

No.

SUPREME COURT OF THE UNITED STATES

RAFAEL MARTINEZ, CITY OF CAMDEN,
SCOTT THOMSON,

Petitioners,

vs.

BRYHEIM JAMAR BASKIN,

Respondent.

On Petition for Writ of Certiorari to
The United States Supreme Court

PETITION FOR WRIT OF CETIORARI

Respectfully submitted,
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I. QUESTION PRESENTED

Is the petitioner/Police Detective Rafael Martinez protected by “qualified immunity” in this action brought under the jurisprudence of 42 U.S.C.A. § 1983?

II. PARTIES TO PROCEEDING AND RELATED CASES

The defendant/appellants in the New Jersey Supreme Court are Rafael Martinez, Detective, Scott Thompson, Chief of Police and the City of Camden. The plaintiff/respondent in the New Jersey Supreme Court is Bryheim Jamar Baskin.

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VI. PETITION for WRIT of CERTIORARI

Petitioner, Rafael Martinez respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey in this case.

VII. OPINIONS BELOW

The opinion of the New Jersey Supreme Court is reported at Baskin v. Martinez, 243 N.J. 112, 233 A.3d 475 (2020), the opinion of the Appellate Division of the Superior Court of New Jersey is Baskin v. Martinez, No. A-5553-15T2, 2018 WL 4373795 (N.J. Super. Ct. App. Div. Sept. 14, 2018), aff'd, 243 N.J. 112, 233 A.3d 475 (2020). The opinion of the Law Division of the Superior Court is attached hereto.

VIII. JURISDICTION

The opinion of the New Jersey Supreme Court was issued on July 9, 2020. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1257 (West), having timely filed this petition for a writ of certiorari within ninety days of the New Jersey Supreme Court's decision.

IX. CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Fourth Amendment right of the respondent Bryheim Jamar Baskin and the right of Rafael Martinez to the protection of qualified immunity.

X. STATEMENT OF THE CASE

This case concerns the appropriate legal standard to be applied to the question, when is a police officer protected by the principle of “qualified immunity”?

The action arose on September 11, 2012 when Bryheim Baskin was observed by members of the City of Camden police force¹ acting in a suspicious manner. It is undisputed Mr. Baskin was in possession of illegal drugs with the intent to sell, attempted to elude the police first by car and then on foot and was armed with a deadly weapon.

The police officers were in multiple police vehicles and pursued Baskin. When Baskin’s escape route was blocked by the police, he put his car in reverse and violently rammed a second police vehicle blocking this avenue of escape.

Baskin then got out of his vehicle and began to run away. The police officers observed Baskin had a pistol tucked in his waistband as he attempted to flee. The officers shouted “gun” to alert each other the plaintiff was armed with a deadly weapon. The uniformed police officers also shouted “police” to identify themselves as police officers. Detective Martinez engaged in a foot chase after Mr. Baskin.

¹ The City’s Police Force has since disbanded and presently the Camden County Police provide the City with police protection.

Detective Martinez, during the course of the chase, observed Mr. Baskin drop the gun he was armed with, stop to retrieve it, and then run behind a house when Detective Martinez lost sight of him.

When Detective Martinez lost sight of Mr. Baskin he slowed to draw his weapon, for the first time, as he approached the rear of the property Baskin had run to.

Unbeknownst to Detective Martinez, Mr. Baskin had entered a fenced in yard which prevented his successful escape from the police. Baskin threw his gun away when he realized he was caught. It was subsequently recovered.

Detective Martinez approached the rear of the property slowly with his weapon drawn. He observed Mr. Baskin turning toward him with what he thought was his weapon in his hand. He fired once and struck Baskin in the abdomen.

Mr. Baskin claims after he threw away his gun he turned toward the officer with his hands raised. He claims he was surrendering at that time. He admits he was standing and turning toward Detective Martinez when he was shot.

Cherron Johnson has provided testimony that from her vantage point, some distance down the street, Mr. Baskin had nothing in his hands when he was turning toward the officer and was shot.

The investigation at the scene discovered Mr. Baskin had two cell phones when this incident occurred, a fact Baskin admits. One cell phone was found on the ground near where Baskin lay. The other remained in his pocket.

Mr. Baskin pleaded guilty to possession with intent to distribute, unlawful fleeing to avoid arrest and possession of a firearm² and was sentenced to a four year term of imprisonment. He has served his time and has been released.

The matter was the subject of investigations by the Camden County Prosecutor's Office and the Office of the New Jersey Attorney General. These investigations concluded Detective Martinez acted reasonably under the circumstances he faced that day.

Summary judgement based upon a finding Detective Martinez was protected by the principle of qualified immunity was granted in the Law Division.

Mr. Baskin appealed the matter to the Appellate Division which, in a split decision (2-1), reversed the ruling of the Law Division Judge. The majority opinion was based upon the fact a single factual dispute existed because Detective Martinez testified Mr. Baskin held an object in his hand when he turned and Cherron Johnson's claim she saw nothing in his hands.

An appeal as of right, because of the split decision in the Appellate Division, was taken to the New Jersey Supreme Court.

The New Jersey Supreme Court, in a 4-3 decision, affirmed the ruling of the Appellate Division. It found the existence of a single factual dispute prevented the

² The plea testimony of Baskin is contradicted by his deposition testimony in this action.

entry of summary judgment based upon qualified immunity and remanded the case for trial.

XI. Reasons For Granting The Petition

The standard to be applied to a request for qualified immunity is well established. The issue is a question of law to be determined by the Court. Brown v. State, 230 N.J. 84, 165 A.3d 735 (2017); see also Hernandez v. New York, 500 U.S. 352, 372, 111 S. Ct. 1859, 114 L. Ed. 2d 395 (1991).

The Court in assessing the issue is required to evaluate the “totality of the circumstances” facing the state officer. It is improper to ignore this standard and to determine the issue based upon a claim that a single fact is in dispute. Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

The opinion of the New Jersey Supreme Court is in direct conflict with the appropriate and applicable standard. The majority decision is based entirely upon the claim Mr. Baskin asserts, that he was unarmed, and Ms. Johnson testimony she saw nothing in his hands as he turned toward the pursuing officer. The reliance on this single fact ignores the requirement to assess the “totality of the circumstances” when deciding the issue.

1. The Appropriate Standard

Courts have long held the issue in determining whether qualified immunity is appropriate is to examine the totality of the circumstances facing the officer and then to decide if he acted in a manner consistent with the actions of a “reasonable

police officer. Graham, 490 U.S. 386, Tennessee v. Garner, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985).

The principle of “qualified immunity” protects all officers “but the plainly incompetent or those who knowingly violate the law.” Connor v. Powell, 162 N.J. 397, 409, 744 A.2d 1158 (2000) (quoting Malley v. Briggs, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986)). The decision of the Court below ignored the totality of the circumstances and focused on one fact and one fact only.

While it is correct, generally, in ruling on a motion for summary judgement to determine if there are any disputed issues of material facts, RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 191 A.3d 629 (2018), in the qualified immunity context the question is do all of the facts establish a reasonable police officer could believe the actions were justified. Conde v. City of Atl. City, 293 F. Supp. 3d 493 (D.N.J. 2017); see also City & Cty. of San Francisco, Calif. v. Sheehan, 575 U.S. 600, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015). The opinion of the court below fails to apply the totality of the circumstances standard but instead focused only upon what took place at the end of Baskin’s attempted escape.

2. The Opinion Of The Lower Court Is Contrary To Established Precedent

The majority opinion states, without citation to any authority,

“The law prohibiting the use of deadly force against a non-threatening and surrendering suspect was clearly established, as evidenced by cases in jurisdictions which have addressed the issue. Opinion p. 3

This statement, the premise for the decision, does not address the totality of the circumstances facing Martinez and is a diversion from the applicable standard, as demonstrated in the case of Conde, 293 F. Supp. 3d 493. Police responded to a call of armed men and upon their arrival of plaintiff attempted to flee. Plaintiff claims the decedent stopped and was raising his arms to surrender when he was shot twice by the pursuing officer.

The Court correctly ruled the defendants were protected by qualified immunity based upon an analysis of the totality of the circumstances which included evidence presented by plaintiff to indicate the decedent was unarmed and surrendering.

The emphasis of the Court's opinion was "...the reasonableness requirement of the Tennessee, 471 U.S. at 7.

The case of Waterman v. Batton, 393 F.3d 471 (4th Cir. 2005) involved a high speed chase and the subsequent use of the vehicle to attempt to run down the pursuing/shooting officers. The Court found, after an evaluation of all of the facts, it was reasonable for the officers to conclude plaintiff's decedent was using the car as a weapon. Thus the officers were determined to be protected by qualified immunity. The Court noted the officers did not have a moment to consider whether plaintiff intended to run them down. They were forced to act and their actions were reasonable under all of the circumstances.

The Court properly considered the “totality of the circumstances” in determining the officers were protected by the principle of qualified immunity unlike the Court in this action.

3. Qualified Immunity Protects All But the Plainly Incompetent

The proper application of qualified immunity recognizes the police will be faced with circumstances requiring split second decisions, such as Detective Martinez faced in this matter. The Fourth Amendment does not require a police officer be perfect only that he/she act in a reasonable manner. Heien v. North Carolina, 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014). The Court in Heien, 574 U.S. 54, states “Searches and seizures based on mistakes of fact may be reasonable.”

The opinion of the majority in this matter is completely contrary to the proper application of this principle. The Court dismisses all that occurred prior to the encounter behind the house Baskin fled to. The detective had been subjected to an attempt to seriously injure him when Baskin rammed his vehicle into the police vehicle. Detective Martinez was aware Baskin was armed from the time Baskin exited his vehicle. Detective Martinez did not un-holster his weapon until Baskin dropped his gun, retrieved it and then ran out of the Detective’s sight behind the houses with the gun in his hand. The detective reasonably feared for his life and recognized Baskin posed a threat to the public at this time.

It has long been held these determinations must be made from the perspective of the officer facing the threat to his life and are not to be decided “with the 20/20 vision of hindsight.” Graham, 490 U.S. at 396. The Court went on:

“Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,...violates the Fourth Amendment” citing Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973).

This is exactly the impact of the majority opinion of the New Jersey Supreme Court. There is no assessment of the evolving situation facing the detective on that day. All of the facts leading to the shooting are ignored and an improper focus on what happened in a split second behind the house is solely relied upon.

The Court ignores the measured and reasonable nature of the actions of the detective and determined, because of a single factual issue, he was not immune. This is an application of the principle which is contrary to and violative of established precedent and must not be allowed to stand.

XII. CONCLUSION

The Petition should be granted. For the foregoing reasons, Petitioners respectfully request that this Court issue a writ of certiorari to review the judgement of the New Jersey Supreme Court.

Respectfully submitted,

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