Deadly Force Pursuit & Qualified Immunity: Monzon v. City of Murrieta

Description

As we navigate through this difficult time, we know that one of our basic liability protections, qualified immunity, is under siege on all fronts, at both the state and federal levels (for more on Qualified Immunity see Parts One, Two, and Three from our three part Qualified Immunity Series). Interestingly, today's case upholds the protections afforded by Qualified Immunity and comes from, of all places, the 9th Circuit!

Just a quick caution before we get to the facts and legal "meat" of this case; today we will be strictly focusing on the use of force by the involved officers under the specific circumstances presented at the time the officers fired. We will not be looking at the pursuit itself, or the officers' decision to pursue the stolen vehicle. Many of you may have agency directives that prohibit engaging in pursuits for the types of offenses committed here. Our purpose in discussing this case today is not to override your agency practices.

FACTS

In 2016 Murrieta police officer Chris Zeltner checked the license plate of a speeding KIA van and determined the van was reported stolen. Monzon (the driver of the stolen vehicle) led police on a five-six mile pursuit, often reaching speeds in excess of 100 MPH, driving recklessly through intersections, and leaving and entering the freeway several times. Unknown to the officers, a passenger, Reyes, was seated in the back of the van.

The pursuit continued to a dead-end road where, faced with the dead end, Monzon stopped the van. The officers pulled in behind the van (four cruisers occupied by five officers) and took positions on either side of the van, ordering Monzon to exit the vehicle. Rather than follow the officers' instructions, Monzon turned the van in a four-point turn, struck a fence post, and drove towards the officers. As the van accelerated towards Zeltner, the officer fired one shot at Monzon. Zeltner fired five more shots as the van drove past him and towards the officers behind him. The van continued directly towards the remaining officers and the officers fired additional rounds at Monzon. The van then crashed into a cruiser forcing the cruiser into Officer Williams with such force that the officer's arm went through the cruiser window. This entire episode elapsed in less than five seconds.

When the van engine stopped revving, the officer called Monzon out of the van but did not receive a response. A dog was deployed and then called off when Monzon appeared unresponsive. Officers determined Monzon had been shot multiple times and provided medical care until paramedics arrived. Reyes was found in the back of the van and Monzon was pronounced dead at the scene.

Monzon's parents brought state and federal claims alleging violations of Monzon's 4th Amendment protections against the officers and *Monell*[i] claims against the City for failure to train the officers. The defendant City and officers filed a motion for summary judgment on all claims and the trial court granted the motion dismissing all claims finding that the officers' use of force was reasonable under the circumstances. This appeal followed.

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NINTH CIRCUIT FINDINGS

As the 9th Circuit accurately noted in their opening statement "*Because the officers have raised the affirmative defense of qualified immunity, plaintiffs cannot prevail on their federal claims unless the officers violated a clearly established constitutional right."*[ii] The court also determined that they must review the facts in a light favoring the plaintiff and through the perspective of the police officer acting in the heat of the moment without the benefit of 20/20 hindsight.

The court first looked at the question of whether the officers' actions violated the plaintiff's constitutional protections. In their evaluation the justices considered:

- **the facts leading up to the use of force;**
- **whether officers had probable cause to believe the suspect posed a threat of serious physical harm;**
- **the severity of the crime; and**
- **whether the suspect was actively resisting or attempting to evade arrest**

Reviewing these factors, the court noted that *"the severity of the crime weighs in favor of the use of force"*. Monzon had led the officers on a reckless, high-speed chase, and Monzon created an imminent danger of serious physical harm to the officers when he accelerated the van towards them.

The court also noted that the officers had mere seconds to act (less than 5 seconds) and "*cherry picking specific facts in hindsight would be a serious mistake*". Plaintiffs argued that the use of force would only have been reasonable if the officers were in the direct path of the vehicle. Under the circumstances, the plaintiffs argued, none of the officers were in the *direct* path of the vehicle and, therefore, the use of deadly force was unreasonable. The 9th circuit disagreed, turning to *Plumhoff v. Rickard*[iii] where the Supreme Court found it was not clearly established that an officer made an unconstitutional seizure when he shot Rickard as the officer stood on an overpass.

The court found it was indisputable that Monzon drove towards the officers in a manner that created an imminent danger of serious injury or death to the officers and, therefore, it was reasonable for the officers to use deadly force to protect themselves and each other. Finding that the officers' actions did not violate constitutional mandates the court was not required to address the second prong of Qualified Immunity (was the violation clearly established at the time of the incident?). However, the court did address the second prong, finding that "*existing precedent does not show that the officers were plainly incompetent or knowingly violated the law when they employed deadly force".*

The 9th Circuit affirmed the trial court's ruling.

TAKEAWAYS

This case led to a good outcome for the officers, but there are a couple of key points to keep in mind moving forward; during the investigation of this case officers were able to download the so-called "black box" information, and determined that the accelerator had been pushed to 84% to 99% multiple times while the van headed towards the officers. Secondly, there was no question that the van was bearing down on the officers, and when Officer Zeltner fired at the van it was either coming at him or heading towards other officers. In several past cases the courts have not allowed Qualified Immunity where officers fired at a vehicle after it passed them. This was clearly not the case here.

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Finally, officers need to take care to protect themselves in these fast-moving incidents where tactical and safety objectives need to take precedent over the arrest objectives. Every major event in this case happened within seconds, so be prepared for these situations by reading agency directives and keeping up to date on your tactical training.

For more on Use of Force and tactical operations, please consider attending our virtual 2020 Use of Force Summit.

[i] *Monell* Claims

[ii] 9th Circuit Opinion

[iii] *Plumhoff v. Rickard*

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