State and Local Government

by Caroline Johnson Levine

Qualified Immunity for State and Local Government Employees

"Qualified Immunity is no immunity at all if 'clearly es-tablished' laws can simply be defined as the right to be free from unreasonable searches and seizures." —Justice Samuel Alito, *City and County of San Francisco, et al. v. Sheehan*, 575 U.S. ——, 135 S.Ct. 1765, 1776 (2015).

State and local governments must frequently defend the actions of their employees in federal courts. In determining whether a lawsuit can proceed further in discovery or trial or be dismissed, the court must initially consider whether the state or local defendant is immune from suit pursuant to state or federal laws or the U.S. Constitution. The "qualified immunity" of a government employee may prevent extensive litigation for a defendant, by granting a dismissal or summary judgment on behalf of the employee, if the employee did not violate a clearly established constitutional right. A recent U.S. Supreme Court ruling in *City and County of San Francisco, et al. v. Sheehan*, 575 U.S. ——, 135 S.Ct. 1765 (2015), elucidates the formula in which qualified immunity may be granted to a state or local government defendant.

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Teresa Sheehan suffered from schizoaffective disorder and "lived in a group home for people dealing with mental illness."[1] A mental health counselor attempted to visit Sheehan in her private room because "Sheehan had stopped taking her medication, no longer spoke with her psychiatrist, and reportedly was no longer changing her clothes or eating."[2] Sheehan was not responsive to the counselor's attempts to communicate with her. Therefore, the counselor unlocked Sheehan's door with a key, which caused Sheehan to react aggressively and yell, "Get out of here! You don't have a warrant! I have a knife, and I'll kill you if I have to."[3] The counselor exited the room, implemented measures to ensure the safety of the residents, completed an involuntary commitment application, and telephoned the police to detain and transport Sheehan to a psychiatric unit at San Francisco General Hospital.

Law enforcement officers responded to the group home, went to Sheehan's room and attempted to communicate with her through a closed door. Subsequently, the officers entered the room and "Sheehan reacted violently. She grabbed a kitchen knife with an approximately 5-inch blade and began approaching the officers, yelling something along the lines of 'I am going to kill you. I don't need help. Get out.' "[4] The officers retreated and called for backup assistance. Believing that Sheehan's dangerous actions created an exigent circumstance, the officers chose to reenter the room prior to the arrival of additional officers. The officers entered the room with their guns drawn and proceeded to ineffectively pepper-spray Sheehan. Sheehan brandished her knife and conceded in her deposition "that it was her intent to resist arrest and to use the knife to defend herself against the officers because she did not want to be removed from her home or detained for a 72-hour evaluation."[5] The officers fired multiple gunshots at Sheehan, and she was subdued and transported to the emergency room for treatment of her wounds.

Sheehan was prosecuted for several counts, including assault with a deadly weapon and making criminal threats. The jury dead-

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locked on whether to convict Sheehan of the criminal charges, and the prosecution chose not to retry the case. Subsequently, Sheehan filed a lawsuit alleging that the officers violated the Americans with Disabilities Act (ADA) by "subduing her in a manner that did not reasonably accommodate her disability."[6] Her state law claims included "assault and battery, negligence, intentional infliction of emotional distress and violation of California Civil Code § 52.1."[7] Additionally, she sued the officers in their personal capacities "alleging violations of her Fourth Amendment rights against unreasonable search and seizure, including a warrantless search and use of excessive force."[8]

The U.S. District Court for the Northern District of California granted the officers' motion for summary judgment and "held that officers making an arrest are not required to 'first determine whether their actions would comply with the ADA before protecting themselves and others.' "[9] Additionally, "the court also held that the officers did not violate the Fourth Amendment"[10] because of the danger that Sheehan created for herself and the officers. The Ninth Circuit Court of Appeals vacated the district court's decision and viewed the officers' actions as a failure to accommodate Sheehan's disability and a violation of Sheehan's Fourth Amendment rights by finding that "[t]his case involves a near fatal tragedy in which police officers attempted to help a mentally ill woman who needed medical evaluation and treatment but wound up shooting and nearly killing her instead. They did so after entering her home without a warrant, causing her to react with violent outrage at the intruders. Fundamentally at issue is the constitutional balance between a person's right to be left alone in the sanctity of her home and the laudable efforts of the police to render emergency assistance, but in a way that does not turn the intended beneficiary into a victim or a criminal."[11]

The U.S. Supreme Court "granted certiorari to consider two questions relating to the manner in which San Francisco police officers arrested a woman who was suffering from a mental illness and had become violent."[12] The first question asked 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."[13] The court dismissed this question as improvidently granted because the petitioner raised a question that was not passed upon by the court below and because both parties failed to "address a related question: whether a public entity can be liable for damages under Title II for an arrest made by its police officers."[14] The second question addressed whether the officers violated Sheehan's Fourth Amendment rights and therefore could cause the officers to "be held personally liable for the injuries that Sheehan suffered"[15] when the officers forcibly entered her room.

The officers argued that summary judgment was proper in this case because, as government employees, they were entitled to "qualified immunity" from suit. The qualified immunity analysis requires a court to consider whether a lawsuit against a government employee should be dismissed, under the facts and circumstances of a particular case, because the government employee did not violate a clearly established legal right. The court explained that qualified immunity provides that "public officials are immune from suit under 42 U.S.C. § 1983 unless they have 'violated a statutory or constitutional right that was clearly established at the time of the challenged conduct.' "[16] A government employee cannot violate an individual's legal rights unless "a reasonable official in [his] shoes would have understood that he was violating it"[17] because precedential decisions would have "placed the statutory or constitutional question beyond debate."[18] The court held that this "exacting standard 'gives government officials breathing room to make reasonable but mistaken judgments' by 'protect[ing] all but the plainly incompetent or those who knowingly violate the law.' "[19]

The Supreme Court found that the officer's first entry into Sheehan's room did not violate a constitutional right, because law "enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury."[20] Additionally, the second entry did violate the Fourth Amendment because it was part of a "continuous search and seizure"[21] and "it is reasonable for police to move quickly if delay 'would gravely endanger their lives or the lives of others.' "[22] The court asserted that a legal analysis of the facts in hindsight should consider that mistakes may be made under the exigent circumstances that police officers routinely encounter.[23] Importantly, the court noted that an officer may act contrary to his or her occupational training, as warranted under the circumstances, and yet retain qualified immunity. Rather, as long as " 'a reasonable officer could have believed his conduct was justified,' a plaintiff cannot 'avoid summary judgment by simply producing an expert's report that an officer's conduct leading up to a deadly confrontation was imprudent, inappropriate, or even reckless.' "[24]

The Supreme Court granted the officers' motion for summary judgment, after viewing "the facts in the light most favorable to Sheehan, the nonmoving party."[25] The court found that qualified immunity applied in this case because under the circumstances, "these officers had no 'fair and clear warning of what the constitution requires.' "[26] The court further held that the officers were "entitled to qualified immunity because they did not violate any clearly established Fourth Amendment right."[27] ⊙

Endnotes

[1]*City and County of San Francisco, et al. v. Sheehan*, 575 U.S. ——, 135 S.Ct. 1765, 1769 (2015).

[2]*Id*. at 1769.

[3]*Id*. at 1770.

[4]*Id*.

[5]*Sheehan v. City and County of San Francisco, et al.*, 743 F.3d 1211, 1220 (9th Cir. 2014).

[6]*See City and County of San Francisco,* 575 U.S. ——, 135 S.Ct. at 1771.

[7]*See Sheehan*, 743 F.3d at 1220.

[8]*Id*.

[9]*See City and County of San Francisco,* 575 U.S. ——, 135 S.Ct. at 1771, citing, *Hainze v. Richards*, 207 F.3d 795 (C.A.5 2000).

[10]*Id*.

[11]*See Sheehan*, 743 F.3d at 1215.

[12]*See City and County of San Francisco,* 575 U.S. ——, 135 S.Ct. at 1769.

[13]*Id*. at 1772.

[14]*Id*. at 1773; *see, e.g., Board of Trustees of Univ. Ala. V. Garrett*, 531 U.S. 356, 360, n. 1, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001); *see also Parker v. Dugger*, 498 U.S. 308, 323, 111 S.Ct. 731, 112 L.Ed.2d 812 (1991).

[15]*Id*. at 1774.

[16]*Id*. at 1773, quoting *Plumhoff v. Rickard*, 572 U.S. ——, 134 S.Ct. 2012, 2023, 188 L.Ed.2d 1056 (2014).

[17]*Id*. at 1774, quoting *Plumhoff*, 134 S.Ct. at 2023.

[18]*Id*., quoting *Ashcroft v. al-Kidd*, 563 U.S. ——, ——, 131 S.Ct. 2074, 2083, 179 L.Ed.2d 1149 (2011).

[19]*Id*., quoting *Ashcroft*, 131 S.Ct. at 2085.

[20]*Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006); *see also Kentucky v. King*, 563 U.S. ——, ——, 131 S.Ct. 1849, 1856-57, 179 L.Ed.2d 865 (2011).

[21]*See City and County of San Francisco,* 575 U.S. ——, 135 S.Ct. at 1775, quoting *Sheehan*, 743 F.3d at 1224; *see also Michigan v. Tyler*, 436 U.S. 499, 511, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978).

[22]*Id*. at 1775, quoting *Warden Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-99, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967).

[23]*See Hein v. North Carolina*, 574 U.S. ——, ——, 135 S.Ct. 530, 536, 190 L.Ed.2d 475 (2014); *see also Plumhoff,* at 2020.

[24]*Id*. at 1777, quoting *Billington v. Smith*, 292 F.3d 1177, 1189 (C.A.9 2002).

[25]*Id*. at 1769; *see, e.g., Plumhoff*, 134 S.Ct. at 2017.

[26]*Id*. at 1778, quoting *Ashcroft*, at 2086-87.

[27]*Id*. at 1769.