



New Jersey Supreme Court Reaffirms Qualified Immunity Doctrine for Police

Client Advisories

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In *Morillo v Monmouth County Sheriff's Office*, decided July 13, 2015, the New Jersey Supreme Court unanimously reversed and remanded for dismissal rulings by both the trial court and Appellate Division denying the defense of qualified immunity from suit to three Sheriff's officers civilly prosecuted by an arrestee for civil rights violations.

The case, *Morillo v Monmouth County Sheriff's Office*, which was successfully argued on behalf of Monmouth County Sheriff's Office by **John C. Connell**, of Archer, P.C., is noteworthy in that the Court concluded that officers acting reasonably when faced with complicated and uncertain legal circumstances should not have to fear civil lawsuits.

The alleged violations arose from an incident in which Eric Morillo was lawfully arrested by Sheriff's officers on a child support warrant. At the time of his arrest, Morillo was found smoking marijuana in a running car located on the property of his mother's home, with a loaded .45-caliber handgun concealed in this waistband, unsecured. He claimed he had the weapon for the purpose of protection against rival gang members. The officers confiscated the handgun in the course of the arrest.

Subsequently, the officers conferred with their supervisor and the assistant county prosecutor as to what to do about the weapon. As a result, Morillo was also charged with illegal gun possession outside his residence. Jurisdiction was transferred to the adjoining county. Unable to make bail, Morillo was confined in the county jail, from which he was later released upon State Police production of proof of Morillo's license for lawful possession.

A civil action alleging civil rights violations followed. In response, the officers asserted the affirmative defense of qualified immunity. The dispositive issue was whether the conduct of the officers in charging Morillo was objectively reasonable because either Morillo had no right to possess a gun under the circumstances, *i.e.*, outside his residence, or that right was not clearly established because it would not be clear to a reasonable officer that the charge was unlawful under the circumstances confronted. On motion by the officers, the trial court denied

the defense of qualified immunity which the Appellate Division affirmed on interlocutory appeal. The Supreme Court granted leave to appeal.

In its analysis, the Supreme Court found that, while the gun possession statute was ambiguous, “the overwhelming majority of New Jersey case law that has touched on the circumstances in which the statutory exemption is applicable supports the view that the statute permits gun owners to carry firearms, without a carry permit, inside their residences. On the other hand, no case law suggests that the statute generally permits a gun owner to carry a firearm outside his or her residence on premises he or she neither owns nor possesses.”

Consequently, the circumstances here did not support a conclusion that no reasonably competent officer would have concluded that a warrant should issue. To the contrary, not only was the purported right not clearly established, but “these officers acted with restraint and prudence in the face of a confusing situation”. Under the totality of the circumstances, the officers “were focused on where plaintiff was with the gun, namely outside the home and in an idling car, how the loaded weapon was being carried (concealed in a waistband), and the additional circumstances of his being outside with the loaded weapon as told by plaintiff and observed by the officers”. In finding the officers qualifiedly immune, the Court concluded that “law enforcement officials should not have to fear facing a ruinous civil lawsuit and substantial financial loss when acting reasonably in difficult circumstances and on uncertain legal terrain.”

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