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Litigation Review and Update
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Daniel Rivas-Villegas v. Ramon Cortesluna (SCOTUS) Case no. 20-1539

Published – 10/18/21; Cite as 595 U.S. ___ (2021)

Summary Rules:

1. ***Entitlement to Qualified Immunity rest upon the facts and knowledge of the officer engaged in the police action and not upon case law precedent generally applicable to a given tactic.***

Facts: Rivas-Villegas was a Police Officer for Union City and responded to a domestic violence call made to 911. The reported activity came from a minor child who indicated that she and her mother were locked inside a room and that the mother's boyfriend was likely intoxicated, angry and using a chainsaw in the home in a threatening manner towards the women. Officer Rivas-Villegas responded to the call along with other officers. Mr. Cortesluna, the boyfriend, was seen with a weapon in a home and initially responded to the commands of the officers. He exited the house and complied orders during which time it was observed that he had a knife in his pocket. Mr. Cortesluna then refused commands and dropped his hands down towards his waist band. Officers shot Mr. Cortesluna twice with bean bag rounds and then moved in to physically detain him. During the cuffing process, Officer Rivas-Villega placed his knee on the back of Mr. Cortesluna, rolled him over, and retrieved the knife still in Mr. Cortesluna's pocket. Mr. Cortesluna sued for excessive force naming each individual officer involved as well as City of Union City (located in Alameda County).

Officer Rivas-Villegas filed MSJ alleging Qualified Immunity which the District Court granted. Cortesluna appealed to the 9th Circuit which overruled the order on MSJ on the ground that "existing precedent put him [Officer Rivas-Villegas] on notice that his conduct constituted excessive force." The Court of Appeals was referring to the case of *LaLonde v. County of Riverside* decided in 2000 by the 9th Circuit and holding that a similar tactic used by police officers constituted excessive force.

Analysis and Holding: In a rather short opinion, the Supreme Court of the United States held that the facts of a given incident dictate entitlement to Qualified Immunity and not case law generally dealing with a given tactic. The Court agreed that the "…facts of *LaLonde* are materially

distinguishable from this case and are therefore insufficient to have made clear to every reasonable officer that the force Rivas-Villegas used here was excessive."

Comments: This opinion returns the importance of a fact intensive analysis of each case to determine whether Qualified Immunity provides protection. Where the 9th Circuit's opinion to have been upheld, caselaw regarding use of specific tactics, even in dissimilar circumstances, would have essentially abrogated Qualified Immunity in most cases.

City of Tahlequah, OK v. Austin P. Bond, et al (SCOTUS) Case no. 20-1668

Published – 10/18/21; Cite as 595 U.S. ____ (2021)

Summary Rules:

1. ***Entitlement to Qualified Immunity rest upon the facts and knowledge of the officer engaged in the police action and not upon case law precedent generally applicable to a given tactic.***
2. ***When citing to case law, the facts of the case must be so substantially similar that is establishes notice to an officer in the facts of the current situation regarding the officer's conduct.***

Facts: A women called the police because her ex-husband was intoxicated in her garage and would not leave. Three officers responded and found the ex-husband, Mr. Rollice, in the garage. After some discussion, Rollice walked to the back of the garage and officers followed. Rollice took a hammer off the wall and held it in two hands as if to swing it. The officers ordered him to put down the hammer but Rollice refused. Rollice then walked around a piece of furniture and obtained an unobstructed path between him and the officers. Rollice then lifted hammer higher as if to throw it at the officers or in preparation to charge at them. In response, "Officers Girdner and Vick fired their weapons, killing Rollice." The Estate of Rollice sued on grounds of excessive force. The officers filed MSJ on both the merits and Qualified Immunity. The District Court granted the motion on both the merits, as the officers' conduct was reasonable, and based on Qualified Immunity.

The Estate of Rollice appealed and the 10th Circuit Court of Appeals reversed on the precedent that "…allows an officer to be held liable for shooting that is itself objectively reasonable if the officer's reckless or deliberate conduct created a situation requiring deadly force." The 10th Circuit held that the initial step taken towards Rollice by one officer constituted reckless conduct because it "cornered" Rollice in the back of the garage.

Analysis and Holding: The Supreme Court refused to decide whether the officer violated the 4th Amendment in the first place because the officers in this case "…did not violate any clearly established law." The Court explained that "The doctrine of qualified immunity shields officers from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known'." The Court further

explained, “We 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 precent; the rule’s contours must be so well defined that is it ‘clear to a reasonable officer that his conduct was unlawful in that situation he confronted’.”

Comments: Once again, the Supreme Court reverse the Court of Appeals because none of the cited precedent was substantially similar to set a firm and clear rule. When a case is used as the underlying rule to defeat Qualified Immunity, the facts must be so similar that the officers should have known that their conduct was excessive.

Nieves Martinez v. City of Beverly Hills (2nd DCA) Case no. B305826

Published – 11/10/21; Underlying case - L.A. Sup. Ct case no. BC667123)

Summary Rules:

3. ***Alleys are subject to a different standard than sidewalks in dangerous condition cases.***
4. ***Public entities need not absolutely disprove notice.***

Facts: Plaintiff was employed at a law firm with three offices within walking distance. The main office is accessible through a rear alley running parallel to road. Plaintiff walks in the alley about once a month. Alley contained a “drainage ribbon” down the center. Plaintiff was delivering plate of pastries to a satellite office while wearing soft-bottomed flip-flops. The front edge of her flip-flop hit a defect at the drainage ribbon measuring about 1.75” and she fell sustaining injuries. Trial Court granted MSJ on trivial defect and lack of notice. City argued that alleys are not intended for pedestrian traffic but rather for heavy/commercial vehicles such as trash trucks and delivery trucks. City alleged not notice, actual or constructive and trivial defect. City testified that even if the defect were known, it would not have been repaired because it was too small and insignificant.

Analysis and Holding: The Appellate Court decided two main issues, that of whether the City has “actual notice” or “constructive notice” sufficient to establish a question of material fact to survive MSJ. The City established that it had no evidence of any complaint about the subject defect in the preceding 15 years. Plaintiff argued that the City was required to submit a declaration from every employee or agent of the City which could have visited the site to establish it had no actual notice of the defect. The Court rejected that argument as unreasonable.

On the issue of constructive notice, which is the real importance of this opinion, the Court framed the issue this way: “Is there a different standard for assessing when a defect is ‘so obvious’ to impart constructive notice to a public entity when the defect is located in an alley rather than on a sidewalk?”

The Court conclude, “yes,” there is a different standard. The Court’s analysis sided with the City’s argument that sidewalks are for walking and alleys are for heavy equipment. The Court reasoned that it takes less of a defect to make a sidewalk dangerous, than it does an alleyway. Less scrutiny

may be applied to alleys because the cost of keeping an alley as defect-free as a sidewalk would be far greater than a sidewalk.

The Court also concluded that the issue of whether a defect is "obvious" is a question for the jury… "But it is not *always* a jury question." The Court explained its role to weed out "**unwarranted litigation which attempts to impose upon a property owner what amounts to absolute liability for injury to persons who come upon property**."

Comments: I can see this last statement above being cited in every dangerous condition demurrer and MSJ from here forward. The final sentence in the opinions properly summarizes the Courts holding, "Again, alleys are different."