SIXTH CIRCUIT REVIEW

Bard v. Brown County, Ohio: A Look at Qualified Immunity in the Sixth Circuit

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The Sixth Circuit addressed the timely issue of qualified immunity in the disturbing case of *Bard v. Brown County*, 970 F.3d 738 (6th Cir. 2020).[1] Ashley Bard brought a civil suit against Brown County and a handful of individual officers after the hanging death of her brother, Zachary Goldson, in Brown County Jail.[2] *Id.* at 2. The alarming sequence of events in the final thirty-seven minutes of Mr. Goldson's life lead to two very different analyses of qualified immunity at the district court and the Sixth Circuit.[3] *Compare id.* at 14–18 *with Bard v. Brown Cty.*, No. 1:15-cv-643, 2019 WL 590357 at *12 (S.D. Ohio Feb. 13, 2019) [hereinafter *District Court*]. Ultimately, these approaches reflect very different standards of accountability for law-enforcement and this disparity frustrates a consistent and fair application of the law.

After being discharged from a local hospital at approximately 2:20 a.m. Mr. Goldson attacked Deputy Travis Justice who restrained him with the help of medical personnel until additional officers arrived.[4] *Id.* at 3. One of the responding officers was Deputy Ryan Wedmore who proceeded to rain obscenities on Mr. Goldson including stating that he would "like to break [Goldson's] fucking neck right now" and that Mr. Goldson "is getting a welcome party when we get to the jail."[5] *Id.* at 4. When the fully restrained Mr. Goldson returned to the jail in a police cruiser, Corporal Jason Huff dragged him out of the back seat by his leg shackles so that his upper body crashed to the ground.[6] *Id.* at 4; WCPO 9, *Zachary Goldson Case: Jail Video Shows Final Seconds of Inmate's Life*, YOUTUBE (Feb. 9, 2015). Correctional Officers (CO) George Dunning and Zane Schadle escorted Mr. Goldson to his cell and removed most of Mr. Goldson's restraints.[7] *Bard*, 970 F.3d at 3. They left Mr.

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1 Bard v. Brown Cty, 970 F.3d 738 (6th Cir. 2020) [https://perma.cc/9Y2Y-NRXL].

2 *Id.* at 2.

3 *Compare Id.* at 14—18 *with Bard v. Brown Cty.*, No. 1:15-cv-643, 2019 WL 590357 at *12 (S.D. Ohio Feb. 13, 2019) [hereinafter *District Court*].

4 *Bard*, 970 F.3d at 3.

5 *Id.* at 4.

6 WCPO 9, *Zachary Goldson Case: Jail Video Shows Final Seconds of Inmate's Life*, YOUTUBE (Feb. 9, 2015), https://www.youtube.com/watch?v=AkUNGNBQtYI [https://perma.cc/HF3K-K2LV].

7 *Bard*, 970 F.3d at 3.

Goldson in his cell at 2:34 a.m. and then returned to find him hanging at 2:58 a.m.[8] *Id.* at 5.

In the aftermath of Mr. Goldson's death, no criminal charges were filed against any of the officers involved. Ms. Bard then brought a civil suit "claiming that [her brother's] hanging was staged" among "other civil-rights and state-law violations,"[9] but the district court granted the officers qualified immunity based on a standard of substantial discretion.[10] *Id.* at 2; *See District Court*, at *12. On appeal, the Sixth Circuit considered two remaining issues: "(1) what claims the plaintiff, Ashley Bard, preserved for appeal, and (2) whether she presented sufficient evidence to defeat a motion for summary judgment on those claims."[11] *Bard*, 970 F.3d at 33. All three Sixth Circuit Judges wrote separately with the majority of Ms. Bard's claims held forfeit due to procedural deficiencies.[12] *Id.* However, Judge Moore's opinion concerning the removal of Mr. Goldson from the police cruiser by Corporal Huff, applied a three-part test for qualified immunity that reflects an objective standard and sharply contrasts with the district court's approach.[13] *Id.* at 14–18.

Even the district court paid lip service to an objective standard for qualified immunity before deferring to Corporal Huff and effectively allowing the officer to pardon himself. The district court acknowledged "that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[14] *District Court* at *10 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). But comparing the district court's analysis to Judge Moore's analysis on the Sixth Circuit exposes wildly different understandings of the law.

First, the district court points out that Mr. Goldson's "autopsy found only minor abrasions to his cheek or nose" and proceeded to trivialize this injury.[15] *Id.* at *12. Next, the district court cites two Supreme Court cases stressing the difficult job of law-enforcement and prison guards with an emphasis on granting officers "substantial discretion" but leaves out the Supreme Court stressing in both cases that officers should be held to an objective standard.[16] *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989); *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2474 (2015)). Finally, the district court accepted Corporal Huff's testimony "that he removed Goldson from the car by his leg shackles because

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8 *Id.* at 5.

9 *Id.* at 2.

10 *District Court*, 2019 WL 590357 at *12.

11 *Bard*, 970 F.3d at 33.

12 *Id.*

13 *Id.* at 14–18.

14 *District Court* at *10 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

15 *Id.* at *12.

16 *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989); *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2474 (2015)).

he wanted to act quickly to prevent Goldson from attempting to escape again." *Id.*

The problem with the district court's analysis is that it does not square with precedent and does not reflect the available evidence for three reasons. First, the amount of force required to cause minor abrasions is not trivial because "a plaintiff may allege use of excessive force even where the physical contact between the parties did not leave excessive marks or cause extensive physical damage."[17] *Bard*, 970 F.3d at 17 (quoting *Ingram v. City of Columbus*, 185 F.3d 579, 597 (6th Cir. 1999)). Second, the incredibly difficult job of law-enforcement and prison officers does require substantial discretion, but there are also bright-line rules like when "someone has been restrained with handcuffs, the need for force is near 'nonexistent.'"[18] *Id.* at 16 (quoting *Kalvitz v. City of Cleveland*, 763 F. App'x 490, 494 (6th Cir. 2019)). Third, Mr. Goldson's attack of Deputy Justice was too physically and temporally attenuated to justify the reasonableness of Corporal Huff's actions given that "Goldson was a known, secured inmate, and no record evidence indicates that the officers were uncertain whether he had been effectively restrained in the cruiser." *Id.* at 17. With the district court's analysis for qualified immunity falling flat, Judge Moore's analysis offers a well-reasoned and replicable approach.

Judge Moore's analysis for qualified immunity has three prongs: "(1) whether a constitutional right was violated; (2) whether that right was clearly established and one of which a reasonable person would have known; and (3) whether the official's action was objectively unreasonable under the circumstances."[19] *Id.* at 15 (citing *Harris v. Bornhorst*, 513 F.3d 503, 511 (6th Cir. 2008)). Applying this analysis to Corporal Huff's removal of Mr. Goldson from the police cruiser places the emphasize on objective variables rather than on Corporal Huff's discretion.

Judge Moore approached the first prong by considering whether "various factors that our caselaw mentions in justifying similar uses of force are present here."[20] *Id.* at 15. These factors are whether or not the recipient of the force (1) was secured, (2) had refused the officer's command to exit the vehicle, and (3) was in a vehicle with "unknown, potentially dangerous contents inside."[21] *Id.* at 15–16. Mr. Goldson was handcuffed behind his back while secured in leg shackles and a transport belt when Corporal Huff, without warning, removed him "from a *law-enforcement* vehicle in which the inmate had already been secured."[22] *Id.* at 16. Judge Moore concluded that Corporal Huff clearly

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17 *Bard*, 970 F.3d at 17 (quoting *Ingram v. City of Columbus*, 185 F.3d 579, 597 (6th Cir. 1999)).

18 *Id.* at 16 (quoting *Kalvitz v. City of Cleveland*, 763 F. App'x 490, 494 (6th Cir. 2019)).

19 *Id.* at 15 (citing *Harris v. Bornhorst*, 513 F.3d 503, 511 (6th Cir. 2008)).

20 *Id.* at 15.

21 *Id.* at 15–16.

22 *Id.* at 16.

"employed excessive force in removing Goldson from the vehicle."[23] *Bard*, 370 F.3d at 17.

The second prong considers whether the violated right was clearly established. Judge Moore cites the Supreme Court for "the general proposition that use of force is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness."[24] *Id.* (citing *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001)). Judge Moore's conclusion on the first prong necessitated that the second prong was also met.

The final prong seeks to further inject objectivity into the analysis and asks whether Corporal Huff's actions were objectively reasonable under the circumstances. Judge Moore turned to precedent to determine whether pulling a restrained inmate out of a vehicle so that his upper body would fall to the floor was a reasonable use of force. After citing three other cases suggesting this use of force was excessive, the final case cited offered a bright-line rule: "A reasonable officer would understand that, after compliance is secured and a threat is no longer posed, force should not be employed."[25] *Id.* at 18 (citing *Cole v. City of Dearborn*, 448 F. App'x 571, 576 (6th Cir. 2011)). Based on this precedent, Judge Moore concluded that all three prongs were met, and Corporal Huff should not have been granted qualified immunity.

Ultimately, the district court's grant of qualified immunity prevailed due to procedural deficiencies on appeal, but Judge Moore's analysis is a valuable contribution to the larger issue of what standard law-enforcement is held to. Is Corporal Huff entitled to substantial discretion in giving Mr. Goldson a "welcome party" as retaliation for the attack on Deputy Justice? Should a law-enforcement officer be granted substantial discretion when he kneels on your neck for almost eight minutes? Or can that conduct be viewed as objectively unreasonable?

If all that is required is that law-enforcement officers be less morally blameworthy than suspects and inmates, then perhaps justice is served. But holding law-enforcement officers to such a low standard is an insult to the uniform and the overwhelming number of honorable individuals in law-enforcement. Watching the video of Corporal Huff's removal of Mr. Goldson from the police cruiser does not reflect the good order and discipline that should be demanded of our thin blue line. Those entrusted to enforce the law are not above it.

Demanding that law-enforcement be held accountable is easy, but how can they be expected to follow the law when judges are unable to agree what the law is? Judge Moore's three-pronged analysis draws on precedent to delineate unacceptable conduct in a defined way that can be used to train other officers. Maintaining the district court's emphasis on substantial discretion entrenches the status quo and is getting harder to defend. If the argument is that people

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23 *Bard*, 370 F.3d at 17.

24 *Id.* (citing *Saucier v. Katz*, 533 U.S. 194, 201–02 (2001)).

25 *Id.* at 18 (citing *Cole v. City of Dearborn*, 448 F. App'x 571, 576 (6th Cir. 2011)).

make mistakes and there are a few bad apples, then the response should be that mistakes have consequences and bad apples that are not thrown out spoil the bushel. The nature of law-enforcement does not lend itself to a comprehensive list of bright-line rules but establishing them when they are practical will help officers abide by them and protects the general public from abuse.