

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

Ferdows Ather, MD
Fellow in Forensic Psychiatry

Timothy Botello, MD, MPH

Clinical Professor of Psychiatry

USC Institute of Psychiatry, Law, and Behavioral Science

Keck School of Medicine, University of Southern California

Los Angeles, California

Police Use of Deadly Force in Response to Threat Made by Man with Mental Illness Does Not Violate the Fourth Amendment or the Americans with Disabilities Act

DOI:10.29158/JAAPL.210001L2-21

Key words: police; schizophrenia; force; killed; disabilities

In *King v. Hendricks Cnty. Comm'rs*, 954 F.3d 981 (7th Cir. 2020), the Seventh Circuit Court of Appeals considered whether the District Court for the Southern District of Indiana's decision to grant summary judgment in favor of police was correct. Matthew King, father and representative of the estate of decedent Bradley King, asserted that the police violated the decedent's Fourth Amendment rights by using excessive force; that the county failed to provide adequate training to police in how to de-escalate situations with persons with mental illness; and that the police violated the decedent's Americans with Disabilities Act (ADA) rights. The court upheld the defendant's grant of summary judgment on the Fourth Amendment claim and ruled that the training and ADA claims failed.

Facts of the Case

Bradley King, a 29-year-old man with schizophrenia, was killed at his home in Hendricks, Indiana, by police performing a welfare check after he called 911 requesting help. No other eyewitnesses were available; the only testimony was from the deputies involved.

Deputies Jason Hays and Jeremy Thomas testified that, upon their arrival to the house, Mr. King came out and walked toward them, pulling a 10-inch knife out of his shorts pocket. Despite drawing their firearms and yelling at Mr. King to stop and drop his knife, Mr. King kept moving forward and started to run at Deputy Hays. When Mr. King was approximately eight feet away, Deputy Hays fired one shot at Mr. King, killing him.

Bradley King's father (petitioner) brought the three federal civil rights claims described above against Deputy Hays, the Hendricks County

Commissioners, the Sheriff's Department, and the Sheriff. The lower court granted summary judgment for the defense on all three claims.

Ruling and Reasoning

The Seventh Circuit affirmed the district court's summary judgment on all three of the petitioner's claims. Regarding the claim that the police's use of excessive force violated Mr. King's constitutional right against unreasonable seizure, the appeals court acknowledged that "the level of force that is constitutionally permissible in dealing with a mentally ill person . . . differs both in degree and in kind from the force that would be justified against a person who has committed a crime or who poses a threat to the community" (*King*, p 984 (quoting *Gray v. Cummings*, 917 F.3d 1 (1st Cir. 2019), p 11)). Thus, the court agreed with the petitioner's assertion that officers should approach anyone suspected or known to have mental illness differently than those suspected of criminal activity. In the present case, Mr. King was reportedly known to police as having mental disabilities because they were involved with him during prior psychotic episodes.

The court also referred to a U.S. Supreme Court admonition that the "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation" (*King*, p 984 (quoting *Graham v. Connor*, 490 U.S. 386 (1989), pp 396-7)). The court explained:

When addressing the use of deadly force, the court considers whether a reasonable officer in the circumstances would have probable cause to believe that the [person] poses an immediate threat to the safety of the officers or others" (*Sanzone v. Gray*, 884 F.3d 736, 740 (7th Cir. 2018)). If the person of interest threatens the officer with a weapon, deadly force may be used, because the risk of serious physical harm to the officer has been shown. (*Ibid.*) This is so even if a less deadly alternative is available to the officers (*Plakas v. Drinksi*, 19 F.3d 1143, 1149 (7th Cir. 1994)). And this is so whether or not the targeted person suffers from a mental illness—the critical consideration is whether he or she poses an immediate threat to the officers or others (*King*, p 985).

Thus, given the evidence available in the case, the court said that Mr. King posed an imminent threat to the officers and deadly force was reasonable. The appeals court, however, did appreciate the challenge Mr. King faced in countering the officers' testimony (the only available eyewitness evidence in the case) and that, unfortunately, "the person most likely to rebut

the officers' version of the events—the one killed—can't testify" (*King*, p 985 (quoting *Cruz v. City of Anaheim*, 765 F.3d 1076 (9th Cir. 2014), p 1079)).

Finally, the court deliberated on the petitioner's third claim, that the police violated Mr. King's rights under Title II of the ADA, which states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity" (42 U.S.C. § 12132 (1990)). The petitioner claimed Mr. King's rights were violated by arguing that the police should have acted differently given Mr. King's mental illness.

In its decision, the appeals court separated this claim into two components. First, it addressed whether Title II applies to law enforcement investigations and arrests, Second, if it does apply, it addressed whether law enforcement violated Mr. King's Title II rights. With regard to the first question, the court acknowledged that other circuit courts were split on the matter but ultimately assumed, without deciding, that Title II did apply to the deputies' response to Mr. King. The appeals court also assumed that the county could be held vicariously liable under Title II for the deputies' actions using the "deliberate indifference standard" to judge their actions. Thus, for the petitioner's claim to succeed, he was required to "show that 'but for' [Mr. King's] disability, he would have been able to access the services or benefits desired" (*King*, p 989 (quoting *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737 (7th Cir. 2006), p 754)).

The court stated that, because the police responded quickly to Mr. King's call and there were no available facts to contradict the deputies' testimony that their lives were in danger from Mr. King running at them with a knife, the deputies' response was not discriminatory given their response would have been identical even if Mr. King did not suffer from mental illness, and there was nothing they could have done in this specific scenario to accommodate for his mental illness. The court concluded that "if the decedent was denied access to medical services it was because of his violent, threatening behavior, not because he was mentally disabled" (*King*, p 989).

In conclusion, the Seventh Circuit unanimously concluded that the police officer's use of deadly

force in response to Mr. King's threat to use a knife did not violate his rights under the Fourth Amendment or the ADA, regardless of the fact that Mr. King was mentally ill.

Discussion

With the recent social upheaval in the wake of the killing of George Floyd and others by police, there has been increased attention to events in which police utilize force in the commission of their duties. Encounters with people in mental health crisis are particularly challenging given the added complexity of such encounters and often limited police training in managing these situations.

In *King*, the court of appeals judged the reasonableness of the police officer's use of deadly force against Mr. King on the basis of what the court of appeals thought would be a reasonable police response to a person without mental illness. In doing so, however, the decision raises the question of why the law takes mental illness into account when someone is the perpetrator of deadly force (e.g., the insanity defense or sentence mitigation), but not when someone is the victim of deadly force. We might also consider whether, had Bradley King survived and been able to testify, the appeals court's treatment of his testimony would have been the same as that of the testimony of someone without mental illness.

Although the law may not require police to respond differently to individuals with mental illness who threaten them with a deadly weapon, some public agencies recognize a need to provide specialized emergency response services for those experiencing a mental health crisis. In Los Angeles County, requests for assistance managing a situation potentially involving mental health concerns are often triaged to teams specializing in mental health crises, such as the Department of Mental Health's Psychiatric Mobile Response Team (PMRT) or mental health clinicians directly integrated into the sheriff police force (Systemwide Mental Assessment Response Team). As police departments are forced to re-evaluate their missions and funding (e.g., the City of Los Angeles recently announced a \$150 million redirection of next year's police budget toward community initiatives), legislative bodies may consider how to support mental

health programs in law enforcement to minimize risk of events like the killing of Bradley King from happening again.

Liability for Suicide Attempt of Pretrial Detainee

Ariel Schonfeld, MD

Fellow in Forensic Psychiatry

John Chamberlain, MD

Clinical Professor of Psychiatry

Department of Psychiatry

University of California San Francisco

San Francisco, California

Officer Denied Qualified Immunity for Failure to Summon Medical Care for Pretrial Detainee

DOI:10.29158/JAAPL.210002-21

Key words: qualified immunity; pre-trial detainee; medical care; suicide

In *Horton v. City of Santa Maria*, 915 F.3d 592 (9th Cir. 2019), the Ninth Circuit Court of Appeals reviewed the district court’s denial of summary judgment to a police officer, reversing the denial on one charge but upholding it on a second charge. Officer Brice was responsible for a pretrial detainee, Shane Horton, at the time Mr. Horton made a suicide attempt. In this case, the first claim was for violation of the due process clause of the Fourteenth Amendment, and the second claim was for failure to provide medical care to Mr. Horton. The Court of Appeals found there was a genuine issue of fact regarding whether Officer Brice acted appropriately.

Facts of the Case

In December 2012, 18-year-old Shane Horton was arrested by Officers Brice and Schneider for misdemeanor vandalism in Santa Maria, California. The circumstances leading to the arrest involved a physical altercation between Mr. Horton and his girlfriend. She drove away with a friend. Mr. Horton slashed the tires of the friend’s car. Officer Brice interviewed Mr. Horton’s girlfriend at the scene. She disclosed that Mr. Horton had previously hit her several times, chased her with a knife, stabbed a friend

in the leg, and made statements about killing police and feeling sympathetic toward perpetrators of recent mass homicides. Officer Schneider placed Mr. Horton in a holding cell, leaving on his belt. Mr. Horton expressed feeling anxious and told him that he had had a difficult three weeks, describing recent drug use, having been assaulted, and his dislike of the jail cell. Officer Schneider stated he would “[p]robably do a psych” and instructed Mr. Horton to wave at the security camera if he needed anything.

About 90 minutes later, Officer Brice visited Mr. Horton, letting him know that his girlfriend was granted a restraining order and that he was being charged with felony domestic violence. Officer Brice asked if he had any medical problems. Mr. Horton stated he did not. Mr. Horton called his mother, who told him she would not bail him out and requested to speak privately to Officer Brice. She disclosed to Officer Brice that her son had been using drugs, extinguished cigarettes on himself, punched his fist through a window, cut his wrist with broken glass, and held a kitchen knife pointed at his throat. Two weeks before, he was held overnight at the emergency room as a suicide risk. The doctors suspected the problem was “mostly drugs” and discharged him in the morning due to his not being suicidal. Ms. Horton told Officer Brice she disagreed with the conclusion that he could be safely discharged. She believed he was depressed and suicidal and that he could be helped in the judicial system.

The phone call lasted 10 to 15 minutes. Officer Brice went to complete paperwork and returned to Mr. Horton’s cell after a total of 27 minutes. Mr. Horton was hanging by his belt, which he had affixed to his cell door. Only his lower body was visible on the security camera, so the injury had not been apparent. Officer Brice called for assistance, administered cardiopulmonary resuscitation, and waited for paramedics to arrive. Mr. Horton survived, but suffered prolonged anoxia and severe irreversible brain damage.

With his mother acting as guardian *ad litem*, Mr. Horton sued Officer Brice, other officers, the City of Santa Maria, and the Santa Maria Police Department. They made claims that his Fourteenth Amendment due process rights under 42 U.S.C. § 1983 (1996) and his state right to medical care while in custody were violated, alleging that Mr. Horton should have received medical care. There was an additional negligence claim that will not be addressed