***Caraway v. Pineville*: August 6, 2024**

4th Circuit No.22-2281

N.C.: Plaintiff appeals the dismissal of his Fourth Amendment lawsuit against Police for Use of Deadly Force.

Facts: Officers responded to a 911 call for "a black male walking around, waving a gun at" a passerby. When officers responded, they found the plaintiff walking alone down the empty sidewalk with his arms at his sides and a cellphone in his left hand. Officers exited their vehicles, weapons at the ready, and shouted a series of commands for the plaintiff to both raise his hands and drop what they thought was a gun.

The plaintiff thought the command required that he remove the gun he was carrying in his jacket pocket, not the phone he held in his hand. The plaintiff turned around and reached into his jacket. As he did so, he began to kneel, his right knee settling on the sidewalk. Officers then yelled "Keep 'em both up," "Get on the ground!" and "Get your hands up!" The plaintiff then removed the firearm from his pocket and held it in "a shooting grip," pointing at the officers. Officers then shot the plaintiff. As he was handcuffed, the plaintiff said, "I'm sorry, I was just doing what I was told to do. Y'all said 'drop it,' I'm sorry."

The plaintiff survived and sued the four officers, raising claims under 42 U.S.C. § 1983 and North Carolina law. The district court granted summary judgment for the officers on the Fourth Amendment excessive force and state-law assault and battery claims.

Held: Affirmed. The Court wrote: "We think it fair to say, with the benefit of hindsight, that the officers should have handled this encounter differently. But that's not our role. Instead, we ask whether the officers' use of deadly force was reasonable. Because the record shows that in the moments before the shooting, Caraway's gun was pointed at two of the officers, we find that it was."

"The Court acknowledged that "It's easy to say (in the peace and quiet of chambers) that Caraway's actions right before he moved to withdraw the gun from his pocket appeared calm and nonthreatening." However, the Court emphasized that the undisputed evidence showed that just before the officers fired, the plaintiff's gun was pointed at the officers."

"The Court likened this case to *Slattery v. Rizzo* and *Elliott v. Leavitt*, cases that for the Court illustrated that the use of deadly force is constitutional when it was objectively reasonable for an officer to believe that, in the moments immediately before that force is deployed, the suspect posed a serious threat of physical harm. Key to those decisions was that the suspects, "though armed, were not threatening the officers or others with their weapons at the moment they were shot."

"The Court distinguished the recent case of *Franklin v. City of Charlotte*. Like Caraway, Franklin wasn't holding a gun at the time the officers demanded he drop it; in response to the officers' conflicting commands, Franklin "slowly reached into the right side of his jacket and retrieved a black handgun with his right hand." Id. at 526. But unlike in this case, "[w]hen Franklin's gun was in [the shooting officer's] view, . . . it was not in a firing grip," rather, "Franklin held it by the top of the barrel slide with the gripside closest to the officers and the muzzle pointed away from them." Id. The evidence further showed that as Franklin sought to comply with the orders by removing the weapon from his jacket, he "pointed it at no one." Id. at 533. But the officer nevertheless "discharged her weapon twice, striking Franklin in the left arm and abdomen." Id. at 526. We declined to grant qualified immunity because "[a] reasonable jury could conclude that Franklin did not pose an imminent threat to the officers or anyone else." Id. at 534.

"This Court has recognized that "[i]n excessive force cases where an officer uses deadly force the second *Graham* factor-Whether the suspect posed an immediate threat to the safety of the officers or other-"is particularly important." *Fraklin*, 64 F.4th at 532."

"That someone has a gun is not enough to justify an officer's use of deadly force; "deadly force may only be used by a police officer when, based on a reasonable assessment, the officer or another person is threatened with a weapon." *Cooper*, 735 F.2d at 159."[P]ointing, aiming or firing [a] weapon," for example, are all sufficient--but not necessary—movements to constitute such a threat. *Id.* at 159 n.9;*accord Elliott v Leavitt*, 99 F.3d 640, 642-44 (4th Cir. 1996)."

"As we Recognized in Cooper, we have concluded "several" times that "a police officer was entitled to qualified immunity after shooting an individual whom the officer mistakenly believed to be armed." 735 F.3d at 159. In other words, we've determined that the use of deadly force was reasonable when "the objective basis for the threat was real, but the gun was not" Id. "By contrast, we have reached the opposite conclusion in cases where the gun was real but the threat was not" *Franklin*, 64 F.4th at 531(cleaned up). Thus the relevant inquiry here is not whether Caraway threatened the officers, but whether there was an objective basis for the officers to believe that he presented a threat."

"Its easy to say (in the peace and quite of chambers) that Caraway's actions right before he moved to withdraw this gun from his pocket appeared to calm and nonthreatening. But on the street that February, the officers had an objective basis to believe that Caraway was a threat in the moments right before the shooting. That's because the undisputed evidence shows that just before the officers fired, Caraway's gun was pointed at French and Roberts. We therefore can't find that the Officers' use of deadly force in response to this perceived threat was unreasonable. *See Stanton v Elliott*, 25 F.4th 227, 234-35 (4th Cir. 2022)("A police officer need not wait for a suspect to shoot before using deadly force. And an officer needn't see the weapon in a suspect's hands to find him objectively dangerous. (cleaned up)." The problem for Caraway is that at least two officers saw his gun pointed at them. And there's no contrary evidence. The District Court did not err in finding that Caraway posed an immediate threat to the officers."

"The other Graham factors also favor the officers. The district court concluded " the officers' response was

objectively justified and reasonable considering the perceived severity of the crime at issue[:]" Caraway, 639 F.Syupp.3d at 573, a man pointing or waiving a gun in a public place. And we find the third factor, which looks to whether the suspect was "actively resisting arrest or attempting to evade arrest by flight, " Graham, 490 U.S. at 396, that it was objectively reasonable for an officer at the scene to believe that Caraway was attempting to resist arrest by pulling his gun to threaten him.

The Court refused to, as the plaintiff requested, parse the shooting into two distinct phases—the periods before and after he fell to the ground. The Court explained that given that the entire sequence of shots lasted only three or four seconds, and the video evidence was not precise enough for the Court to conduct a frame-by-frame, second-by-second, shot-by-shot analysis. In sum, the district court correctly determined that the officers are entitled to qualified immunity because their use of force did not violate the Fourth Amendment."