



Justices Nix Immunity For Cops Accused Of Suffocating Man

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The U.S. Supreme Court said Monday that an appeals court was too quick to award immunity to police officers who allegedly suffocated a suspect to death through the use of a lengthy "prone restraint," a win for police misconduct plaintiffs in the wake of George Floyd's killing under similar circumstances.

The high court vacated a ruling in favor of St. Louis police officers who restrained prisoner Nicholas Gilbert on his stomach for 15 minutes until he stopped breathing.

Gilbert, who had apparently attempted suicide while in custody for traffic and trespassing violations, was in handcuffs and leg irons as the officers held down his shoulders, biceps and legs while putting pressure on his back and torso, per court documents. He was pronounced dead at the hospital.

The justices, in an unsigned per curiam ruling, said the Eighth Circuit had either failed to analyze the evidence or dismissed it as "insignificant" when it ruled the officers acted reasonably and thus did not apply constitutionally excessive force. Justice Samuel Alito Jr. wrote a dissent joined by Justice Clarence Thomas and Justice Neil Gorsuch.

The decision **comes amid heightened scrutiny** over the doctrine of "qualified immunity" following the death of George Floyd, in which video of a Minneapolis police officer kneeling on Floyd's neck spurred a nationwide movement against police conduct.

The doctrine shields law enforcement and other government officials from being held liable for violating people's rights unless it was "clearly established" the misconduct was illegal. Critics say it has little basis in common law or statutory law and protects misconduct.

"As George Floyd's death made painfully clear, forcible prone restraint is a highly dangerous police tactic that has killed hundreds of people in the last decade or two and that serves no legitimate purpose," Jonathan Ellis Taylor of Gupta Wessler PLLC, an attorney for Gilbert's

parents, said. "Today's opinion is an important step toward reining in its use."

In the case of Gilbert's death, the Eighth Circuit had cited precedent saying a prone restraint is constitutional when a detainee is resisting the officers, shrugging off the fact that Gilbert was already shackled and kept in the restraint for 15 minutes.

"Such details could matter when deciding whether to grant summary judgment on an excessive force claim," the court said in its per curiam opinion.

The court sent the case back to the Eighth Circuit "to give the court the opportunity to employ an inquiry that clearly attends to the facts and circumstances in answering those questions in the first instance."

The justices said the police department's own guidance instructs officers that pushing down on a prone suspect can cause suffocation and tells them to get suspects off their stomach quickly because of that risk. Other guidance tells officers to get suspects off their stomach quickly because of the risk of suffocation. The guidance also suggests that suspects in this position may disobey due to oxygen deprivation, the court said.

"Having either failed to analyze such evidence or characterized it as insignificant, the court's opinion could be read to treat Gilbert's 'ongoing resistance' as controlling as a matter of law," the court said. "Such a per se rule would contravene the careful, context-specific analysis required by this court's excessive force precedent."

Justice Alito said the decision was "unfair" to the Eighth Circuit. If the majority disagreed with the Eighth Circuit on whether the officers acted reasonably, then they should have granted certiorari and called for briefing and argument on the question, Justice Alito said.

"That is the course I would take," Justice Alito said. "I do not think that this court is above occasionally digging into the type of factbound questions that make up much of the work of the lower courts, and a decision by this court on the question presented here could be instructive."

Instead, Justice Alito said, the court misinterpreted the Eighth Circuit's decision as standing for the proposition that a prone restraint of a resisting suspect can never be unconstitutional.

"Can the court seriously think that the Eighth Circuit adopted such a strange and extreme position?" Justice Alito asked.

In a statement, the attorney for Gilbert's parents said the decision to vacate a grant of qualified immunity was "exceedingly rare" and described it as a "a huge victory not only for our clients, but for police reform advocates across the country and for the rule of law."

"The Eighth Circuit's decision was egregiously wrong, and would have made it much harder to

hold officers accountable when they kill someone by forcible prone restraint," Ellis said. "By vacating that decision, the Supreme Court has sent a powerful message to lower courts and law enforcement to heed the 'well-known police guidance recommending that officers get a subject off his stomach as soon as he is handcuffed.'"

St. Louis City Counselor Robert Dierker played down the significance of the court's ruling in a statement to Law360.

"There's not really too much to say," he said. "The Supreme Court's order just tells the Eighth Circuit to rewrite its opinion. When all is said and done, we expect that the courts will conclude that our officers committed no constitutional tort; and, in fact, they did not. They did their best to save a life but with an unintended and unfortunate result."

Although seen by some as evidence of changing tides in qualified immunity cases, the Cato Institute's Jay Schweikert said that the plaintiffs' win in this case is extremely narrow.

That's because under the two-step framework of qualified immunity doctrine, the plaintiffs will have to show on remand to the Eighth Circuit that not only did the officers violate Gilbert's Fourth Amendment rights but also that their conduct was "clearly established" as illegal. The Supreme Court simply said that the court of appeals analyzed that first step under the wrong framework, while expressing "no view" on the merits of either question.

"I do think it will be an uphill climb," Schweikert said. "Even if they win on the [first question], I think the clearly established law point is going to be very difficult to make."

Indeed, opponents of qualified immunity doctrine have long pointed out that courts won't consider a civil rights violation to be "clearly established" unless there is a prior precedent with virtually the exact same fact pattern holding the officer's conduct to be illegal.

That this is a "very fact-specific case" where it might be difficult to find such a precedent will make it very difficult for the plaintiffs to defeat the officers' claims of immunity, Schweikert said. "I would be surprised if it changes the outcome," he said.

"The justices are obviously aware of the current national climate around certain policing," he said. "It may well be that what explains them issuing this pretty narrow, not-all-that-substantive opinion, is that they wanted to say something about taking prone restraints seriously ... but I don't think it's going to make that much of a difference."