

Orders Under Fire: Navigating the Tensions of Excessive Force, Muddled Commands, and Qualified Immunity

By **Daigle Law Group**

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DAIGLE LAW GROUP

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The Fourth Circuit Court of Appeals presented a decision in *Franklin v. City of Charlotte*, a case that emphasizes the tensions between police response and perceived threats, while considering the potential pitfalls of ambiguous or conflicting officer commands.¹ Stemming from an incident at a local fast-food restaurant, what might have been an everyday incident rapidly escalated into an irreversible tragedy.

The plaintiff, acting on behalf of her deceased son's estate, filed a 42 U.S.C. §1983 claim against the involved officer, alleging excessive force. The plaintiff then lodged a claim against the City of Charlotte, contesting the City's official position regarding the officer-involved shooting. The district court found in favor of both the officer and the City, holding that the individual officer was entitled to qualified immunity and finding the city exempt from liability concerning the officer's actions.

The Fourth Circuit hearing the case, affirmed the district court's decisions granting summary judgment for the City on Franklin's § 1983 and negligent training claims and reversed the decision granting summary judgment for Officer Kerl on the § 1983 claim.

Summary

Charlotte Police officers were dispatched to a local fast-food restaurant, following reports of a man, later identified as Franklin, allegedly threatening customers and staff with a firearm. When officers arrived on the scene, they found Franklin outside the restaurant, positioned next to a car, with no firearm in plain sight. Interestingly, the restaurant's manager was in the passenger seat of the car, attempting to deescalate the situation.

Franklin was in a non-threatening position, crouched down near the passenger door, holding his hands joined together between his legs. Despite there being no visible weapon, the officers fired conflicting commands at Franklin, asking him to both show his hands and drop the weapon. Franklin acknowledged the orders but did not immediately comply. He slowly retrieved a handgun from his coat, holding it by the barrel with the grip towards the officers and the muzzle pointed away.

Tragically, within 43 seconds of their arrival on the scene, one of the officers discharged her weapon twice, striking Franklin in the chest and arm, resulting in his death. The entire incident was captured on the officers' body cams. During the police department's internal review, the officers' accounts were inconsistent with the video footage.

A lawsuit was filed against the individual officer alleging excessive force and against the City of Charlotte, contesting their official stance on the shooting. While the district court in favor of both the officer and the city, grounding its judgment in the doctrine of qualified immunity and state law, the Fourth Circuit had a different perspective, one that would lead to a partial reversal of the lower court's ruling.

On appeal, the Fourth Circuit affirmed the district court's summary judgment for the City on Franklin's § 1983 and negligent training claims but reversed the decision granting summary judgment for Officer Kerl on the § 1983 claim.

Analysis and Implications

Under the Fourth Amendment, as outlined in *Graham v. Connor*, the use of force must be reasonable, considering the severity of the crime, whether the suspect poses an immediate threat, and whether the suspect is resisting or trying to evade arrest.² On appeal, the Fourth Circuit placed significant emphasis on the second Graham factor, highlighting that the immediate threat level was a key determinant in the case's outcome.

Although the initial dispatch indicated a severe threat by an armed suspect, the actual scene appeared less hostile than anticipated. The Fourth Circuit acknowledged that the officers' conflicting orders seemingly exacerbated the situation, overshadowing Franklin's relatively non-threatening behavior.

Drawing on established precedent within the Fourth Circuit, which stipulates that mere possession of a firearm alone does not automatically justify the use of deadly force, the Court ruled that the ultimate judgment on the reasonableness of the officer's actions should be determined by a jury.

The Fourth Circuit reversed the grant of summary judgment to the officer based on qualified immunity and remanded the case for further proceedings. As for the city's liability, the court agreed with the district court's decision that the city was precluded from liability for Franklin's death because his death could not be traced back to a decision by a subordinate.

Takeaways

The Fourth Circuit's decision shed light on the significance of on-the-ground threat assessments, emphasizing that an officer's real-time observations and responses should ideally align with the situation's actual exigencies, not merely the initial call's severity.

This case underscores the crucial responsibility that law enforcement officers must accurately assess threats and respond proportionally and serves as a reminder that the right to bear arms does not inherently justify the use of deadly force.

Franklin v. City of Charlotte provides a sobering example of the level of scrutiny that law enforcement actions can undergo, especially when deadly force is involved. This case serves as a significant cautionary reminder for our officers, underlining the necessity to continuously evaluate the totality of the circumstances when determining the appropriateness and proportionality of their response measures.

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