

POLICE - EXCESSIVE FORCE

Marc Golick v. State of California, et al.

Docket: A162137(1st DCA)

Opinion Date: September 8, 2022

Summary Rules:

1. ***Law enforcement has a duty to act with care when using deadly force, but that duty does not encompass an obligation to prevent a third party from engaging in criminal activity.***

Facts:

Albert Wong, a veteran of the war in Afghanistan, was a former patient of a mental health service provider at the Veterans Home called Pathway; in 2018 he went to the facility armed and dressed for combat and took hostage three female Pathway employees, including Jennifer Gorlick. After exchanging fire with a Napa County Sheriff's deputy, Wong shot and killed his hostages and then killed himself. Family members of the victims filed wrongful death actions naming multiple defendants, including the California Department of Veterans and related state defendants), Napa County, the Sheriff's Office, and Deputy Lombardi.

The trial court dismissed the Napa County defendants from two of the wrongful death actions, finding that the plaintiffs failed to allege facts establishing a duty of care. The court of appeal affirmed. Peace officers owe a duty to act reasonably when using deadly force, but the plaintiffs fail to allege facts showing that this duty encompassed an obligation to prevent Wong from shooting his hostages. The alleged connections between Lombardi's actions and Wong's crimes are little more than speculation. Allegations regarding Lombardi's conduct at the crime scene do not show that he had a special relationship with the hostages.

Javier Vanegas v. City of Pasadena

Docket: 21-55478 (9th Circuit, Court of Appeals, Central District of CA)

Opinion Date: August 31, 2022

Summary Rules:

1. ***Where probable causes exists in support of an arrest, based on facts obtained at the scene establishing that a crime had been committed, summary judgment is proper and the court need not decide the issue of qualified immunity.***

Facts:

Following an appearing in his divorce proceedings at the Superior Court, Javier Vanegas followed his ex-wife and her attorney out of the courthouse and verbally accosted them both. The attorney called the police and Pasadena PD responded. Vanegas left the scene but was contacted by a Pasadena officer who had been in the courthouse and responded to an alert from dispatch. The officer requested that Vanegas identify himself but he refused. Vanegas was handcuffed and visual confirmation was provided by the attorney. Vanegas was booked and charged criminally. Vanegas then sued alleging violations of his civil rights. The city moved for summary judgment which was granted in its favor.

Analysis:

The Ninth Circuit affirmed the district court's summary judgment in favor of the City of Pasadena and Pasadena police officers in an action brought pursuant to 42 U.S.C. Section 1983 alleging that plaintiff was unlawfully arrested. Plaintiff first argued that, because he was arrested under California Penal Code Section 148(a)(1), that means it was disputed whether probable cause existed under Section 415(2). The panel disagreed, stating first that it was well-established that if the facts support probable cause for one offense, an arrest may be lawful even if the officer invoked, as the basis for the arrest, a different offense that lacked probable cause. Second, by the time of Plaintiff's arrest, the officers learned enough facts to believe that Plaintiff had violated Section 415(2) and therefore had probable cause to make the arrest.

Having found no violation of the Fourth Amendment, there was no need to proceed to the second question of the qualified immunity analysis—whether the unlawfulness of the officer's conduct was not “clearly established.” Further, the panel held that no “controlling authority” or “robust consensus of cases” prohibited the officer from arresting Plaintiff under the facts confronting him.

Gabbi Lemos v. County of Sonoma

Docket: 19-15222 (9th Circuit, Court of Appeals, Northern District of CA)

Opinion Date: July 19, 2022

Summary Rules:

1. *The bar to a civil action established by Heck v. Humphrey turns on whether the criminal conviction resulted from the specific conduct which creates the damages in the civil case. If jury does not find guilt on the exact facts, Heck does not bar the claim.*

Facts:

Plaintiff was engaged in a verbal altercation with 3 other women, one of whom was in a vehicle parked in the roadway. A Sonoma Deputy arrived on the scene and began to inquire whether one of the women, the one in the passenger side of the vehicle, had been involved in domestic violence. During that investigation, the all the woman argued vehemently that the Deputy must leave the scene. Plaintiff refused multiple orders to back up and continued to argue with and

berate the deputy. The deputy then attempted to restrain and cuff plaintiff, who resisted, and she was taken to the ground. Plaintiff then sued the County and the deputy but proceedings were stayed pending the criminal action. In the criminal case, the jury was instructed that it could find plaintiff guilty based on any one of 4 facts. Instead, the jury issues a general verdict indicating guilt, without any specific finding of one or more of the 4 facts. Following conviction, the civil stay was lifted, and the County filed MSJ, which was granted.

Plaintiff appealed from the district court's dismissal of her claim under 42 U.S.C. Section 1983 alleging that a sheriff's deputy used excessive force in arresting her. The district court held that Plaintiff's claim was barred by Heck v. Humphrey, 512 U.S. 477 (1994), because Plaintiff was convicted of willfully resisting, delaying, or obstructing the deputy during the same interaction in violation of Cal. Penal Code section 148(a)(1).

Analysis:

The *en banc* Ninth Circuit court reversed the district court's summary judgment for Defendants. The court held that because the record did not show that Plaintiff's section 1983 action necessarily rested on the same event as her criminal conviction, success in the former would not necessarily imply the invalidity of the latter.

Heck would bar Plaintiff from bringing an excessive force claim under section 1983 if that claim were based on force used during the conduct that was the basis for her section 148(a)(1) conviction. Crucially, the criminal jury was told that it could find Plaintiff guilty based on any one of four acts she committed during the course of her interaction with the Deputy. Because the jury returned a general verdict, it is not known which act it thought constituted an offense. Although any of the four acts could be the basis for the guilty verdict, Plaintiff's section 1983 action was based on an allegation that the Deputy used excessive force during only the last one. The court held that if Plaintiff were to prevail in her civil action, it would not necessarily mean that her conviction was invalid; and the action was therefore not barred by Heck.

POLICE – VEHICLE PURSUITS

Patricia Flores v. City of San Diego

Docket: D078501 (4th D.C.A.)

Opinion Date: September 15, 2022

Summary Rules:

- 1. A law enforcement department is only entitled to immunity under Vehicle Code section 17004.7 if the department complied with the training requirements set forth by POST and 11 C.C.R. 1081.***

Facts:

After multiple citizen complaints of a speeding motorcyclist, San Diego PD investigated and observed a motorcyclist run a red light on a motorcycle. SDPD pursued with lights and sirens activated. Flores failed to yield and evaded, merging onto I-805 at accelerating to over 100mph. The officer reported to dispatch, lost sight of the rider, and terminated the pursuit. The officer

then immediately responded to another high priority radio call and did not advise dispatch that he had terminated his pursuit. A second SDPD officer was waiting on the side of I-805, observed a motorcycle operated by decedent Flores, with a female passenger, and initiated pursuit with lights activated. That motorcyclist also evaded, exited I-805, entered a parking lot where it lost control, ejected the passenger, and the driver crashed into a retaining wall which caused fatal injuries.

Appellants Patricia Flores and Angelica Sanchez appealed after the trial court granted summary judgment in favor defendant City of San Diego (the City). Flores and Sanchez sued the City for wrongful death and negligence, respectively, in connection with the death of William Flores, who was operating a motorcycle that was the subject of a police vehicle pursuit when he crashed and was killed.

Analysis:

The City moved for summary judgment on the ground that it was immune from liability under the grant of immunity provided for in Vehicle Code section 17004.7. The Court of Appeal concluded that the vehicle pursuit policy training required by section 17004.7 had to meet certain basic standards that were set forth in California Code of Regulations, title 11, section 1081, as adopted by the Commission on Peace Officer Standards and Training (the POST Commission), including an annual one-hour minimum time standard set out in that regulation, before a governmental entity was entitled to immunity under the statute. "Not only did the City fail to present undisputed evidence that the training it provided in the year prior to the incident at issue met the annual one-hour standard, but the City failed to dispute the fact, put forth by appellants, that the training implemented by the City comprised a single video of less than half the required one-hour duration." In the absence of training that met the standards imposed by Regulation 1081, as required by section 17004.7, the City was not entitled to immunity under that statute, as a matter of law. Summary judgment in favor of the City was therefore erroneously granted, and the judgment **had to be reversed.**

Preston Seidner v. Jonathan de Vries

Docket: 20-17403 (9th Circuit; District of AZ)

Opinion Date: June 30, 2022

Summary Rules:

- 1. Defendant officer was entitled to qualified immunity even if his tactics could have constituted excessive force, since the law as it existed at the time of the incident did not clearly establish that the officer actions violated the 4th Amendment.***

Facts:

In February 2020, Plaintiff was riding his bicycle near midnight with no front light on the in violation of the law. The officer attempted to stop plaintiff, but he fled. The officer accelerated past plaintiff and pulled his car in front of Plaintiff, causing plaintiff to crash into the patrol car. Plaintiff sued Defendant officer, under 42 U.S.C. Section 1983, alleging that Defendant violated

Plaintiff's Eighth and Fourteenth Amendment rights when the officer used a roadblock to stop Plaintiff, who was suspected of committing a minor traffic violation, from fleeing on a bicycle. The district court construed Plaintiff's allegations as asserting a Fourth Amendment excessive-force claim and found that his claim was plausible.

Analysis:

The Ninth Circuit reversed the district court's denial of qualified immunity Defendant. The court held that the question of whether Defendant used excessive force against Plaintiff would be a question for a factfinder. The roadblock was a use of intermediate force that was capable of inflicting significant pain and causing serious injury. Given the circumstances, a jury could conclude that Defendant should have taken additional steps to stop Plaintiff before using an intermediate level of force given Plaintiff's minor offense and the lack of any safety risk to Defendant or anyone else. However, even if Defendant did use excessive force, the law as it existed at the time of the incident did not clearly establish that his actions violated the Fourth Amendment. Therefore, Defendant was entitled to qualified immunity.

PUBLIC EMPLOYEE – FREE SPEECH

Juan Hernandez v. City of Phoenix

Docket: 21-16007 (9th Circuit; District of AZ)

Opinion Date: August 5, 2022

Summary Rules:

- 1. An individual public employee may post on social media commentary on issues of public concern, regardless of whether the public entity employer finds the posts to be a violation of its policy.**

Facts:

The City of Phoenix's Police Department concluded that a Sergeant with the Department violated a Department policy by posting content to his personal Facebook profile alleged to denigrate Muslims and Islam. When the Department took steps to discipline the Sergeant, five years after the posts on Facebook had been published, he sued, alleging that the Department was retaliating against him for exercising his First Amendment right to freedom of speech.

Analysis:

The Ninth Circuit affirmed in part and reversed in part the district court's dismissal of Plaintiff's action. In analyzing the content, form and context of the Sergeant's posts, the court concluded that the posts qualified as speech on matters of public concern. While it was true that each of the Sergeant's posts expressed hostility toward, and sought to denigrate or mock, major religious faith and its adherents, the Supreme Court has made clear that the inappropriate or controversial character of a statement is irrelevant to the question of whether it deals with a matter of public concern.

The court, therefore, reversed the district court's dismissal of Plaintiffs' First Amendment retaliation claim and his related claim under the Arizona Constitution. The court held that the

district court properly rejected Plaintiffs' facial overbreadth challenge to certain provisions of the Department's social media policy, except as to the clauses prohibiting social media activity that (1) would cause embarrassment to or discredit the Department, or (2) divulge any information gained while in the performance of official duties, as set forth in section 3.27.9B.(7) of the policy. The court affirmed the district court's rejection of Plaintiffs' facial vagueness challenge to the same provisions discussed above and their municipal liability claim.

JAIL CLAIMS – DELIBERATE INDIFFERENCE

Kevin Simmons v. G. Arnett

Docket: 20-55043 (9th Circuit; Central Dist. of CA)

Opinion Date: August 31, 2022

Summary Rules:

- 1. The officer's use of force was not excessive since he did not have an improper motive and certainly did not act maliciously or sadistically.***
- 2. The nurse did not demonstrate deliberate indifference by cutting short her evaluation of plaintiff in favor of expedited medical treatment outside the prison.***

Facts:

Defendant, a California prison guard, shot Plaintiff with three sponge-tipped plastic rounds during a prison fight involving multiple inmates. Defendant Arnett was alone with no other officers in the vicinity to respond. Arnett had only two options, use force or allow the inmates to severely beat or kill another inmate. Arnett selected the less-lethal weapon, over a mini-14 rifle, and fired several rounds at one of the fighting inmates, breaking Plaintiff's leg and injuring his butt and thigh. Following the fight, a prison nurse assessed Plaintiff's injuries and transferred him to an emergency room without fully completing her notes or conducting a full body examination.

Analysis:

The Ninth Circuit affirmed the district court's summary judgment for Defendants in Plaintiff's action alleging excessive force and deliberate indifference to medical needs. The panel first held that the district court correctly concluded that there was no constitutional violation. The guard's decision to shoot Plaintiff with sponge rounds was not excessive use of force. He had a duty to keep prison staff and the prisoners in his care safe and he used the lowest level of force available to him. Even viewing the record in the light most favorable to Plaintiff, there was no evidence showing that Arnett had any improper motive, let alone that he acted "maliciously and sadistically for the very purpose of causing harm."

As to the nurse, rather than deliberate indifference, her actions seemed to reflect the conduct of a medical professional who quickly and successfully ensured that her patient received the appropriate level of care. The court held that Defendants were therefore entitled to protection under the doctrine of qualified immunity and summary judgment was properly entered in their favor.

J.J. V. City of San Diego

Docket: 20-55622 (9th Circuit; Southern Dist. of CA)

Opinion Date: August 2, 2022

Summary Rules:

1. *Where video is placed at issue and incorporated in a complaint, the District Court has discretion to review, and does not err by reviewing, the video in connection with a motion to dismiss.*
2. *Officers were not deliberately indifferent when the serious medical need of the plaintiff was not readily apparent, and in fact concealed by, the plaintiff.*

Facts:

Plaintiff's mother was arrested at a traffic stop and fell ill in police custody. She began to vomit in the back of the patrol vehicle while the police officers investigated the discovery of narcotics paraphernalia in the car where the woman had been riding. The woman alleged that she was pregnant as the reason for the vomiting. The officers questioned her about possibly detoxing but the woman denied the allegation. Over the course of an hour during transport to the police station, the woman became obviously distressed and screamed for help. By the time of arrival at the police station, the woman was non-responsive. Tragically, she died nine days later. Her minor son, J.K.J., brought constitutional claims against the City of San Diego and two officers who participated in the traffic stop. The District Court dismissed J.K.J.'s amended complaint with prejudice. The district court dismissed J.K.J.'s amended complaint with prejudice.

Analysis:

The Ninth Circuit filed (1) an order granting a petition for rehearing, denying as moot a petition for rehearing *en banc*, and amending the prior opinion and dissent; and (2) an amended opinion affirming the district court's dismissal of an action brought pursuant to 42 U.S.C. Section 1983 alleging constitutional violations by police officers in their treatment of Plaintiff's mother.

The court first held that the district court validly exercised its discretion in choosing to review a bodycam video that Plaintiff had incorporated by reference into the amended complaint. Second, the district court did not assign the video too much weight. Lastly, to the extent the district court found that the video contradicted anything in the amended complaint, it rejected Plaintiff's conclusory allegations regarding whether the officers' conduct met the legal standard of a constitutional violation.

The court held that the district court did not err in dismissing the amended complaint. The court further held that the alleged violative nature of the officers' conduct, in failing to recognize and respond to the woman's serious medical need, was not clearly established in the specific context of this case.

Lewis Stewart v. Romeo Aranas

Docket: 20-15586 (9th Circuit; District of Nevada)

Opinion Date: May 4, 2022

Judge: Siler

Areas of Law: Civil Rights, Constitutional Law, Government & Administrative Law

Summary Rules:

- 1. Prison officials violate a constitutional right to medical treatment when they continued with a course of treatment which had failed and under which the condition worsened, without ever changing the treatment plan.***

Facts:

Plaintiff complained of symptoms of related to urinary flow, discomfort in his abdomen and back and requested medical treatment. He was provided with generic medication after a physical examination. The pain continued from 2013 through 2015 with no change in treatment plan which was essentially to “wait and see” what happens. Plaintiff was transferred from Southern Nevada to Norther Nevada in 2015 where treatment continued but the condition had worsened to an enlarged prostate including stage 3 kidney disease

Plaintiff filed an action pursuant to 42 U.S.C. Section 1983 alleging that Defendants, prison officials, were deliberately indifferent to his medical needs, when despite his numerous complaints over a period of years and a visibly deteriorating condition, they ignored his enlarged prostate. After the district court screened Plaintiff’s complaint, he was left with two claims of deliberate indifference to serious medical needs. The remaining officials claimed that they were entitled to qualified immunity and moved for summary judgment. The district court disagreed and denied summary judgment.

Analysis:

The Ninth Circuit affirmed the order denying qualified immunity to prison officials. The Ninth Circuit determined that only examination of the second prong of the qualified immunity analysis was necessary—whether the right was clearly established at the time of the violation—because doing so would not hamper the development of precedent and both parties expressly acknowledged that this case turned on the second prong. The court reasoned it was clearly established at the time of Plaintiff’s treatment that prison officials violated the constitution when they choose a medically unacceptable course of treatment for the circumstances and a reasonable jury could find that the prison officials did just that.

SEXUAL ABUSE AND MOLESTATION

Doe v. Anderson Union High School Dist.

Docket: C093099 (Third Appellate District; Shasta County Superior Court)

Opinion Date: May 4, 2022

Areas of Law: Civil Procedure, Education Law, Labor & Employment Law, Personal Injury

Summary Rules:

1. *Sexual misconduct is not foreseeable as between teacher and student where there are no prior complaints, reports, or rumors of misconduct.*
2. *A school district does not have a duty to constantly monitor teachers and staff for misconduct by reviewing security camera footage and alarm deactivation data. Such a duty is unreasonable.*

Facts:

Daniel Schafer, a teacher at a high school in the Anderson Union High School District (District), had a sexual relationship on school premises with one of his students, plaintiff Jane Doe. Doe sued the District, principal Carol Germano, and superintendent Tim Azevedo for negligent hiring and negligent supervision. Plaintiff also contended that the Principal had a duty to review security video footage of Schafer and alarm deactivation data to determine whether Schafer was accessing the school after normal hours for inappropriate purposes. Plaintiff also argued that sexual misconduct between a student and teacher is foreseeable.

The trial court granted the District's motion for summary judgment and entered judgment in favor of the District, finding that there was no evidence the District knew or should have known that Schafer posed a risk of harm to students. On appeal, Doe contended the trial court erred by granting summary judgment because the District had a duty to supervise and monitor Schafer and Doe, and whether the District breached its duty to Doe was a question of fact for the jury to decide.

Analysis:

The Court of Appeal affirmed the trial court's grant of summary judgment, finding that on the trial court record, that sexual misconduct between a teacher and student is not foreseeable so the District did not have a duty to review alarm data and video recordings in order to constantly monitor all teachers, students, and campus visitors, nor did it have such a duty specifically with regard to Schafer and Doe.