ILLINOIS DEFENSE COUNSEL
IDC QUARTERLY

Civil Rights Update

Bryan J. Vayr
Heyl, Royster, Voelker & Allen, P.C., Champaign

Supreme Court Doubles Down on Qualified Immunity for Law Enforcement

Qualified immunity remains alive and well at the Supreme Court. In October of 2021, roughly four months after former Minneapolis police officer Derek Chauvin was convicted of murdering George Floyd, the Supreme Court handed down two decisions supporting the Court's broader application of qualified immunity. *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4 (2021) and *City of Tahlequah, Oklahoma v. Bond*, 142 S. Ct. 9 (2021). Both *Rivas-Villegas* and *Tahlequah* reversed efforts by appellate courts to lessen the degree of factual similarity between a Fourth Amendment claim and "clearly established law." Lawyers defending law enforcement should closely familiarize themselves with these cases.

Qualified Immunity and the Fourth Amendment

Qualified immunity under federal law shields officers from civil liability as long as their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

This begs the question: when is a law "clearly established," such that an officer should know not to violate it? According to the Supreme Court, a "clearly established" law should not be defined at "too high a level of generality." *Tahlequah*, 142 S. Ct. at 11. It is not enough for a rule to be "suggested" by then-existing precedent, but rather "the rule's contours must be so well defined" that it is "clear" an officer's conduct was illegal in the circumstances before them. *Id.* at 10 (internal quotations and citations omitted). In plain terms, qualified immunity is granted unless there is a sufficiently close factual fit between the complained-of conduct and a prior opinion from an appropriate court penalizing similar conduct.

In the Fourth Amendment context, the Supreme Court requires a particularly close fit between a lawsuit and the "clearly established law," Factual specificity is "especially important in the Fourth Amendment context" as the fact-specific nature of Fourth Amendment doctrines (such as excessive force) "sometimes [make it] difficult for an officer to determine how the relevant legal doctrine * * * will apply to the factual situation the officer confronts." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015). In October of 2021, the Supreme Court reversed the Ninth and Tenth Circuits' efforts to permit a looser factual fit to defeat qualified immunity when dealing with claims of excessive force.

The *Rivas-Villegas* and *Tahlequah* Decisions

The Supreme Court's decisions in *Rivas-Villegas* and *Tahlequah* highlight how the Court remains vigilant against attempts to water down qualified immunity in the Fourth Amendment context. Both cases centered on alleged excessive

force. The Supreme Court reversed denials of qualified immunity when the Circuit Courts attempted to require something less than a near perfect factual fit between the alleged misconduct and the "clearly established law."

Rivas-Villegas

In *Rivas-Villegas*, police officer Daniel Rivas-Villegas used his knee to apply pressure for approximately eight seconds to a then-compliant and facedown arrestee's back. Another officer removed a knife from the arrestee's pocket while the arrestee was detained. Moments before, the arrestee had been shot by officers twice with a beanbag round from a shotgun. *Rivas-Villegas*, 142 S. Ct. at 6. Prior to the use of force, Officer Rivas-Villegas learned the arrestee was drunk and reportedly attempted to break through an apartment door with a chainsaw to attack his girlfriend and her children. *Id.* Officer Rivas-Villegas also saw the arrestee lower his hands, contrary Rivas-Villegas' orders, in an apparent attempt to reach for a knife in the arrestee's right pocket. *Id.* The arrestee was shot twice with beanbag rounds when his hands went in the direction of his knife. *Id.* After being shot, the arrestee complied with the officers' orders, including an order to get facedown on the ground. However, the knife was still in the arrestee's pocket. At that point, Officer Rivas-Villegas squatted over the arrestee and placed his knee on the arrestee's back, near the pocket with the knife. *Id.* Officer Rivas-Villegas also leaned into his knee; applying pressure on the arrestee for the around eight seconds it took for another officer to remove the knife. *Id.* The arrestee was arrested without further incident.

The District Court granted Officer Rivas-Villegas qualified immunity, but the Ninth Circuit reversed. The Ninth Circuit found that Officer Rivas-Villegas violated a sufficiently specific rule of law based upon the Ninth Circuit's decision in *LaLonde v. County of Riverside*, 204 F.3d 947 (9th Cir. 2000), which held that an officer cannot grind his knee into the back of a face-down, compliant arrestee. *Cortesluna v. Leon*, 979 F.3d 645, 654–55 (9th Cir. 2020). According to the Ninth Circuit, "rarely is a precedent as precisely aligned with the relevant actions" as *LaLonde*. *Leon*, 979 F.3d at 654. In both *Rivas-Villegas* and *LaLonde*, the arrestee had a weapon (a knife and chainsaw in *Rivas-Villegas*; a rifle in *LaLonde*), initially declined to follow the responding officers' orders, was subdued/injured through a projectile (beanbag rounds in *Rivas-Villegas*; pepper spray in *LaLonde*) and the arrestee was face-down and complying with orders when an officer put a knee on the subdued arrestee causing injury. *Leon*, 979 F.3d at 654 (discussing *LaLonde*, 204 F.3d at 950–52). The Ninth Circuit held that *LaLonde* was specific enough to find that Officer Rivas-Villegas could not press his knee into a compliant, facedown arrestee, and concluded that qualified immunity was inappropriate.

The Supreme Court reversed the Ninth Circuit, concluding that Officer Rivas-Villegas was entitled to qualified immunity. *Rivas-Villegas*, 142 S. Ct. at 8. The Court concluded that no "clearly established law" had been violated, rejecting the Ninth Circuit's reliance on *LaLonde*. What struck the Ninth Circuit as a "rarely…precisely aligned" case was "materially distinguishable" to the Supreme Court. *Compare Cortesluna*, 979 F.3d at 654, *with Rivas-Villegas*, 142 S. Ct. at 8. The Supreme Court recognized that unlike *LaLonde*, Officer Rivas-Villegas placed his knee on the arrestee for a brief period (8 seconds), the arrestee was armed at the time, and Officer Rivas-Villegas only placed his knee on the side of the arrestee's back closest to where the weapon was stashed. *Rivas-Villegas*, 142 S. Ct. at 8. The Court also noted that Office Rivas-Villegas was responding to a crime of violence (domestic battery) compared to the minor noise compliant at issue in *LaLonde*. *Id.* Given these facts, the Supreme Court unanimously concluded that no clearly established law showed that Officer Rivas-Villegas used excessive force and he was entitled to qualified immunity.

Tahlequah

In *Tahlequah*, two police officers were accused of using excessive force in 2016, when they shot and killed an intoxicated man who, contrary to the officers' orders, picked up a hammer and reared the hammer back as if to throw it at the officers. *Tahlequah*, 142 S. Ct. at 10. At the time the officers pulled the trigger, they knew the decedent was intoxicated and refused to leave the property. *Id.* at 10. Leading up to the shooting, the officers stayed about six feet away from the intoxicated man, and the man did not utter any threats but refused to be patted down for weapons. *Id.* The officers yelled at the decedent after the decedent picked up the hammer and started to wield it with both hands like a baseball bat. *Id.*

The District Court granted the officers summary judgment, but the Tenth Circuit reversed. The Tenth Circuit concluded that the officers' decision to shoot the intoxicated man was reasonable. However, the Tenth Circuit held that the officers could still be found liable, as it was the officers' own reckless or deliberate conduct that required the use of deadly force. *Tahlequah*, 142 S. Ct. at 10.

The Supreme Court concluded the officers were entitled to qualified immunity. The Court declined to determine whether the Tenth Circuit's officer-created danger rule applied or was valid because the rule was immaterial to the result: the officers' conduct leading up to and including the shooting violated no clearly established law. *Tahlequah*, 142 S. Ct. at 10. The closest case the Tenth Circuit or the civil plaintiff could identify was *Allen v. Muskogee*, 119 F.3d 837 (10th Cir. 1997). There, the defendant-police officers responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to wrest a gun from the suspect's hands. *Tahlequah*, 142 S. Ct. at 10 (discussing *Allen*, 119 F.3d at 841). To the Supreme Court, the facts in *Allen* were "dramatically different" from *Tahlequah*. The officers in *Tahlequah* spoke with the decedent conversationally and did not "scream" at the decedent. Further, they did not yell at the decedent until he picked up a hammer and the officers stayed six or more feet away from the decedent. *Id.* These factual differences were sufficient to distinguish *Tahlequah* from *Allen*. Accordingly, no clearly established law condemned the officer's actions leading up to and including the shooting and the Supreme Court found that the officers were entitled to qualified immunity.

Conclusion

When dealing with the Fourth Amendment, the Supreme Court's *Rivas-Villegas* and *Tahlequah* decisions show that even when a precedent is seemingly "precisely aligned" with a plaintiff's claim, a plaintiff may still fail to satisfy a challenge to qualified immunity. In *Rivas-Villegas*, the lack of "clearly established law" came down to the location on the body where a police officer placed his knee on a facedown arrestee's back and whether that arrestee was armed. *Rivas-Villegas* and *Tahlequah* show that civil rights plaintiffs must go farther than focusing on generally similar cases to defeat qualified immunity. Rather there must be no meaningful factual difference between the case purporting to constitute "clearly established law" and the plaintiff's case.

About the Author

Bryan J. Vayr is an Associate at *Heyl, Royster, Voelker & Allen, P.C.*, in Champaign, where he focuses his practice on civil litigation, with a focus on complex civil rights, governmental defense, and professional liability. Much of his practice entails defending government, law enforcement, and educational institutions in cases alleging violations of civil rights in

state and federal court. Mr. Vayr also represents counties and municipalities in tort litigation and contract disputes, including employment, infrastructure, and construction disputes. Mr. Vayr joined Heyl Royster in 2017 after receiving his J.D., *summa cum laude*, Order of the Coif, from the University of Illinois College of Law and B.S., *magna cum laude*, from the University of Illinois-Springfield. While in law school, Mr. Vayr was Managing Articles Editor for the *University of Illinois Law Review*, and was recognized by the Clinical Legal Education Association for his work in the College's Civil Litigation Clinic. Prior to joining Heyl Royster, Mr. Vayr worked at the Champaign County States Attorney's Office, a Chicago-based firm specializing in complex litigation, and the Land of Lincoln Legal Assistance Foundation.

About the IDC

The Illinois Defense Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.IDC.law or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, admin@IDC.law.