

Fourth Circuit Court of Appeals

Lewis v. Caraballo: April 15, 2024

Baltimore: Officers appeal the denial of Summary Judgment in a Police Use of Force lawsuit.

Facts: An officer responded to a domestic incident at an apartment complex. The call indicated the incident was “active” and “physical.” The officer was the first officer to arrive at the complex, where he found the plaintiff, a fifteen-year-old boy, pacing on a sidewalk and his mother crying nearby on her front steps. The officer approached the mother, who told him that her son had physically assaulted her. The officer then approached the plaintiff, who clenched his fists, assumed a “fighting stance,” and shouted, “[Y]o get the f&\$# away from me.” The officer tried talking to the plaintiff, but the teenager maintained a fighting position and continued yelling at him.

After a backup officer arrived on the scene, the plaintiff continued backing away, repeatedly telling the officers not to touch him. When the officer told the plaintiff to stop, the plaintiff clenched his fists below his waist, bent his knees, and shouted, “[A]in’t nobody f%&ing playing with you.” The officers ordered the plaintiff to surrender, and the backup officer pointed his taser at the plaintiff. The officers then grabbed the plaintiff and put him on the ground.

The officer made three elbow strikes to the back of the plaintiff’s shoulder area while the plaintiff was still on his hands and knees with his face down. The officer then executed knee strikes on the plaintiff, who was still down. There is a dispute about whether the knee strikes hit the plaintiff in the head. The officer then moved over the plaintiff, adopted a boxer-like stance, and struck the plaintiff’s head area four or five times. The backup officer finally tased the plaintiff, who became compliant.

The plaintiff sued the officer, bringing state and federal constitutional claims for excessive force and a state-law battery claim. The officer filed a motion for summary judgment on the grounds of qualified and statutory immunity, which the district court denied.

Held: Affirmed. The Court agreed with the district court that disputes of material fact precluded summary judgment. The Court explained that a reasonable jury could find that the officer struck the plaintiff when the teenager did not pose a threat, was not actively resistant, and was subdued. The Court stated that several consecutive closed-fist punches to the head of an arrestee in those conditions constitute excessive force.

The Court further held that the defendant’s constitutional right to be free from excessive force in the form of head strikes was clearly established at the time of his arrest. The Court also held that there is a genuine dispute of material fact as to whether the officer’s actions amounted to gross negligence or malice, precluding summary judgment in his favor on his statutory immunity defense. The Court found that the officer’s use of force in this case was significant, and pointed out that it has previously held that several closed-fist strikes to the head could constitute deadly force.

The Court then applied the *Graham v. Connor* factors to this case. The Court first looked at the severity of the crime at issue. Although the mother reported that her son had physically assaulted her, the Court noted that there was no evidence that the mother was visibly injured or that any weapons were present, and the offense was a misdemeanor.

Regarding whether the defendant was an immediate threat, the Court observed that the video indicated that the plaintiff was retreating from the officers and that he never voluntarily touched them. The Court found that the plaintiff posed no immediate danger to the officers. The Court observed that the video appears to show the plaintiff walking away from his mother's apartment well before the officers lunged at him. The Court also opined that when the officers initiated force, at least two officers were on top of the plaintiff and could have protected the mother from the unarmed teenager even if she was nearby. The Court also contended that the plaintiff was "partially subdued" before the officer began striking his head. Thus, the Court ruled that a jury could thus find that the plaintiff posed no reasonable threat that could have justified the officer's escalation of force.

Regarding the third *Graham* factor, the Court stated that the plaintiff made no attempt to flee. Regarding the plaintiff's resistance during the struggle, the Court agreed with the trial court that the plaintiff's resistance may merely have been "a natural response to the physical nature of the arrest."

Caraballo argues that Lewis was not fully "pinned" to the ground like the suspect in *Kane*. We find that distinction insignificant. The law can place officers on notice "even in novel factual circumstances," so long as the law provides "fair warning" that the officer's conduct was unconstitutional. *Booker*, 855 F.3d at 538 (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). Here, the video moves too quickly to distinguish Lewis's position at the precise moment Caraballo began striking his head, but the district court found that Lewis was either on his hands and knees with his face down, or he was completely "[on] the ground, facedown," when Caraballo began striking his head. Caraballo, 2022 WL 4558218, at *2. Either way, we know Lewis was down under the weight of two visibly larger officers—as opposed to the one larger officer in *Kane*— when Caraballo deployed his head beatings. Moreover, the suspect in *Kane* had been actively resisting arrest and attempting to flee. *Kane*, 987 F.2d at 1007–08. By contrast, viewing the facts in the light most favorable to Lewis, his defensive maneuvers did not constitute active resistance and he did not attempt to flee. Thus, a more significant use of force was justified in *Kane* than here. Similarly, in *Valladares v. Cordero*, we concluded a police officer used excessive force when he slammed an unarmed fifteen-year-old's head into a car. *Valladares*, 552 F.3d at 390. The teenage suspect had fallen to the ground, and because the officer "picked [him] up off the ground," and thus briefly had him "under full control," and "then forcefully shoved his face into his mother's car," this Court found that the officer used excessive force. *Id.* (emphasis added). As in *Valladares*, viewing the evidence in Lewis's favor, Lewis was under the officers' control, even if briefly, because he was partially subdued while kneeling on the ground under the officers' weight, before Caraballo began striking his head.

The Court concluded that a reasonable officer would not think that beating a non-dangerous suspect's head, after elbow- and knee-striking the suspect, was proportionate to the minimal resistance that the plaintiff gave. The Court found that an officer striking the head of a non-dangerous, non-actively resistant, partially subdued adolescent would not be objectively reasonable. The Court then held that the right of a suspect who was at the very least partially subdued and posed no immediate threat to be free from excessive force in the form of strikes to his head was clearly established at the time of the events of this case in 2018. The Court therefore rejected the officer's claim of qualified immunity.

Full Case At:

<https://www.ca4.uscourts.gov/opinions/222115.P.pdf>