

Objective Use of Force Standards Defined as to Pre-Trial Detainees- Guidance on Objective Reasonable Standards

In the decision released on Monday, the United States Supreme Court held in *Kingsley v. Hendrickson*[1] that the appropriate standard for deciding a pretrial detainee's excessive force claim is an objective standard.

Accordingly, a pretrial detainee is not required to prove a defendant officer's state of mind in a claim under 42 U.S.C. §1983 for excessive use of force. Our analysis of this case finds that in addition to the actual holding regarding pre-trial detainees, the Supreme Court provided additional guidance on how force incidents should be analyzed by utilizing specific factors which are important to policy and training standards.

Factual Background

Michael Kingsley, the Petitioner, was arrested on a drug charge and detained in a Wisconsin county jail awaiting trial. On the evening of May 20, 2010, an officer was performing a cell check when he noticed that Kingsley had covered an overhead light fixture with a piece of paper. Kingsley refused several officers' instructions throughout the evening to remove the paper from the light fixture. When Kingsley again refused to remove the paper the following morning, he was informed that officers would themselves remove the paper and that he would be moved to a receiving cell in the interim. Four officers then approached the cell and ordered Kingsley to stand, back up to the door, and keep his hands behind him. Kingsley refused to comply. The officers then handcuffed Kingsley, forcibly removed him from the cell, carried him to a receiving cell, and placed him face down on a bunk with his hands still handcuffed behind his back.

The officers testified that Kingsley then resisted their efforts to remove his handcuffs, while Kingsley testified that he did not resist. All parties agreed, however, that Sgt. Hendrickson placed his knee in Kingsley's back and that Kingsley used "impolite language" when telling him to "get off." Kingsley testified that Hendrickson and other officers then slammed his head into the concrete bunk, which the officers deny. The parties also agreed that Hendrickson directed another officer ("Degner") to "stun" Kingsley with a Taser; the officers applied the taser to Kingsley's back for five seconds and the officers then left Kingsley alone in the receiving cell. The officers returned to Kingsley's cell approximately fifteen minutes later and removed his handcuffs.

Procedural History

Kingsley filed a federal action under § 1983, alleging that Hendrickson and Degner used excessive force against him in violation of his Fourteenth Amendment Due Process rights. The officers moved for summary judgment, which the District Court denied on the grounds that "a reasonable jury could conclude that [the officers] acted with malice and intended to harm [Kingsley] when they used force against him." [2] The cause of action against the officers then proceeded to trial.

At the conclusion of the trial, the District Court instructed the jury that "excessive force means force *applied recklessly* that is unreasonable in light of the facts and circumstances at the time." The District Court's jury instructions also included providing the jury with a list of factors they may consider when "deciding whether

one or more defendants used unreasonable force and acted with *reckless disregard of plaintiff's rights*." The jury found in favor of the defendant officers.

On appeal, Kingsley argued that the correct standard for deciding a pretrial detainee's excessive use of force claim is "objective unreasonableness." The Appellate Court disagreed with Kingsley's argument and held "that the law required a 'subjective inquiry' into the officer's state of mind," and that there must be "an actual intent to violate [the plaintiff's] rights or reckless disregard for his rights." [3]

Kingsley then filed a petition for certiorari asking the United States Supreme Court to determine "whether the requirements of a § 1983 excessive force claim brought by a pretrial detainee must satisfy the subjective standard or only the objective standard." The Supreme Court granted certiorari.

United States Supreme Court's Analysis

In determining that courts should use an objective standard when deciding whether deliberately used force is excessive, the Supreme Court looked to its precedent set forth in *Graham v. Conner* as well as *Bell v. Wolfish*, [4] wherein the Court applied an objective standard to evaluate a variety of prison conditions, including prison practice of "double-bunking," and did not consider the prison officials' subjective beliefs about the policy. The *Bell* Court examined "objective evidence, such as the size of rooms and available amenities, before concluding that the conditions were reasonably related to the legitimate purpose of holding detainees for trial and did not appear excessive in relation to that purpose." [5] The Supreme Court reasoned that *Bell* shows that "a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." The Supreme Court further stated that experience shows that an objective standard is "workable" and is consistent with jury instructions provided in several circuits. The Court also pointed to the fact that many facilities, including the Wisconsin facility at issue in this case, train its officers on the "objective reasonableness standard."

Lastly, the Supreme Court stated that the use of an objective standard "adequately protects an officer who acts in good faith." The Court recognized that officers are "often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly involving." [6] Accordingly, courts must judge the reasonableness of a use of force from the perspective and with the knowledge of a defendant officer. The Supreme Court also noted that police officers enjoy qualified immunity and are not liable for excessive force claims unless they violated a "'clearly established' right, such that it would [have been] clear to a reasonable officer that his conduct was unlawful in the situation he confronted." [7]

The Supreme Court next considered the lawfulness of the District Court's jury instructions, wherein the instruction defined "excessive force" as "force applied recklessly that is unreasonable in light of the facts and circumstances at the time," as well as the requirement that Kingsley provide that officers acted with "reckless disregard" to Kingsley's rights and safety. Kingsley argued that the District Court's use of the word "reckless" suggested a need to prove that the defendants "acted with a certain subjective state of mind with respect to the excessive use of force claim." The Supreme Court agreed with Kingsley's argument and found that the jury instructions were erroneous. As stated, the jury instructions "suggested the jury should weigh

[the defendant officers'] subjective reasons for using force and subjective views about the excessiveness of the force," rather than the objective standard as required by the Court's ruling.[8]

Supreme Court's Conclusion

An objective standard is appropriate in the context of excessive force claims brought by pretrial detainees pursuant to the Fourteenth Amendment. The court cautioned, however, that courts cannot apply the "objectively reasonable" standard "mechanically." Rather, the "objectively reasonable" standard turns on the "facts and circumstances of each particular case." [9] Furthermore, as with excessive force cases involving non-detainees, the court's determination is from the perspective of a reasonable officer at the scene, including what the officer knew at that time, not with the 20/20 vision of hindsight. [10] In addition, courts must account for the government's legitimate interest in managing a holding facility for detainees and appropriately defer to "policies and practices that in the judgment of jail officials are needed to preserve internal order and discipline and to maintain institutional security." [11]

The Court further provided that when determining the reasonableness or unreasonableness of a use of force, courts may consider "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." [12]

Recommendations

As discussed above, the majority of this case is dedicated to providing clear instructions on use of force standards applicable to the pre-trial detainee. Correctional and Law Enforcement agencies across the country can now amend their policies and training to reflect the Supreme Court's ruling of the objectively reasonable standard. We also believe that with all the media hype and attention on police use of force cases across the country, the Supreme Court took an opportunity to remind law enforcement of the standards that will be utilized when analyzing a use of force case under an objectively reasonable standard. These factors, however, do not replace the *Graham* standard of severity of the crime, threat to the officer, and active resistance or evading arrest by flight. Rather, the Supreme Court provided these factors, which were not meant to be an exclusive list, to illustrate the types of objective circumstances potentially relevant to a determination of excessive force. [13]

Clarification of the Suggested Factors and Training Recommendations:

As stated above, the Supreme Court provided the following factors a court may consider when determining the reasonableness and unreasonableness of a use of force:

1. "The relationship between the need for the use of force and the amount of force used": This factor essentially restates the Fourth Amendment principle from *Graham v. Connor*, which provided: "'Reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake."

[14] The Tenth Circuit has already applied this suggested factor in *Estate of Booker v. Gomez*, [15] wherein the court stated: "We recognize that much of the case law we rely upon [for pretrial claims] deal with excessive force claims under the Fourth, not the Fourteenth Amendment. Although the two standards are different, a finding of excessive force under the Fourth Amendment is highly relevant to the relationship between the amount of force used and the need presented...."

2. "The extent of the injury inflicted":

Individuals that are training only the objective reasonableness standard must utilize extreme "CAUTION." These individuals must understand this suggested factor derives from the Eighth Amendment and the Supreme Court has given very clear direction not to stray from its meaning. The Supreme Court has clearly stated "the use of excessive physical force against a prisoner may constitute cruel and unusual punishment [even] when the inmate does not suffer serious injury." [16] The Supreme Court has further cautioned: "This court rejected the notion that significant injury is a threshold requirement for stating an excessive force claim." [17]

3. "Efforts made to temper or to limit the amount of force":

This factor is just another way of saying the individual was afforded a "chance to comply."

4. "Threat reasonably perceived":

This suggested factor also derives from the Eighth Amendment. Training threat assessment, however, is the "cornerstone" for all use of force training programs and proper training for officers to assess imminent and immediate threats is well established by the Supreme Court. [18]

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