Municipal Tort And Civil Rights Litigation Update

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MUNICIPAL TORT AND CIVIL RIGHTS LITIGATION UPDATE

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MUNICIPAL TORT AND
CIVIL RIGHTS LITIGATION UPDATE

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1. *Cordova v. City of Los Angeles,* 190 Cal. Rptr. 3d 850 (Cal. 2015).

BRIEF SUMMARY OF THE LEGAL ISSUE

CAN A PUBLIC ENTITY BE HELD LIABLE FOR INJURY WHERE IT IS ALLEGED THAT A DANGEROUS CONDITION OF PROPERTY EXISTED WHICH CAUSED THE INJURY PLAINTIFFS SUFFERED IN AN ACCIDENT, BUT DID NOT CAUSE THE THIRD PARTY CONDUCT THAT LED TO THE ACCIDENT?

FACTUAL BACKGROUND

Cristyn Cordova was driving her 2006 Nissan Maxima westbound in the inside lane of Colorado Boulevard in Eagle Rock, a neighborhood in the City of Los Angeles, when a vehicle driven by Rostislav Shnayder veered into the side of Cristyn's car. The speed of the two cars at the time of the collision was in dispute, but it was undisputed that both cars were traveling well above the posted speed limit of 35 miles-per-hour.

The impact from the collision forced Cristyn's vehicle over the curb and onto the grassy center median of Colorado Boulevard. Out of control and spinning counterclockwise, the car struck one of several large magnolia trees planted in the median, approximately seven feet from the inside lane of the roadway. Cristyn, her unborn baby, and three of the car's passengers, including Cristyn's brother and sister, were killed. A fourth passenger was seriously injured. Shnayder was arrested at the scene. A jury later convicted Shnayder of four counts of vehicular manslaughter without gross negligence.

The parents of Cristyn and her siblings filed a wrongful death action against the City of Los Angeles, among other defendants. As to the City, Plaintiffs alleged that "Colorado Boulevard was in a dangerous condition because the magnolia trees on the grassy median were too close to the travel portion of the roadway, posing an unreasonable risk to motorists who might lose control of their vehicles." Plaintiffs claimed that the alleged dangerous condition proximately caused the death of the decedents.

PROCEDURAL BACKGROUND

The City moved for summary judgment, contending that the street and median were not dangerous and that the accident was caused by third party conduct, not by any feature of public property.

The trial court entered summary judgment in favor of the City, ruling that the magnolia tree "does not constitute a dangerous condition of public property" because, among other things, it "did not cause the accident that killed the Cordova children."

The Court of Appeal affirmed the trial court's grant of summary judgment to the City, concluding that the magnolia tree did not constitute a dangerous condition of public property as a matter of law because Plaintiffs "cannot show that the magnolia tree contributed to Shnayder's criminally negligent driving."

The California Supreme Court granted Plaintiffs' petition for review, limited to the following question: "May a government entity be liable where it is alleged that a dangerous condition of public property existed and caused the injury plaintiffs suffered in the accident, but did not cause the third party conduct that led to the accident?"

DECISION OF CALIFORNIA SUPREME COURT

The Supreme Court reversed the order of summary judgment that was granted in favor of the City by the Court of Appeal. The Supreme Court unanimously held that plaintiffs injured by a combination of a dangerous condition of public property and third party conduct are *not* required to show that the condition caused the third party conduct that precipitated the accident. They are only required to show that a dangerous condition of public property contributed to their injuries.

The California Government Claims Act (Cal. Gov't Code § 810 et seq.,) "is a comprehensive statutory scheme that sets forth the liabilities and immunities of public entities and public employees for torts." *Kizer v. County of San Mateo,* 53 Cal. 3d 139, 145 (1991). Section 835 prescribes the conditions under which a public entity may be held liable for injuries caused by a dangerous condition of public property. *Brown v. Poway Unified School Dist.*, 4 Cal. 4th 820, 829 (1993). The Act defines a "dangerous condition" as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." Cal. Gov't Code § 830.

"A public entity is not, without more, liable under section 835 for the harmful conduct of third parties on its property." *Hayes v. State of California,* 11 Cal. 3d 469, 472 (1974). In the court's view, a public entity cannot be held liable for a property defect that "combines with a third party's negligent conduct to inflict injury," *Ducey v. Argo Sales Co.,* 25 Cal. 3d 707, 718-719 (1979), unless the plaintiff can show the defect caused the third party negligence.

Here, the Court of Appeal ruled that a public entity cannot be held liable for a property defect that combines with a third party's negligent conduct to inflict injury, unless the plaintiff can show that the condition caused the third party negligence that precipitated the accident.

The Supreme Court disagreed. The Court explained that in this case, section 835 only requires Plaintiffs to show that "a dangerous condition of property—that is, a condition that creates a substantial risk of injury to the public—proximately caused the fatal injuries their decedents suffered as a result of the collision with Shnayder's car." According to the Court, "there is nothing in the statute [that] requires plaintiffs to show that the allegedly dangerous condition also caused the third party conduct that precipitated the accident."

HOLDING

Plaintiffs injured by a combination of a dangerous condition of public property and third party conduct are *not* required to show that the condition somehow caused the third party's harmful conduct. Plaintiffs only need to show that the condition proximately caused their injury.

2. *Velazquez v. City of Long Beach,* 793 F.3d 1010 (9th Cir. 2015).

BRIEF SUMMARY OF THE PRIMARY LEGAL ISSUE

UNDER *GRAHAM V. CONNOR,* IF AN ARREST IS UNLAWFUL DUE TO THE ABSENCE OF PROBABLE CAUSE, DOES ANY AMOUNT OF FORCE THEREBY BECOME EXCESSIVE?

FACTUAL BACKGROUND

Plaintiff Alejandro Velazquez and several of his friends had been drinking alcoholic beverages at Velazquez's house from late in the afternoon through the early morning. At approximately 3:30 a.m., City of Long Beach police officers Defendants Kalid Abuhadwan and Martin Ron responded to a call concerning a loud party at Velazquez's house. When the officers arrived at the scene, they saw about eight to ten individuals standing around a vehicle parked on a "dimly lit street." Officer Abuhadwan asked the group to pick up their litter and go inside the house. Members of the group with the exception of Velazquez began to comply with the officer's request.

Velazquez, however, questioned the authority of Officer Abuhadwan to disperse the group and told the group not to leave. The officer got out of his vehicle and approached Velazquez. When he was about four feet away, Officer Abuhadwan testified that he smelled alcohol on Velazquez's breath and observed that his eyes were watery.

Officer Abuhadwan informed Velazquez that he was being "detained" for being drunk in public and to put his hands behind his head. Velazquez refused to place his hands behind his head and the officer decided to apply a "twist lock" on him. After placing Velazquez in the twist lock hold and while walking him to the patrol car, Officer Abuhadwan stated that he felt Velazquez "pull away." The officer then applied an "arm bar take-down" which brought Velazquez to the ground. However, instead of Velazquez ending up in the prone position with his stomach to the ground, thus allowing the officer more control—a properly applied hold would place the suspect in that position—Velazquez rolled onto his back and was facing the officer with his fists clinched to his chest. Officer Abuhadwan believed that Velazquez was getting ready to fight him, and at that point the officer decided to arrest Velazquez for violating California Penal Code section 148, which prohibits resisting or obstructing a police officer when the officer is engaged in the performance of his or her duties.

Officer Abuhadwan commanded Velazquez to roll over onto his stomach and to place his hands to his sides, but Velazquez did not comply. Without warning, the officer struck Velazquez three times on the shoulder with his baton. Officer Abuhadwan continued to order Velazquez to roll over onto his stomach but Velazquez failed to comply. The officer proceeded to strike Velazquez eight more times. After eleven baton strikes, Velazquez rolled onto his stomach and placed his hands to his side; Abuhadwan then handcuffed him, and after additional units arrived at the scene, Officer Abuhadwan drove Velazquez to the police station to be booked.

The court noted that the parties' accounts of the events "diverged considerably."

No criminal charges related to the incident were ever brought against Velazquez.

PROCEDURAL BACKGROUND

Velazquez sued Officers Abuhadwan and Ron in federal court under 42 U.S.C. § 1983, alleging that the officers unlawfully arrested him and used excessive force against him in violation of the Fourth Amendment. Velazquez also sued the City and the Long Beach Police Department under *Monell v. Department of Social Services,* 436 U.S. 658 (1978), alleging, among other things, that the City "maintained a policy, pattern, practice and custom of permitting, encouraging, and ratifying the use of unnecessary and unreasonable force" by police officers. In addition to the federal civil rights claims, Velazquez brought state law claims of negligence, intentional infliction of emotional distress, assault and battery, and false arrest.

The case proceeded to trial. After the close of evidence, the City and the officers filed a motion for judgment as a matter of law under Fed. R. Civ. P. Rule 50(a) on Velazquez's federal claims. The district court granted the motion as to Velazquez's section 1983 *Monell* and unlawful arrest claims. The court then dismissed the state law claims without prejudice but submitted the section 1983 excessive force claim to the jury, which returned a defense verdict.

Velazquez appealed the final judgment.

NINTH CIRCUIT DECISION

The Ninth Circuit concluded as follows:

(1) Velazquez's § 1983 Unlawful Arrest Claim.

The Ninth Circuit concluded that the district court erred when it ruled in favor of Officer Abuhadwan that no reasonable jury could have found that the officer lacked probable cause to arrest Velazquez for resisting a police officer. According to the Ninth Circuit, accepting Velazquez's account of the incident and drawing all reasonable inferences in his favor,—which the court must do on a Rule 50(a) motion—"there is no doubt that the unlawful arrest claim should have gone to the jury." There was sufficient evidence for a jury to conclude that Officer Abuhadwan had no lawful basis upon which to detain or investigate Velazquez, as California law does not make it unlawful, standing alone, to refuse to cooperate with police officers.

Velazquez's conduct was not only lawful, "but protected by the First Amendment." Accordingly, the Ninth Circuit reversed the district court's grant of judgment as a matter of law as to Velazquez's unlawful arrest claim.

(2) <u>Velazquez's § 1983 Excessive Force Claim</u>.

The Ninth Circuit reversed the jury's verdict in favor of the officers on Velazquez's excessive force claim. According to the court, the district court's grant of judgment as a matter of law on the unlawful arrest claim "so substantially prejudiced the jury's consideration of the excessive force claim as to warrant reversal of the verdict." According to the court, the removal of the unlawful arrest claim from the jury's consideration together with the district court's jury instructions, "fatally infected" the jury's verdict as to excessive force.

The courts have recognized that "[b]ecause the excessive force and false arrest factual inquiries are distinct, establishing a lack of probable cause to make an arrest does not establish an excessive force claim, and vice-versa." *Beier v. City of Lewiston,* 354 F.3d 1058, 1064 (9th Cir. 2004). The courts have made it clear that the absence of probable cause alone is insufficient to establish excessive force. *Mattos v. Agarano,* 661 F.3d 433, 443 n.4 (9th Cir. 2011). In fact, every circuit that has addressed the question has held that a finding of excessive force cannot be based solely on the fact of an unlawful arrest. *Snell v. City of York, Pa.,* 564 F.3d 659, 672 (3d Cir. 2009).

However, the objective-reasonableness test established in *Graham v. Connor,* 490 U.S. 386 (1989), "remains the applicable test for determining when excessive force has been used, including those cases where officers allegedly lacked probable cause to arrest." *Jones v. Parmley,* 465 F.3d 46, 61-62 (2nd Cir. 2007). The *Graham* reasonableness analysis takes into account, among other considerations, the facts known to the police at the time of the arrest, whether or not there is also an unlawful arrest claim.

Here, the bulk of the evidence presented by both sides went to both the unlawful arrest and excessive force claims. The circumstances underlying Velazquez's arrest were a "central issue from the outset." However, according to the Ninth Circuit, by granting the Rule 50(a) motion on the unlawful arrest claim, the district court did not give the jury any real opportunity to consider, as part of the excessive force claim, the circumstances that justified, or did not justify, the detention and arrest.

According to the Ninth Circuit, the district court improperly influenced the jury's consideration of Velazquez's excessive force claim when it granted the Rule 50(a) motion on the lawfulness of the arrest. Thus, the Ninth Circuit reversed the jury's verdict on the excessive force claim.

(3) Velazquez's *Monell* Liability Claims.

The Ninth Circuit also reversed the district court's grant of the City's motion for judgment as a matter of law on Velazquez's municipality claims on the ground that the district court erroneously excluded relevant *Monell* evidence. One of Velazquez's theories of *Monell* liability for excessive use of force was that the City had a policy or custom of failing to investigate and discipline officers who had allegedly committed prior instances of excessive force. However, the district court, without any explanation, granted Defendants' motion *in limine* to preclude reference to such evidence. The Ninth Circuit concluded that the district court's categorical exclusion of evidence relevant to establishing Velazquez's theory of municipal liability was an abuse of discretion. The court thus reversed the district court's grant of judgment as a matter of law on the *Monell* claims.

(4) Velazquez's State Law Claims.

The district court dismissed Velazquez's state law claims without prejudice on the ground that instructing on both federal and state liability for false arrest and excessive force would be "difficult, misleading, or confusing" to the jury. The Ninth Circuit held that the dismissal of the state law claims was error. According to the court, such claims are "routinely combined in district courts," and the court was "unaware of any case in which prejudicial confusion resulted." The court therefore held that the district court abused its discretion "in blanketly refusing to exercise supplemental jurisdiction," and so reversed its dismissal of the state law claims.

Reversal and Remand

The Ninth Circuit reversed and remanded the case for a new trial on all of Velazquez's claims. In addition, the court instructed the Chief Judge for the Central District of California to assign the case to a different district judge on remand, as the court expressed its doubts about the district court's ability to afford Velazquez a fair trial.

The trial court record, as described by the Ninth Circuit, reveals that, "during trial, the district judge criticized and rebuked Velazquez's counsel numerous times—often for exceedingly minor issues—while maintaining a more permissive and accommodating approach toward defense counsel." One such criticism which is stated in a footnote in the opinion criticized Plaintiff's counsel for saying "good afternoon" to the court.

"Litigants are entitled to a fair trial and a perception that the presiding judge does not possess a bias that will affect rulings during trial." *Montiel v. City of Los Angeles,* 2 F.3d 335, 344 (9th Cir. 1990). Reassignment is therefore "advisable to preserve the appearance of justice." *United States v. Rivera,* 682 F.3d 1223, 1237 (9th Cir. 2012).

3. Z.V., *a Minor, v. County of Riverside,* 238 Cal. App. 4th 889 (2015).

BRIEF SUMMARY OF THE LEGAL ISSUE

CAN A COUNTY BE HELD LIABLE FOR THE SEXUAL ASSAULT BY AN OFF-DUTY EMPLOYEE?

FACTUAL BACKGROUND

Z.V., then 15-years-old, was within the custody of the Riverside County Department of Public Social Services, which had removed him from his parents. He had an assigned social worker, Rebecca Seolim, who in the early afternoon had taken Z.V. to the social services office. Seolim spent most of the afternoon attempting to find a new foster home placement for Z.V. She finally found one late in the afternoon. However, she was unable to take Z.V. to the new home immediately because a family emergency came up.

Sean Birdsong, a social worker who apparently happened to be in the office at that moment, offered to take Z.V. to the new placement, as he lived closer to the placement than Seolim. Z.V. immediately sensed that Birdsong had a sexual interest in him. Z.V. told Seolim that he didn't want to go with Birdsong because "there was something about him I didn't trust." Nevertheless, despite his protestations, Z.V. was told by other social workers in the office that if he didn't go with Birdsong, "they were going to call the police."

Birdsong and Z.V. departed the office at 5:30 p.m., when both Birdsong's and Seolim's shifts would normally be ending. The trip to the new foster home took about 30 minutes. When they arrived, Birdsong dropped off Z.V. at the new home. Birdsong understood his duties in dropping off Z.V. were to enter the new home, do an assessment, and make sure all placement papers were completed. The drop-off was completed without incident. Birdsong went to a pharmacy, purchased alcohol, and then went to his apartment and began drinking.

Sometime between Birdsong's return to his apartment and 8:30 p.m. that evening, Birdsong called the new foster home and asked to retrieve some papers he had left at the new home. During this phone conversation Z.V. asked to speak with him. Z.V. told Birdsong that he didn't want to be at the new home, but Birdsong told him to stay there and that he would travel to the new home to make sure "everything's going well."

The upshot of the call was Birdsong's directive to Z.V. to put his stuff by the front door and go inside. At the time, however, there was no new placement to which Z.V. might have been taken.

Birdsong arrived at the new foster home in a County van. Smelling of alcohol, Birdsong picked up Z.V. near the foster home somewhere between 8:30 p.m. and 9:00 p.m. He made no attempt to pick up any paperwork, but picked up Z.V. and drove to Birdsong's apartment. Birdsong went upstairs while Z.V. stayed in the van. Birdsong then drove to a liquor store, where he purchased more liquor while Z.V. stayed in the van. They then returned to Birdsong's apartment, and

went inside, where Birdsong sexually assaulted Z.V. Z.V. went outside, contacted bystanders who called the police, and Birdsong was soon arrested.

PROCEDURAL BACKGROUND

Z.V. brought an action against both Birdsong and the County of Riverside seeking to hold Birdsong's employer—the County—responsible for the assault under the doctrine of respondeat superior.

The trial court granted summary judgment to the County. Z.V. filed a timely notice of appeal.

CALIFORNIA COURT OF APPEAL DECISION

The Court of Appeal affirmed the grant of summary judgment in favor of the County. The court concluded that as a matter of law, Birdsong was acting outside the scope of his employment at the time of the assault; hence, there could be no respondeat superior liability on the part of the County.

Respondeat Superior and *Mary M.*

Z.V. relied primarily on the California Supreme Court case of *Mary M. v. City of Los Angeles,* 54 Cal. 3d 202 (1991), in support of his contention that the County of Riverside should be held liable under the doctrine of respondeat superior for the sexual assault. In *Mary M.,* a female motorist driving home alone after midnight was stopped by a police sergeant for her erratic driving. He was in uniform. He was on duty. He wore a badge and carried a gun. He was driving a marked black and white police car. He radioed a message saying he was conducting an investigation. He asked the woman for her driver's license and administered a field sobriety test on which she did not "do well." He then ordered her to get in the front seat of the police car, and drove her to her home. Once at the house, the officer told the woman he expected "payment" for taking her home instead of jail. The woman tried to run away but the police sergeant grabbed her hair and threatened to take her to jail. He then raped her.

The woman sued the city on a respondeat superior theory. A divided California Supreme Court held that the city could be held liable for the errant officer's conduct since that conduct was not "so divorced" or "so unusual" to the "enterprise" of police work that it could be said, as a matter of law, the officer was acting outside the scope of his employment. The Court explained that given the "unique position" of police officers in our society, including the right to arrest and use deadly force, the city could be found liable on a respondeat superior theory.

The Narrow Holding of *Mary M.*

The Supreme Court has limited the holding of *Mary M.* to police officers, based on "the unique authority vested in police officers." *Mary M.,* 54 Cal. 3d at 218 n.11. The Court on two occasions resisted an invitation to extend *Mary M.'s* approach to sexual assaults by employees other than police officers. In *Farmers Ins. Group v. County of Santa Clara,* 11 Cal. 4th 992 (1995), the Court held that a county was not responsible for the sexual harassment of a county jailer directed at a fellow jailer. The majority opinion explained that "except where sexual

misconduct by on-duty police officers against members of the public is involved," the "employer is not vicariously liable to the third party [victim] for such misconduct." *Id.* at 1006.

In *Lisa M. v. Henry Mayo Newhall Memorial Hospital,* 12 Cal. 4th 291 (1995), the Court held that a hospital was not responsible for the sexual molestation of a pregnant patient by an ultrasound technician after the patient was taken to the hospital's emergency room. The *Lisa M.* majority distinguished *Mary M.* on two grounds: First, its holding was "expressly limited" to and based on the "unique authority vested in police officers"; and second, sexual assaults by police officers "may be foreseeable from the scope of their unique authority, but the same could not be said for an ultrasound technician." *Id.* at 304.

The Instant Case

The Court of Appeal in the instant case held that the County of Riverside was not liable for the sexual assault under the doctrine of respondeat superior because, as a matter of law, the assault did not occur in a police context involving "the unique authority vested in police officers." However, according to the court, even if *Mary M.* was not strictly confined to police contexts and might possibly apply to social workers, as a matter of law, under the facts of this case, the court was of the view that Birdsong's sexual assault did not occur in the course and scope of his employment.

Birdsong had no authorized duties to perform vis-à-vis Z.V. when the assault took place. Birdsong was not Z.V.'s assigned social worker. No one in the department requested Birdsong to do anything for Z.V. beyond simply driving him to his new placement. Birdsong merely volunteered to transport Z.V. to a new placement at the end of the workday. When the attack occurred, Birdsong's normal shift had been over for several hours. Therefore, according to the court, the evidence was undisputed that at the time of the assault Birdsong was not acting in the course and scope of his employment as a social worker.

4. *Green v. County of Riverside,* 238 Cal. App. 4th 1363 (2015).

BRIEF SUMMARY OF THE LEGAL ISSUE

IN THE EVALUATION OF FORCE USED BY POLICE OFFICERS UNDER THE FOURTEENTH AMENDMENT, WHICH STANDARD APPLIES: (1) INTENT TO CAUSE HARM, OR (2) DELIBERATE INDIFFERENCE?

FACTUAL AND PROCEDURAL BACKGROUND

Anthony Padilla, a licensed and armed security guard at a church in Hemet, California, saw Lawrence Rosenthal, clad only in boxer shorts, running in place in sprinklers at the church and saying he was on fire and attempting to cool off in the water. Thinking that someone might get hurt, Padilla called 9-1-1 to get medical help for Rosenthal.

Riverside County Deputy Sheriff Christopher Cazarez arrived while Padilla was still talking to the 9-1-1 operator. Padilla told Cazarez that Rosenthal was not in his right mind, and Cazarez saw Rosenthal running around and making erratic movements. Concerned for his own safety and for the safety of others, and believing that Rosenthal might be under the influence of drugs, Cazarez approached Rosenthal and tried to calm him down; despite Cazarez's effort, Rosenthal's behavior continued. Cazarez became concerned that Rosenthal might run out onto an adjoining state highway where traffic was proceeding at approximately 45 to 50 miles-an-hour. After Rosenthal began yelling that a bomb would go off, Cazarez called for backup.

When Deputies Janecka and Dietrich arrived, Rosenthal turned toward their vehicle, yelled at them and continued his erratic movements. Because the deputies believed Rosenthal was under the influence of drugs, Cazarez felt it necessary to take Rosenthal into custody for a mental status evaluation under California Welfare and Institutions Code section 5150.

The deputies ordered Rosenthal to get on the ground, but he did not comply. Instead, Rosenthal took a fighting stance and moved toward Janecka and Dietrich.

Cazarez used the Taser on Rosenthal; Rosenthal went to the ground, but after about five seconds he tried to get up. Cazarez used the Taser again, causing Rosenthal to fall back to the ground. When Rosenthal tried to get up again, Cazarez used the Taser a third time. Rosenthal continued to struggle while Dietrich and Janecka tried to handcuff him. For a couple of seconds, Janecka put some weight with either his knee or forearm across Rosenthal's back, at which point Rosenthal became unconscious, although he was still breathing.

One of the deputies called for paramedics, who arrived within six minutes. Shortly thereafter, Rosenthal stopped breathing, and he went into cardiac arrest. He died five days later when the ventilator keeping him alive was removed in accordance with his family's wishes.

The autopsy report listed the cause of death as lack of sufficient oxygen to the brain following cardiac arrest resulting from Rosenthal's hypertensive and atherosclerotic cardiovascular disease.

Rosenthal's mother filed an action in state court under 42 U.S.C. § 1983 alleging a deprivation of her Fourteenth Amendment rights to love, support, affection and companionship from her son. She also filed a wrongful death action under state law against the County of Riverside and the three deputy sheriffs who interacted with Rosenthal. After an 18-day trial, the jury returned a special verdict, finding that Deputy Cazarez used excessive force, but that the force was not a substantial factor in causing Rosenthal's death. The jury found that Deputies Janecka and Dietrich did not use excessive force. The trial court entered judgment in favor of the Defendants and awarded them costs of $66,453.02 - $40,610.68 of which was attributable to their presentation of certain evidence at trial.

The mother filed a timely appeal from the judgment.

DECISION OF CALIFORNIA COURT OF APPEAL

The California Court of Appeal affirmed the judgment in its entirety in favor of the Defendant deputies. Some of the issues in the case include the following:

(1) Failure to Properly Instruct on the Fourteenth Amendment Claim.

Plaintiff contended that the instruction the trial court gave involving her Fourteenth Amendment claim was erroneous because "it required the jury to find that the officers acted with a purpose to cause harm unrelated to legitimate law enforcement objectives." The court did not agree, as the courts have uniformly held in fast moving situations where police officers do not have the luxury or opportunity to reflect and consider various plans of action, the purpose-to-cause-harm standard, rather than the less demanding "deliberate indifference" standard applies.

Here, the Court of Appeal held that the trial court correctly instructed the jury on the mental state required in a Fourteenth Amendment excessive use of force claim under § 1983. According to the court, this case "did not involve reflective decision making by the officers, but instead their reaction to fast-paced circumstances presenting competing public safety obligations. Given these circumstances, [Plaintiff] was required to prove that the officers acted with a purpose to cause harm to her son." *Porter v. Osborn,* 546 F.3d 1131, 1138 (9th Cir. 2008).

(2) Failure of Trial Court to Instruct on Negligence.

Plaintiff agreed with the court in argument on appeal that the general negligence instructions contained in CACI do not provide the proper standard for evaluating officers' tactical decisions made before the use of force. Instead, according to the court, a specialized instruction such as the new BAJI No. 3.43 based on *Hayes v. County of San Diego,* 57 Cal. 4th 622 (2013), should have been given. Under *Hayes,* law enforcement officers' tactical decisions before the use of force may be evaluated under a negligence standard, but they must be considered as part of the "totality of the circumstances" preceding the application of force.

(3) Award of Trial Costs.

Plaintiff contended that the trial court should not have awarded $40,610.68 in "paralegal" costs because there was no basis for awarding attorney fees as costs. However, according to the court, "these costs reflected amounts defendants incurred for preparation and presentation of electronic evidence, including videos of deposition testimony, exhibits and excerpts from audio recordings, at trial."

These costs are neither specifically allowable nor prohibited by the Code of Civil Procedure. They may be awarded provided they are "reasonably necessary to the conduct of the litigation rather than merely convenient or

beneficial to its preparation." *Ladas California State Auto. Assn.,* 19 Cal. 4th 761,774 (1993).

5. *Patel v. City of Montclair,* No. 13-55632, 2015 WL 4899632 (9th Cir. Aug. 18, 2015).

BRIEF SUMMARY OF THE LEGAL ISSUE

DO POLICE OFFICERS CONDUCT A "SEARCH" WITHIN THE MEANING OF THE FOURTH AMENDMENT MERELY BY ENTERING AN AREA OF PRIVATE, COMMERCIAL PROPERTY THAT IS OPEN TO THE PUBLIC?

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff owned a motel that primarily rented rooms on an extended basis to middle-aged and elderly low-income residents receiving public assistance. These residents often could not find or afford other low-income housing.

Police officers for the City of Montclair entered the public areas of the motel and issued citations based on code violations they observed in plain view. The owner of the motel filed an action under 42 U.S.C. § 1983 against the City and its police officers, alleging that the officers violated the Fourth Amendment. The district court dismissed the action, holding that the owner of the motel did not have a reasonable expectation of privacy in the areas of the motel that were open to the public. The owner timely appealed that ruling.

On appeal, the motel owner did not contend that he had a reasonable expectation of privacy in the public areas of the motel which would be necessary to state a claim for a violation of the Fourth Amendment. Instead, he contended that, under recent decisions of the U.S. Supreme Court, police officers violated his Fourth Amendment rights by trespassing on his property for the purpose of conducting an investigation.

NINTH CIRCUIT DECISION

The Ninth Circuit affirmed the district court's order dismissing the motel's complaint alleging that City of Montclair police officers violated the motel owner's Fourth Amendment rights. The court held that "[p]olice officers do not conduct a search within the meaning of the Fourth Amendment merely by entering an area of private, commercial property that is open to the public."

The court did not agree with the motel's contention that under the Supreme Court's recent decisions in *United States v Jones,* 132 S. Ct. 945 (2012), and *Florida v. Jardines,* 133 S. Ct. 1409 (2013), police officers violated the motel owner's Fourth Amendment rights by entering his property for the purpose of conducting an investigation. In *Jones,* the Supreme Court explicitly reaffirmed the "open fields" doctrine, which states that a mere trespassory entry onto private property does not constitute a search. *Jones,* 132 S. Ct. at 953. Some areas of private property are not protected by the Fourth Amendment and *Jones* does not suggest that all technical trespasses constitute a search under the Fourth

Amendment. Rather, as the Supreme Court explained in *Florida v. Jardines*: "[t]he Fourth Amendment does not . . . prevent all investigations conducted on private property." *Jardines,* 133 S. Ct. at 1414.

Here, the motel owner further contended that the Supreme Court decisions in *Camara v. Municipal Court of City and County of San Francisco,* 387 U.S. 523 (1967), and *See v. City of Seattle,* 387 U.S. 541 (1967), protect against any police intrusion into private commercial property. In *Camara,* the Supreme Court held that the entry of an inspector into an area of a private business being used as a residence constituted a search. In *See,* the Court held that the Fourth Amendment protected against the search of a locked warehouse. Both opinions contain strong language protecting private commercial property. However, according to the court, those cases do not establish the broad principle that the motel owner asked the court to adopt in this case, namely, that any unauthorized entry onto private property constitutes a search.

CONCLUSION

Police officers entering Plaintiff's motel were entitled to observe (without a warrant) anything observable by the public. According to the court, "*Camara* and *See* only allow a commercial property owner to manifest a reasonable expectation of privacy in his property by closing off portions of his business to the public."

SUMMARY OF THE DOCTRINE OF QUALIFIED IMMUNITY UNDER SECTION 1983

The doctrine of qualified immunity shields government officials, including police officers, from liability under § 1983 unless they have violated a statutory or constitutional right "clearly established" at the time of the challenged conduct. *City & Cnty. of San Francisco v. Sheehan,* 135 S. Ct. 1765, 1774 (2015).

Qualified immunity "gives government officials breathing room to make reasonable but mistaken judgments," and "protects 'all but the plainly incompetent or those who knowingly violate the law'." *Ashcroft v. al-Kidd,* 563 U.S. 731, 131 S. Ct. 2074, 2085 (2011) (quoting *Malley v. Briggs,* 475 U.S. 335, 341 (1986).

The Supreme Court has repeatedly stressed "the importance of resolving immunity questions at the earliest possible stage in litigation." *Hunter v. Bryant,* 502 U.S. 224, 227 (1991) (*per curiam).*

A district court's denial of a defendant's motion to dismiss for failure to state a claim or a denial of a motion for summary judgment based on qualified immunity is a "final decision" subject to immediate appeal, provided a genuine issue of material fact does not exist. *Ashcroft v. Iqbal,* 556 U.S. 662,

671-672 (2009); *Behrens v. Pelletier,* 516 U.S. 299, 306 (1996).

To determine whether an officer is entitled to qualified immunity, the courts conduct a two-part analysis. *See Pearson v. Callahan,* 555 U.S. 223, 232 (2009). First, do the facts alleged show the officer's conduct violated a constitutional right? If the Constitution was not violated, that is the end of the inquiry. Second, if the Constitution was violated the court must determine whether the law was "clearly established" at the time of the alleged misconduct such that it would have been clear to a reasonable officer that his conduct was unlawful in the situation he confronted The district court has discretion to decide which step to address first. *Id.*

"An officer cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in his shoes would have understood that he was violating it, meaning that existing precedent placed the statutory or constitutional question beyond debate." *Sheehan,* 145 S. Ct. at 1774.

It is not necessary in order for a legal principle to be clearly established that the very action in question has previously been held unlawful. When there is no case on all fours prohibiting the conduct at issue, the courts must ask "whether the state of the law at the time of the alleged wrong gave the defendants fair warning that their alleged treatment of the plaintiff was unconstitutional." *Davis v. City of Las Vegas,* 478 F.3d 1048, 1056 (9th Cir. 2002).

Furthermore, the right at issue cannot be defined at too high a level of generality "as it would be of little help in determining whether the violative nature of particular conduct is clearly established." *Ashcraft v. al-Kidd,* 131 S. Ct. at 2984.

Officers are entitled to qualified immunity if (1) the officers' actions do not amount to a constitutional violation; (2) the violation was not clearly established; or (3) their actions reflected a reasonable mistake about what the law required. *See Blankenhorn v. City of Orange,* 485 F.3d 463, 471 (9th Cir. 2007).

- **PRACTICE POINTER**

Qualified immunity is an excellent tool that is available to city officials, especially police officers, in certain section 1983 cases to avoid having to go to trial and undergo costly discovery. Motions to dismiss and summary judgment motions should be brought early on

in select cases where there is no genuine dispute of material facts and a persuasive argument can be made that the officers are entitled to judgment as a matter of law based on qualified immunity.

6. *Demuth v. County of Los Angeles,* 2015 WL 4773429 (9th Cir. Aug. 14, 2015).

BRIEF SUMMARY OF THE LEGAL ISSUE

IS A GOVERNMENTAL OFFICIAL ENTITLED TO QUALIFIED IMMUNITY WHEN HE HAD NO REASONABLE BASIS FOR BELIEVING HE WAS AUTHORIZED TO TAKE THE CHALLENGED CONDUCT?

FACTUAL BACKGROUND

The following factual narration was taken virtually verbatim from the opinion:

Plaintiff, Florentina Demuth, a public defender, arrived at the Los Angeles Los Padrinos Juvenile Courthouse shortly after 8:30 a.m. She had a hearing for one of her clients that day, though it wasn't set for a specific time. Around 9:00 a.m., she had a brief conversation with the presiding referee in Demuth's case and opposing council in which Demuth indicated that she didn't intend to return to court until approximately 1:30 p.m. Demuth then left to work in her office, which was located in a different part of the building. A short while later, the referee asked Wai Li, the deputy sheriff on duty in her courtroom, to page Demuth over the court's intercom. Deputy Li paged Demuth several times, Demuth heard at least one page, but she didn't respond. Deputy Li also telephoned Demuth's direct line. Demuth heard her direct line ringing, but she didn't answer.

It was not unusual for lawyers, especially public defenders, to be absent from the courtroom when their case was called, and it typically took some time for the attorneys to get there. While she was being paged, Demuth was with her supervisor, Patricia Jones, who had instructed Demuth to finish an assignment before returning to court.

The referee was eager to hear the case of Demuth's client. She had approximately 53 cases on her calendar to hear before 2:00 p.m., and the deadline to hear the case of Demuth's client was that day around 9:45 a.m. The referee issued an order for Demuth to come to the referee's courtroom, and if she refused, her supervisor Patricia Jones would have to explain "why this is happening." Deputy Li found Demuth in her office suite talking to Ms. Jones. Li told Demuth several times that she had been called by the referee, to which Demuth responded "just a minute," or something to that effect. After some back and forth, Li raised his voice and demanded that Demuth come immediately. Demuth responded that "[i]f you want me to come right now, you'll have to arrest me." Deputy Li did just that. He put Demuth in handcuffs and escorted her to the referee's courtroom, where he removed the handcuffs. The arrest lasted some 11 minutes.

PROCEDURAL BACKGROUND

Demuth sued Deputy Li and the City of Los Angeles under 42 U.S.C. § 1983 and a variety of state law theories. After a bench trial, Defendants prevailed on all counts. The district court concluded that the arrest violated Demuth's Fourth Amendment rights, but that Li was protected by qualified immunity.

Demuth filed a timely appeal.

NINTH CIRCUIT DECISION

The Ninth Circuit reversed the decision of the district court that Deputy Li was entitled to qualified immunity. The Ninth Circuit concluded that Li had no reasonable basis for believing he was authorized to arrest Demuth; thus, he was not entitled to qualified immunity.

Deputy Li conceded that he violated Demuth's Fourth Amendment rights, but he contended that he was entitled to qualified immunity. Li can only be liable if "every reasonable official would have understood that" arresting Demuth violated her Fourth Amendment rights. *Mattos v. Agarano,* 661 F.3d 433, 442 (9th Cir. 2011) (en banc).

According to the court, Deputy Li "could not reasonably have believed that he had one of the usual Fourth Amendment justifications for the arrest." He had no warrant; Demuth was not suspected of a crime; he was not in hot pursuit or performing a community caretaking function, etc. The referee's order, by its clear terms, did not authorize Deputy Li to seize Demuth. Rather, it gave clear instructions as to what Li was to do if Demuth refused to come to court: bring her supervisor.

According to the court, "[n]o reasonable officer could have understood the referee as ordering that Demuth be forcibly brought into court. An unreasonable mistake of fact does not provide the basis for qualified immunity." *See Liberal v. Estrada,* 632 F.3d 1064, 1078 (9th Cir. 2011).

CONCLUSION

In denying qualified immunity to Deputy Li, the Ninth Circuit took the occasion to express its view of the case: "What seems to be at stake here is little more than wounded pride, as any damages suffered by the plaintiff seem hardly more than nominal. The dispute should have been resolved by an admission that the deputy violated Demuth's constitutional rights, followed by mutual apologies and a handshake, saving the taxpayers of Los Angeles County the considerable costs of litigating this tiff."

7. *Taylor v. Barkes,* 575 U.S. ___, 135 S. Ct. 2042 (2015).

BRIEF SUMMARY OF THE LEGAL ISSUE

CAN A FEDERAL RIGHT BE "CLEARLY ESTABLISHED" UNDER SECTION 1983 DESPITE DISAGREEMENT IN THE COURTS OF APPEAL?

FACTUAL BACKGROUND

Christopher Barkes, "a troubled man with a long history of mental health and substance abuse problems," was arrested for violating his probation. Barkes was taken to a correctional institution where, among other things, a medical evaluation was conducted by an intake nurse designed in part to assess whether an inmate was suicidal. The nurse worked for the contractor providing healthcare at the Institution.

The nurse employed a suicide screening form based on a model form developed by a national health organization. The form listed 17 suicide risk factors. If the inmate's responses and nurse's observations indicated that at least eight were present, or if certain risk factors were present, the nurse would notify a physician and initiate suicide prevention measures.

Barkes disclosed that he had a history of psychiatric treatment and was on medicine. He also disclosed that he had attempted suicide about a year earlier but was not currently thinking about killing himself. Because only two risk factors were apparent, the nurse gave Barkes a "routine" referral to mental health services and did not initiate any special suicide prevention measures.

Barkes was placed in a cell by himself. He called his wife that evening and told her that he "can't live this way anymore" and was going to kill himself. Barkes's wife did not inform anyone at the institution of this call. The next day, an officer arrived to deliver lunch and discovered that Barkes had hanged himself with a sheet.

PROCEDURAL BACKGROUND

Barkes's wife and children filed a 42 U.S.C. § 1983 action against various entities and individuals connected with the institution, who they claimed had violated Barkes's civil rights by failing to prevent his suicide. At issue in this case is a claim against the Commissioner of the State Department of Corrections and the Warden of the institution. Although it was undisputed that neither individual had personally interacted with Barkes or knew of his condition before his death, Plaintiffs alleged that the two individuals had violated Barkes's constitutional right to be free from cruel and unusual punishment. They allegedly did so by failing to supervise and monitor the private contractor that provided the medical treatment—including the intake screening—at the institution.

The Commissioner and the Warden moved for summary judgment on the ground that they were entitled to qualified immunity, but the district court denied the motion. The Commissioner and the Warden filed a timely notice of appeal.

A divided panel of the Court of Appeals for the Third Circuit affirmed. The panel majority held that it was clearly established at the time of Barkes's death that an incarcerated individual had an Eighth Amendment "right to the proper implementation of adequate suicide prevention protocols." The panel then concluded there were material factual disputes about whether the Commissioner and the Warden had violated this right by failing to adequately supervise the contractor providing medical services at the prison. There was evidence that the medical contractor's suicide screening process did not comply with the national standards, as required by the contract. Those standards allegedly called for a revised screening form and for screening by a qualified mental health professional, not a nurse.

The Commissioner and the Warden petitioned for certiorari. The U.S. Supreme Court granted the petition.

U.S. SUPREME COURT DECISION

The Supreme Court *per curiam* reversed the decision of the Third Circuit on the ground there was no violation of clearly established law.

"Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Reichle v. Howards,* 132 S. Ct. 2088, 2093 (2012). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." When properly applied, [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2085 (2011). "[T]he Court does not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.,* at 2085.

The Third Circuit concluded that the right at issue was best defined as "an incarcerated person's right to the proper implementation of adequate suicide prevention protocols." However, the Supreme Court explained that "this purported right was not clearly established [at the time of Barkes's death] in a way that placed beyond debate the unconstitutionality of the institution's procedures, as implemented by the medical contractor."

The Court noted that no decision of the Court established a right to the proper implementation of adequate suicide prevention protocols. Furthermore, according to the Court, the weight of authority in the Courts of Appeal at the time of Barkes's death suggested that such a right did *not* exist.

The Supreme Court in its discussion of the qualified immunity doctrine in this case, suggested that "for the sake of argument" a right might be "'clearly established" by circuit precedent despite disagreement in the courts of appeal. However, here there was no precedent that would have made it clear to the Commissioner and the Warden that they were overseeing a system that violated the Constitution.

Since there was no violation of clearly established law, the Supreme Court held that the Commissioner and the Warden were entitled to qualified immunity.

8. *Kingsley v. Hendrickson,* 576 U.S. ___, 135 S. Ct. 2466 (2015).

BRIEF SUMMARY OF THE LEGAL ISSUE

IS A PRETRIAL DETAINEE WHO BRINGS AN EXCESSIVE FORCE CLAIM UNDERTHE FOURTEENTH AMENDMENT REQUIRED TO SHOW THE STATE OF MIND OF THE OFFICERS?

FACTUAL BACKGROUND

Michael Kingsley was arrested on a drug charge and detained in a Wisconsin county jail while awaiting trial. One evening, he refused the orders of several jail officers to remove a piece of paper covering the light fixture above his bed. The next morning, four officers entered Kingsley's cell and when Kingsley failed to comply with orders to keep his hands behind him, the officers handcuffed him, forcibly removed him from the cell, carried him to a receiving cell, and placed him face down on a bunk with his hands handcuffed behind his back.

The officers testified that Kingsley resisted the officers' efforts to remove his handcuffs. Kingsley testified that he did not resist. A sergeant placed his knee in Kingsley's back and when Kingsley told him to get off, Kingsley testified that the sergeant and another officer slammed his head onto the concrete bunk—an allegation that the officers denied.

However, the parties agreed that the sergeant directed an officer to stun Kingsley with a Taser. The officer then applied a Taser to Kingsley's back for approximately five seconds; the officers then left the hand-cuffed Kingsley alone in the receiving cell; and officers returned to the cell 15 minutes later and removed Kingsley's handcuffs.

PROCEDURAL BACKGROUND

Kingsley filed a section 1983 complaint in federal district court claiming, among other things, that the officers used excessive force against him in violation of the Fourteenth Amendment's Due Process Clause. The officers moved for summary judgment, which the district court denied, stating that "a reasonable jury could conclude that [the officers] acted with malice and intended to harm [Kingsley] when they used force against him."

Kingsley's excessive force claim proceeded to trial. The court instructed the jury that Kingsley was required to show that the force used by the officers was "unreasonable" in light of the facts and circumstances at the time, *and* that the officers "acted with reckless disregard of [Kingsley's] rights."

The jury found in the officers' favor, and Kingsley appealed to the Court of Appeals for the Seventh Circuit.

On appeal, Kingsley argued that the correct standard for judging a pretrial detainee's excessive force claim is objective unreasonableness, and the jury instruction did not comport with that standard. A panel of the Court of Appeals disagreed, with one judge dissenting. The majority held that the law required a "subjective inquiry" into the officer's state of mind.

Kingsley filed a petition for certiorari asking the Supreme Court "to determine whether the requirements of a section 1983 excessive force claim brought by a pretrial detainee must satisfy the subjective standard or only the objective standard."

The Supreme Court granted the petition.

U.S. SUPREME COURT DECISION

With respect to the question of an officer's state of mind as to whether his use of force on a pretrial detainee was excessive, the Supreme Court concluded that the relevant standard is solely an objective one not subjective. "Thus, the defendant's state of mind is not a matter that a plaintiff is required to prove." "[I]f the use of force is deliberate—i.e., purposeful or knowing—the pretrial detainee must show only that [such] force used against him was objectively unreasonable."

Here, the officers did not dispute that they acted purposely or knowingly with respect to the force they used against Kingsley. Thus, according to the Court, all that Kingsley, a pretrial detainee, was required to show was that the force purposely or knowingly used against him was objectively unreasonable in light of the facts and circumstances at the time. It was not necessary for Kingsley to prove that the officers acted with reckless disregard of Kingsley's rights or that the officers believed there was a threat to staff or prisoners, or any other matter relating to the state of mind of the officers.

UPDATE OF CASE REMANDED BY U.S. SUPREME COURT

City and County of San Francisco v. Sheehan, 575 U.S. ___, 135 S. Ct. 1765 (2015).

ISSUE

Does the Americans with Disabilities Act (ADA) require police officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of making an arrest?

CASE SUMMARY

In this case, two police officers responded to a request from a social worker to provide assistance in taking Plaintiff, Teresa Sheehan, into protective custody for an involuntary mental evaluation. Sheehan had threatened to kill the social worker and stated she had a knife. When the officers arrived, they opened the door to Sheehan's room using the social worker's key. Sheehan reacted

violently. She grabbed a kitchen knife with a five-inch blade and approached the officers while threatening to kill them.

The officers retreated from the room and Sheehan closed the door. The officers called for backup. However, before backup arrived, the officers were concerned that the door to Sheehan's room was closed. They worried that Sheehan, out of their sight, could gather more weapons, or try to escape through the back window. They believed that the situation required their immediate attention and to prevent Sheehan from harming herself or others, they made a decision to enter Sheehan's room a second time and take her into protective custody. When the officers reentered Sheehan's room, Sheehan again threatened them with a knife and ordered them out of her room. She refused to drop the knife and an officer used pepper spray to try to stop her from advancing on the officers. When Sheehan kept coming at the officers with the knife, they shot her several times and were able to remove the knife from her.

Sheehan survived the shooting. She filed a § 1983 action in federal court against the two officers and the City and County of San Francisco for violation of Title II of the Americans with Disability Act of 1990, (ADA) 42 U.S.C. § 12191 et seq., and for violation of the Fourth Amendment.

The district court granted summary judgment to San Francisco and the two officers on the ground that police officers "are not required to determine whether their actions would comply with the ADA before protecting themselves and others." The district court also held that the officers did not violate the Fourth Amendment when they reopened Sheehan's door and thus were entitled to qualified immunity.

The Ninth Circuit reversed in part and held that the ADA applied. It concluded that a jury should decide whether San Francisco should have provided some type of accommodation to Sheehan "by, for instance, respecting her comfort zone, engaging in non-threatening communications and using the passage of time to defuse the situation rather than precipitating a deadly confrontation."

The City and the officers petitioned the Supreme Court for a writ of certiorari and asked the Court to resolve two questions: (1) whether the ADA "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody;" and (2) whether the courts below properly applied Fourth Amendment and qualified immunity standards to the facts of this case.

The Supreme Court granted the petition as to both questions.

With respect to the first question relating to the ADA issue, the Court noted that after certiorari was granted, the City's argument focused on issues that were somewhat different from the argument presented to the courts below and in its certiorari petition. The Court explained that those issues should not be decided without the benefit of briefing and an adversary presentation. Accordingly, the Court then exercised its discretion and declined to answer the first question

regarding the ADA issue. It dismissed the ADA question presented as "improvidently granted."

With respect to the second question, the Supreme Court held that the two officers were entitled to qualified immunity for their reentry into Sheehan's room to prevent her from escaping or gathering more weapons. According to the Court, "competent officers could have believed that the second entry was justified under both continuous search and exigent circumstances rationales." Accordingly, the Court held that the officers were entitled to qualified immunity.

CONCLUSION

The U.S. Supreme Court dismissed the first question pertaining to the ADA issue as "improvidently granted."

On the second question involving the lawfulness of the second entry into Sheehan's room, the Supreme Court granted qualified immunity to the officers and reversed the judgment of the Ninth Circuit.

The Supreme Court remanded the case for further proceedings consistent with the Court's opinion.

NOTE

On July 14, 2015, the Ninth Circuit filed an Order affirming the district court's grant of summary judgment to the officers on Sheehan's Fourth Amendment claims. However, the district court erred by granting summary judgment to the defendants on Sheehan's ADA claims. The Ninth Circuit therefore vacated in part the judgment of the district court and remanded for further proceedings.

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