

SCOTUS: 9th Circuit “Provocation Rule” Is an Unwarranted and Illogical Expansion of *Graham v. Connor*

Description

On May 30th, 2017, the United States Supreme Court issued its opinion in *County of Los Angeles v. Mendez*,^[1] which eliminated the 9th Circuit’s “Provocation Rule,” finding that once a use of force is deemed reasonable under *Graham v. Connor*,^[2] it may not be found unreasonable in reference to a separate constitutional violation.

FACTS

In October 2010, Deputies Christopher Conley (“Conley”) and Jennifer Pederson (“Pederson”) were assigned to a task force established to locate a wanted parolee named Ronnie O’Dell (“O’Dell”). A felony arrest warrant had been issued for O’Dell, who was believed to be armed and dangerous. The task force received a tip from a confidential informant that a man fitting O’Dell’s description was riding a bicycle in front of a residence owned by a woman named Paula Hughes. The officers were also told that “a male named Angel Mendez” lived in the backyard of the Hughes residence with a pregnant woman named Jennifer Garcia (now Mrs. Mendez.) The task force’s plan for apprehending O’Dell provided for some officers to approach the front door of Ms. Hughes’ residence while Conley and Pederson would search the rear of the property and cover the back door of the residence. The officers did not have a search warrant to enter Hughes’ property.

When officers questioned Ms. Hughes at the front door of her residence, she asked if the officers had a search warrant. The officers told her they had a warrant for O’Dell’s arrest. The officers heard what appeared to be sounds of someone running in the house, and prepared to enter the home by force. Ms. Hughes then opened the door and told them O’Dell was not in the house. Officers searched her home, but did not locate O’Dell. Meanwhile Conley and Pederson, with guns drawn, searched the rear of the residence, which included three metal storage sheds and a one-room shack. The shack was surrounded by an air conditioning unit, electric cord, water hose and other belongings, and had a single doorway covered by a blue blanket. The deputies did not have a search warrant and did not knock and announce their presence. When the deputies entered the shack they saw the silhouette of an adult male holding what appeared to be a rifle pointed at them. Conley yelled “Gun!” and both deputies fired 15 shots in total. Both Mendezes were injured by the shooting. Mr. Mendez required amputation of his right leg below the knee, and Ms. Mendez was shot in the back. The weapon in question was a BB rifle that closely resembled a small caliber rifle, which Mr. Mendez kept in the shed for use on rats and other pests.

PROCEDURAL HISTORY

The Mendezes filed a lawsuit under 42 U.S.C. § 1983, alleging a violation of their 4th Amendment rights. The Mendezes specifically alleged three 4th Amendment claims: (1) the officers executed an unreasonable search by entering the shack without a warrant (“warrantless entry”); (2) the officers failed to announce their presence before entering the shack (“knock-and-announce”); and (3) the officers used excessive force when “opening fire” after entering the shack.

The district court held that the officers violated the 4th Amendment warrant requirement, as the warrantless entry into the shack was a 4th Amendment search and was not justified by exigent circumstances or another exception to the warrant requirement. The court also found that the officers violated the 4th Amendment knock-and-announce rule. The district court concluded, however, that the officers' use of force was reasonable "given their mistaken belief that a man was holding a firearm threatening their lives." The District Court, nevertheless, held the officers liable for excessive force under the 9th Circuit's "provocation rule," and awarded damages in the amount of \$4 million. On Appeal, the Court of Appeals for the Ninth Circuit held that the officers were entitled to qualified immunity on the knock-and-announce claim and that the warrantless entry violated clearly established law. It also affirmed the District Court's application of the provocation rule, and held in the alternative, that basic notions of proximate cause would support liability even without the provocation rule. The officers appealed to the United States Supreme Court.

SCOTUS ANALYSIS

The Ninth Circuit's "provocation rule" provides that "an officer's otherwise reasonable (and lawful) defensive use of force is unreasonable as a matter of law, if (1) the officer intentionally or recklessly provoked a violent response and (2) that provocation is an independent constitutional violation. The provocation rule essentially "uses another constitutional violation to manufacture an excessive use of force claim where one would not otherwise exist." If a court finds an officer's use of force reasonable under *Graham*, the provocation rule instructs a court to ask whether the officer violated the 4th Amendment in some other way leading up to the event. If so, the separate 4th Amendment violation renders the use of force unreasonable "as a matter of law."

The Supreme Court found that the 4th Amendment provides no basis for the Ninth Circuit's "provocation rule." The provocation rule is incompatible with the Supreme Court's excessive force jurisprudence, which sets forth a settled and exclusive framework for analyzing whether the force used in making a seizure complies with the 4th Amendment. The operative question in such cases is "whether the totality of the circumstances justifie[s] a particular sort of search or seizure." When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim. The provocation rule, however, instructs courts to look back in time to see if a different 4th Amendment violation was somehow tied to the eventual use of force, an approach that mistakenly conflates distinct 4th Amendment claims.

The Supreme Court reasoned "an excessive force claim is a claim that a law enforcement officer carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances. It is not a claim that an officer used reasonable force after committing a distinct 4th Amendment violation, such as unreasonable entry." The Supreme Court further reasoned that by "conflating excessive force claims with other 4th Amendment claims, the provocation rule permits excessive force claims that cannot succeed on their own terms."

The Supreme Court also rejected the Appellate Court's holding that found the officers liable under basic notions of proximate cause, which concluded that the shooting was proximately caused by the officers' warrantless entry of the shack. The Ninth Circuit claimed that when officers make a "startling entry by barging into a home unannounced, it is reasonably foreseeable that violence may result." The Supreme Court held that the Appellate Court's "proximate cause analysis, like the provocation rule, conflated distinct Fourth Amendment claims and required only a murky causal link between the warrantless entry

and the injuries attributed to it.”

The Supreme Court vacated the Court of Appeals judgment, and remanded the case for further proceedings. The Supreme Court directed the lower court to revisit the question whether proximate cause permits respondents to recover damages for their injuries based on the deputies’ failure to secure a warrant at the outset.

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1. 581 U.S. ____ (2017 [?](#))

2. 490 U.S. 386 (1989) [?](#)

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