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County of Sacramento v. Lewis:

A Suspect's Substantive Due Process Right is Not Violated when Police Action, Aimed at Apprehending a Suspected Offender, with No Intent to Harm or Legally Worsen Suspect's Situation, Causes Death

By Bryon S. Bereano

The Supreme Court of the United States ruled that a police officer who is engaged in a high-speed pursuit of a suspected offender does not violate a suspect's substantive due process right by causing death through deliberate indifference or reckless indifference to life. *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). In so holding, the Court determined that the proper standard necessary to establish a Due Process violation is deliberate indifference that shocks the conscience.

While responding to an unrelated call, officers James Smith ("Smith") and Murray Stapp ("Stapp") observed a motorcycle driven by Brian Willard ("Willard") with Philip Lewis ("Lewis") as a passenger, traveling at a high rate of speed. *County of Sacramento v. Lewis*, 523 U.S. 833 (1988). Stapp yelled for the motorcycle to stop, turned on his police lights, and a chase ensued. *Id.* In an effort to pin in the motorcycle, Stapp maneuvered his patrol car closer to Smith's patrol car. *Id.* However, Willard sped away, managing to steer his motorcycle clear of the two police cars. *Id.* The chase ended when Willard's motorcycle tipped over while attempting to turn left. *Id.* Smith immediately applied his brakes, but his patrol car skidded into Lewis at forty miles an hour, propelling Lewis seventy feet down

the road. *Id.* Lewis suffered massive injuries and was pronounced dead at the scene. *Id.* Willard survived without serious injury. *Id.*

The respondents, Philip Lewis's parents and the representatives of his estate, brought suit against the petitioners, Sacramento County, the Sacramento County Sheriff's Department and Smith, alleging a deprivation of Lewis's Fourteenth Amendment substantive due process right to life. *Id.* The district court granted summary judgment for Smith, reasoning that even if Smith violated Lewis's constitutional rights, Smith was entitled to qualified immunity.

The Court of Appeals for the Ninth Circuit reversed the district court's decision and held that "the appropriate degree of fault to be applied to high-speed police pursuits is deliberate indifference to or reckless disregard for, a person's right to life and personal security." *Id.* (quoting *Lewis v. County of Sacramento*, 98 F.3d 434, 441 (1996)). The ninth circuit reasoned that because Smith disregarded the Sacramento County Sheriff's Department's General Order on police pursuits, there was a genuine issue of material fact that could establish that Smith acted with deliberate indifference. *Id.* The ninth circuit, therefore, remanded the case for a new trial.

The Supreme Court of the

United States granted certiorari to resolve the conflict among the circuits concerning the degree of culpability required by a police officer to violate substantive due process in a high-speed chase. Specifically, the Court was faced with deciding whether the appropriate standard to be applied is deliberate or reckless indifference to life or conduct that rises to one that shocks the conscience. *Id.* (citing *Lewis v. County of Sacramento*, 98 F.3d at 441 (9th Cir. 1996); *Evans v. Avery*, 100 F.3d 1033, 1038 (C.A.1 1996)). Before discussing which standards to apply, however, the Court addressed the County's contention that the Respondents suit was barred by a more definite provision of the constitution, precluding the application of a substantive due process claim. The County relied upon *Graham v. Conner*, 490 U.S. 386 (1989), which held that "[w]here a particular amendment provides an explicit textual source of constitutional protection against a particular sort of Government behavior, that amendment, not the more generalized notion of substantive due process, must be the guide for analyzing claims." The county argued that Smith's actions constituted a seizure and, therefore, the case should be analyzed under the Fourth Amendment. The Court, however,

held that the Fourth Amendment covers searches and seizures and a motorcycle chase in pursuit of a suspect does not constitute a seizure under the Fourth Amendment. *Id.* (citing *Graham*, 490 U.S. at 395). The Court concluded that there was no Fourth Amendment violation, and that Smith's actions would be examined under a substantive due process violation analysis.

Having determined that a substantive due process analysis was applicable, the Court turned to the issue of culpability necessary for a violation. The Court stated that when dealing with abusive executive action, only the "most egregious official conduct can be said to be arbitrary in the constitutional sense." *Id.* at 1716 (quoting *Collins v. Harker Heights*, 503 U.S. 115, 129, 112 S.Ct. 1061, 1071 (1992)). Under the *Collins* test, substantive due process can only be violated by executive action that shocks the conscience. *Id.* at 1717. The Court, relying on the *Collins* test, determined that Smith did not violate Lewis's substantive due process when he was killed during the vehicle chase. *Id.* at 1720. When looking at the government's actions, a totality of the circumstances standard should be used before judging actions that shock the conscience. *Id.* at 1718. The Court determined that in a situation of a high-speed pursuit of a suspect, an officer's instant judgment is required. *Id.* at 1720. With no time to think, an officer's actions must be held to the higher standard of the *Collins* test and not to the level of deliberate indifference or reckless indifference.

In the wake of the Court's holding, police officers will violate a suspect's due process rights in a high-speed pursuit only if the officer's actions are arbitrary and shock the conscience. No longer will conduct that is deliberate or shows reckless indifference be enough to hold police officers liable for injuries sustained by suspects during pursuits.