

Los Angeles Times

Supreme Court shields a police officer from being sued for shooting a woman in her front yard

David G. Savage

April 2, 2018

The Supreme Court on Monday shielded a police officer from being sued for shooting an Arizona woman in her front yard, once again making it harder to bring legal action against officers who use excessive force, even against an innocent person.

With two dissents, the high court tossed out a lawsuit by a Tucson woman who was shot four times outside her home because she was seen carrying a large knife.

Justices Sonia Sotomayor and Ruth Bader Ginsburg said in dissent the victim did not threaten the police or a friend who was standing nearby. This "decision is not just wrong on the law; it also sends an alarming signal to law enforcement officers and the public. It tells officers that they can shoot first and think later," Sotomayor wrote.

Since the Civil War, federal law has allowed people to sue government officials, including the police, for violating their constitutional rights. But in recent years, the Supreme Court has erected a shield of immunity for police and said officers may not be sued unless victims can point to a nearly identical shooting that had been deemed unconstitutionally excessive in a previous decision.

Police shootings of unarmed people, many of them African Americans, have sparked protests across the country, most recently in Sacramento. Often prosecutors have been reluctant to bring criminal charges in such cases because they would need to convince an entire jury that the officer was guilty beyond a reasonable doubt.

Civil suits that seek damages are in theory easier to win because plaintiffs need only present convincing evidence that the officer used unreasonable force. But the high court has repeatedly made it harder for victims to bring such claims before a jury.

In an eight-page unsigned opinion in *Kisela vs. Hughes*, the justices did not rule on whether officer Andrew Kisela acted reasonably when he used potentially deadly force against Amy Hughes, who was standing in her driveway a few feet away from her friend and roommate, Sharon Chadwick. The police had been called after a neighbor reporting seeing a woman acting strangely and carrying a large knife.

Rather than decide whether Kisela used excessive force, the court instead ruled he could not be sued because the victim could not cite a similar case involving a police shooting of a person holding a knife.

"Police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue...This is far from an obvious case in which any competent officer would have known that shooting Hughes to protect [Sharon] Chadwick would violate the 4th Amendment" and its ban on unreasonable seizures, the court said Monday.

The decision reversed the 9th Circuit Court of Appeals, which had allowed the woman's lawsuit to go before a jury.

In recent months, legal scholars and the libertarian Cato Institute have joined civil libertarians in criticizing the court's approach to police shootings. University of Chicago law professor William Baude, a former clerk for Chief Justice John G. Roberts Jr., has argued the justices invented the doctrine of "qualified immunity" in the 1980s and have steadily expanded it to block suits in cases of excessive force.

In her dissent, Sotomayor quoted a law review article by Judge Stephen Reinhardt from Los Angeles, who died last week. "Nearly all of the Supreme Court's qualified immunity cases come out the same way—by finding immunity for the officials," Reinhardt wrote in 2015.

Three years ago, the justices tossed out a lawsuit brought by a mentally ill San Francisco woman shot five times by officers who pushed their way into her private room. They said they shot her because she was holding a bread knife.

The Tucson shooting took place a few blocks from the University of Arizona campus. Police were called to "check welfare" after a neighbor called about a woman who was acting erratically and brandishing a knife. Three officers, including Kisela, arrived and saw a woman, later identified as Hughes, leave the house and walk toward Chadwick. She was carrying a knife. A chain link fence prevented the officers from approaching, but they called out to Hughes to drop the knife.

She ignored them and came within six feet of Chadwick. The other woman was calm and said there was no threat. But Kisela then fired four shots, striking Hughes. She was handcuffed, and taken to a hospital. She recovered from her injuries and sued Kisela for an unreasonable seizure and an excessive use of force.

The 9th Circuit appeals court said that while some key facts are in dispute, a "rational jury could find that [Hughes] had a constitutional right to walk down her driveway holding a knife without being shot."

Lawyers for Arizona appealed and said the suit should be dismissed. "Qualified immunity exists to protect the public from unwarranted timidity on the part of public officials," they said.

The justices agreed and ruled Kisela was entitled to immunity.

Sotomayor said the majority had revised the facts to favor the officer. Hughes "held a kitchen knife down at her side with the blade facing away from Chadwick. Hughes was nowhere near the officers, had committed no illegal act, was suspected of no crime, and did not raise the knife in the direction of Chadwick or anyone else," she wrote. Two officers kept talking, but "without giving a warning that he would open fire, he [Kisela] shot Hughes four times, leaving her seriously wounded. If this account of Kisela's conduct sounds unreasonable, that is because it was," Sotomayor said.

She said the court's "one-sided approach to qualified immunity transforms the doctrine into an absolute shield for law enforcement officers, gutting the deterrent effect of the 4th Amendment."