

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Irish v. Fowler

No. 20-1208, United States Court of Appeals for the First Circuit (November 5, 2020)

SUMMARY

The First Circuit held that a viable substantive due process state-created danger claim under § 1983 was presented against two Maine State Police detectives who left a voicemail for a suspect, triggering a violent rampage that resulted in murder, rape, and kidnapping. The court adopted a four-part test requiring: (1) an affirmative act creating or enhancing danger; (2) danger specific to the plaintiff; (3) causation; and (4) conscience-shocking conduct, with deliberate indifference sufficient when officials have time for unhurried judgments. The court reversed the grant of qualified immunity, finding the law clearly established by a robust consensus of persuasive authority and prior circuit precedent, and by factually similar cases like **Kennedy v. City of Ridgefield** and **Monfils v. Taylor**. Key topics: state-created danger doctrine, substantive due process, qualified immunity, clearly established law, police liability for failure to protect.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lynch; Selya; Barron
JURISDICTION	Federal
DECIDED	November 5, 2020
DOCKET	20-1208
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Maine, Hon. John A. Woodcock, Jr., U.S. District Judge. The district court granted summary judgment to defendants on qualified immunity grounds.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Brittany Irish, individually and as Personal Representative of the Estate of Kyle Hewitt, and Kimberly Irish v. Detective Jason Fowler, Detective Micah Perkins, and Sergeant Darrin Crane

TOPICS

civil rights section 1983 qualified immunity due process fourteenth amendment police misconduct
state action appellate procedure standard of review summary judgment

PRACTICE AREAS

Civil Rights

QUESTIONS PRESENTED

1. Whether the plaintiffs have presented a viable substantive due process state-created danger claim against the defendant officers.
2. Whether the defendant officers are entitled to qualified immunity on the state-created danger claim.

KEY QUOTATIONS

“In this opinion, we hold on these facts that a viable substantive due process state-created danger claim has been presented against two Maine State Police officers, and that it was error to grant the officers qualified immunity.” (page 2 (approximate))

“In order to make out a state-created danger claim in the First Circuit, the plaintiff must establish: (1) that a state actor or state actors affirmatively acted to create or enhance a danger to the plaintiff; (2) that the act or acts created or enhanced a danger specific to the plaintiff and distinct from the danger to the general public; (3) that the act or acts caused the plaintiff's harm; and (4) that the state actor's conduct, when viewed in total, shocks the conscience.” (page 20-21)

“The test to determine whether a right is clearly established asks whether the precedent is 'clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply' and whether '[t]he rule's contours [were] so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'” (page 23-24)

FACTUAL BACKGROUND

Brittany Irish reported to police that Anthony Lord had kidnapped and raped her on July 14, 2015. She told detectives that Lord threatened to cut her from ear to ear and that she feared he would become violent if he knew she went to police. The detectives instructed her to continue talking to Lord as if nothing happened. Despite knowing Lord was a registered sex offender and had made death threats, the detectives did not check his criminal record or attempt to locate him in person. Instead, they left a voicemail on Lord's cellphone identifying themselves as state police detectives and asking him to return their call. Lord became irate upon receiving the voicemail, threatening that 'someone's gonna die tonight.' The detectives continued to investigate but did not provide protection to Irish and her family. Over the course of the night, Lord set fire to Irish's parents' barn, attacked a man with a hammer and stole his truck, and then drove to the Irish home. Lord broke into the house, shot and killed Kyle Hewitt, shot Kimberly Irish, and kidnapped Brittany Irish, raping her over the next nine hours before being apprehended.

PROCEDURAL HISTORY

The plaintiffs initially filed this § 1983 action. The district court dismissed the claims, and the First Circuit vacated in *Irish v. Maine*, 849 F.3d 521 (1st Cir. 2017) ('Irish I'), holding that the complaint stated a claim. On remand, after extensive discovery, the defendants moved for summary judgment. The district court concluded that a jury could find a constitutional violation but granted summary judgment on qualified immunity. The plaintiffs appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with this opinion.

CITED IN

- *Irish v. Fowler*, *Irish v. Fowler*, 979 F.3d 65, 67, 75 (1st Cir. 2020)
- *Irish v. Fowler*, *Irish v. Fowler*, 979 F.3d 65, 76-77 (1st Cir. 2020)
- *Irish v. Fowler*, *Irish v. Fowler*, 979 F.3d 65, 76 (1st Cir. 2020)
- *Irish v. Fowler*, *Irish v. Fowler*, 979 F.3d 65, 73 (1st Cir. 2020)