disputed facts in the plaintiff's favor for purposes of the appeal: Calonge was not drawing his gun or making a threatening gesture when Officer Carboni shot him; there were no bystanders in Calonge's vicinity when he was shot; and officers did not instruct Calonge to get on the ground or otherwise stop. The court held that the totality of the circumstances did not justify deadly force.

Cuevas v. City of Tulare

Ninth Circuit; Docket: 23-15953

Opinion Date: July 10, 2024

Judge: Nelson

Areas of Law: *Violation of Civil Rights based on post-pursuit OIS which injured passenger and killed driver.*

Summary Rules:

Officers entitled to qualified immunity where they return fire at a driver, but hit an otherwise "innocent" passenger in the vehicle by accident; it is not clearly excessive force based on case law.

Facts:

Rosa Cuevas was a passenger in a car driven by Quintin Castro, who led police on a high-speed chase. After getting stuck in mud, Castro continued trying to flee. Police officers surrounded the car, broke the window, and sent a police dog inside. Castro shot and killed the dog and injured an officer. The officers returned fire, aiming at Castro but accidentally hitting Cuevas multiple times. Castro was ultimately killed, and Cuevas survived with severe injuries. Cuevas sued the City of Tulare and the involved officers under 42 U.S.C. § 1983 and California law, alleging excessive force.

The United States District Court for the Eastern District of California granted summary judgment in favor of the defendants. The court found that Cuevas was not seized for Fourth Amendment purposes and, alternatively, that even if she were seized, the officers were entitled to qualified immunity because it was not clearly established that their use of force was excessive. The court declined to exercise supplemental jurisdiction over the state law claims and the defendants' counterclaims.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case and affirmed the district court's decision. The appellate court held that Cuevas was indeed seized under clearly established Fourth Amendment law. However, it was not clearly established that the force used by the officers was excessive. The court found that none of the cases cited by Cuevas clearly established that officers violated her rights when they shot her while defensively returning fire during an active shooting. The court also noted that in excessive-force cases where police officers face a threat, the obviousness principle will rarely be available as an end-run to the requirement that law must be clearly established. Therefore, the officers were entitled to qualified immunity.

Rosenbaum v. City of San Jose

Docket: 22-16863

Ninth Circuit; Opinion Date: July 11, 2024

Judge: Sanchez

Areas of Law: *Violation of Civil Rights related to police K-9 bite.*

Summary Rules:

Officers not entitled to qualified immunity where police K-9 continued to bite suspect after he had fully surrendered.

Facts:

Zachary Rosenbaum was arrested by San Jose police officers, during which a police dog allegedly bit him for over twenty seconds after he had surrendered and lay prone on his stomach with his arms outstretched. Rosenbaum sued the City of San Jose and the officers involved under 42 U.S.C. § 1983, claiming excessive force in violation of the Fourth Amendment. He alleged that the prolonged dog bite caused severe lacerations and permanent nerve damage to his arm.

The United States District Court for the Northern District of California denied the defendants' motion for summary judgment based on qualified immunity. The defendants appealed, arguing that the bodycam video contradicted Rosenbaum's allegations. However, the district court found that the video did not contradict Rosenbaum's claims and that whether the officers acted reasonably was a triable question for the jury.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case and affirmed the district court's denial of qualified immunity. The Ninth Circuit held that the bodycam video generally

supported Rosenbaum's allegations and that a reasonable jury could find that the officers used excessive force. The court noted that it was clearly established in the Ninth Circuit that officers violate the Fourth Amendment when they allow a police dog to continue biting a suspect who has fully surrendered and is under officer control. Therefore, the court concluded that the officers were not entitled to qualified immunity and affirmed the district court's decision.

Williams v. City of Sparks

Ninth Circuit; Docket: 23-15465

Opinion Date: August 9, 2024

Judge: Milan D. Smith

Areas of Law: *Violation of Civil Rights following OIS post-vehicle pursuit; fleeing felon v. threat to public.*

Summary Rules:

MSJ is appropriate where conduct during vehicle pursuit demonstrated threat to public safety and not just a fleeing suspect.

Facts:

The case involves a non-fatal shooting of Joseph Williams by officers of the Sparks Police Department following a 42-minute car chase. Williams had stolen alcohol and vandalized a vehicle, leading to a police pursuit. During the chase, Williams ran red lights, drove through a fence, and briefly drove on the wrong side of the freeway. The chase ended when officers pinned Williams's truck, but he continued to attempt to flee, leading officers to fire multiple rounds, injuring him.

The United States District Court for the District of Nevada denied summary judgment on Williams's claims of excessive force, municipal liability, and battery, except for the negligence claim. The court found genuine factual disputes about the threat Williams posed and whether he was attempting to flee when officers fired. The court also denied summary judgment on the *Monell* claims and the battery claim, citing unresolved factual issues.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reversed the district court's denial of summary judgment. The appellate court found that video evidence clearly showed Williams attempting to accelerate, contradicting his claim. The court held that the officers' use of deadly force was objectively reasonable, given the threat Williams posed to public safety. The court also exercised pendent jurisdiction over the *Monell* and battery claims, finding no constitutional violation in the officers' use of force and ruling that the battery claim failed because the force used was not unreasonable. The court reversed and remanded the case for further proceedings consistent with its opinion.

Chinaryan v. City of Los Angeles

Ninth Circuit; Docket: 21-56237

Opinion Date: August 14, 2024

Judge: Nguyen

Areas of Law: *Violation of Civil Rights based on felony traffic stop following mistaken information.*

Summary Rules:

Officers are not entitled to qualified immunity after conducting a high-risk felony vehicle stop justified by suspicion alone that vehicle was stolen.

Facts:

Hasmik Chinarian was driving home with her daughter and a friend when Los Angeles Police Department (LAPD) officers mistakenly suspected her vehicle was stolen due to a DMV error with the license plates. Despite driving normally, officers conducted a high-risk felony stop, ordering Chinarian and her passengers out of the vehicle at gunpoint, handcuffing them, and making them lie on the street while they investigated.

The plaintiffs sued the officers, the LAPD, and the City of Los Angeles under 42 U.S.C. § 1983 and California's Bane Act, alleging illegal seizures, excessive force, and failure to properly train the officers. The United States District Court for the Central District of California granted partial summary judgment in favor of the officers, ruling they were entitled to qualified immunity on the § 1983 claims and that there was no evidence of specific intent to violate plaintiffs' rights under the Bane Act. A jury later found in favor of the City and the LAPD on the *Monell* claims.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reversed the district court's summary judgment in favor of the individual officers on the Fourth Amendment and Bane Act claims. The appellate court held that it was clearly established in *Washington v. Lambert* and *Green v. City & County of San Francisco* that officers cannot conduct a high-risk vehicle stop based solely on reasonable suspicion that a vehicle is stolen. The court found that the officers were not entitled to qualified immunity and that there was sufficient evidence for a jury to find that the officers acted with reckless disregard for plaintiffs' rights. The court affirmed the judgment in favor of the City and the LAPD, ruling that the district court did not abuse its discretion in declining plaintiffs' requested jury instructions. The case was remanded for a new trial on all claims against the individual officers.

SEXUAL ABUSE AND MOLESTATION CLAIMS - CONSTITUTIONALITY OF AB 218

West Contra Costa Unified School District v. Superior Court

Docket: A169314(First Appellate District)

Opinion Date: July 31, 2024

Judge: SIMONS

Areas of Law: *Personal injury and constitutionality of AB 218's revival of expired SAM claims.*

Summary Rules:

AB 218's revival of expired SAM claims does not constitute an unconstitutional gift of public funds since the no new liability was created; only the SOL barrier to those claims was removed.

Facts:

In 2019, the California Legislature enacted Assembly Bill No. 218 (AB 218), which allowed plaintiffs to bring childhood sexual assault claims against public entities within a three-year window, even if those claims were previously barred by statutes of limitations or claim presentation requirements. A.M.M. filed a complaint against the West Contra Costa Unified School District, alleging sexual assaults by a District employee from 1979 to 1983. The District argued that reviving such claims constituted an unconstitutional gift of public funds under the California Constitution. The trial court overruled the District's demurrer, leading the District to seek writ review.

The trial court sustained the demurrer for the first three causes of action but overruled it regarding the gift clause argument. The District then petitioned the California Court of Appeal, First Appellate District, for a writ of mandate to sustain the demurrer in its entirety. The appellate court

issued an order to show cause, and both parties filed responses, including amicus curiae briefs from various entities.

Analysis and Holding:

The California Court of Appeal, First Appellate District, held that AB 218's retroactive waiver of the claim presentation requirement did not constitute an unconstitutional gift of public funds. The court reasoned that the waiver did not create new substantive liability but merely removed a procedural barrier to existing claims. The court also found that AB 218 served a valid public purpose by providing relief to victims of childhood sexual assault, aligning with the state's interest in public welfare. Additionally, the court ruled that the District lacked standing to assert due process claims under both the federal and California Constitutions. The petition for writ of mandate was denied.

EMPLOYMENT CLAIM BASED ON FEHA

Bailey v. San Francisco District Attorney's Office

Cal. Supreme Court; Docket: S265223

Opinion Date: July 29, 2024

Judge: Evans

Areas of Law: *Labor & Employment Law arising out of racial slur; standard for severe and pervasive.*

Summary Rules:

MSJ is not appropriate where the use of a racial slur even in one instance could be the subject of a dispute which is material.

Facts:

Twanda Bailey, an African-American employee, sued the San Francisco District Attorney's Office, former District Attorney George Gascon, and the City and County of San Francisco for racial harassment and retaliation under the California Fair Employment and Housing Act (FEHA). Bailey alleged that a coworker called her the N-word, and after reporting the incident, the human resources manager obstructed her complaint, engaged in intimidating conduct, and threatened her.

The San Francisco City and County Superior Court granted summary judgment for the City, finding that Bailey failed to make a prima facie case for her FEHA claims. The trial court concluded that a single racial slur by a coworker did not constitute severe or pervasive harassment and that Bailey did not suffer an adverse employment action. The Court of Appeal affirmed the trial court's decision.

Analysis and Holding:

The Supreme Court of California reviewed the case and held that an isolated act of harassment, such as the use of an unambiguous racial epithet like the N-word, can be actionable if it is sufficiently severe under the totality of the circumstances. The Court emphasized that the severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position. The Court also held that a course of conduct that effectively withdraws an employee's means of reporting and addressing racial harassment can constitute an adverse employment action. The Court found that there were triable issues of fact regarding both Bailey's harassment and retaliation claims and reversed the judgment of the Court of Appeal, remanding the case for further proceedings.

Ruelas v. County of Alameda

Ninth Circuit; Docket: 21-16528

Opinion Date: July 26, 2024

Judge: Thomas

Areas of Law: *Labor & Employment Law arising out of wages paid to inmates.*

Summary Rules:

Jail inmates are not entitled to minimum wages and overtime pursuant to the Labor Code when they work for a private company operating for-profit inside a jail. The Penal Code controls wages for inmates, not the Labor Code.

Facts:

A group of non-convicted individuals detained in Alameda County's Santa Rita Jail filed a lawsuit against Aramark Correctional Services, LLC, Alameda County, and Sheriff Gregory J. Ahern. The plaintiffs claimed they were entitled to minimum wage and overtime pay under California's Labor Code for work performed without pay for Aramark while detained. The defendants moved to dismiss these claims, arguing that the plaintiffs' compensation was governed by the California Penal Code, which allows counties to pay prisoners at rates below minimum wage.

The United States District Court for the Northern District of California denied the defendants' motion to dismiss the minimum wage and overtime claims, holding that the California Penal Code did not preclude non-convicted detainees working for a private company from the protections of the Labor Code. The district court allowed the plaintiffs' claims to proceed, leading the defendants to file an interlocutory appeal.

Analysis and Holding:

The United States Court of Appeals for the Ninth Circuit reviewed the case and certified a question to the California Supreme Court regarding whether non-convicted detainees working for a private company in county jails have a claim for minimum wages and overtime under the California Labor Code. The California Supreme Court responded that such detainees do not have a claim for minimum wages and overtime under Section 1194 of the California Labor Code. The court clarified that section 4019.3 of the California Penal Code applies broadly to all county inmates, including pretrial detainees, and does not depend on the identity of the employer.

Based on the California Supreme Court's response, the Ninth Circuit reversed the district court's order denying the motion to dismiss the plaintiffs' minimum wage and overtime claims. The court held that the plaintiffs' claims failed under the current law and reversed the district court's decision.

DANGEROUS CONDITION OF PUBLIC PROPERTY

Downey v. City of Riverside

Supreme Court of California; Docket: S280322

Opinion Date: July 22, 2024

Judge: Kruger

Areas of Law: Personal Injury

Summary Rules:

Bystander liability only requires contemporaneous awareness of the injury causing incident, not awareness of the causal connection of the at-fault defendant.

Facts:

Jayde Downey was on the phone with her daughter, Malyah Jane Vance, giving driving directions when Vance was severely injured in a car crash. Downey heard the collision and its immediate aftermath but could not see what caused it. She claims the crash was partly due to the condition of the roadway and sued the City of Riverside and the owners of adjacent private property for negligent infliction of emotional distress.

The Riverside County Superior Court sustained the defendants' demurrers without leave to amend, agreeing that Downey could not claim emotional distress damages because she was not aware of the defendants' role in causing the crash at the time it occurred. The Court of Appeal affirmed, holding that Downey needed to show contemporaneous awareness of the causal connection between the defendants' negligence and her daughter's injuries.

Analysis and Holding:

The Supreme Court of California reviewed the case and concluded that the Court of Appeal erred. The court held that for purposes of emotional distress recovery, it is sufficient for a plaintiff to be aware of an event that is injuring the victim, not necessarily the defendant's role in causing the injury. The court emphasized that the requirement is awareness of the injury-producing event, not the specific negligent conduct of the defendant. The judgment of the Court of Appeal was reversed, and the case was remanded for further proceedings.