

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Tuttle v. Sepolio

No. 22-20279 c/w 23-20013, United States Court of Appeals for the Fifth Circuit (May 24, 2023)

SUMMARY

The Fifth Circuit addressed qualified immunity on interlocutory appeal in a § 1983 excessive-force and unlawful-search action arising from a no-knock warrant execution. The court affirmed denial of qualified immunity for excessive-force claims against the executing officers because plaintiffs alleged they fired without provocation, but reversed failure-to-intervene claims for lack of a clearly established right. It affirmed a failure-to-supervise claim against Lieutenant Gonzales based on allegations of deliberate indifference to a subordinate officer’s pattern of fraudulent warrant practices, while dismissing direct-liability claims against Gonzales for lack of personal involvement. The court also vacated rulings concerning Lieutenant Todd due to a separate appeal and declined jurisdiction over search-and-seizure and state-law claims not tied to the qualified immunity defense.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per Curiam; Priscilla Richman; Jennifer Walker Elrod; Andrew S. Oldham
JURISDICTION	Federal
DECIDED	May 24, 2023
DOCKET	22-20279 c/w 23-20013
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from denial of qualified immunity and other motions to dismiss.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	Published
PARTIES	Eric Sepolio, Manuel Salazar, Thomas Wood, Oscar Pardo, Frank Medina, Clemente Reyna, Cedell Lovings, Nadeem Ashraf, Marsha Todd, Robert Gonzales v. Clifford F. Tuttle, Jr., as Representative of the Estate of Dennis W. Tuttle, Deceased, Robert Tuttle, Ryan Tuttle, Jo Ann Nicholas, John Nicholas

TOPICS

civil rights

qualified immunity

fourth amendment

appellate procedure

appellate jurisdiction

motions to dismiss

civil procedure

PRACTICE AREAS

Civil Rights

Appellate Practice

QUESTIONS PRESENTED

1. Whether the district court properly denied qualified immunity on excessive force claims against non-supervisory officers.
2. Whether the district court properly dismissed search-and-seizure claims against non-supervisory officers.
3. Whether failure-to-intervene claims were properly allowed.
4. Whether the district court had jurisdiction over Lieutenant Todd.
5. Whether direct liability claims against Lieutenant Gonzales were properly denied.
6. Whether failure-to-supervise claims against Lieutenant Gonzales were properly allowed.
7. Whether state-law wrongful death and survival claims are properly before the court.

HOLDINGS

1. The district court properly denied qualified immunity because plaintiffs alleged officers fired without provocation, which states a claim for excessive force.
2. The district court erred in allowing failure-to-intervene claims because plaintiffs failed to show that officers had a sufficient opportunity to intervene during the firefight.
3. The district court lacked jurisdiction to rule on Todd's motion because she had already appealed a prior order.
4. The district court erred in denying qualified immunity on direct liability claims because Gonzales was not personally involved.
5. The district court properly allowed failure-to-supervise claims because plaintiffs alleged specific instances of Goines' misconduct and Gonzales' knowledge and inaction.

KEY QUOTATIONS

“To state such a claim, a plaintiff must establish that he was injured as a result of force that was 'clearly excessive to the need' as well as 'objectively unreasonable' in light of the relevant circumstances.” (4)

“We thus hold that the district court erred in allowing these claims to proceed. The claims will be dismissed with prejudice because they are futile.” (6)

“Personal involvement is an essential element of demonstrating liability under § 1983.” (7)

FACTUAL BACKGROUND

The case arises from a police raid at 7815 Harding Street. Officer Gerald Goines fraudulently obtained a no-knock search warrant based on false information. During execution, officers fired, killing Dennis Tuttle and Rhogena Nicholas and injuring four officers. Plaintiffs allege officers fired without provocation. The officers moved to dismiss based on qualified immunity.

PROCEDURAL HISTORY

The district court dismissed some claims and allowed others to proceed. Defendants appealed the denial of qualified immunity.

DISPOSITION

other

REMAND INSTRUCTIONS

The case is remanded to the district court for proceedings consistent with this opinion. The judgment is **AFFIRMED** in part (excessive force claims against non-supervisory officers and failure-to-supervise claim against Gonzales), **REVERSED** in part (failure-to-intervene claims and direct liability claim against Gonzales, dismissed with prejudice), and **VACATED** in part (as to Todd).

CASES CITED

- Walker v. Beaumont ISD, 938 F.3d 724 (5th Cir. 2019)
- Jackson v. Gautreaux, 3 F.4th 182 (5th Cir. 2021)
- Joseph v. Bartlett, 981 F.3d 319 (5th Cir. 2020)
- Arizmendi v. Gabbert, 919 F.3d 891 (5th Cir. 2019)
- Smith v. Brenoettsy, 158 F.3d 908 (5th Cir. 1998)
- Roberts v. City of Shreveport, 397 F.3d 287 (5th Cir. 2005)
- Delaughter v. Woodall, 909 F.3d 130 (5th Cir. 2018)
- Brown v. Miller, 519 F.3d 231 (5th Cir. 2008)
- Burnside v. Kaelin, 773 F.3d 624 (5th Cir. 2014)
- Carswell v. Camp, 54 F.4th 307 (5th Cir. 2022)
- Allen v. Hays, 21-20337 (5th Cir. 2023)
- Henderson v. Harris County, Henderson v. Harris County, 51 F.4th 125 (5th Cir. 2022)
- Pearson v. Callahan, 555 U.S. 223 (2009)
- Marshall v. Kansas City S. Ry. Co., 378 F.3d 495 (5th Cir. 2004)
- Williams v. Brooks, 996 F.2d 728 (5th Cir. 1993)
- Thompson v. Steele, 709 F.2d 381 (5th Cir. 1983)
- Sims v. Adams, 537 F.2d 829 (5th Cir. 1976)
- Anokwuru v. City of Houston, 990 F.3d 956 (5th Cir. 2021)
- Mitchell v. Forsyth, 472 U.S. 511 (1985)

- *Kisela v. Hughes*, 138 S. Ct. 1148 (2018)
- *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4 (2021)
- *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018)
- *Mullenix v. Luna*, 577 U.S. 7 (2015)
- *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)
- *Brosseau v. Haugen*, 543 U.S. 194 (2004)
- *Wanger v. Bonner*, 621 F.2d 675 (5th Cir. 1980)
- *Brown v. Callahan*, 623 F.3d 249 (5th Cir. 2010)
- *Salazar v. Molina*, 37 F.4th 278 (5th Cir. 2022)