WINTER 2015 NEWSLETTER

CIVIL RIGHTS LAW UPDATE

By Josh Skinner

United States Supreme Court

***Holt v. Hobbs*, No. 13-6827 (January 20, 2015)**

A prison regulation prohibiting inmates from growing beards violated the religious rights of a Muslim inmate who wished to grow a ½-inch beard in accordance with his religious beliefs.

Holt, an Arkansas inmate and devout Muslim, wanted to grow a ½-inch beard in accordance with his religious beliefs. However, the Arkansas Department of Correction's grooming policy prohibits inmates from growing bears unless they have a particular dermatological condition. Holt filed a pro se complaint in federal district court. The district court entered a preliminary injunction and remanded to a magistrate judge for an evidentiary hearing. The Department called two witnesses who expressed the belief that inmates could hide contraband in a ½-inch beard, but could not point to any instances in which this had been done in Arkansas or elsewhere. The prison warden stated that a prisoner could change his appearance by shaving to help avoid capture if he escaped or snuck into other areas of the prison. The prison warden did not explain, however, why he could not solve the possibility of a change of appearance by taking a picture of Holt without a beard, as was done in other prison systems. The magistrate judge recommended dismissal, explaining that Holt could exercise his religion in other ways. The district court adopted the magistrate's recommendation and the Eighth Circuit affirmed. Holt sought review from the Supreme Court.

The Supreme Court held that the prison regulation violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibits a state or local government from taking any action that substantially burdens the religious exercise of an institutionalized person unless the government demonstrates that the action constitutes the least restrictive means of furthering a compelling governmental interest. The Court held that the policy (1) substantially burdens Holt's religious exercise, and (2) is not the least restrictive means of furthering the compelling interest that the prison identified as justifying the restriction. The Court specifically rejected the lower courts' argument that Holt's religious exercise was not substantially burdened because he had alternative means of practicing his religion. In addition, the Court explained that the "substantial burden" component is based on the individual's religious beliefs, not the beliefs of other members of the same religion.

***Heien v. North Carolina*, No. 13-604 (December 15, 2014)**

A police officer's reasonable mistake of law can serve as justification for a search and seizure because the Fourth Amendment only prohibits "unreasonable searches and seizures."

Sergeant Darisse noticed, while driving behind a vehicle, that one of its brake lights was not working. Darisse pulled the vehicle over and gave the driver a warning ticket. Darisse asked and received permission to search the vehicle. In the course of the search, Darisse found a sandwich bag containing cocaine. The driver and the passenger were arrested. At the criminal trial on cocaine-trafficking, the passenger moved to suppress the evidence seized from the car, arguing that the original stop violated the Fourth Amendment. The trial court denied the motion to suppress. On appeal, the state court of appeals reversed, holding that the broken brake light did not violate North Carolina law because the law only required one working brake light. However, the North Carolina Supreme Court, in turn, reversed, holding that Darisse's mistake was a reasonable mistake and therefore did not violate the Fourth Amendment. The passenger filed a petition for writ of certiorari to the United States Supreme Court, which was granted.

The Court held that the police officer's mistake regarding the brake-light law was a reasonable mistake and, consequently, the stop was lawful under the Fourth Amendment. It was already well-established that a police officer's reasonable mistake of fact meant that a search or seizure did not violate the Fourth Amendment. The Court extended that holding to reasonable mistakes of law, such as the officer's mistake regarding the brake-light law. Because the officer made a reasonable mistake regarding North Carolina brake-light requirements, the initial stop of the vehicle did not violate the Fourth Amendment.

***Walker v. Texas Division, Sons of Confederate Veterans*, No. 14-144 (oral argument set for March 23, 2015)**

The Court is considering whether state-issued specialty license plates qualify as government speech and are, consequently, immune from any requirement of viewpoint neutrality. On July 14, 2014, the Fifth Circuit concluded that such specialty license plates on motor vehicles are private speech entitled to First Amendment protection because a reasonable observer would understand the specialty license plates to be private speech. The Court held that the State of Texas violated the plaintiffs' First Amendment rights by denying their request of a specialty license plate that includes the confederate flag.

The Texas Division of the Sons of Confederate Veterans (Texas SCV) submitted an application to the Texas Department of Transportation for approval of a specialty license plate, in accordance with TxDOT procedures. The proposed specialty license plate included two confederate flags. TxDOT denied the application. The Texas Department of Motor Vehicles subsequently assumed responsibility for the specialty license plates. Texas SCV renewed its application, and it was again denied. The DMV Board adopted a resolution explaining that it was denying the application because the general public finds the proposed license plate offensive and that such opinions were reasonable. Texas SCV brought suit, alleging violations of its rights under the First Amendment. Both parties moved for summary judgment. The district court concluded that the license plates were private, not government, speech, but that the restrictions were reasonable. Texas SCV appealed and the Fifth Circuit reversed the grant of summary judgment to the State.

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the license plates are private, rather than government, speech because a reasonable observer would understand that the specialty license plates are private speech. The Court noted that states have not traditionally used license plates to convey a particular message to the public. In addition, the Court concluded that the denial of the application was impermissible viewpoint discrimination rather than permissible content-based regulation.

United States Court of Appeals for the Fifth Circuit

***Luna v. Mullenix*, 773 F.3d 712 (5th Cir. December 19, 2014)**

There is a sharp divide among some of the judges in the Fifth Circuit regarding the application of the qualified immunity doctrine. A split panel (2-1) in this case issued the original decision on August 28, 2014, denying qualified immunity. The State Trooper moved for rehearing en banc. The 2-person majority of the panel issued a revised opinion on December 19, 2014, again denying qualified immunity, and the Court, split 9-6, denying rehearing en banc. The six judges who would have granted rehearing en banc issued an opinion dissenting from the denial of rehearing that states, "My impression is that the panel majority either does not understand the concept of qualified immunity or, in defiance thereof, impulsively determines the 'right outcome' and constructs an opinion to support its subjective judgments, which necessarily must ignore the concept and precedents of qualified immunity." The State Trooper's deadline to seek review from the United States Supreme Court is March 19, 2015.

State Trooper denied qualified immunity because use of deadly force to end vehicular flight violated clearly established law because the panel majority concluded that the driver did not pose a substantial and immediate risk of danger to other officers or bystanders. This opinion would appear to conflict with the Fifth Circuit's decision earlier in August, *Thompson v. Mercer*, 762 F.3d 433 (5th Cir. 2014).

A police officer attempted to arrest Israel Leija, but Leija fled in a vehicle onto the highway. The ensuing pursuit involved speeds of between 80 and 110 MPH, but traffic on the highway was light and in a rural area. During the pursuit, Leija twice called police dispatch on his cell phone, claiming (falsely, as it turned out) that he had a gun and that he would shoot at police officers if they did not cease the pursuit. The police set up a series of three tire spikes. However, Trooper Mullenix shot at Leija before he reached the tire spikes, killing Leija. Leija's family brought suit. Mullenix moved for summary judgment, arguing that he was entitled to qualified immunity. The district court denied the motion and Mullenix appealed.

The Fifth Circuit affirmed the denial of qualified immunity to Mullenix, stating that Leija did not pose a substantial and immediate risk of danger to other officers or bystanders and that, in consequence, Mullenix violated clearly established law. The Court focused on facts such as the rural nature of the area, the fact that the police had not actually seen whether Leija had a firearm, and the upcoming tire spikes.