



Law Enforcement

January 2017

Digest

Law enforcement officers: Thank you for your service, protection and sacrifice.

HONOR ROLL

741st Basic Law Enforcement Academy - August 31, 2016 through January 1, 2017

- President: Officer Robert Kleinpaste, Bainbridge Island PD
Best Overall: Deputy Corey Parris, Grays Harbor County SO
Best Academic: Deputy Corey Parris, Grays Harbor County SO
Best Practical Skills: Officer Jordan Todd, Redmond PD
Patrol Partner: Officer Elliot Edmunds, Evergreen State College PD
Tac Officer: Mathew Ludwig, Tukwila Police Department
Sean Hendrickson, WSCJTC

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UNITED STATES SUPREME COURT

CIVIL RIGHTS LAWSUIT: OFFICER (WHO ARRIVED LATE ON SCENE) ENTITLED TO QUALIFIED IMMUNITY FOR SHOOTING SUSPECT (WHO HAD SHOT AT LAW ENFORCEMENT OFFICERS). White v. Pauly, ___ U.S. ___, 137 S.Ct. 548 (January 9, 2017).

Officer A and Officer B arrived at Daniel Pauly’s home to investigate a reported road rage incident. Officer A and Officer B “approached [the home] in a covert manner to maintain officer safety.” At the time, Daniel was in the home with his brother Samuel Pauly. The brothers “became aware of the officer’s presence and yelled out ‘Who are you?’ and ‘What do you want?’” The officers laughed and stated “Hey (expletive), we got you surrounded. Come out or we’re coming in.” The brothers did not hear the officers identify themselves as police.

At this point, Officer C arrived on scene and heard yelling from the house. When Officer C arrived at the house, he heard the home’s occupant yell “We have guns.” In response, Officer C “drew his gun and took cover behind a stone wall 50 feet from the front of the house.” A few seconds later, Daniel stepped out of the house, screamed, and fired a shotgun. Samuel then “opened the front window and pointed a handgun in” Officer C’s direction. A few seconds later, Officer C shot and killed Samuel.

Samuel Pauly’s estate filed a 42 U.S.C. § 1983 (Section 1983) lawsuit against the officers. The lawsuit alleged that Officer C used excessive force against Samuel in violation of his Fourth Amendment rights. The trial court and the Tenth Circuit Court of Appeals denied qualified immunity to Officer C. The United States Supreme Court disagreed.

In a Section 1983 lawsuit, an officer has qualified immunity if: (1) the officer did not violate a constitutional right; or (2) the constitutional right was not clearly established at the time of the incident. In this case, the United States Supreme Court found that the officer’s conduct did not violate clearly established law. The Supreme Court reasoned:

Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one [Officer C] confronted here.

As a result, the Supreme Court reversed the trial court and Court of Appeals’ decisions that denied the officer qualified immunity.

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NINTH CIRCUIT COURT OF APPEALS

CIVIL RIGHTS LAWSUIT: OFFICER USED REASONABLE FORCE IN RESPONSE TO A WOMAN ATTEMPTING TO PREVENT HER SON (WHO WAS EXPERIENCING A DRUG OVERDOSE) FROM RECEIVING MEDICAL ATTENTION FROM ON-SCENE AID CREW; AND EMREGENCY EXCEPTION AUTHORIZED OFFICER'S SEARCH OF TRUCK'S PASSENGER COMPARTMENT FOR ANY MEDICATIONS THE SON MAY HAVE TAKEN.
Ames v. King County, ___ F.3d ___, 2017 WL 127563 (January 13, 2017).

A law enforcement officer and emergency medical personnel (aid crew) responded to a 911 call that 22-year-old Colin Briganti had attempted suicide and overdosed on his medications. When the aid crew and officer arrived at the residence, Tonja Ames (Briganti's mother) refused to allow the officer to enter the residence. The officer informed Ames, "If I can't enter the home, then you get no service." The officer instructed the aid crew to leave the residence.

Ames and her neighbors carried Briganti from the residence to her truck. Ames planned to drive Briganti to the hospital. The officer was concerned that Briganti would die from a drug overdose without immediate medical attention. The officer informed her supervisor that Ames had placed Briganti in the truck. The supervisor instructed the officer to stop Ames from leaving so that the aid crew could treat Briganti.

The officer positioned her patrol car to prevent Ames's truck from leaving the driveway. The officer instructed Ames that she should let the aid crew help Briganti. Ames was angry and yelled at the officer "Move your f-ing vehicle. I'm taking my son to the hospital. You guys left. You won't help him out. Get out of my way."

When the officer tried to remove Ames from the truck, "Ames grabbed the steering wheel tightly with her right hand and [the officer] employed a hair hold to distract Ames and loosen her grip so the officer could remove Ames from the truck."

The officer "took Ames down to the ground into a prone handcuffing position." When Ames fell to the ground, her right arm was pinned under her body. The officer "held onto Ames's hair with one hand and pushed her knee into Ames's back while she handcuffed Ames's left arm." The officer instructed Ames to present her right arm. The officer "slammed Ames's head into the ground three times as Ames tried to explain that her arm was pinned and that she suffered from a back injury." The officer then handcuffed Ames. At this point, approximately 97 seconds had passed from the supervisor's instruction to stop Ames from leaving.

A backup officer arrived on the scene and learned that Briganti had been in the truck and a suicide note was in the truck. The backup officer "believed the truck was a possible overdose scene and he searched the cab, glove compartment, and truck bed." The officers found a firearm, prescription drugs, and the suicide note.

Ames filed a 42 U.S.C. § 1983 (Section 1983) lawsuit against the officers. Ames contended that the officer used excessive force. Ames also alleged that the backup officer conducted "an unlawful search of her truck." The trial court denied qualified immunity to the officers. The officers appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit found that the officers were entitled to qualified immunity.

In a Section 1983 lawsuit, an officer has qualified immunity if: (1) the officer did not violate a constitutional right; or (2) the constitutional right was not clearly established at the time of the incident. In this case, the Ninth Circuit found: (1) the officer used reasonable force and did not violate Ames's Fourth Amendment rights; and (2) the emergency exception to the warrant requirement authorized the backup officer to search the truck for the suicide note or the medications Briganti may have taken to commit suicide.

First, a "[u]se of force is a seizure that is subject to the Fourth Amendment's reasonableness requirement." Courts use the *Graham* factors to evaluate whether an officer used reasonable force: (1) the severity of the crime; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight. The most important factor is whether there is an immediate threat to the safety of the arresting officer or others.

In this case, the Ninth Circuit concluded that "Briganti's urgent need for life-saving emergency medical care and the need to protect the first responders and other motorists from potential harm . . . outweighed any intrusion on Ames's Fourth Amendment rights." The Ninth Circuit reasoned that under the totality of the circumstances the officer's use of force was reasonable: (1) the officer "was acting in her community caretaking capacity [in response to Briganti's potential overdose], totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute"; (2) "Ames was prolonging a dire medical emergency through her disregard of [the officer's] lawful commands, and her actions risked severe consequences"; and (3) "Ames presented an immediate danger" because driving Briganti away from the scene "would further delay Briganti's access to urgently needed medical care." Accordingly, the officer was entitled to qualified immunity.

Second, the Ninth Circuit found that the backup officer lawfully searched the truck under the emergency exception to the warrant requirement. Under the Fourth Amendment, a warrant or a recognized exception to the warrant requirement must authorize a search. The emergency exception is a recognized exception to the warrant requirement. "To determine whether the emergency exception applies to a particular warrantless search, [courts] examine whether: (1) considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm; and (2) the search's scope and manner were reasonable to meet the need."

In this case, the emergency exception authorized the warrantless search of the truck because: (1) the truck was "a possible overdose scene based on the fact that Briganti had been in the pickup prior to [the backup officer's] arrival and his knowledge of the presence of the suicide note inside the truck"; (2) "it is common practice for officers responding to an attempted suicide call involving a drug overdose to search locations associated with the suicide victim in order to find out what drugs were used in the suicide attempt"; (3) "it was reasonable for [the back up officer] to search the glove compartment of the truck, given that the specific purpose of the search was to assist in Briganti's medical care by finding medications or drugs he had taken, and that medications and drugs easily can be stored in a glove compartment"; and (4) the officer "stated that he was not investigating a crime, nor operating to gather evidence of a crime" when he searched the truck. As such, the search fell under the emergency exception to the warrant requirement, and the officer was entitled to qualified immunity.

As a result, the Ninth Circuit reversed the trial's courts denial of qualified immunity to the officers.

The Law Enforcement Digest (LED) is edited by Assistant Attorney General Shelley Williams of the Washington Attorney General's Office. Questions and comments regarding the content of the LED are welcome and should be directed to Ms. Williams at ShelleyW1@atg.wa.gov. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]
