



Cordell Pearson v. Afton Callahan
(2009 U.S. LEXIS 591)
(Decided: January 21, 2009)

By: Robert G. Hanna, Jr., Esquire
Lavery, Faherty, Young & Patterson, P.C.
225 Market Street, Suite 304
P. O. Box 1245
Harrisburg, PA 17108-1245
(717) 233-6633
rhanna@laverylaw.com

EDITOR' NOTE:

The Supreme Court took this particular case to decide whether or not Saucier v. Katz, 533 U.S. 194, 121 S. Ct. 2151, 150 L.Ed. 2d 272 (2001), mandated a two-step sequence for resolving **government officials' qualified immunity** claims that should continue. This decision does not prevent lower courts from following Saucier. It simply recognizes that they should have the discretion to decide whether that procedure is worthwhile in particular cases. Justice Alito delivered the opinion for a unanimous court.

LEGAL BACKGROUND:

Afton Callahan brought this 42 U.S.C. § 1983 claim against state law enforcement officers who conducted a warrantless search of his house incident to his arrest for the sale of methamphetamine to an undercover informant whom he had not voluntarily admitted to the premises.

FACTUAL BACKGROUND:

The Central Utah Narcotics Task Force is charged with investigating illegal drug use and sales. In 2002, Brian Bartholomew, who became an informant for the task force after having been charged with the unlawful possession of methamphetamine, informed Officer Jeffrey Whatcott that Callahan had arranged to sell Bartholomew methamphetamine later that day. Bartholomew went to Callahan's residence at about 8 p.m., went inside and confirmed that Callahan had methamphetamine available for sale. Bartholomew said he needed to obtain money to make his purchase, and left.

Approximately one hour later Bartholomew met with members of the task force and told him that he would be able to buy a gram of methamphetamine for \$100. After concluding that Bartholomew was capable of completing the planned purchase, the officers searched him, determined that he had no controlled substances on his person, gave him a marked \$100 bill and a concealed electronic transmitter to monitor his conversations, and agreed on a signal that he would give after completing the purchase.

Next, the officers drove Bartholomew to Callahan's trailer home where Callahan's daughter let him inside. Callahan retrieved a large bag containing methamphetamine from his freezer and sold Bartholomew a gram which he put into a small plastic bag. Bartholomew then gave the arrest signal to the officers who entered the trailer through a porch door. In the enclosed porch, the officers encountered Bartholomew, and two other persons, and they saw Bartholomew drop a plastic bag which they later determined contained methamphetamine. They then did a protective sweep of the premises recovering the large bag plus the marked bill from Callahan and a small bag containing methamphetamine from Bartholomew. They also found drug syringes in the residence. As a result, Callahan was charged with the unlawful possession and distribution of methamphetamine.

Callahan was convicted, but the Utah Court of Appeals disagreed and vacated the conviction. Callahan then brought this damage action under 42 U.S.C. § 1983 alleging that the officers had violated the Fourth Amendment by entering his home without a warrant.

In granting the officers' motion for summary judgment, the District Court noted that other courts had adopted the "consent-once-removed" doctrine, which permits a warrantless entry by police officers into a home when consent to enter has already been granted to an undercover officer or informant who has observed contraband in plain view. Believing that this doctrine was in tension with the Supreme Court's decision in Georgia v. Randolph, 547 U.S. 103, 126 S. Ct. 1515, 164 L.Ed. 2d 208 (2006), the District Court concluded that "the simplest approach is to assume that the Supreme Court would ultimately reject the [consent-once-removed] doctrine and find that searches such as the one in this case are not reasonable under the Fourth Amendment. The court then held that the officers were entitled to qualified immunity.

A divided panel of the Tenth Circuit disagreed and further held that the Fourth Amendment right that it recognized was clearly established at the time of Callahan's arrest. The Court concluded that the relevant right was the right to be free in one's home from unreasonable searches and arrests. The Court determined that warrantless entries into a home are *per se* unreasonable unless they satisfy the established exceptions. The only two exceptions to the warrant requirement are consent and exigent circumstances.

DISCUSSION:

The Court went through an extensive review of qualified immunity. The protection of qualified immunity applies whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." Groh v. Ramirez, 540 U.S. 551, 567, 124 S. Ct. 1284, 157 L.Ed. 2d 1068 (2004).

Because qualified immunity is "an immunity from suit rather than a mere defense to liability, . . . it is effectively lost if a case is erroneously permitted to go to trial." Accordingly, in the previous decisions, the Court has stress the importance of resolving immunity questions at the earliest possible stage in litigation. It then went on to redo the Court mandated two-step sequence articulated eight years ago in Saucier. The evidence from this period supports the Court's present determination that a mandatory, two-step rule should not be retained. Most importantly, the judges of the district courts and courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.

Turning to the conduct of the officers in the instant matter, the Court unanimously held that they are entitled to qualified immunity because the entry did not violate clearly established law. When the entry at issue here occurred in 2002, the "consent-once-removed" doctrine had gained acceptance in the lower courts. Prior to the Tenth Circuit's decision in the present case, no Court of Appeals had issued a contrary decision. The officers here were entitled to rely on these cases even though their own Federal Circuit had not yet ruled on "consent-once-removed". The principles of qualified immunity shield an officer from personal liability when an officer reasonably believes that his or her conduct complies with the law. Police officers are entitled to rely on existing lower court cases without facing personal liability for their actions. In Wilson v. Layne, 526 U.S. 603, 618, 119 S. Ct. 1692, 143 L.Ed. 2d 818 (1999), for example, the court had explained that a Circuit split on the relevant issue after the events that gave rise to suit and concluded that if judges disagree on a constitutional question, it is unfair to subject police to money damages for picking a losing side of the controversy. Likewise in the instant matter where the divergence of views on the consent-once-removed doctrine was created by the decision of the Court of Appeals in this case, it is improper to subject petitioners to money damages for their conduct. Because the unlawfulness of the officers' conduct in this case was not clearly established, they are entitled to qualified immunity. The judgment of the Court of Appeals is therefore reversed.

EDITORIAL COMMENT:

One of the dilemmas we currently face on the issue of qualified immunity is when to raise it. If we do raise qualified immunity in a Rule 12(b)(6) motion, it is not at all unlikely that the case will be delayed up to a year before the district court will get to it. The question at the practical level is whether we gained anything by this year long delay, or perhaps it would be more economical to allow discovery to proceed, and then raise the motion in the summary judgment format where we might actually get a final and useful decision. The specific case evidence should be reviewed to determine strategy.