and individuals experiencing these conditions. These individuals, like Mr. Jones, are more likely to experience violence in encounters with police (Saleh AZ, *et al*: Deaths of people with mental illness during interactions with law enforcement. Int'l J L & Psychiatry 58:110-6, 2018). The topical nature of the proceedings was not lost on the court, which used the coda of its opinion to connect the instant case to some of these sociopolitical concerns. Referencing the death of George Floyd two weeks prior to the issuance of its opinion, the court stated: "Although we recognize that our police officers are often asked to make split-second decisions, we expect them to do so with respect for the dignity and worth of black lives . . . . This has to stop. To award qualified immunity at the summary judgment stage in this case would signal absolute immunity for fear-based use of deadly force, which we cannot accept" (*Jones*, p 673). It is conceivable to think, based on this commentary, that doctrines like qualified immunity will be reexamined over the coming years and may well have their boundary lines redrawn, either by legislation or court decisions.

Unlawful Entry into Residence

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History of Mental Illness Alone Is Not Probable Cause for Warrantless Forced Entry

DOI:10.29158/JAAPL.210001L1-21

Key words: unlawful entry; *Monell* claim; mental illness

In *Chamberlain v. City of White Plains*, 960 F.3d 100 (2d Cir. 2020), the U.S. Court of Appeals for the Second Circuit considered whether there was a plausible claim for unlawful entry and whether the officers involved were entitled to qualified immunity. The Estate of Kenneth Chamberlain, Sr., challenged the District Court's granting the defendants' motion to dismiss unlawful entry, excessive force, and supervisory liability claims regarding events that resulted in Mr. Chamberlain being killed by a White Plains police officer. The second Circuit Court of Appeals found that the appellant advanced a plausible claim for unlawful entry. The grant of summary judgment in favor of the defendants with respect to the claims of excessive force and supervisory liability was vacated and remanded to the district court for further proceedings.

Facts of the Case

Mr. Chamberlain, a 68-year-old African-American Marine Corps veteran, accidentally activated his Life Aid medical button early in the morning on November 19, 2011. The Life Aid operator responding to the alert was initially unable to communicate directly with Mr. Chamberlain and contacted the White Plains Department of Public Safety. A squad car and an ambulance were sent to Mr. Chamberlain's apartment by a White Plains police dispatcher. Responding units were advised that Mr. Chamberlain had been classified as an "emotionally disturbed person."

Upon arrival, officers banged loudly on Mr. Chamberlain's door and demanded entry. Mr. Chamberlain activated his Life Aid button and reported "an emergency" and that "the White Plains Police Department [is] banging on my door and I did not call them and I am not sick." The Life Aid operator informed the White Plains police dispatcher, who responded, "They're gonna make entry anyway . . . . They're gonna open it anyway."

Mr. Chamberlain continued to make repeated statements to the Life Aid operator and officers at his door that he had not called the police and that he did not need help. The officers continued attempts to gain entry forcibly and called for tactical reinforcements armed with handguns, a beanbag shotgun, Taser, riot shield, and pepper spray.

The officers opened Mr. Chamberlain's front door with an apartment master key but the door opened only a few inches due to an interior locking mechanism. Once the officers were in view of Mr. Chamberlain, he expressed belief that the officers were there to kill him and began experiencing delusions, hallucinations, and flashbacks to his time in the military. He began thrusting a knife through the partially opened door and repeatedly asked the officers to leave.

The officers "mocked and insulted" Mr. Chamberlain while continuing to attempt entry. They did not allow or facilitate communication between Mr. Chamberlain and his family members, including a niece who lived in the same building. After an hour of attempting entry, the officers removed Mr. Chamberlain's door from its hinges. The officers tased Mr. Chamberlain, which was not successful, fired several beanbag shots, and fired two handgun shots at him. One bullet hit Mr. Chamberlain, and he was killed.

The Estate of Kenneth Chamberlain, Sr., sued the officers from the White Plains Police Department who were involved and the City of White Plains Police Department, claiming unlawful entry and excessive force resulted in Mr. Chamberlain's death. The District Court for the Southern District of New York dismissed the unlawful entry claim as "failing to state a claim upon which relief can be granted" (a Rule 12(b)(6) motion, based on Fed. R. Civ. P. 12 (b)(6) (2019)) and ruled that some of the defendants were protected from suit due to qualified immunity. The plaintiff appealed this judgment, challenging these motions and the granting of summary judgment in favor of the defendants on supervisory liability claims, an excessive force claim, and a *Monell* claim against the city (after *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)).

Ruling and Reasoning

The U.S. Court of Appeals for the Second Circuit concluded that the initial grant of summary judgment made by the District Court in favor of defendants should be reconsidered because the claim of unlawful entry by the defendants was plausible. The Second Circuit affirmed that the *Monell* claim was properly dismissed on summary judgment. Under *Monell*, government entities may qualify and be subject to suits as "persons" for the purposes of 42 U.S.C. § 1984. The Second Circuit Court of Appeals noted that qualified immunity should be resolved at the earliest possible point in litigation (referencing *Pearson v. Callahan*, 555 U.S. 223 (2009)). As an affirmative defense, however, the question of qualified immunity cannot be answered before the truth of any plausible factual allegations is ascertained and thus cannot be presented for dismissal of claims under a Rule 12(b)(6) motion in place of a motion for summary judgment (Fed. R. Civ. P. 56(a) (2019)).

The court said that warrantless entry into a private dwelling is clearly unlawful without exigent circumstances, citing *Payton v. New York*, 445 U.S. 573 (1980), and that warrantless entry in response to a medical concern is unlawful without probable cause that the person inside is in immediate danger. Additionally, a report of a individual with mental illness in distress is insufficient support for probable cause of medical exigency (referencing *Kerman v. City of New York*, 374 F.3d 93 (2d Cir. 2004) and *Keeton v. Metro. Gov't of Nashville*, 228 F. App'x. 522 (6th Cir. 2007)). Because the emergency call from Mr. Chamberlain's apartment was not corroborated by Mr. Chamberlain or anyone else and it was later expressly retracted by the Life Aid operator, the court stated that there were sufficient facts to overcome an assertion of qualified immunity.

The previous dismissal and granting of summary judgment were vacated, and the claims were remanded to the district court for further proceedings to examine claims of unlawful entry, excessive force, and supervisory liability.

Discussion

Chamberlain reviews claims of unlawful entry and excessive force dismissed under qualified immunity. Such claims cannot be dismissed under qualified immunity, an affirmative defense, given the high standard required for a Rule 12(b)(6) motion in contrast to summary judgment or trial. On the basis of previous cases, warrantless entry into a private dwelling is only lawful under exigent circumstances where there is probable cause that the person inside is in immediate danger. Uncorroborated reports or reports of an individual with mental illness is not sufficient evidence to qualify as exigent circumstances. These claims and the affirmative defense of qualified immunity should be examined through summary judgment or trial where discovery and further briefing will allow for a more detailed examination of facts.

Police Response to Threat by Person with Mental Illness

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