

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Vette v. Sanders

Vette · No. 20-1118 · Decided March 5, 2021

SUMMARY

The United States Court of Appeals for the Tenth Circuit addresses an interlocutory appeal from the denial of qualified immunity to a sheriff's sergeant accused of using excessive force during an arrest. The court holds that its jurisdiction is limited to abstract legal issues and that it lacks jurisdiction to review factual disputes except under the narrow blatant-contradiction exception. It further holds that the plaintiff's verified complaint could be treated as summary-judgment evidence and that the defendant's testimonial accounts and arrest-scene photographs did not blatantly contradict the plaintiff's version of events.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	McHugh, Circuit Judge; Lucero, Senior Circuit Judge; Carson, Circuit Judge
JURISDICTION	Federal
DECIDED	March 5, 2021
DOCKET	20-1118
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of a motion for summary judgment based on qualified immunity in a 42 U.S.C. § 1983 excessive-force action.
STANDARD OF REVIEW	De novo review of the denial of summary judgment on qualified-immunity grounds, limited to purely legal issues; the court generally lacked jurisdiction to review factual disputes or the district court's determination of what facts a reasonable jury could find.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	K-9 Unit Deputy Sanders v. Eric Tyler Vette

TOPICS

qualified immunity

police misconduct

section 1983

interlocutory appeal

summary judgment

PRACTICE AREAS

Civil rights

constitutional law

qualified immunity

appellate procedure

summary judgment

QUESTIONS PRESENTED

1. Whether the Tenth Circuit had interlocutory appellate jurisdiction to review the denial of qualified immunity.
2. Whether a verified complaint may be treated as affidavit evidence at summary judgment when it satisfies Federal Rule of Civil Procedure 56 standards.
3. Whether the district court's assumed version of the facts was blatantly contradicted by the record.
4. Whether, accepting the facts the district court determined a reasonable jury could find, striking an apprehended suspect and releasing a police dog to attack him violated the Fourth Amendment.
5. Whether that Fourth Amendment right was clearly established by December 2017.

HOLDINGS

1. Under the collateral-order doctrine, the court had jurisdiction to review abstract legal questions arising from the denial of qualified immunity at summary judgment, but not factual disputes or challenges dependent on facts different from those assumed by the district court.
2. A verified complaint may be treated as an affidavit for summary-judgment purposes when it is based on personal knowledge, sets out admissible facts, and otherwise satisfies Federal Rule of Civil Procedure 56.
3. The record did not blatantly contradict the district court's assumed facts, and conflicting testimonial accounts by the defendant could not establish the narrow blatant-contradiction exception.
4. Accepting the facts the district court determined a jury could find, striking an apprehended suspect in the face and releasing a police dog to attack him after he was subdued constituted objectively unreasonable force in violation of the Fourth Amendment.
5. By December 2017, it was clearly established that punching or striking an apprehended person and allowing a police dog to attack him after he was subdued violated the Fourth Amendment; Sanders was therefore not entitled to qualified immunity.

KEY QUOTATIONS

“In an interlocutory appeal from the denial of summary judgment based on qualified immunity, we have jurisdiction over the abstract legal questions of (1) whether, accepting the facts the district court concluded a reasonable jury could find based on the summary judgment evidence, those facts constitute a legal violation, and (2) whether that legal violation was clearly established at the time of the violation.” (at 21-22)

“We further conclude that, under the totality of circumstances, Sergeant Sanders’s alleged use of force against Mr. Vette—viz., striking him in the face and releasing a police dog to attack him after he was already apprehended—was objectively unreasonable.” (at 27)

“This court’s precedent, summarized above, would make it clear to every reasonable officer that punching an arrestee, hitting him in the face with a dog chain, and allowing a police dog to attack him, all after he is subdued, violates the Fourth Amendment.” (at 31)

FACTUAL BACKGROUND

On December 31, 2017, officers pursued Vette after he drove away from an attempted traffic stop and fled on foot into a field. Two officers apprehended Vette, after which, according to the facts the district court determined a reasonable jury could find, Sergeant Sanders punched him, struck him in the face with a dog chain, and allowed his police dog, Oxx, to attack and bite Vette's shoulder. Vette's verified complaint described the conduct and photographs showed marks on his shoulder.

PROCEDURAL HISTORY

Vette filed a verified complaint in the District of Colorado alleging that Sergeant Sanders used excessive force during his arrest. The district court converted Sanders's motion to dismiss or, alternatively, for summary judgment into a summary-judgment motion and denied it, concluding that a reasonable jury could find that Sanders punched Vette, struck him with a dog chain, and allowed a police dog to attack him after he had been apprehended. Sanders filed an interlocutory appeal under the collateral-order doctrine.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the district court for proceedings consistent with the decision.

CASES CITED

- Amundsen v. Jones, 533 F.3d 1192, 1196 (10th Cir. 2008)
- Estate of Valverde ex rel. Padilla v. Dodge, 967 F.3d 1049, 1058, 1061 n.2 (10th Cir. 2020)
- Ralston v. Cannon, 884 F.3d 1060, 1066 (10th Cir. 2018)
- Gelboim v. Bank of America Corp., 574 U.S. 405, 414 n.5 (2015)
- Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949)
- Thomas v. Durastanti, 607 F.3d 655, 658-59 (10th Cir. 2010)
- Crowson v. Washington County, 983 F.3d 1166, 1177-78 (10th Cir. 2020)
- Walker v. City of Orem, 451 F.3d 1139, 1155 (10th Cir. 2006)
- Fancher v. Barrientos, 723 F.3d 1191, 1199, 1201 (10th Cir. 2013)
- Lynch v. Barrett, 703 F.3d 1153, 1159 (10th Cir. 2013)
- Lewis v. Tripp, 604 F.3d 1221, 1225-26 (10th Cir. 2010)
- Argo v. Blue Cross & Blue Shield of Kansas, Inc., 452 F.3d 1193, 1199 (10th Cir. 2006)
- Mitchael v. Intracorp, Inc., 179 F.3d 847, 854 (10th Cir. 1999)

- *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1311 (10th Cir. 2010)
- *Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1991)
- *Speidell v. United States ex rel. IRS*, 978 F.3d 731, 740 (10th Cir. 2020)
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 255 (1986)
- *Scott v. Harris*, 550 U.S. 372, 378, 380-81 (2007)
- *Estate of Valverde ex rel. Padilla v. Dodge*, 967 F.3d 1049, 1062 (10th Cir. 2020)
- *Farrell v. Montoya*, 878 F.3d 933, 938 (10th Cir. 2017)
- *McCowan v. Morales*, 945 F.3d 1276, 1281 n.3, 1285 (10th Cir. 2019)
- *Rhoads v. Miller*, 352 F. App'x 289, 291 (10th Cir. 2009) (unpublished)
- *Younes v. Pellerito*, 739 F.3d 885, 889 (6th Cir. 2014)
- *Roosevelt-Hennix v. Prickett*, 717 F.3d 751, 759 (10th Cir. 2013)
- *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)
- *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)
- *Quinn v. Young*, 780 F.3d 998, 1004 (10th Cir. 2015)
- *Bond v. City of Tahlequah*, 981 F.3d 808, 815-16, 820, 824-25 (10th Cir. 2020)
- *Graham v. Connor*, 490 U.S. 386, 394, 396 (1989)
- *Emmett v. Armstrong*, 973 F.3d 1127, 1135-39 (10th Cir. 2020)
- *Lee v. Tucker*, 904 F.3d 1145, 1149 (10th Cir. 2018)
- *Henry v. Storey*, 658 F.3d 1235, 1239 (10th Cir. 2011)
- *City of Escondido v. Emmons*, 139 S. Ct. 500, 503 (2019) (per curiam)
- *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018)
- *Tolan v. Cotton*, 572 U.S. 650, 656 (2014)
- *McCoy v. Meyers*, 887 F.3d 1034, 1052 (10th Cir. 2018)
- *Dixon v. Richer*, 922 F.2d 1456, 1463 (10th Cir. 1991)
- *Casey v. City of Federal Heights*, 509 F.3d 1278, 1286 (10th Cir. 2007)
- *Weigel v. Broad*, 544 F.3d 1143 (10th Cir. 2008)
- *Estate of Ronquillo v. Denver*, 720 F. App'x 434, 438 (10th Cir. 2017) (unpublished)