



## SIXTH CIRCUIT HOLDS SHOOTING OF MENTALLY ILL PERSON LEGAL

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On July 6, 2016, the Sixth Circuit Court of Appeals decided *Rucinski v. County of Oakland et al.*<sup>1</sup>, in which the Sixth Circuit examined whether the shooting of an armed mentally ill man was reasonable under the Fourth Amendment. The relevant facts of *Rucinski*, taken directly from the case, are as follows:

Jeremy Rucinski suffered from multiple mental-health conditions, including bipolar disorder, schizophrenia, and paranoid behavior. On the afternoon of January 6, 2013, Rucinski approached his girlfriend Rebecca Vandebrook in the bedroom of their home and asked her for his cigarettes. Vandebrook refused to disclose the location of Rucinski's cigarettes and suggested that Rucinski keep smoking his electronic cigarette instead. In response, Rucinski yelled at Vandebrook, pulled a switchblade knife from his pajama pants pocket, opened the blade, and demanded his cigarettes. Vandebrook told Rucinski where his cigarettes were and, after Rucinski had left the room, she shut the bedroom door, retreated to the adjoining bathroom, and called 911. Vandebrook told the 911 operator that Rucinski was "schizophrenic and [] [was] having a breakdown"; that Rucinski had a switchblade knife in his possession; that Rucinski was alone in the garage; and that Rucinski needed to go to the hospital because she was worried that he might hurt himself.

In response to Vandebrook's call, Oakland County Deputy Sheriffs Sarah McCann, Sharon Beltz, Eric Rymarz, and Drakkar Eastman drove to Rucinski and Vandebrook's home in order to conduct a "welfare check." The deputies learned from dispatch that there was a schizophrenic individual in the house's garage who had a knife in his possession. Upon their arrival at Rucinski's house, McCann and Beltz walked up the driveway towards the garage, which was connected to the home, while Rymarz and Eastman went to the front door of the home. The deputies never developed a plan as to how they would handle the situation with Rucinski.

Vandebrook opened the front door for Rymarz and Eastman, and allowed the two deputies to enter the residence. Vandebrook told Rymarz and Eastman that Rucinski

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was in the garage; that Rucinski "usually carrie[d] a switchblade knife"; and that Rucinski "was off his meds and [Vandenbrook] was concerned about him." Vandenbrook then led Rymarz and Eastman to the door that served as the interior entrance to the garage so that Rymarz could open the garage door and give McCann and Beltz access to Rucinski "[i]n case things went south." Rymarz opened the interior door without knocking or identifying himself, and he then pressed the button to open the garage door. Rymarz and Eastman then began to walk down a short flight of stairs to the floor of the garage.

As the overhead garage door opened, the deputies spotted Rucinski in the far-back corner of the garage, and Beltz entered the garage between two parked cars with her taser drawn in order to speak with Rucinski. McCann, who had previously drawn her firearm, acted as "cover" for Beltz and took only a few steps into the garage.

Rymarz initiated contact by calling out Rucinski's name, saying "Jeremy, Jeremy." Rucinski looked at Rymarz, reached into his pocket, pulled out and opened his switchblade knife, said "bring it on" or "here we go," and began walking towards McCann. McCann took a few steps backwards and moved out of the garage, but she had to stop after retreating "a couple of feet" because the driveway was icy and slippery. Rucinski refused to comply with the deputies' commands that he "[d]rop the knife," approaching to within five feet of McCann while still brandishing the knife.

At this point, Beltz, who remained between the two cars parked inside the garage, believed McCann was in "danger" and fired her taser at Rucinski. McCann discharged her firearm at Rucinski a split-second later, hitting him in the chest with a single deadly shot. The deputies immediately administered first aid to Rucinski, and Rucinski was transported to Genesys Hospital where he was pronounced dead. McCann later testified that she was not aware that Beltz had already fired her taser at Rucinski when she discharged her firearm.<sup>ii</sup>

Debra Rucinski filed suit against officers McCann, and Beltz for excessive force under the Fourth Amendment and the County of Oakland for failure to train, hire and supervise under the Fourth Amendment. The district court granted the defendant's motion for summary judgment, and the lawsuit was dismissed. This article will not cover the state law claim, but that was also dismissed in favor of the officers.

Rucinski filed an appeal to the Sixth Circuit Court of Appeals. The first issue on appeal was whether Officer's McCann and Beltz used excessive force on Rucinski. The court first addressed the legal standard for an officer to receive immunity from a suit such as this. The court stated

**Qualified immunity "ordinarily applies unless it is obvious that [a] reasonably competent official would have concluded that the actions taken were unlawful,"** *Chappell*, 585 F.3d at 907, **and it affords "'ample room for mistaken judgments' by protecting 'all but the plainly incompetent or those who knowingly violate the law,'"** *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (quoting *Malley v. Briggs*, 475 U.S. 335, 343, 341 (1986)).<sup>iii</sup> [emphasis added]

The court further stated that, in order for a plaintiff to defeat an officers motion for qualified immunity, the plaintiff must allege sufficient facts to show (1) that the officers violated a constitution right, and (2) that right was clearly established such that another reasonable officer in the same situation would have known his conduct was unlawful.

The court then set out to examine whether the officers violated Kucinski's Fourth Amendment right to be free from excessive force when he was shot. The court summed up the law relevant to this case as follows:

**The proper application of the Fourth Amendment reasonableness test "requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others." *Graham v. Connor*, 490 U.S. 386, 396 (1989). This is an objective test, to be "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* The evaluation of reasonableness must also recognize that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-97.**

**An officer's use of deadly force is reasonable if "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." *Tennessee v. Garner*, 471 U.S. 1, 3 (1985). We have said that "[w]hen a person aims a weapon in a police officer's direction, that officer has an objectively reasonable basis for believing that the person poses a significant risk of serious injury or death." *Greathouse v. Couch*, 433 F. App'x 370, 373 (6th Cir. 2011).<sup>iv</sup> [emphasis added]**

The court then examined the facts of Rucinski's relevant to the Fourth Amendment issue. The court noted that Rucinski pulled a switchblade knife from his pocket, opened the blade, told the officers "here we go" or "bring it on", and then began moving toward Officer McCann. Rucinski failed to comply with the officers' repeated orders to drop the knife and got within five feet of Officer McCann. At that point, Officer Beltz fired her Taser at McCann and a split second later Officer McCann fired one shot from her handgun at Rucinski who was hit and killed.

The Sixth Circuit noted that there was other court precedent that was relevant to Rucinski's case. Particularly, the court stated

Our holdings in *Chappell*, 585 F.3d at 911, *Gaddis v. Redford Township*, 364 F.3d 763, 776 (6th Cir. 2004), and *Rhodes v. McDannel*, 945 F.2d 117, 118 (6th Cir. 1991), confirm the district court's judgment that McCann and Beltz acted reasonably as a matter of law in using force against Rucinski when he approached to within five feet of McCann while brandishing a knife. Our prior decisions in *Chappell*, 585 F.3d at 911, and *Rhodes*, 945 F.2d at 118, are most directly on point. In *Chappell*, where detectives shot and killed a fifteen-year-old boy after he moved to within seven feet of them while holding a steak knife over his head, we held that the detectives' use of deadly force was reasonable as a matter of law, 585 F.3d at 911. Similarly, we held in *Rhodes* that an officer acted

reasonably as a matter of law when he shot and killed a suspect brandishing a knife after the suspect did not comply with commands to drop the knife and approached to within four feet of the officer, 945 F.2d at 118. Thus, the implication of *Chappell* and *Rhodes*: McCann acted reasonably as a matter of law in using deadly force against Rucinski when he approached to within five feet of her while wielding a knife. And of course, these precedents also establish that Beltz acted reasonably as a matter of law when she deployed *non-lethal* force (her taser) against Rucinski.<sup>v</sup>

Rucinski argued that Chappell and Rhodes are both different from Rucinski's case because in those two cases, the officers involved were investigating crimes, whereas in his case, the officers were merely conducting a welfare check. However, to this the court responded as follows:

**Rucinski identifies no case law restricting an officer's ability to use deadly force when she has probable cause to believe that a mentally ill person poses an imminent threat of serious physical harm to her person; indeed, out of circuit case law weighs against this argument. See, e.g., *Sanders v. City of Minneapolis*, 474 F.3d 523, 527 (8th Cir. 2007) (quoting *Bates ex rel. Johns v. Chesterfield County, Va.*, 216 F.3d 367, 372 (4th Cir. 2000)) ("Knowledge of a person's disability simply cannot foreclose officers from protecting themselves . . . when faced with threatening conduct by the disabled individual.").<sup>vi</sup> [emphasis added]**

Thus, the court held that the officers acted reasonably in accordance with current court precedent in their use of force (both deadly force and Taser) against Rucinski and the fact that he was mentally ill did not have the effect of preventing the officers from being able to lawfully defend themselves.

Rucinski also argued that the court should consider the officer's alleged poor planning and tactics in this case. However, the court declined to deviate from the "segmented approach" to its use of force analysis, in which the court focuses on the events of the moments immediately preceding the officer's use of force. To this, the court stated the following:

[W]e may not disregard this Court's long-standing practice of analyzing excessive force claims in segments. See, e.g., *Lubelan*, 476 F.3d at 406 ("The proper approach under Sixth Circuit precedent is to view excessive force claims in segments."); *Dickerson v. McClellan*, 101 F.3d 1151, 1162 (6th Cir. 1996) (using the segmented approach to analyze an excessive force claim). And in any event, **even if we were able to consider whether the deputies, through their lack of planning and alleged bad tactics in initiating contact with Rucinski, created circumstances that led to McCann's use of deadly force, the Supreme Court has recently weighed in on this very issue, stating that plaintiffs "cannot establish a Fourth Amendment violation based merely on bad tactics that result in a deadly confrontation that could have been avoided."** *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. —, 135 S. Ct. 1765, 1777 (2015) (internal quotation marks omitted) (applying without adopting the Ninth Circuit law in *Billington*, 292 F.3d at 1190).<sup>vii</sup>

Thus, the court held that they would continue to apply the segmented approach and the use of force was lawful.

As to the claim against the county for inadequate training and supervision, the court held that that claim must be dismissed because there was no underlying constitutional violation in this case and in order to establish municipal liability, the first thing that must be proven is an underlying constitutional violation.

As such the court affirmed the grant of qualified immunity and summary judgment for the defendants in this case.

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Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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<sup>i</sup> No. 15-1844 (6th Cir. Decided July 6, 2016 Unpublished)

<sup>ii</sup> Id. at 2-4

<sup>iii</sup> Id. at 4

<sup>iv</sup> Id. at 5-6

<sup>v</sup> Id. at 6-7

<sup>vi</sup> Id. at 7

<sup>vii</sup> Id. at 8

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