Drop-the-Gun Demands to Deadly Force: Eighth Circuit Delivers Decision in Klum v. City of Davenport

Description

The United States Court of Appeals for the Eighth Circuit recently issued a decision in Klum v. City of Davenport, a case that challenges whether qualified immunity shields an officer who used deadly force against a man while he walked through a residential neighborhood with a handgun pressed to his own head.

Factual Background

This case arises out of incident from October 2021, after a Davenport Police Officer visited Bobby Klumâ??s home to follow up on a report that Klum had a confirmed warrant for his arrest. The officer parked his vehicle in an alley near Klumâ??s house and ultimately observed Klum walking out of the backyard. As soon as Klum saw the Officer, he began to flee which prompted the Officer to activate his emergency lights and chirp his siren. The officer pulled into the driveway of the house, exited his vehicle, and began chasing Klum on foot, while concurrently reporting the pursuit over his radio to other officers. Despite the Officerâ??s demands to stop running and his indication that he had a warrant for Klumâ??s arrest, Klum refused to comply. While the pursuit was still ongoing, the Officer observed Klum holding a gun to his head and reported his observations over his radio, commanding Klum to get on the ground. Klum again, refused to comply and began walking through the residential neighborhood while continuing to hold the gun to his head. Once Klum disappeared into the neighborhood, several other officers began to assist in the pursuit. After several minutes had passed, a different Officer spotted Klum walking through the neighborhood and attempted to speak with Klum, asking him to â??talk about thisâ?• and to put down the gun. Klum did not comply and walked in the opposite direction. Less than a minute later, Klum walked back in the Officerâ??s direction and into a nearby alleyway. A third Officer was positioned at the end of the alleyway when he observed Klum walking in his direction with the gun still held to his head. This officer followed suit and ordered Klum multiple times to put his hands up and drop the gun. Klum did not comply and continued to walk down the alleyway in the Officerâ??s direction.

Once Klum exited the alleyway, he moved South-bound onto the sidewalk of Iowa Street, heading in the opposite direction of the officers. Officers followed Klum while repeatedly commanding him to â??drop the gun.â?• The officers began to yell at bystanders to â??get out of the streetâ?• and to â??go inside.â?• At this point, two Officers each fired a less lethal weapon at Klum. The rubber bullet from the first Officerâ??s weapon hit Klum in the torso due to his body positioning in the officerâ??s direction. Unaffected by the rubber bullet, Klum turned and continued to walk away from the officers. Two bystanders sat in a car at the intersection watching the encounter; while several other bystanders watched from a front yard; and two other bystanders, a woman and a young girl, were watching from the street as Klum began to approach the intersection. As officers fired the less lethal weapons at Klum, the bystanders retreated. Within second after the officers fired the final rubber bullet, Klum began crossing the street despite orders to drop the gun and to stop walking. Before Klum could reach the sidewalk, Officer Roth, without issuing a verbal warning, fired and struck Klum, resulting in his death.

In the aftermath, the Plaintiffs sued Officer Roth and the City of Davenport, alleging use of excessive force under 42 U.S.C. Â§ 1983 in violation of the Fourth Amendment. Hearing the case at the outset, the district court granted summary judgment to Officer Roth and the City of Davenport on all claims. As to the claim for excessive use of force, the lower court found that Klumâ??s Fourth Amendment right against unreasonable seizure was not violated; nor did Klum have a clearly established right against seizure by deadly force under the circumstances. On appeal to the Eighth Circuit, the Plaintiffs only challenged district courtâ??s grant of summary judgment based on qualified immunity as to their excessive force claim against Officer Roth and the City of Davenport.

United States Court of Appeals for the Eighth Circuit

When the case reached the Eighth Circuit, the Court affirmed the district courtâ??s decision and held that any right was not clearly established at the time of the incident, and therefore, Officer Roth was entitled to qualified immunity because the totality of the circumstances, including Klumâ??s non-compliance, evasion, and proximity to bystanders, justified the use of deadly force. The court reiterated the legal framework that guides itsâ?? analysis in this case. An officer may be shielded from liability upon a finding that the officer is entitled to qualified immunity. However, qualified immunity is not afforded to an officer if: (1) the officer violated an individualâ??s constitutional right, and (2) that constitutional right was clearly established so that a reasonable officer would know of the right at the time of the alleged violation.[1] If either prong is not satisfied, then the officer is entitled to qualified immunity. For cases that are within the Eighth Circuit, this Circuit Court is permitted to analyze either prong of this analysis first.[2]

First, the Court tackled the excessive force analysis, considering whether the officerâ??s actions were objectively reasonable in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation. The court emphasized the circumstances surrounding the encounter; namely, that the incident arose due to the officerâ??s warrant for Klumâ??s arrest and that Klum was actively fleeing and ignoring repeated commands while holding a gun to his head. However, Officer Roth knew only that Klum had been evading arrest and holding a gun to his head. Whether a reasonable officer could conclude Klum posed an immediate threat to the safety of others depends on the totality of the circumstances known at the time of the shooting. The Court reiterated that it has consistently held that deadly force is not unreasonable where an officer has â??probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others. While it was clearly established that a person does not pose an immediate threat of serious physical harm to another when, although the person is in possession of a gun, he does not point it at another or wield it in an otherwise menacing fashion, Klumâ??s possession of a firearm was not the only fact and circumstance confronting the officers that day. At the time of the incident, there were several bystanders outside near a house approximately half a block from where Klum was shot and in the general direction Klum was heading after the officers fired the rubber bullets at him. Even if Klum never moved the gun away from his head or aimed it at bystanders, the officers were confronted with an evolving set of circumstances when they observed that Klum was unaffected by the rubber bullet, changed course and began walking in the general direction of the bystanders with his gun to his head, and did not comply with the officersâ?? commands to stop.[3]

The Court distinguished the facts of Klumâ??s case from the facts present in the Plaintiffs cited case, therefore, finding that Plaintiffs cannot rely on that case to show the law was clearly established that Officer Roth could not use deadly force against Klum. Here, Klum was non-compliant and evaded arrest

while walking through a residential neighborhood with a gun to his head and in the general direction of bystanders, including a woman who was seen earlier with a young girl, when Officer Roth shot him. The Court then addressed Plaintiffs argument that Officer Rothâ??s failure to provide a warning before shooting Klum required reversal. The Eighth Circuit was unpersuaded, acknowledging that this court has previously held that Tennessee v. Garner, requires the officer to give a warning â??where feasible,â??â?• however, even so, a failure to warn does not automatically render the use of deadly force unreasonable.[4]

More importantly, the Court made clear that this is not a failure to warn case, but rather an escalation case. The officersâ?? repeated demands to drop the gun and the use of non-lethal rounds should have provided Klum â??adequate notice that any action the officers perceived as escalation could result in the use of deadly force.â?•[5] When Klum refused to stop walking and drop his weapon, and instead proceeded in the general direction of bystanders, Officer Roth could have perceived the action as an escalation requiring use of deadly force. At the very least, this courtâ??s case law at the time of Klumâ??s shooting did not place the question of his right to be free from deadly force in this situation â??beyond debate.â?• Therefore, because not every reasonable officer would have understood that the use of deadly force here violated the Fourth Amendment, the district court properly granted Officer Roth qualified immunity. The court also upheld the district courtâ??s grant of summary judgment on the *Monell* claim, concluding that Plaintiffs failed to raise a genuine issue as to whether the City of Davenport had a policy that directly caused the use of deadly force.

[1] Thurairajah v. City of Fort Smith, 925 F.3d 979, 982 (8th Cir. 2019).
[2] Pearson v. Callahan, 555 U.S. 223, 236 (2009).
[3] See Graham, 490 U.S. at 396â??97.
[4] Tennessee v. Garner, 471 U.S. 1, 11â??12 (1985).
[5] Rogers v. King, 885 F.3d 1118, 1122 (8th Cir. 2018).

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