



US Supreme Court Affirms Qualified Immunity in 2 Force Cases

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There has been a lot of discussion related to the qualified immunity doctrine in the past year and a half. The doctrine of qualified immunity was established by the Supreme Court in the 1980's as an affirmative defense in Section 1983 cases. Since that time, the doctrine has remained the same: Qualified immunity applies when an officer's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The tricky issue in most cases is whether there is a prior case with sufficiently similar facts so that reasonable officers would be aware that their conduct is unlawful. In two recent cases, the Supreme Court reiterated that the prior caselaw must be very similar in order to deny qualified immunity. In Per Curiam opinions, the Court reversed lower courts and granted qualified immunity for the officers. Of particular significance, a Per Curiam opinion is one issued by the Court as a whole and not naming specific judges as the authors; it is a signal that the cases were uncontroversial, obvious and don't require a substantial opinion.

The Court issued the 2 succinct opinions on the same day. In [Rivas-Villegas v. Cortesluna](#), a police officer in Union City, California responded to a 911 call reporting that a woman and her 2 children were barricaded in a room for fear that the woman's boyfriend was going to hurt them. The victims told the 911 operator that the boyfriend was trying to hurt them with a chainsaw, was "always drinking," had "anger issues" and was "really mad." The officers responded to the scene and ordered the offender to come out with his hands up. As he walked out, the officers ordered him to get on his knees. When he was about 10 feet from the officers, they observed a knife in his front left pocket. When the offender lowered his hands, an officer shot him with a bean-bag round in his stomach and hip. He was then ordered to get down at which time an officer placed his left knee on the left side of the offender's back for no more than 8 seconds while he was handcuffed. The offender filed an excessive force case against the officers.

The trial court's grant of defense summary judgment was reversed by the 9th Circuit, which found the officer was not entitled to qualified immunity. The Supreme Court reversed the 9th Circuit, finding the officer was entitled to qualified immunity. "A right is clearly established when it is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.'" With respect to Fourth Amendment cases in particular, the Court emphasized the importance that the specific facts must be very similar to a prior case. "Whether an officer has used excessive force depends on the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

The second case is a deadly force case where officers arrived at a home because a women's ex-husband was there, intoxicated and would not leave. [Tahlequah v. Bond](#). The man kept his tools in his ex-wife's garage and that's where he was when the officers arrived. He appeared nervous and refused to allow the officers to conduct a pat down to check him for weapons. He walked to the back of the garage and grabbed a hammer, holding it over his head as if preparing to swing

a baseball bat. The officers ordered him to drop the hammer and he started walking toward an officer when two officers shot and killed him. His estate filed a section 1983 excessive force case. The district court granted the defense motion for summary judgment and the 10th Circuit reversed, concluding that a jury could find that the officers conduct recklessly created the situation that led to the fatal shooting. The Supreme Court reversed, finding that the officers were entitled to qualified immunity. “As we have explained, qualified immunity protects ‘all but the plainly incompetent or those who knowingly violate the law.’” The Court reiterated its clear direction to lower courts: “We have repeatedly told courts not to define clearly established law at too high a level of generality.” Since the prior cases relied on by the 10th circuit had significantly different facts, the Supreme Court reversed and granted the officers qualified immunity.