

## **2015 YEAR IN REVIEW**

### **CIVIL RIGHTS LAW UPDATE**

**By Josh Skinner**

#### **United States Supreme Court**

##### ***Kingsley v. Hendrickson*, No. 14-6368 (June 22, 2015)**

In order to prove an excessive force claim against a jailer, a pretrial detainee must show that the jailer's use of force was objectively unreasonable. The pretrial detainee is not required to show that the officers were subjectively aware that their use of force was unreasonable.

Kingsley was arrested on a drug charge and detained prior to trial. Jailers noticed a piece of paper covering the light fixture above Kingsley's bed. The officer told Kingsley to remove it, because the placement of the paper violated Jail rules, but Kingsley refused. Various officers directed Kingsley to remove it, but he consistently refused. The Jail Administrator decided to remove Kingsley from the cell, while an officer removed the paper. Kingsley refused to cooperate with his removal from the cell and was forcibly handcuffed, carried from the cell, and taken to the receiving cell. Kingsley was placed face down on the bunk, his cuffed hands were behind his back. The officers attempted to remove the cuffs and claim that Kingsley resisted. Kingsley denies resisting. There was some back and forth between the officers and Kingsley and, ultimately, one of the officers tased Kingsley in the back for approximately five seconds. The officers then left Kingsley alone in the cell, but returned 15 minutes later and removed the handcuffs. Kingsley filed suit, alleging that his Fourteenth Amendment rights were violated. The case went to trial and the jury returned a verdict for the officers. However, Kingsley appealed, maintaining that the district court improperly required him to prove that the officers were subjectively aware that the use of force was unreasonable, rather than just showing that the use of force was objectively unreasonable. The Seventh Circuit affirmed.

The Supreme Court reversed, holding that a pretrial detainee need only show that the use of force was objectively unreasonable and is not required to show that the officers were subjectively aware that their use of force was unreasonable. A civil rights plaintiff bringing a Section 1983 claim, like Kingsley, is required to show that the officers' conduct was intentional, but that means that they use of force must have been intentional, not that the officers intended the excessiveness of their use of force. A longer discussion of the *Kingsley* decision and its implications for law enforcement agencies is available in podcast form at <http://www.fed-soc.org/multimedia/detail/kingsley-v-hendrickson-post-decision-scutuscast>.

##### ***Reed v. Town of Gilbert*, No. 13-502 (June 18, 2015)**

A town's sign ordinance violated the First Amendment because it imposed more stringent restrictions on certain signs, that were classified based on their content. The signs subject to the greater restrictions were essentially those that directed the public to meetings of nonprofit groups.

The Town of Gilbert's Sign Code prohibits the display of outdoor signs anywhere in the

Town without a permit, but it exempts 23 categories from that requirement. The categories include such things as “Ideological Sign[s],” “Political Sign[s],” and “Temporary Directional Signs Relating to a Qualifying Event.” “Temporary Directional Signs Relating to a Qualifying Event,” unlike other signs, may only be displayed for up to 12 hour before the event and 1 hour afterwards. The Good News Community Church wished to advertise the time and location of their Sunday church services.

However, as a small, cash-strapped entity that does not own any property, the services were held at a variety of locations. In order to alert the public as to the location of a specific service, the church began placing temporary signs around Town. The signs typically displayed the church’s name, along with the time and location of the upcoming service. Church members typically put the signs up on Saturday morning and removed them Sunday afternoon. The Town’s Sign Code compliance manager twice cited the church for violation of the Sign Code’s time restrictions. Reed, the pastor of the church, filed suit against the Town. The district court granted summary judgment in favor of the Town and the Ninth Circuit affirmed.

The Supreme Court reversed, holding that the Sign Ordinance categorizes the signs based on content, and therefore is subject to strict scrutiny under the First Amendment. Since “Temporary Directional Signs Relating to a Qualifying Event” are subject to greater restrictions than signs with different content, the Town is required to meet the strict scrutiny standard. The Court concluded that the Town could not meet strict scrutiny because the government interests identified by the Town as justifying the distinction (aesthetic appeal and traffic safety) are underinclusive. The Town did not explain how “Temporary Directional Signs Relating to a Qualifying Event” require greater restrictions than other types of signs, such as ideological or political signs.

***Walker v. Tex. Div., Sons of Confederate Veterans, No. 14-144 (June 18, 2015)***

Because specialty license plates are “government speech,” that is, they convey a message that is attributable to the government, the government is able to refuse to include a proposed design because of its content without violating the First Amendment.

Texas has a specialty license plate program that permits private parties to develop and submit (for a fee) proposed license plate designs that, if accepted, drivers may select (for an additional fee). The Sons of Confederate Veterans, Texas Division (SCV) applied to sponsor a specialty license plate that include the organization’s logo, which has a Confederate battle flag. The State of Texas denied the application, explaining “that a significant portion of the public associate the confederate flag with organizations advocating expressions of hate directed toward people or groups that [are] demeaning to those people or groups.” The SCV filed suit, alleging that the denial of their application violated their First Amendment free speech rights. The district court entered judgment for the State, but a divided panel of the Fifth Circuit reversed. The Fifth Circuit held that the specialty license plates are “private speech” entitled to First Amendment free speech protection, and that the denial of SCV’s application constituted illegal viewpoint discrimination.

The Supreme Court reversed the decision of the Fifth Circuit, holding that the license plates, including specialty license plates, are “government speech” and, therefore, are not subject to the First Amendment. The Court stated that, while license plates may also implicate driver’s free speech rights in that the drivers cannot be compelled to display messages they do not agree with, the license plates are, nevertheless, the speech of the government and the government can prohibit content

without having to provide a viewpoint-neutral reason. The government can decide on its own message and, in the context of this case, that means that it can prohibit inclusion of the Confederate flag.

***Taylor v. Barkes*, No. 14-939 (June 1, 2015)**

Jail personnel are entitled to qualified immunity from allegations that they violated an inmate's civil rights by failing to prevent his suicide. There is no clearly established right to the proper implementation of adequate suicide prevention protocols.

Barkes, an individual with a long history of mental health and substance abuse problems, was arrested for violating his probation. A nurse performed a suicide screening form, but, based on Barkes' responses, he was given a routine referral to mental health services and the nurse did not initiate any special suicide prevention measures. The following morning Barkes hung himself. Barkes's wife and children brought suit against various entities and individuals, alleging that they violated Barkes's civil rights in failing to prevent his suicide. Among the defendants were the petitioners, Stanley Taylor, Commissioner of the Delaware Department of Correction and Raphael Williams, the Institution's warden. Neither Taylor nor Williams had any personal involvement with Barkes, but were sued on a theory of supervisory liability. Taylor and Williams moved for summary judgment, but the district court denied the motion. The Third Circuit affirmed, holding that they could be held liable under a supervisory liability theory and that they were not entitled to qualified immunity.

The Supreme Court reversed, holding that Taylor and Williams were entitled to qualified immunity because the law was not clearly established. First, the Court pointed out that no decision of the Supreme Court had established a right to the proper implementation of adequate suicide prevention protocols. In fact, as the Court points out, no decision of the Supreme Court had even discussed them. Second, to the extent that a robust consensus of cases of persuasive authority in the courts of appeals could itself clearly establish the alleged right, such case law did not indicate that there was a clearly established right. Finally, taking up the Third Circuit's argument that the right was clearly established by two of its own decisions, the Supreme Court, assuming for the sake of argument that Third Circuit precedents could clearly establish the law despite disagreement in the courts of appeals, concluded that the cases relied upon by the Third Circuit did not clearly establish such a right.

***City and County of San Francisco v. Sheehan*, No. 13-1412 (May 18, 2015)**

Police officers are entitled to qualified immunity from allegations that they violated the Fourth Amendment by failing to accommodate a suspect's mental illness when using deadly force.

Reynolds and Holder, two police officers, were called to a group home for people dealing with mental illness. They were called because a social worker was threatened by Sheehan, one of the residents. Reynolds and Holder entered Sheehan's room after knocking and Sheehan threatened them with a knife, stating that she would kill them. Reynolds and Holder left the room and called for backup. Rather than wait for backup to arrive, however, Reynolds and Holder decided to enter the room again, concerned that Sheehan might gather additional weapons or escape out the window.

They entered and ultimately sprayed Sheehan with pepper spray. When Sheehan continued to move towards them with the knife and, when she was only a few feet away, the officers shot her. Sheehan survived.

San Francisco prosecuted Sheehan, but failed to get a conviction. Sheehan brought suit against San Francisco and the officers alleging that San Francisco violated the Americans with Disabilities Act (ADA) and that the officers violated the Fourth Amendment, by failing to accommodate Sheehan's mental illness when using force to effect her arrest. The district court granted summary judgment to San Francisco and the officers. On appeal, the Ninth Circuit reversed. In regard to the officers, the Ninth Circuit held that the officers "provoked" Sheehan by needlessly forcing the second confrontation. The Ninth Circuit held that it was clearly established that an officer cannot "forcibly enter the home of an armed, mentally ill subject who had been acting irrationally when there was no objective need for immediate entry." San Francisco and the officers sought and were granted review by the Supreme Court. However, at the Supreme Court, San Francisco abandoned the argument it had relied upon in the Ninth Circuit regarding the interpretation of the ADA and urged a different ground for reversal. The Supreme Court rejected San Francisco's new argument and dismissed that portion of the petition for writ of certiorari as improvidently granted. This case was widely viewed as an opportunity for police officers to get clarity regarding their obligations under the ADA when effecting the arrest of a disabled individual. As a result of San Francisco's change in legal arguments, the Supreme Court did not reach that question.

In regard to the officers, the Supreme Court held that the officers were entitled to qualified immunity, whether or not their actions violated the Fourth Amendment. In particular, the Court focused on the fact that the second entry was part of the same basic event and that, even under the standard enunciated by the Ninth Circuit, the officers should receive qualified immunity because it was not clearly established that there was "no objective need for immediate entry." The Court also noted that there is significant dispute about the Ninth Circuit's "provocation" theory.

### ***Rodriguez v. United States*, No. 13-9972 (April 21, 2015)**

Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures.

A police officer, Struble, pulled over Rodriguez when Rodriguez's vehicle briefly veered onto the shoulder of the highway. Officer Struble was a K-9 officer and his dog was in his patrol car that night. Officer Struble questioned Rodriguez and his passenger, called for a second officer, and issued Rodriguez a warning for driving on the shoulder of the highway. Officer Struble asked Rodriguez for permission to walk his dog around the vehicle, but Rodriguez refused. The officer instructed Rodriguez to turn off the engine, exit the vehicle and stand in front of the patrol car to wait for the second officer. Rodriguez complied. When the second officer arrived, Officer Struble walked his dog around Rodriguez's vehicle and it alerted to the presence of drugs. A search of the vehicle revealed a large bag of methamphetamine. The entire stop took approximately 30 minutes. Rodriguez was indicted and moved to suppress the evidence. The district court denied the motion to suppress and the Eighth Circuit affirmed. Rodriguez filed a petition for writ of certiorari with the Supreme Court, which was granted.

The Supreme Court vacated the decision of the Eighth Circuit. The Court noted that it has previously held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. However, in this case, the dog sniff was conducted after completion of the traffic stop. The Court held that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.

***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 beards 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.