



A Judge Said George Floyd’s Name When He Denied Qualified Immunity to 5 Cops

Emma Ockerman

June 10, 2020

A federal judge used George Floyd’s name when denying legal immunity to five West Virginia police officers who fatally shot a Black, homeless man 22 times in 2013.

A doctrine known as “qualified immunity” previously shielded the Martinsburg officers from being held civilly liable — an all-too-common roadblock for families trying to hold individual officers accountable in court. The two brothers of Wayne Jones, the man killed by police, sued the police officers and the city shortly after their brother’s death, but their complaint was tossed out three times because of the immunity doctrine.

Now, after years of fighting, the case can proceed to trial.

On Tuesday, a panel of federal judge’s reversed a lower court’s decision, which applied qualified immunity protections to the five officers in the majority-white town of Martinsburg, about 85 miles away from Washington, D.C. The ruling was first reported by outlets including the [National Law Journal](#) and [BuzzFeed News](#).

“Before the ink dried on this opinion, the FBI opened an investigation into yet another death of a black man at the hands of police, this time George Floyd in Minneapolis,” Judge Henry Floyd said in the Fourth Circuit U.S. Court of Appeals’ ruling. “This has to stop.”

In the appellate court’s ruling, the judges mentioned the police killings of both Floyd in Minneapolis, and Michael Brown in Ferguson, Missouri, noting that the expectation should be that police act with “respect for the dignity and worth of black lives.” They ruled that the police officers in Martinsburg could be held liable because they shot Jones when he was incapacitated and not moving, violating a “clearly established” right.

Awarding qualified immunity, Judge Floyd said, would've signaled "absolute immunity for fear-based use of deadly force, which we cannot accept."

"This has been a seven-year struggle," Christopher E. Brown, an attorney for the family, said. "I can't even tell you what it meant for me to be able to call the brothers and to be able to say we're going to get a chance."

George Floyd's death has spurred legislators to call for abolishing the immunity defense, which makes it nearly impossible to sue individual officers for wrongdoing. While Brown said his clients don't want their brother to necessarily become a headline case, "they are hopeful their brother's death contributes to a momentum for change; it's all too often very difficult to get these cases to a jury."

An attorney for the police department in this case, Philip Savrin, didn't immediately respond to a VICE News request for comment.

To get past the qualified immunity hurdle, a person has to prove that an officer violated a "clearly established" law or constitutional right, citing previous rulings with identical conduct and context. Since officers are so rarely fired or prosecuted over police brutality, qualified immunity can destroy a person's last shot at holding an officer accountable for their actions.

Qualified immunity has successfully roadblocked lawsuits over cops siccing a dog on a surrendering homeless man, shooting a child, and destroying another woman's home, with courts finding that there wasn't an obvious violation of a "clearly established" right.

But proving the "clearly established" right a standard so high that Clark Neily, vice president for criminal justice at the Cato Institute, recently wrote that, should Floyd's family want to sue the Minneapolis cop charged with murdering him on May 25, they'd have to first "find an existing case from the Eighth U.S. Circuit Court of Appeals holding that a police officer may not kneel on a unresisting suspect's neck, ignoring his pleas for help, until he passes out."

Even the Players Coalition called for an end to qualified immunity this week, with prominent athletes like Tom Brady and Odell Beckham Jr., writing that "a legal system that does not provide such a recourse is an illegitimate one."

While the Supreme Court has repeatedly upheld and strengthened the immunity rule, several cases are currently pending before the High Court. A broad coalition of libertarian, conservative, and progressive legal scholars are hoping those lawsuits finally weaken or destroy the doctrine.

In Jones' case, he had a small knife tucked in his sleeve when he was approached by an officer in March 2013 for walking in the road, rather than on the sidewalk. When asked whether he had a

weapon, Jones, who had been diagnosed with schizophrenia, seemed confused but said he had “something” on him.

After that, several officers were called to the scene for back-up. Jones was choked, tased, and kicked. One officer felt a sharp “poke” in his side and saw the knife, and the officers backed away and demanded Jones drop it. At that point, Jones was motionless, lying on the ground, with the knife pinned under his body. When he didn’t immediately respond, the five officers shot him to death.

“Non-cooperation with law enforcement has never given officers carte blanche to use deadly force against a suspect; luckily for many of us, neither has being “armed”with a small knife,” Judge Floyd wrote.