

COURT OF APPEAL OF LOUISIANA, SECOND CIRCUIT

Kevin Byrd v. Bossier Parish Sheriff, Deputy Scott Nelson, Deputy H. Balkom, Officer M. Hannah, and Officer K. Hardin

Byrd v. Bossier Parish Sheriff, No. 54,914-CA (La. Ct. App. 2d Cir. Mar. 1, 2023) · No. 54,914-CA · Decided March 1, 2023

SUMMARY

The Louisiana Second Circuit affirmed judgments sustaining exceptions of prescription and dismissing Kevin Byrd’s claims arising from alleged excessive force during his arrest. The court held that Byrd’s allegations did not sufficiently establish that the officers’ conduct constituted a crime of violence triggering Louisiana Civil Code article 3493.10’s two-year prescriptive period, so the one-year period under article 3492 applied.

CASE DETAILS

COURT	Court of Appeal of Louisiana, Second Circuit
WRITING FOR THE COURT	Robinson, J.; Marcotte, J.; Ellender, J.
JURISDICTION	Louisiana Court of Appeal, Second Circuit
DECIDED	March 1, 2023
DOCKET	54,914-CA
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from judgments sustaining exceptions of prescription and dismissing Byrd's state-law lawsuit with prejudice.
STANDARD OF REVIEW	When no evidence is introduced at a prescription-exception hearing, the court accepts the petition's factual allegations as true and reviews whether the trial court was legally correct.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Kevin Byrd v. Bossier Parish Sheriff, City of Bossier City, Deputy Scott Nelson, Deputy H. Balkom, Officer M. Hannah, Officer K. Hardin

TOPICS

- statute of limitations
- civil procedure
- appellate procedure
- standard of review
- personal injury

PRACTICE AREAS

civil rights

torts

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether Byrd's allegations that officers used excessive force during his arrest sufficiently alleged damages resulting from an act defined as a crime of violence under La. C.C. art. 3493.10, thereby triggering a two-year prescriptive period.
2. Whether the trial court properly sustained the exceptions of prescription and dismissed Byrd's state-law claims.

HOLDINGS

1. Allegations that law-enforcement officers used excessive force during an arrest, together with allegations of serious injury, do not by themselves sufficiently allege that the defendants committed an act defined as a crime of violence under La. R.S. 14:2(B). Permitted use of reasonable force during a lawful arrest is not automatically transformed into a crime of violence by the resulting injury.
2. The one-year prescriptive period under La. C.C. art. 3492 applied to Byrd's claims, and his state-court action filed on September 21, 2021, was prescribed because the alleged injury occurred during his August 29, 2019 arrest.

KEY QUOTATIONS

"It is well-settled that under Louisiana law, excessive force may transform ordinarily protected use of force into an actionable battery, rendering the officer and his employer liable for damages." (at 6)

"The injuries allegedly sustained by Byrd do not automatically transform the defendants' permitted actions into crimes of violence." (at 9)

"Accordingly, we conclude that the facts alleged in Byrd's petition are insufficient to state claims that constitute crimes of violence." (at 9)

FACTUAL BACKGROUND

Byrd was arrested in Bossier City on August 29, 2019, for drug offenses. He alleged that officers and deputies used excessive force while he was subdued and being handcuffed, stretching his shoulder out of its socket and causing a severe rotator cuff injury. He filed a federal action on October 1, 2020, and a state action on September 21, 2021, asserting excessive-force, failure-to-intervene, negligence, and related claims.

PROCEDURAL HISTORY

Byrd first filed federal claims under 42 U.S.C. § 1983 and related state-law claims arising from the force used during his arrest. The federal court dismissed the federal claims with prejudice as prescribed and dismissed the state-law claims without prejudice after declining supplemental jurisdiction. Byrd then filed suit in Louisiana district court, which sustained the defendants' exceptions of prescription and dismissed the action with prejudice. The Louisiana Second Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Hall v. City of Shreveport, 45,205 (La. App. 2 Cir. 4/28/10), 36 So. 3d 419
- Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C., 21-00061 (La. 10/10/21), 333 So. 3d 368
- Hogg v. Chevron USA, Inc., 09-2632 (La. 7/6/10), 45 So. 3d 991
- Wells v. Zadeck, 11-1232 (La. 3/30/12), 89 So. 3d 1145
- Correro v. Ferrer, 16-0861 (La. 10/28/16), 216 So. 3d 794
- Maltby v. Gauthier, 506 So. 2d 1190 (La. 1987)
- Carter v. Haygood, 04-0646 (La. 1/19/05), 892 So. 2d 1261
- O'Neal v. Succession of Wells, 33,915 (La. App. 2 Cir. 12/6/00), 774 So. 2d 1084
- Vallery v. City of Baton Rouge, 2011-1611 (La. App. 1 Cir. 5/3/12), 2012 WL 2877599
- Penn v. St. Tammany Parish Sheriff's Office, 02-0893 (La. App. 1 Cir. 4/2/03), 843 So. 2d 1157
- Edwards v. Lewis, 2022-56 (La. App. 3 Cir. 9/28/22), 348 So. 3d 269
- Lewis v. Parish, 51,064 (La. App. 2 Cir. 1/11/17), 212 So. 3d 1186, writ not cons., 17-0852 (La. 9/21/18), 252 So. 3d 494
- Anding o/b/o Anding v. Ferguson, 54,575 (La. App. 2 Cir. 7/6/22), 342 So. 3d 1138