

UNITED STATES SUPREME COURT REVERSES THE NINTH CIRCUIT'S DENIAL OF QUALIFIED IMMUNITY

April 3, 2018 | Law Alerts, News

Kisela v. Hughes

United States Supreme Court, April 3, 2018



This week, the United States Supreme Court once again reversed the Ninth Circuit's

refusal to apply qualified immunity. The Supreme Court ruled that qualified immunity protected an officer who shot a non-compliant, knife-wielding suspect who matched a description of someone who had been acting erratically with a knife.

In May 2010, somebody called 911 to report that a woman was hacking at a tree with a kitchen knife. Officers Kisela and Garcia heard the report over the radio and responded. A few minutes later, the 911 caller flagged down the officers, gave them a description of the woman with the knife, and told them the woman had been acting erratically. About the same time, a third police officer arrived on scene.

Officer Garcia spotted a woman, later identified as Sharon Chadwick, standing in the driveway of a nearby house. A chain-link fence with a locked gate separated Chadwick from the officers. The officers then saw another woman, Hughes, emerge from the house carrying a large knife at her side and walk towards Chadwick, stopping about six feet from her. Hughes matched the description of the woman who had been seen hacking at the tree. The officers drew their weapons and told Hughes at least twice to drop the knife. Hughes appeared calm, but did not acknowledge the officers' presence or drop the knife. Officer Kisela, believing Chadwick was in danger, shot Hughes four times through the fence.

Hughes sued Officer Kisela under 42 U. S. C. § 1983, alleging that Officer Kisela used excessive force in violation of the Fourth Amendment. The district court granted summary judgment to Officer Kisela on qualified immunity grounds, but the Ninth Circuit reversed. It held that the record, viewed in the light favorable to Hughes, was sufficient to demonstrate that Kisela violated the Fourth Amendment, and that the law he violated was clearly established law under circuit precedent – i.e., the constitutional violation was obvious.

The Supreme Court reversed, ruling that Officer Kisela was entitled to qualified immunity. The Court did not address whether his use of force violated the Fourth Amendment. Going right to qualified immunity, the Court once again admonished the Ninth Circuit that it should not assess whether the law was clearly established with “a high level of generality.” (“This Court has repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality.”). It held that it was not obvious on this record that any reasonable officer would have known that shooting Hughes would violate the Fourth Amendment:

[Officer] Kisela says he shot Hughes [through a chain link fence] because, although the officers themselves were in no apparent danger, he believed she was a threat to Chadwick. Kisela had mere seconds to assess the potential danger to Chadwick. He was confronted with a woman who had just been seen hacking a tree with a large kitchen knife and whose behavior was erratic enough to cause a concerned bystander to call 911 and then flag down Kisela and Garcia. Kisela was separated from Hughes and Chadwick by a chain-link fence; Hughes had moved to within a few feet of Chadwick; and she failed to acknowledge at least two commands to drop the knife. Those commands were loud enough that Chadwick, who was standing next to Hughes, heard them. This is far from an obvious case in which any competent officer would have known that shooting Hughes to protect Chadwick would violate the Fourth Amendment.

Justice Sotomayor dissented, joined by Justice Ginsburg. They believed that the majority ignored Ninth Circuit precedent which should have put the officer on notice that his conduct was unconstitutional. Justice Sotomayor also commented that “unwarranted summary reversal is symptomatic of ‘a disturbing trend regarding the use of this Court’s resources’ in qualified-immunity cases” and that “this Court routinely displays an unflinching willingness ‘to summarily reverse courts for wrongly denying officers the protection of qualified immunity’ but ‘rarely intervene[s] where courts wrongly afford officers the benefit of qualified immunity in these same cases.’” Concluding, Justice Sotomayor stated “[t]he majority today exacerbates that troubling asymmetry. Its decision is not just wrong on the law; it also sends an alarming signal to law enforcement officers and the public. It tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished.” Justice Sotomayor thought there was “nothing right or just under the law about this.”

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