

SCOTUS Rules for Police Officer in Excessive Force Case

This week the Supreme Court of United States decided *Kisela v. Hughes*, 584 US ____ (2018), and the opinion is already the center of a debate. In this case, not only did the majority find that Officer Kisela was entitled to qualified immunity for his use of deadly force, but it also went on to criticize (to the point of expressing disappointment) the Ninth Circuit Court of Appeals for its reasoning. The case also includes a passionate dissenting opinion made by Justices Sotomayor and Ginsburg that it is also worth discussing. Let's start with the facts of the case.

In May 2010, somebody in Hughes' neighborhood called 911 to report that a woman was hacking a tree with a kitchen knife. Officers Kisela and Garcia heard the report over the radio in their patrol car and responded. A few minutes later the person who had called 911 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, Officer Kunz also arrived to the scene.

Garcia spotted a woman, later identified as Chadwick, standing next to a car in the driveway of a house. A chain-link fence with a locked gate separated Chadwick from the officers. The officers then saw Hughes emerge from the house carrying a large knife at her side. Hughes walked toward Chadwick and stopped no more than six feet from her. All three officers drew their guns. At least twice they told Hughes to drop the knife. Chadwick said "take it easy" to both Hughes and the officers. Hughes appeared calm, but she did not acknowledge the officers' presence or drop the knife. The top bar of the chain-link fence blocked Kisela's line of fire, so he dropped to the ground and shot Hughes four times through the fence. Then, the officers jumped the fence, handcuffed Hughes, and called paramedics, who transported her to a hospital. She was treated for non-life-threatening injuries. Less than a minute had transpired from the moment the officers saw Chadwick to the moment Kisela fired shots. All three of the officers later said that at the time of the shooting they subjectively believed Hughes was a threat to Chadwick.

In an affidavit Chadwick said that she did not feel endangered at any time. Based on her experience as Hughes' roommate, Chadwick stated that Hughes "occasionally has episodes in which she acts inappropriately, but she is only seeking attention. This information, however, was unknown to the officers at the time of the incident.

Hughes sued Kisela alleging that he had used excessive use of force in violation of the Fourth Amendment. The District Court granted summary judgment to Kisela, but the Court of Appeals for the Ninth Circuit reversed on the following grounds:

- 1) The record was sufficient to demonstrate that Kisela violated the Fourth Amendment.
- 2) The constitutional violation was clearly established because, in its view, the constitutional violation was obvious and there was Circuit precedent that the court perceived to be analogous.

Kisela appealed to the Supreme Court and the Court REVERSED the Appellate Court's decision on the following grounds:

- 1) While the Appellate Court found that Kisela violated the 4th Amendment, the Supreme Court stated it need not, and did not, decide whether a Fourth Amendment violation occurred (a proposition the Court found was not at all evident), — based on the facts of the case, however, Kisela was at least entitled to qualified immunity.
- 2) “‘Qualified Immunity’ attaches when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *White v. Pauly*, 580 U.S. ___, ___ (2017)(slip op, at 6)
- 3) “Reasonableness is judged against the backdrop of the law at the time of the conduct.” *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004)
- 4) While the analysis does not require a case directly on point, “existing precedent must have placed the statutory or constitutional question beyond debate.” *White*, 580 U.S. at ____.
- 5) The Court has repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a “high level of generality.”
- 6) “Use of excessive force is an area of law ‘in which the result depends very much on the facts of each case,’ and thus police officers are entitled to qualified immunity unless existing precedent ‘squarely governs’ the specific facts at issue.” *Mullenix v. Luna*, 577 U.S. ___, ___ (2015)(slip op., at 12)
- 7) Where constitutional guidelines seem inapplicable or too remote, it does not suffice for a court simply to state that an officer may not use unreasonable and excessive force, deny qualified immunity, and then remit the case for a trial on the question of reasonableness.
- 8) An officer “cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in the defendant’s shoes would have understood that he was violating it.” That is a necessary part of the qualified-immunity standard, and it is a part of the standard that the Court of Appeals here failed to implement in a correct way.
- 9) Kisela shot Hughes 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 atree with a large kitchen knife and whose behavior was erratic enough to cause a concerned bystander to call 911 and then flag down the officers. 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.
- 10) The Court ended its analysis criticizing the Ninth Circuit for relying on a case that happened after the incident, and cases that were not similar to the case at bar, finding that not one of the cases on which the Appellate Court relied supported a denial of qualified immunity as to Kisela.

It is important to note that the Supreme Court relied on *Tennessee v. Garner* 471 US 1 (1985) and *Graham v. Connor* 490 US 386 (1989), in their ruling.

The Dissenting Opinion

The perspective of Justice Sotomayor and Justice Ginsburg in their dissenting opinion is worth discussing here. In essence, they concluded that Kisela's conduct was unreasonable for the following reasons:

1. The police officers themselves never witnessed any erratic conduct.
2. Hughes stood stationary about six feet away from Chadwick.
3. Hughes appeared composed and content and held a kitchen knife down at her side with the blade facing away from Chadwick.
4. Hughes never made any aggressive or threatening movements.
5. Hughes was nowhere near the officers, had committed no illegal act, was suspected of no crime, and did not raise the knife in the direction of Chadwick or anyone else.
6. One of the officers testified that he wanted to continue trying verbal commands and see if that would work.
7. There is significant doubt as to whether she was aware of the officers' presence at all, and evidence suggests that Hughes did not hear the officers' swift commands to drop the knife.
8. The record suggests that Kisela could have, but failed to, use less intrusive means before deploying deadly force. Kisela should have used his Taser.

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