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Qualified Immunity Denied Because Officer Used Knee to Secure Suspect

Cortesluna v. Leon et al

Ninth Circuit Court of Appeals, No. 19-15105, Filed October 27, 2020

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Facts: On the night of November 6, 2016, a 911 dispatcher received a call from a 12-year old girl, who reported that she, her mother, and older sister were barricaded in a room at their home, because her mother's boyfriend, Ramon Cortesluna, had a chain saw and was going to attack them. A sawing sound of some type was audible to the 911 operator. Officers Leon and Rivas-Villegas, Sergeant Kensic, and two other officers responded to the home. The officers could see Cortesluna through the window, but he had nothing in his hand except a beer.

The officers planned to approach the house and gain entry with less than lethal force, if necessary. An officer knocked on the front door. A few seconds later, Cortesluna emerged through a sliding glass door holding a large metal object. He was ordered to "drop it", which he did. Cortesluna was ordered to put his hands up, and walk forward, which he did. As Cortesluna approached the officers, Kensic saw a knife in his front left pocket and yelled the warning to the officers that there was "a knife in his left pocket". Cortesluna was ordered to keep his hands up.

When Cortesluna lowered his hands, Leon shot him with a beanbag round, then quickly fired a second beanbag shot while the hands were still in a downward position. After the second shot, Cortesluna raised his hands over his head. When the officers ordered him to "get down", Rivas-Villegas used his foot to push him to the ground. Rivas-Villegas then pressed his knee into Cortesluna's back and positioned his arms as Leon handcuffed him. Rivas-Villegas then lifted Cortesluna up by his handcuffed hands and moved him away from the house - ending the incident.

Cortesluna sued Leon and Rivas-Villegas for excessive force and Kensic for failing to intervene to stop the excessive force. He claimed that he suffered physical, emotional, and economic injuries as a result of the officers' conduct (placing the knee on the back). Summary judgment was granted to all three officers with a ruling that Leon and Rivas-Villegas' force used was objectively reasonable under the circumstances, and they both were entitled to qualified immunity. As to Kensic, the court ruled that he had no reasonable opportunity to intervene and therefore could not be liable. Cortesluna appealed the ruling.

In his appeal, Cortesluna alleged that Rivas-Villegas violated his right to be free from excessive force by *leaning too hard on his back with his knee, causing injury*. Since the Court had to take his version of facts as true in deciding the motion for summary judgment, the majority of the Court of Appeal panel agreed that the force was excessive. The Court's decision suggests that by the time Rivas-Villegas put a knee on his back, *Cortesluna was no longer posed a risk,* since he was lying face down on the ground, having been shot by the two beanbag rounds, and did not appear to be resisting. The Court ruled here, that a knee on the back was sufficient to create a genuine dispute of fact that requires a jury trial.

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The Court found Rivas-Villegas violated clearly established law and was, therefore, not entitled to qualified immunity because he was on notice that his conduct constituted *excessive force.*

How could the Court find Rivas-Villegas to be "on notice" that using his knee to secure the prone suspect would constitute excessive force? In a prior case, the 9th Circuit found that during the handcuffing process, the plaintiff suffered "significant pain and a lingering back injury" when an officer forcefully put a knee onto his back, thereby violating the 4th Amendment. *LaLonde v. County of Riverside*, 204 F.3d 947 (9th Cir. 2000).

According to the Court, since Rivas-Villegas's conduct was *similar* to that in LaLonde's case, he was *"on notice"* that the conduct would be unconstitutional and therefore was not entitled to qualified immunity.

The officers argued the method of handcuffing Cortesluna was standard procedure, designed to minimize injuries and confrontations. The majority disagreed. The dissent called out the majority for discounting the need for precautionary measures (like holding a suspect down during handcuffing in the event he resists before the handcuffs are applied.)

Unless there is a rehearing granted in this case, a jury will decide whether Rivas-Villegas used excessive force and, if so, how much in damages to assess.

If a rehearing is denied, it appears that from now on, as the dissent remarked, **"all an arrestee has to do to get a jury trial on an excessive force claim - including defeating qualified immunity - is to assert that the arrest resulted in ongoing subjective pain."** In fact, as the dissent stated, "the practical effect of the majority's ruling today will likely be to ***eliminate the use of a knee*** *to protectively hold down a non-resisting suspect* while handcuffing him."

After reading this opinion, it could be said "an officer would be taking a significant risk [of a lawsuit] by using a knee to secure an arrestee during handcuffing."

Stay Safe and Healthy!

Robert Rabe *is Stone Busailah, LLP's writs, and appeals specialist. His 41 years practicing law include 16 years as a Barrister, Supreme Court of England and Wales, practicing in London, England.*