SCOTT v. HARRIS

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I. INTRODUCTION

In an 8-1 decision in *Scott v. Harris*,[1] the Supreme Court reversed an Eleventh Circuit decision that had denied qualified immunity to a police officer sued by a fleeing motorist who was rendered quadriplegic when his car was pushed over an embankment by the officer's vehicle.[2] The Court held that the officer did not violate the motorist's Fourth Amendment right to be free from unreasonable seizure and that the officer was entitled to summary judgment.[3] Both the federal district court and the Eleventh Circuit had ruled in favor of the respondent, denying the officer's summary judgment motion based on qualified immunity after finding a Fourth Amendment violation.[4]

II. FACTS & PROCEDURAL HISTORY

In March 2001, a Coweta County, Georgia deputy police officer clocked a car driven by Victor Harris traveling 73 miles per hour in a 55-mile-per-hour zone and flashed his lights to initiate a traffic stop. Rather than stopping, Mr. Harris fled from the officer, at times driving more than 85 miles per hour on a two-lane road.[5] Upon hearing a request for help, Officer Timothy Scott joined the pursuit and forced Harris into a shopping center, where police unsuccessfully attempted to box him in. After further pursuit, Scott considered engaging a "Precision Intervention Technique" ("PIT") maneuver, which ideally would have caused Harris's car to spin out, but decided against it. Instead, Scott applied a push-bumper technique to the rear of Harris's

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1. Scott v. Harris, 127 S. Ct. 1769 (2007).
2. *Id.*
3. *Id.* at 1779.
4. *Id.* at 1773–74.
5. *Id.* at 1772.

car, which caused Harris to lose control of his car, crash over the embankment, and suffer severe injuries that rendered him quadriplegic.[6]

Harris sued Scott under 42 U.S.C. § 1983, alleging excessive use of force resulting in an unreasonable seizure in violation of the Fourth Amendment.[7] Scott moved for summary judgment, claiming qualified immunity from suit. Scott also asserted that no Fourth Amendment violation existed because at the time of contact, the law was not sufficiently clear to put him on notice that his actions were unlawful.[8] The district court denied Scott's motion for summary judgment.[9] The Eleventh Circuit granted an interlocutory appeal and held that Scott did not have qualified immunity for two reasons: (1) a jury could find that his actions were unreasonable under the Fourth Amendment; and (2) the law was clear at the time of the incident that an automobile could be used as deadly force.[10]

The Eleventh Circuit said the test established in *Tennessee v. Garner*[11] was applicable to the case because Scott's contact constituted deadly force.[12] Under the *Garner* test, a court is to decide whether the officer had probable cause to believe that the alleged criminal was involved in a crime that posed or threatened to pose serious physical harm, and whether the crime that initiated the chase posed an imminent threat of serious physical harm.[13] The Eleventh Circuit concluded that Scott's use of deadly force was impermissible because these factors were not present, and "deadly force cannot be used in the absence of the *Garner* preconditions."[14] In addition, the Eleventh Circuit determined that Scott should have been on notice that using deadly force to stop a crime in which there was no imminent threat of

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6. *Id.* at 1773.
7. Harris v. Coweta County, 2003 U.S. Dist. LEXIS 27348, at *8 (N.D. Ga. Sept. 25, 2003).
8. *Id.* at *16–18.
9. *Id.* at *38.
10. Harris v. Coweta County, 433 F.3d 807, 821 (11th Cir. 2005), *rev'd* 127 S. Ct. 1769 (2007).
11. Tennessee v. Garner, 471 U.S. 1 (1985).
12. Although *Garner* did not define deadly force, other cases have held that deadly force is that which is substantially likely to result in death. However, whether the force used was deadly was not in issue, as Scott admitted, and the court took judicial notice that the force used was deadly. The Court here did not believe that whether the force was deadly was relevant.
13. *Garner*, 471 U.S. at 11.
14. *Harris*, 433 F.3d at 819.

physical harm to the officer or others was unconstitutional.[15] Scott appealed the decision, and the Supreme Court granted certiorari.[16]

III. HOLDING & RATIONALE

Justice Scalia, writing for the majority, held that Scott's actions were not a violation of the Fourth Amendment, and thus that he was entitled to summary judgment.[17] Scalia wrote that courts must consider a threshold question to resolve qualified immunity issues: whether the alleged facts show a violation of a constitutional right.[18] Only upon a determination that a constitutional right has been violated may a court proceed to ask whether the right was clearly established.[19]

The majority began its analysis by endorsing the two-step process for qualified immunity cases that it set forth in *Wilson v. Layne*.[20] This test requires that courts first decide whether a constitutional right has been violated, before deciding whether an officer is entitled to qualified immunity. In *Wilson*, the Court unanimously decided that the Fourth Amendment had been violated when reporters accompanied federal officers during their execution of search warrants in individuals' homes. After establishing that a right had been violated, the Court then held in an 8-1 decision that the officers enjoyed qualified immunity.[21] The Court in *Wilson* decided the constitutional issue, even though the case could have been decided on a non-constitutional basis by deciding first whether the officers enjoyed qualified immunity, eliminating the need to reach whether there was a Fourth Amendment violation.

In determining whether an officer is entitled to qualified immunity, the Court looks to the officer's actions and knowledge at the time of the alleged conduct. In *Hope v. Pelzer*,[22] the Court determined that case law need not exist with the same facts as the conduct at issue in order to show that a right was clearly established

15. *Id.* at 820.
16. Scott v. Harris, 127 S. Ct. 1769 (2006).
17. *Id.* at 1779.
18. *Id.* at 1774.
19. *Id.*
20. Wilson v. Layne, 526 U.S. 603, 609 (1999).
21. *Id.* at 617–18.
22. Hope v. Pelzer, 536 U.S. 730 (2002).

at law.[23] What mattered was that the officer either was put on notice or received a fair warning that the conduct at issue was unconstitutional. Such notice could be established through general principles, not just case law.[24] Whatever the rationale, the Court later reaffirmed the two-part test in *Saucier v. Katz*,[25] the current test used in the instant case, which requires: (1) the Court to ask, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?"[26] (2) If the actions violate a constitutional right, then the Court must determine "whether the right was clearly established . . . in light of the specific context of the case."[27]

In analyzing the first prong of *Wilson*—whether a constitutional right has been violated—there was no dispute that by applying his bumper to Harris's vehicle, Officer Scott made a seizure under the Fourth Amendment.[28] Because the touchstone of the Fourth Amendment is reasonableness, whether a violation occurred depends on if Officer Scott's actions were reasonable. The parties agreed that courts decide whether a seizure using excessive force violated a defendant's Fourth Amendment rights under the test set forth in *Graham v. Connor*,[29] but they disagreed about how to determine whether an action was objectively reasonable.[30]

The respondent argued that the issue was not one for the justices to decide, but rather one for the jury because the lower courts already determined that, based on *Garner*, there was enough evidence for a jury to decide that the officer's actions were unconstitutional.[31] Harris relied on testimony that evidenced both that Officer Scott was not adequately trained to execute a PIT maneuver and that it would be unreasonable to bump a car progressing at a high rate of speed.[32]

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23. *Id.* at 741.
24. *Id.*; United States v. Lanier, 520 U.S. 259, 271 (1997).
25. Saucier v. Katz, 533 U.S. 194 (2001).
26. *Id.* at 201.
27. *Id.*
28. Scott v. Harris, 127 S. Ct. 1769, 1776 (2006); Brief for Petitioner at 8, Scott v. Harris, 127 S. Ct. 1769 (2007) (No. 15-1631). In *Brower v. Inyo*, 489 U.S. 593, 597 (1989), the Court established that use of a police vehicle to deliberately stop a fleeing suspect is a seizure under the Fourth Amendment.
29. Graham v. Connor, 490 U.S. 386 (1989).
30. *Scott*, 127 S. Ct. at 1776.
31. Brief for Respondent at 29, Scott v. Harris, 127 S. Ct. 1769 (2007) (No. 15-1631).
32. *Id.* at 8.

However, only Justice Stevens (in dissent) agreed that the Court should have let a jury decide whether Officer Scott's actions were reasonable.[33]

Scott, on the other hand, argued that *Garner* should not apply because case law had not clearly established that using a police car to bump a speeding vehicle constituted deadly force.[34] Distinguishing *Garner* from his case, Scott maintained that in *Garner* a gun was used, a wholesale difference from using a vehicle to bump a fleeing motorist's vehicle. An additional distinction is that in *Garner*, the fleeing individual was on foot and unarmed, whereas in the instant case the fleeing individual used a car to escape police.

Aside from these distinguishing facts, Scott contended that the key question was whether, at the time of contact, the officer reasonably believed that vehicle contact was needed to avoid a greater harm of bodily injury or death. Scott urged the Court to use the balancing test set forth in *Graham*.[35] The *Graham* test, Scott argued, requires that reasonableness be gauged by balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.[36]

The Court wholeheartedly adopted Scott's position. The Court's impression of the case is apparent from its phrasing of the issue: "whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind."[37] Stating that the use of deadly force was a non-issue, the Court concluded that the real issue was whether Scott's actions were reasonable.[38] Therefore, the Court stated that *Garner* had no application to this case, which the Court found bore little resemblance to the facts in *Garner*.[39] Quoting the Eleventh Circuit's decision in

33. *Scott*, 127 S. Ct. at 1785 (Stevens, J., dissenting).

34. Brief for Petitioner, *supra* note 28, at 14–15.

35. *Id.* at 8. The Eleventh Circuit did apply the *Graham* test; however, its reliance on *Garner* led to its conclusion that under *Graham*, Scott's actions were not reasonable. Respondent, likewise, argued that analyzing the case under either *Garner* or *Graham* without the *Garner* pre-conditions would result in finding of a violation of the Fourth Amendment. Brief for Respondent, supra note 31, at 26.

36. Brief for Petitioner, *supra* note 28, at 8.

37. *Scott*, 127 S. Ct. at 1772 (majority opinion).

38. *Id.* at 1778.

39. *Id.* at 1777.

Adams v. St. Lucie County Sheriff's Department,[40] the Court said that "'*Garner* had nothing to do with one car striking another or even with car chases in general . . . . A police car's bumping a fleeing car is, in fact, not much like a policeman's shooting a gun so as to hit a person.'"[41] *Garner*, the Court said, did not provide an "on-off switch" that could be used to determine the constitutionality of an officer's actions once a court found that deadly force was used.[42]

Instead, the Court endorsed the *Graham* test, stating that to determine the reasonableness of a seizure the Court "'must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.'"[43] Perhaps the most important factor in this balancing test for the Court was that Harris posed a significant risk to the public and therefore, regardless of whether bumping the rear of the vehicle constituted deadly force, Scott's actions were reasonable.[44]

IV. IMPACT

Despite the Court's near unanimous agreement that Officer Scott was entitled to qualified immunity, there was one element in the case that was rather unique that might caution against using this decision to support a mechanical rule heavily favoring police action—the videotape of the chase. The Court viewed the videotape of the chase during oral argument and even placed a link to the tape on the Court's website next to the decision for the public to view.[45] The Court specifically said that its decision was fairly easy to make, but one could fairly say the ease with which the Court made its decision was possible only because of what were unquestionably horrifying scenes on the videotape.

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40. Adams v. St. Lucie County Sheriff's Dep't, 962 F.2d 1563 (11th Cir. 1992).

41. *Scott*, 127 S. Ct. at 1777 (quoting *Adams*, 962 F.2d at 1577 (Edmondson, J., dissenting)). Although the Court quotes the Eleventh Circuit's decision here, *Adams* was actually decided before the Court established its two-part test requiring courts to determine first whether a constitutional right had been violated. Therefore *Adams* did *not* reach the question whether using a police vehicle to stop a high-speed pursuit violated the Fourth Amendment, and instead concerned the qualified immunity issue only.

42. *Scott*, 127 S. Ct. at 1777.

43. *Id.* at 1778 (quoting United States v. Place, 462 U.S. 696, 703 (1983)).

44. *Id.* at 1778–79.

45. http://www.supremecourtus.gov/opinions/06slipopinion.html.

In a summary judgment motion, courts are to accept the allegations of fact most sympathetic to the nonmoving party.[46] The district court and the Eleventh Circuit both found that genuine issues of material fact existed such that a reasonable juror could conclude that Officer Scott's actions were unreasonable in violation of the Fourth Amendment. However, the Court wrote that where a record exists that blatantly contradicts the plaintiffs' version of the facts, courts should not rely on the plaintiff's statement.[47] Here, the Court after viewing the videotape, determined that no reasonable juror could believe Harris's version of the facts.[48]

When both lower courts decided in favor of Harris, arguably only on the basis of the videotape could the Court conclude no reasonable juror could find that the "car chase that respondent initiated in this case posed a substantial and immediate risk of serious physical injury to others."[49] Therefore, while a clear 8-1 majority signaled that even the use of deadly force in this case was objectively reasonable, it is not clear that if evidence such as a videotape is not available lower courts are to assume a rigid position.

The two concurring opinions state the decision should not be read as a mechanical, per se rule.[50] Importantly, though, no other justices signed onto these positions. Therefore, for simple ease of administration, when it can be shown that the public could be endangered, police officers might have far-ranging license to use even deadly force without fear of having to defend themselves in a suit for liability.

Even if the majority opinion does in fact set forth a mechanical rule to follow in cases in which deadly force is used to terminate high-speed pursuits, the case leaves open the possibility of setting forth a new test to use in qualified immunity cases. Despite endorsing the two-step test, the fact that the Court relied on the videotape calls into question whether the Court will continue to use the two-step process in deciding qualified immunity cases. In a footnote, the majority noted that the wisdom of the two-step process requiring consideration of

46. FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986).
47. *Scott*, 127 S. Ct. at 1776.
48. *Id.*
49. *Id.* at 1779.
50. *Id.* at 1779 (Ginsburg, J., concurring); *id.* at 1781 (Breyer, J., concurring).

constitutional issues first has been questioned in the past.[51] However, that issue was not necessarily before the Court to consider, and furthermore the Court found the constitutional question in this case easy to decide.[52]

Therefore, the majority said the "better approach" in the case was to determine the constitutional question first, in line with precedent.[53] However, if the constitutional question is not as easy as it was for the Court to decide here, one reading of the footnote could be that the better approach would be to decide the qualified immunity issue first if the immunity issue is easy to decide. The majority's footnote also leaves open to interpretation how to determine the better approach in deciding qualified immunity cases. Could the rule be that when the constitutional issue is not easy, courts should follow *Scott v. Harris* and use the two-step process, but when the qualified immunity issue is easy, courts should decide that issue first?

Justice Breyer, in his concurrence, explicitly states that *Saucier* should be revisited and that lower courts should be able to decide whichever question provides for the easiest disposition first.[54] Justice Ginsburg, in her concurrence, leaves open the possibility that *Saucier* could be revisited when that specific issue is raised properly before the Court.[55] Even so, it is not clear that the Court would take an opportunity to clarify the issue unless the lower courts signal that the issue should be clarified. For ease of administration, the lower courts may very well apply a mechanical rule and avoid causing a split in the circuits.

V. CONCLUSION

With this decision, the Court endorsed a two-step approach to resolving qualified immunity cases. However, despite the near-majority decision, it is not clear that this case stands for a proposition that police have free license to use deadly force in fleeing felon cases without consequence. This decision still leaves room for the argument that unless there is uncontroverted evidence that a fleeing felon poses

51. *Id.* at 1774 n.4 (majority opinion).
52. *Id.*
53. *Id.*
54. *Id.* at 1780 (Breyer, J., concurring).
55. *Id.* at 1779–80 (Ginsburg, J., concurring).

a significant risk of physical harm to the public, deadly force may be unconstitutional.