Force, Filming, and First Amendment in the Fifth Circuit

Description

The Fifth Circuit Court of Appeals recent decision in *Perkins v. Hart* casts a spotlight on the challenging scenarios officers face on the ground, focusing on an arrest that raised questions about excessive force and First Amendment retaliation.[1] This case stems from an escalated confrontation between Ms. Teliah Perkins and two deputies of the St. Tammany Parish Sheriffâ??s Office, ultimately leading to Perkinsâ??s arrest. In the aftermath of the arrest, Perkins filed a 42 U.S.C. Â§ 1983 lawsuit against the deputies, alleging violations of her and her sonâ??s First, Fourth, and Fourteenth Amendment rights.

It was a typical Spring Day in Slidell, Louisiana, when what began as a routine police response quickly turned into a heated altercation between a Slidell County resident and two law enforcement officers. St. Tammany Parish Sheriffâ??s Deputies Kyle Hart and Ryan Moring responded to a report of a female seen recklessly riding a dirt bike, wearing no helmet. The Deputies drove past Teliah Perkinsâ?? home and saw her standing in her driveway next to a bike. The two officers turned around and approached Ms. Perkins, requesting her driverâ??s license, vehicle registration, and proof of insurance. In the first few minutes after the officers arrived, Perkins was initially cooperative with the Deputiesâ?? requests. Things took a turn after she was unable to provide the officers with proof of insurance.

As tensions rose, Perkinsâ??s compliance fell. This prompted her to request a supervisory officer and to direct her son and nephew to record everything on their cell phones. Despite the Deputiesâ?? instructions for the boys to return to the porch, they ignored the request and began filming the incident. Perkins resisted the deputiesâ?? attempts to arrest her. Perkins pulled away as the deputies worked to restrain her, with repeated commands from them to â??stop resisting.â?• Perkins continued flailing her arms and legs while insisting that she was not resisting. Eventually, she was brought to the ground, where Deputy Hart seized her arms and handcuffed her. During the struggle, Deputy Moring had his own confrontation with D.J, attempting to interfere with the recording by blocking his camerasâ?? view of Perkins. The standoff was tense; Deputy Moring commanded D.J. to â??get back,â?• as they continued to make aggressive comments at each other. In a show of authority, the Deputy possibly pushed D.J. and at one point, held out his taser to keep him at bay. While Hart was on the ground with Perkins, he applied pressure on her back for about one minute. Immediately after he released the pressure, Perkins flipped to her back and continued kicking and struggling. As Hart tried to control her, his hand, initially on her shoulder, briefly slipped onto her neck for less than 2 seconds, causing her to yell that she was choked. Meanwhile, Deputy Moring, preoccupied with D.J., missed this part of the altercation.

Perkins was arrested, tried, and convicted, for â??Resisting an Officer.â?? She filed a 1983 action against the Deputies for excessive force and First Amendment Retaliation. The district court held that the deputies were not entitled to qualified immunity on the excessive force and First Amendment retaliation claims. The decision was based on the courtâ??s interpretation of the video footage and testimony, which they believed to show violations of Perkins and D.J.â??s clearly established rights. The deputies challenged the district courtâ??s decision, appealing their case to the Fifth Circuit for further review.

On appeal, the Fifth Circuit Court reversed the district courtâ??s ruling, granting summary judgment to the deputies on both Perkinsâ??s and D.J.â??s excessive force claims. However, the Circuit upheld the district courtâ??s finding that D.J.â??s filming of the arrest was a clearly established, protected First Amendment activity, defeating Deputy Moringâ??s qualified immunity defense.

The Fifth Circuit began by assessing Perkinsâ??s Excessive Force Claim, highlighting a key principle: a plaintiffâ??s version of events can be set aside for qualified immunity purposes if it is clearly contradicted by video evidence. After reviewing the extensive video evidence provided in this case, the Court determined that the footage conclusively showed that the deputiesâ?? use of force was not clearly unreasonable.

Focusing on the qualified immunity analysis, the Court found that the district court incorrectly grouped the deputiesâ?? actions together, as the district court denied both officers qualified immunity due to only Deputy Hartâ??s alleged choking of Perkins. Upon conducting an individual assessment of Deputy Moringâ??s conduct, the Court determined that Moringâ??s actions were proportionate to Perkinsâ??s resistance, noting that he ceased using force once she was subdued.

Similarly, despite Perkinsâ??s choking allegation against Deputy Hart, the Court, guided by video evidence, found the claim unsupported and consequently found that Officer Hart was entitled to qualified immunity as well.

The Circuit then tackled the Excessive Force Claim on behalf of D.J. The Fifth Circuit found this to be clear-cut. In its reasoning, the Court emphasized that D.J. was never seized, which is a necessary requirement for making a claim of excessive force. In this case, D.J. was only asked to maintain distance while Deputy Moring secured the scene, an action in-line with standard procedure. The Court ultimately concluded that because there was no violation of D.J.â??s Fourth Amendment rights, the Deputies were entitled to summary judgment.

Lastly, the Court considered D.J.â??s First Amendment Retaliation claim and affirmed that D.J. met the necessary criteria required to establish such claim. The Court reasoned that D.J. was lawfully filming the arrest, and there was no justifiable reason for Deputy Moringâ??s interference. Relying on the 2017 case, *Turner v. Lieutenant Driver*, the Fifth Circuit recognized a First Amendment right to record the police, subject to reasonable restrictions.[2] In this case, D.J.â??s filming did not hinder police work, as the facts made clear that his actions sufficiently respected the balance between an individual observing compared to when an individual is obstructing the police. The Court emphasized that D.J. experienced a significant chilling effect on his protected rights when Deputy Moring pointed a taser at him and issued verbal threats, actions seen as potentially infringing on D.J.â??s First Amendment rights.

Perkins v. Hart highlights the importance of focusing on the actions of individual officers when determining qualified immunity, emphasizing that the shield of qualified immunity is evaluated on an officer-by-officer basis. As evidenced by this case, we are reminded of the significant impact that video evidence can potentially have on the outcome of a case. This evidence is particularly critical for law enforcement officers, as it can either support or challenge officersâ?? accounts of an incident. Overall, this reminds our officers of the importance of transparency and accountability in operations.

Date Created
02/22/2024