SCOTUS - Officer Entitled to Qualified Immunity After Firing Shots at a Fleeing Vehicle

On November 9, 2015, the United States Supreme Court released its decision in Mullenix v. Luna,[1] holding that an officer was entitled to qualified immunity after firing shots at a fleeing vehicle and killing the driver of the vehicle, moments before it ran over a spike strip placed in the roadway. The ruling is just another in a line of recent decisions by the Supreme Court, in which it has side-stepped addressing whether the specific acts by the defendant officers were lawful under the Fourth Amendment, and, instead, focused its analysis on whether the officers were entitled to qualified immunity. Accordingly, please review this summary of the Mullenix decision carefully, and do not come away from it with the impression that the Supreme Court is green lighting the use of deadly force to stop fleeing vehicles.

Factual Background

On March 23, 2010, a sergeant with the Texas Police Department followed Israel Leija, Jr. to a restaurant with a warrant for his arrest. Upon being informed he was under arrest, Leija sped away and headed for the interstate. The officer gave chase and was quickly joined by a Trooper with the Texas Department of Public Safety (DPS). Leija entered the interstate and led officers on an 18-minute chase, reaching speeds between 85 and 110 mile per hour. Twice during the chase, Leija called the Tulia Police Dispatcher, claiming to have a gun and threatening to shoot police officers if they did not abandon the chase. The dispatcher notified the officers of Leija's threat, and also informed them that he might be intoxicated.

During the pursuit, other law enforcement officers set up tire spike strips at three locations. An officer from the Canyon Police Department manned the spike strike at the first location Leija was expected to reach, beneath the overpass at Cemetery Road. DPS Trooper Mullenix responded to the pursuit and drove to the Cemetery Road overpass, where he initially intended to set up a tire spike strip. When Mullenix learned of the location of the other spike strips, however, he decided to consider the tactic of shooting at Leija's vehicle to disable it. Mullenix had not received training on this tactic, and had never tried it before. Mullenix asked the DPS dispatcher to inform his supervisor of his plan, and ask if it was "worth doing." Before receiving a response from his supervisor, Mullenix exited his vehicle with his service rifle, and took a shooting position on the overpass, 20 feet above the interstate. Leija's Estate (the "Respondent") alleges that, from his position, Mullenix was able to hear his supervisor tell him to "stand by" and "see if the spike strips work first."

While waiting for Leija's vehicle to appear, Mullenix discussed his plan with another officer, and learned that an officer was located beneath the overpass upon which he was stationed. Three minutes after taking his position, Mullenix observed Leija's vehicle. As the vehicle approached the overpass, Mullenix fired six shots at the vehicle. Leija's car continued forward under the overpass, where it ran over the tire spike strip, hit the

median, and rolled two and a half times. It was later determined that Leija had been killed by Mullenix shots, with four of them striking his upper body. There was no evidence that any of Mullenix's shots struck the car's radiator, hood, or engine block.

Procedural History

Respondent filed suit against Mullenix, claiming that he violated the Fourth Amendment by using excessive force against Leija. Mullenix moved for summary judgement on the ground of qualified immunity. The District Court denied the motion and held that "[t]here are genuine issues of fact as to whether Trooper Mullenix acted recklessly, or acted as a reasonable, trained peace officer would have acted in the same or similar circumstances." Mullenix appealed to the Court of Appeals for the Fifth Circuit, but the Fifth Circuit affirmed the District Court, holding that the "immediacy of the risk posed by Leija" was a question of fact for the jury, which precluded the court from concluding that Mullenix had acted objectively reasonable as a matter of law.

The Fifth Circuit denied Mullenix's petition for a rehearing, en banc. The Fifth Circuit did, however, revise its opinion to recognize that objective reasonableness is a question of law that can be resolved on summary judgment, while reaffirming the denial of qualified immunity. The Fifth Circuit Court reasoned that Mullenix's actions

> were objectively unreasonable because several of the factors that had justified deadly force in previous cases were absent here: There were no innocent bystanders, Leija's driving was relatively controlled, Mullenix had not first given the spike strips a chance to work, and Mullenix's decision was not a split-second decision.[2]

The court concluded that Mullenix was not entitled to qualified immunity because "the law was clearly established such that a reasonable officer would have known that the use of deadly force, absent sufficiently substantial and immediate threat, violated the Fourth Amendment."[3]
The United States Supreme Court granted Mullenix's petition for writ of certiorari on the question of qualified immunity only (not whether there was a Fourth Amendment violation) and reversed the Fifth Circuit's decision denying qualified immunity.

United States Supreme Court's Analysis

The United States Supreme Court began its analysis by reiterating that the doctrine of qualified immunity shields officials from civil liability if their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[4] A clearly established right is one that is "sufficiently clear that every reasonable official would [have understood] that what he is doing violates that right."[5] In other words, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law."[6]

The Supreme Court explained that it has repeatedly warned courts against defining clearly established law "at a high level of generality," and stated that the dispositive question is "whether the violative nature of the

particular conduct is clearly established."[7] The Court noted the Fifth Circuit's finding that Mullenix violated the clearly established rule that a police officer may not "use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others."[8] The Supreme Court pointed out, however, that it had, in fact, previously considered and rejected almost the "exact formulation of the qualified immunity question in the Fourth Amendment context."

The Supreme Court next reviewed its decision in *Haugen v. Brosseau*,[9] wherein an officer shot a suspect feeling in a vehicle out of fear that he endangered others the officer *believed* may have been on foot, possible occupants of vehicles in his path, and other citizens who *might* be in the area. The Ninth Circuit denied qualified immunity in the underlying case on the ground that "deadly force is only permissible where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others."[10] The Supreme Court reversed the Ninth Circuit's holding, finding that the correct inquiry was whether it was "clearly established that the Fourth Amendment prohibited the officer's conduct in the 'situation [she] confronted': whether to shoot a disturbed felon, set on avoiding capture through vehicular flight, when persons in the immediate area are at risk from that flight."[11] The Court noted that the application of qualified immunity depends very much on the facts of each case.

The Supreme Court also reviewed its decision in *Anderson v. Creighton*,[12] which it found instructive on the required "degree of specificity" in the application of qualified immunity. In *Anderson,* the lower court had denied qualified immunity based on the clearly established "right to be free from warrantless searches of one's home unless the searching officers have probable cause and there are exigent circumstances."[13] The Supreme Court reversed the lower court's decision, finding that it had failed to address the actual question at issue: whether "the circumstances with which Anderson was confronted . . . constituted probable cause and exigent circumstances."[14]

In the present case, the Supreme Court noted that Mullenix had been faced with a reportedly intoxicated fleeing suspect, who was involved in a high speed chase and had twice threatened to shoot police officers, and who was racing towards another officer stationed in the underpass. The Court stated that the relevant inquiry is whether, based on existing precedent, Mullenix had acted unreasonably, "beyond debate," in those circumstances.[15]

The Court stated that rather than providing clarity on this issue, excessive force cases involving vehicular pursuits revealed a "hazy legal backdrop against which Mullenix acted."[16] In comparing the threat in the present case, with that found in the *Brosseau* case, the Court found that the threat Leija posed "was at least as immediate as that presented by a suspect who had just begun to drive off and was headed only in the general direction of officers and bystanders."
The Supreme Court identified only two other cases it had considered involving high-speed vehicle pursuits since its decision in *Brosseau.* In *Scott v. Harris*,[17] the Court held that an officer did not violate the Fourth Amendment by ramming the car of a fleeing suspect whose "reckless driving posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase." In *Plumhoff v. Rickard*,[18] the Court reaffirmed its holding in *Scott* and found that "an officer acted reasonably when he fatally shot a fugitive who was 'intent on resuming' a chase that 'posed a deadly threat for others on the road.'"

Thus, the Supreme Court has never found the use of deadly force in connection with a dangerous vehicle pursuit to violate the Fourth Amendment, much less as a basis for denying qualified immunity. The Supreme Court noted that while Leija did not pass as many vehicles as the drivers in *Scott* and *Plumhoff* had, Leija had verbally threatened to kill police officers if they did not cease the pursuit, and was moments away from coming upon an officer at the time he was shot.

The majority noted that while the dissent focused on the availability of spike strips to terminate the chase, the mere use of the spike strips, particularly with a vehicle traveling at speeds between 85 and 110 miles per hour, was a danger not only of its own, but also to the officers manning them. The majority also observed that the dissent could cite no case "from this Court denying qualified immunity because officers entitled to terminate a high-speed chase selected one dangerous alternative over another."

Furthermore, while the dissent argued that no governmental interest existed to justify shooting at Leija's vehicle before it hit the spike strip, Mullenix had explained that he feared Leija might attempt to shoot at or run over the officers manning the spike strips. In fact, Mullenix hoped that his actions would "stop the car in a manner that avoided the risks to other officers and other drivers that relying on spike strips would entail."

Lastly, the Respondent argued that the danger Leija presented was less substantial than the threats that courts have found sufficient to justify deadly force. The Court stated, however, that "the mere fact that courts have approved deadly force in more extreme circumstances says little, if anything, about whether such force was reasonable in the circumstances here."

Accordingly, the Supreme Court held that because the constitutional rule applied by the Fifth Circuit was not "beyond debate," the lower court's decision denying qualified immunity was reversed.

Despite the holding in this case, officers should be mindful that proper police practices generally prohibit police officers from shooting at a moving vehicle unless exigent circumstances exist. In *Mullenix,* The Supreme Court emphasized that these cases are very fact specific. In this particular case, the officer was entitled to qualified immunity based on the specific facts that: the dispatcher reported that the fleeing suspect was likely intoxicated; on two separate occasions the suspect threatened to shoot police officers if they did not abandon the pursuit; the fleeing suspect was quickly approaching the location of an officer; and the use of spike strips in this case, with vehicle speeds reaching between 85 and 100 miles per hour, presented a danger, particularly to the officers manning the strips.

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[1] 2015 U.S. LEXIS 7160, 577 U.S. ____ (2015)
[2] 773 F.3d 712, 720-724 (CA5 2014)
[3] Id. at 725
[4] *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)

[5] *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012).
[6] *Malley v. Briggs*, 475 U.S. 335, 341 (1986)
[7] *Ashcroft v. Al-Kadd*, 563 U.S. 731, 742 (2011) (emphasis added)
[8] 773 F.3d 712, 725 (CA5 2014)
[9] 543 U.S. 194 (2004)
[10] 339 F.3d 857, 873 (CA9 2003)
[11] 543 U.S. at 199-200.
[12] 483 U.S. 635 (1987)
[13] Id. at 640.
[14] Id. at 640-641 (emphasis added)
[15] Citing *al-Kidd,* 563 U.S. at 741.
[16] 577 U.S. at _____.
[17] 550 U.S. 372, 384 (2007).
[18] 134 S. Ct. 2012 (2014)