

The Chief

Civil Service LEADER
THE CIVIL EMPLOYEES' WEEKLY

Judge: Change Law That Shielded Cop's Misconduct Civilly

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August 31, 2020

A Federal Judge in Mississippi who concluded that a white cop there abused his authority during a car stop of a black motorist but that he was required to dismiss the lawsuit against the cop based on the principle of qualified immunity called for the Supreme Court to strike it down as it previously had the legal doctrine of "separate but equal."

Qualified immunity shields police officers and other public officials from civil liability when they violate someone's rights if it is determined that they acted in good faith and with probable cause to believe that they had been following the law.

In a 72-page decision released in early August, U.S. District Judge Carlton W. Reeves wrote that since the concept was established in a 1960s case involving the arrest of black clergymen who joined white colleagues in using segregated facilities at a bus terminal in Mississippi, the justification for it had been stretched to such a degree as to perpetuate injustice.

The case in which he ruled concerned a 2013 incident in which Clarence Jamison, while driving back from a vacation in Phoenix, Arizona to his South Carolina home in a 2001 Mercedes Benz convertible, was pulled over on Interstate 20 by Police Officer Nick McClendon of the Richland Police Department, who said he did so because the temporary tag on the car was "folded over to where I couldn't see it."

Although there was reason to doubt that was the case, Judge Reeves stated in his ruling, Mr. Jamison was then "subjected to one hundred and ten minutes of an armed police officer badgering him, pressuring him, lying to him, and then searching his car top-to-bottom for drugs."

He continued, "Nothing was found. Jamison isn't a drug courier, He's a welder. Unsatisfied, the officer then brought out a canine to sniff the car. The dog found nothing."

Clean on Both Checks

During the course of the stop, Judge Reeves noted, Mr. Jamison provided the bill of sale for the car, which he had recently purchased, as well as his license and insurance card. Officer McClendon conducted a background check with the El Paso Intelligence Center and had a National Criminal Information Center dispatcher run a criminal-history check on both Mr. Jamison and the car's vehicle information number.

The background check came back clean. Before he heard back from the NCIC, the Judge noted, Officer McClendon asked Mr. Jamison if he could search his car, and when the motorist pressed him on why, the cop claimed he had received a phone call telling him there were 10 kilos of cocaine in the car.

"That was a lie," the Judge stated in his decision. But Officer McClendon continued to press him to allow a search until Mr. Jamison reluctantly consented.

He found nothing improper in the vehicle while dismantling parts of it during his search. But the officer then asked whether he could "deploy my canine" to sniff for drugs. After initially refusing, Mr. Jamison reluctantly consented, the dog turned up nothing and he finally was allowed to drive away.

Sued Him Personally

Mr. Jamison subsequently filed a lawsuit naming Officer McLendon and the City of Pelahatchie, Mississippi as defendants. He accused the cop of violating his Fourth Amendment protection against illegal searches, and his 14th Amendment right not to be singled out because of his race. He also accused Officer McClendon of having done \$4,000 worth of damage to his car in the course of the search, and said the ordeal had caused him psychological harm.

Officer McClendon sought to have the suit dismissed, using the grounds that Mr. Jamison had not shown that the stop was racially motivated and invoking his right to qualified immunity regarding the claim that he had lacked reasonable suspicion to stop him.

Judge Reeves granted the officer's motions on those grounds, but did not dismiss the claim against him for \$4,000 worth of damage to the car because Mr. McClendon had not raised that issue in his court papers. But in writing that he was bound to honor qualified immunity based on legal precedent, he offered a scathing assessment that the Supreme Court over the past 38 years "has dispensed with any pretense of balancing competing values. Our courts have shielded a police officer who shot a child while the officer was attempting to shoot the family dog; prison guards who forced a prisoner to sleep in cells 'covered in feces' for days; police officers who stole over \$225,000 worth of property; a deputy who body-slammed a woman after she simply 'ignored his command and walked away,'" among other cases.

He continued, "Once, qualified immunity protected officers who acted in good faith. The doctrine now protects all officers, no matter how egregious their conduct, if the law they broke was not 'clearly established.'

"This 'clearly established' requirement is not in the Constitution or a Federal statute," Judge Reeves wrote. "The Supreme Court came up with it in 1982. In 1986, the Court then 'evolved' the qualified immunity defense to spread its blessings 'to all but the plainly incompetent or those who knowingly violate the law.'"

'A Major Problem'

But even as subsequent rulings further stretched what was covered under qualified immunity, he wrote, some of the more-conservative Supreme Court Justices to serve over the last three decades raised questions about the basis for doing so, including Justice Clarence Thomas and the late Antonin Scalia. He said there was "Increasing consensus that qualified immunity poses a

major problem to our system of justice...Those who violated the constitutional rights of our citizens must be held accountable."

Just before granting Officer McClendon's motion for summary judgment on most of the suit--with a trial still to be held concerning liability for damages to Mr. Jamison's car, Judge Reeves wrote that "the status quo is extraordinary and unsustainable. Just as the Supreme Court swept away the mistaken doctrine of 'separate but equal,' so too should it eliminate the doctrine of qualified immunity."

Civil-rights attorney Norman Siegel said in an Aug. 27 phone interview that he was pleased Judge Reeves had included such a comprehensive analysis of the history of qualified immunity and the lengths to which it had been stretched in his ruling. "It's part of the growing movement throughout the country for courts and legislative bodies to rethink qualified immunity," he said. "It basically protects government officials, particularly in law enforcement, in cases that often involve excessive and unnecessary force."

In the wake of George Floyd's killing, Mr. Siegel added, legislation has been introduced in both houses of Congress that would limit the use of qualified immunity to shield police officers from civil liability. It has the backing, he said, of not only the American Civil Liberties Union and the NAACP but the libertarian Cato Institute.

Calls to attorneys for the Police Benevolent Association and the Detectives' Endowment Association for their reactions to Judge Reeves's opinion were not immediately returned.