RECEIVED
Feb 20 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

---

Appellate Case No. 2020-000589
Case No. 2017-CP-40-3166

---

Bridgett Taylor,..... Respondent,

v.

Richland County Sheriff's Department, ..... Appellant.

---

**RETURN TO RESPONDENT'S PETITION FOR REHEARING**

---

The Appellant Bridgett Taylor has petitioned this Court for a rehearing of its recent unpublished opinion in *Taylor v. Richland County Sheriff's Department*, Op. No. 2024-UP-030 (S.C. Ct. App. filed January 24, 2024). In response, the Respondent Richland County Sheriff's Department ("Department") submits that this Court properly ruled on the issues challenged by the Appellant in her petition for rehearing.

Based on the overall tenor of the arguments raised in her petition for rehearing, it is obvious that Taylor is confusing issue preclusion (collateral estoppel) with claim preclusion (res judicata). This Court did not find, nor did the Department argue, that the federal district court adjudicated a gross negligence *claim*. Instead, the Court, like the Department, set forth an exhaustive listing of the *factual findings* made by the federal court in ruling against Taylor on her

Fourth Amendment excessive force claim. As this Court correctly concluded, those factual findings – which Taylor is precluded by collateral estoppel from re-litigating in state court -- preclude Taylor's ability to successfully show that the Department's deputies acted with gross negligence, i.e., the absence of even slight care.

To recap, in the federal action, Taylor alleged that the deputies' use of a detonator on the front door constituted an excessive use of force in violation of the Fourth Amendment. The federal court's order adopts the Report and Recommendation which addresses extensively the factual background regarding both the preparation and planning that preceded the execution of the search warrant and the actual entry into the residence including the use of a detonator on the front door to gain entry. In then applying the Fourth Amendment "objective reasonableness" standard to the use of the detonator, the federal court explained:

> With specific regard to the plaintiff's argument that use of the detonator itself constituted excessive force, the facts and circumstances of this case belie this contention. The court first considers the factors suggested in *Graham* to the extent they apply. First, the severity of the crime at issue was serious -- law enforcement had regularly been called to the residence based on illegal drug activity. Second, the suspect -- Terrence Taylor, and arguably everyone else in the residence based on information that all of the household were involved in drug activity -- were assessed to pose a threat to law enforcement officers. According to Ezzell, all of the occupants had been identified by his counterpart at the Columbia police department as combative. Weapons had previously been recovered in the home. Moreover, Terrence Taylor, whom the police reasonably but erroneously suspected to be inside, was a murder suspect and known to carry weapons. The third factor -- whether the suspect was actively resisting arrest or attempting to flee -- has no application to the facts presented, as the detonator was deployed while the door was still locked prior to law enforcement's entry. Moreover, Defendants Ezzell and Linfert consulted beforehand and decided to use a smaller (six-inch) charge rather than the usual fifteen-inch more explosive charge, indicating use of a lower level of force for the circumstances presented.

2018 WL 3912377, *6. (R. 60-61). The federal court concluded that "[b]ased on all of this, and considering the totality of the circumstances, no reasonable jury could find that using the detonator to unlock the door was unconstitutionally excessive," meaning that the Court found the use of the detonator to be objectively reasonable. 2018 WL 3912377, *6. (R. 61).

As part of that same analysis, the federal court also concluded that the "officers reasonably suspected exigent circumstances existed" for use of the no-knock entry. *Id*. (R. 60). The federal court further ruled that the officers had "reasonable suspicion that occupants in the residence would present a danger to law enforcement or inhibit the investigation." 2018 WL 3912377, *2. (R. 51). The court found that nature and the length of the surveillance including the threat assessment were reasonable. 2018 WL 3912377, *3. (R. 53-54). Moreover, the court found that the "officers had reason to suspect that [Terrence] Taylor was present, since they had information that Terrence Taylor drove the Impala and that the presence of the Impala would indicate he was at the subject property." 2018 WL 3912377, *5. (R. 57-58). Also, the court determined that the "officers had reason to suspect that the plaintiff herself posed a risk to the effectiveness of the investigation." 2018 WL 3912377, *3. (R. 54). Based thereon, the federal court concluded the "officers had particular reason to suspect Terrence Taylor (and possibly co-conspirators) were in the home and that his mother might interfere with law enforcement efforts to conduct the search." 2018 WL 3912377, *5. (R. 56). In sum, the federal court found the search, including the use of the no-knock entry and the preparations done prior to the execution of the search warrant were, in fact, objectively reasonable.

Those are all *factual findings* to which collateral estoppel attaches. To be clear, as this Court correctly ruled, Taylor is precluded by collateral estoppel from re-litigating those factual findings, and based thereon, Taylor could not establish that the deputies failed to exercise at least

slight care, as would be necessary to prevail on her gross negligence claim. This Court's analysis is absolutely correct and is also supported by numerous cases cited in the Department's brief, including *Sigman v. Town of Chapel Hill*, 161 F.3d 782 (4th Cir. 1998), which this Court cited in its opinion.

Notably, Taylor has still not cited any contrary authority. In fact, the cases now cited for the first time in her petition for rehearing are inapposite or distinguishable in a variety of ways. For instance, Taylor relies on a two-prong test for excessive force cited in the case of *Smith v. Ozmint*, 578 F.3d 246 (4th Cir. 2009). The Court will note, however, that *Smith* is an inmate case where the prison excessive force claim was asserted *under the Eighth Amendment* and not the Fourth Amendment. Ironically, the *Smith* case no longer accurately reflects the Eighth Amendment standard in light of *Wilkens v. Gaddy*, 559 U.S. 34, 37 (2010) ("[t]he 'core judicial inquiry' … was not whether a certain quantum of injury was sustained, but rather 'whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm'"). Nonetheless, it is clear that the Eighth Amendment standard for excessive force has no application in the case at bar. Likewise, Taylor cites to the recent district court opinion in *Smith v. Clark*, 2023 WL 4096740 (N.D. W.Va. 2023), but that court did not address the merits of the Fourth Amendment excessive force claim and instead granted qualified immunity to the officers. The court did address a state law excessive force claim under West Virginia law, but that has no bearing on this case.

As to the other cases cited by Taylor, it bears repeating that this Court did not dispose of her gross negligence claim on the basis of res judicata. The Department did not argue nor did this Court find that a gross negligence cause of action was litigated in federal court. Instead, this case presents the classic application of collateral estoppel where, as this Court concluded, the

factual findings by the federal court precludes any finding that the very same conduct found to be "objectively reasonable" under the Fourth Amendment standard could give rise to a finding that the deputies lacked slight care under state law.

Next, Taylor criticizes this Court's decision for failing to address various exceptions to the application of the collateral estoppel defense. This is an argument made for the first time on rehearing, which is not permissible. *See*, *Kleckley v. Northwestern National Cas. Co.*, 338 S.C. 131, 526 S.E.2d 218 (2000) (issue raised for first time in petition for rehearing not preserved for review). The fact that it is raised for the first time on rehearing also shows why it was not addressed previously – because Taylor never argued or relied on any exceptions when he opposed the application of collateral estoppel in the trial court or in this Court. (R. 264-270). Notwithstanding the preservation issue, Taylor's new-found public policy exception has no merit. There is no adverse public policy fostered by the application of collateral estoppel to prevent a litigant from getting two bites of the apple in attempting to show "police misconduct." Taylor had her day in court; she attempted to show that the deputies' use of a detonator was an objectively unreasonable use of force and she failed. Public policy does not mandate that she should get another chance or that the adverse factual findings of the federal court should be cast aside and ignored – particularly where Taylor had the option of appealing those rulings and chose not to exhaust her procedural rights. In short, Taylor had a full and fair opportunity to litigate her claim. Quite simply, the application of collateral estoppel in the case at bar does not negatively impact the public interest, and Taylor has certainly not cited any case law applying a public policy exception to the collateral estoppel doctrine under similar circumstances.

As for the other exception, Taylor returns to her prior routine of confusing collateral estoppel with res judicata. Again, the federal court did not adjudicate her gross negligence claim,

and this Court did not rule that it did. The federal court did, however, make a host of factual findings which, as this Court correctly concluded, did preclude her ability to show that the deputies failed to exercise even slight care. That is the dispositive ruling by this Court, and it does not warrant rehearing.

In sum, this Court correctly applied the defense of collateral estoppel based on the factual findings made by the federal court.[1] The Department, therefore, respectfully requests that this Court deny Taylor's petition for rehearing.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

ROBERT D. GARFIELD #6557
CROWE LAFAVE GARFIELD
& BAGLEY, LLC
2019 Park Street
Columbia, South Carolina 29201
(803) 724-5729

*Counsel for Appellant Richland County Sheriff's Department*

February 20, 2024

[1] By ruling on the collateral estoppel defense in favor of the Department, the Court did not find it necessary to reach the Department's other directed verdict ground based on Section 15-78-60(6) of the Tort Claims Act, which has been fully briefed. In the event the Court rehears and reverses itself on the collateral estoppel defense, the Department respectfully requests that the Court address the Section 15-78-60(6) immunity defense as an additional basis for reinstating the directed verdict.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

---

Appellate Case No. 2020-000589
Case No. 2017-CP-40-3166

---

Bridgett Taylor,..... Respondent,

v.

Richland County Sheriff's Department, ..... Appellant.

---

**CERTIFICATE OF SERVICE**

---

Pursuant to Section (d)(1) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellant, does hereby certify that service of **Return to Respondent's Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by email only this the 20th day of February, 2024 as follows:

Andrew W. Kunz, Esquire
Lauren K. Slocum, Esquire
Elliott, Phelan & Kunz, LLC
Email: andrew@elliottphelanlaw.com
Email: lauren@elliottphelanlaw.com

Robert D. Garfield, Esquire
Crowe LaFave Garfield & Bagley, LLC
Email: robert@crowelafave.com

*s/ Andrew F. Lindemann*

LINDEMANN
Law Firm, P.A.

Telephone (803) 881-8920
Facsimile (803) 862-1181

5 Calendar Court, Suite 202 (29206)
Post Office Box 6923
Columbia, South Carolina 29260

**ANDREW F. LINDEMANN***
Direct Dial: (803) 881-8921
Email: andrew@ldlawsc.com

*Also Admitted in North Carolina

RECEIVED
Feb 20 2024
SC Court of Appeals

February 20, 2024

***Via Email Only***
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Bridgett Taylor v. Richland County Sheriff's Department
Appellate Case Number: 2020-000589
Civil Action Number: 2017-CP-40-3166
Claim Number: Risk Management
Our File Number: 314.20297

Dear Ms. Kitchings:

Pursuant to Section (b)(2)the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as amended May 6, 2022), please find enclosed for filing the **Return to Respondent's Petition for Rehearing** with regard to the above referenced appeal. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

If you have any questions, please advise. Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Andrew W. Kunz, Esquire *(w/ Enclosure, Via Email Only)*
Lauren K. Slocum, Esquire *(w/ Enclosure, Via Email Only)*
Robert D. Garfield, Esquire *(w/ Enclosure, Via Email Only)*