

Sixth Circuit Finds That District Court Should Not Engage In “Leisurely Stop-Action Viewing” Of Recording In Police Shooting Case

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On April 19, 2021, the United States Court of Appeals for the Sixth Circuit in *Cunningham v. Shelby County, Tenn.*, No. 20-5375, reaffirmed and clarified that a court must view use of force from a police officer’s perspective when applying qualified immunity. This is notable in light of recent criticism of qualified immunity, particularly with respect to police shootings.

Nancy Lewellyn called the Shelby County Sheriff’s Department around noon on March 17, 2017 to report that she was depressed and suicidal, that she had a gun, and that she would kill anyone who came to her residence. The first officer to arrive parked in her driveway facing the house, and two other officers arrived soon after. As Lewellyn walked out of her front door and turned towards her driveway, the officers saw what appeared to be a .45 caliber pistol in her right hand, but was later determined to be a BB handgun. Lewellyn raised the gun as she continued towards the car, prompting the officers to yell to her and then fire. She did not drop immediately, and a total of ten shots were fired, eight of which struck and killed her. The entire altercation was captured on dashcam video and only eleven seconds elapsed between Lewellyn exiting her house and collapsing from her injuries.

Lewellyn’s estate filed a civil rights claim alleging excessive force in violation of the Fourth Amendment. The district court denied the officers’ motion for summary judgment, opining that Lewellyn had not pointed her gun toward the officers nor used the gun in a threatening way. The officers appealed the district court’s denial of qualified immunity. The Sixth Circuit first noted that because the events of the case were recorded on video, “the facts are viewed in the video’s light, not in a light favorable to plaintiff.” It described its task: “to determine whether the videotapes portray a constitutional violation of the kind that a reasonable deputy should have understood.”

Rejecting the district court’s reliance on stop action screenshots from the video, the court noted that “[t]he deputies’ perspective did not include leisurely stop-action viewing of the real-time situation that they encountered. To rest a finding of reasonableness on a luxury that they did not enjoy is unsupported by any clearly established law.” Thus, the Sixth Circuit reaffirmed that a court must view use of force from the officers’ perspective at the time, not with the benefit of 20/20 hindsight, when determining entitlement to qualified immunity.

You can view the full opinion by [clicking here](#).

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