

**LOOPHOLE OR SHIELD?: PROTECTING THE RIGHT TO
QUALIFIED IMMUNITY FOR POLICE OFFICERS ACTING
UNDER REASONABLE BELIEF WHEN VIOLATING THE
FOURTH AMENDMENT**
MANIS V. LAWSON, NO. 08-30987, 2009 WL 3298078
(5TH CIR. OCT. 15, 2009)

Highlight

Lynn Taylor

In *Manis v. Lawson*, the defendant-appellant, Officer Douglass Zemlik (Zemlik), filed an interlocutory appeal on the district court's ruling denying Zemlik's qualified immunity defense.¹ Police Officer Zemlik responded to a call that a car was parked idling on the intersection's railroad tracks.² David and Janet Jenkins observed Michael Manis's car parked on the tracks and after repeatedly honking at the car called the police.³ Sergeant Scott Vinson (Vinson) arrived at the scene and approached Manis's vehicle and observed Manis in the front seat of his car.⁴ Vinson observed Manis either sleeping or passed out and then moved to the back of the car to approach from the passenger side.⁵ Officer Zemlik arrived on the scene and approached from Manis's vehicle from the driver's side; meanwhile, Vinson reached inside the SUV and placed the vehicle in park.⁶ Both officers then identified themselves as law enforcement and attempted to wake Manis verbally and physically.⁷

The parties disagree what happened next, but according to Vinson and Zemlik, Manis began shouting obscenities and flailing.⁸ Zemlik opened the driver's side door and attempted to calm Manis while Vinson turned the vehicle off and began to assist Zemlik.⁹ Manis then began to reach under his seat, from the seat-belted position; the officers both drew their weapons and repeatedly ordered Manis to show his hands.¹⁰ After ignoring the officers' request several times, Manis appeared to Zemlik to retrieve an object from under the seat and when he began to straighten up, Zemlik fired four rounds,

¹ *Manis v. Lawson*, No. 08-30987, 2009 WL 3298078, at *1 (5th Cir. Oct. 15, 2009).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

killing Manis.¹¹

Plaintiff-appellees assert that Manis was confused and was only attempting to raise his hands in submission when Zemlik fired his weapon. The autopsy confirmed that Manis was intoxicated and under the influence of cocaine and barbiturates.¹²

Defendant-appellant moved for summary judgment based on qualified immunity, asserting that he used force reasonable under the circumstances.¹³ The district court denied Zemlik's summary judgment motion without explanation and stated only, "there are disputed issues of material facts as to whether the defendant's conduct was objectively reasonable in light of legal rules clearly established at the time of the incident."¹⁴ The Fifth Circuit reversed and remanded to the district court for entry of summary judgment finding that the material facts in the case were undisputed and did not establish a constitutional violation.¹⁵

The Fifth Circuit employed the two-pronged inquiry adopted in *Pearson v. Callahan* to decide whether or not Zemlik was entitled to qualified immunity.¹⁶ The inquiry denies the use of qualified immunity when the defendant's (1) conduct violates a constitutional right and (2) that right is clearly established at the time of the misconduct.¹⁷

In the court's analysis it determined that to prevail on an excessive force claim, the plaintiff must show that (1) an injury occurred, (2) that resulted directly from the use of force that was *clearly* excessive, and (3) the force used was *clearly* unreasonable.¹⁸ Furthermore, a plaintiff must also demonstrate that a government official violated a clearly established constitutional or statutory right that a reasonable person would have been aware existed.¹⁹

The court held that an officer use of deadly or excessive force is reasonable when the officer reasonably believes that "the suspect poses a threat of serious harm to the officer or others."²⁰ In this case, the court found that Zemlik had a reasonable belief that Manis posed a serious threat to him or others when he reached under the seat and appeared to reach for what Zemlik could reasonably believe was a weapon.²¹ The court cited several other cases in which it found that an officer acted reasonably in his use of force when a suspect ignored verbal commands and subsequently reached for what could

¹¹ *Id.*

¹² *Id.* at *2.

¹³ *Id.* at *3.

¹⁴ *Id.* at *2.

¹⁵ *Id.*

¹⁶ *Id.* at *3.

¹⁷ *Id.*; see *Pearson v. Callahan*, 129 S. Ct. 808 (2009).

¹⁸ *Manis*, 2009 WL 3298078, at *3 (citing *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir. 2009)) (emphasis added).

¹⁹ *Id.* at *5.

²⁰ *Id.* at *3.

²¹ *Id.*

have been a weapon.²² The court noted that Zemlik's account of the scene was corroborated by the other officer present, Vinson, as well as two eyewitnesses.²³ Although the appellees argued that Manis's actual intent should be taken into account, the court dismissed this argument stating that the test is not actual intention but what was objectively reasonable in light of the circumstances as they existed at the time of the use of force.²⁴

In the second prong of the analysis the court held that Zemlik's conduct was objectively reasonable under clearly established legal rules at the time of the shooting.²⁵ Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law" from civil liability.²⁶ An officer is authorized to use deadly force when he has probable cause to believe the suspect poses a threat; controlling authority in the Fifth Circuit has not prohibited deadly force in cases with facts similar to this situation.²⁷ Thus, Zemlik's use of force did not violate the Fourth Amendment because the law established at the time of shooting allowed for action that was reasonable under the circumstances.²⁸

Qualified immunity has long been a defense to civil liability for police officers acting within the scope of their employment.²⁹ To negate a defense of qualified immunity plaintiffs have to offer more than "mere allegations."³⁰ Therefore, defense attorneys must be able to show that there are no material issues of facts and use cases with similar fact patterns to support their claims. This case affirms the defense of qualified immunity for government officials when making reasonable discretionary decisions.

This decision walked through the two-pronged analysis set forth by the Supreme Court and compared the officer's actions in this situation with other officer's actions in similar cases.³¹ Qualified immunity turns on what the law was at the time of the alleged violation; so it's either the ultimate loophole or the impenetrable shield.

²² *Id.*; see *Ontiveros*, 564 F.3d at 385, *Reese v. Anderson*, 926 F.2d 494, 501 (5th Cir. 1991); *Young v. City of Killeen*, 775 F.2d 1349, 1352-53 (5th Cir. 1985).

²³ *Manis*, 2009 WL 3298078, at *4.

²⁴ *Id.*

²⁵ *Id.* at *5.

²⁶ *Id.* (quoting *Malley v. Bridges*, 475 U.S. 335, 341 (1986)).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at *2.

³⁰ *Id.* (citing *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir. 2009)).

³¹ *Id.* at *6.