

Police Officer Entitled to Qualified Immunity Unless It is "Beyond Debate" that Conduct Violated Clearly Established Law

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ATTORNEYS

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A police officer accused of using excessive force is entitled to qualified immunity for the use of force unless it is "**beyond debate**" that the officer's conduct violated clearly established law. Qualified immunity is an affirmative defense that protects police officers, and other public employees, from liability when they allegedly violate civil rights under 42 USC Â§1983. To defeat this important defense of qualified immunity, the United States Supreme Court has recently ruled, a plaintiff must demonstrate that the official's action was prohibited by clearly established law.

In *Mullenix v. Luna*, police officers in Texas attempted to execute an arrest warrant. The suspect refused to surrender and led police on a high-speed chase reaching speeds of 110 miles per hour. During the chase, the suspect told a police dispatcher that he would shoot at police officers if the officers did not abandon the pursuit.

Trooper Mullenix of the Texas Department of Public Safety was one of the officers who responded. He positioned himself on an overpass. Other officers placed tire spikes on the road below. Mullenix then asked a supervisor for permission to fire at the vehicle. The supervisor replied that firing "was worth doing." It was not clear from the evidence whether Mullenix heard the supervisor later tell him to fire *only* if the tire spikes did not work. Mullenix fired at the suspect's vehicle 6 times. No shot hit the engine block of the vehicle, but 4 shots hit the suspect's upper body and killed him.

The estate of the suspect sued under 42 USC Â§ 1983, alleging that Mullenix violated the Fourth Amendment because he used excessive force. Mullenix claimed he was entitled to qualified immunity because he did not violate "clearly established statutory or constitutional law."

The Supreme Court found Mullenix was entitled to qualified immunity from liability for the use of force. The Court noted that "when Mullenix fired, he reasonably understood [the suspect] to be a fugitive fleeing arrest, at speeds over 100 miles per hour, who was armed and possibly intoxicated, who had threatened to kill any officer he saw if the police did not abandon their pursuit." The Court rejected the claim that a police officer may not "use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others." The Court found that uncertainty existed as to whether an officer in Mullenix's position could use deadly force. In order to defeat qualified immunity, the plaintiff would have to prove that a reasonably competent officer would realize that their actions were illegal **"beyond debate."** In this instance, however, the Supreme Court found that there was uncertainty in the law, and appellate decisions involving vehicular pursuits provided, at best, a "hazy legal background."

If you have any questions about liability and immunity for police officers or public officials, please contact Robert C. Ceccon or Jennifer Petrussis.