

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4996
Summary Calendar

IMOGENE JONES KILE, ET AL.,

Plaintiffs,

IMOGENE JONES KILE, etc.,

Plaintiff-Appellant,

versus

SCOTTSDALE INSURANCE COMPANY, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(CA-91-0100)

(October 17, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

EDITH H. JONES, Circuit Judge:*

Appellant Imogene Jones Kile, mother of the decedent David Kile, filed a civil rights action against the City of Bossier, Louisiana, two police officers, the city's police chief and the police department's insurance company, for the shooting

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

death of her son by one of the officers. She asserted claims under the Fourth Amendment, the Eighth Amendment, due process and equal protection clauses, and pendent state claims. After a three-day bench trial, the district court found that officer Larry Stockton, who shot Kile, was entitled to qualified immunity for his use of deadly force. The court entered judgment for defendants and dismissed the state law claims. Finding no error in the issues raised by Mrs. Kile on appeal, we affirm.

It is unnecessary to rehash the evidence concerning the events that led to the tragic shooting of 35-year old David Kile, a man afflicted by serious mental illness who had refused to take his medication and became suicidal during a visit to his brother's home. The police were called in, and David was shot while in possession of a large hunting knife with which he had stabbed himself several times.

Appellant first asserts that the district court's factual findings were clearly erroneous in a number of respects. Her arguments challenge the credibility of police officers Stockton and Brown, rely on the trial testimony of David's brother Dennis and Dennis's son Mark Kile, and assert that forensic and medical evidence in the case were more accurate concerning the facts than the officers' testimony. The burden an appellant undertakes in disputing factual findings of a district court is a difficult one, particularly where, as here, those findings turn on the credibility of witnesses. There is no indication that the district court did not fully consider the objective evidence on which appellants now

rely. Having done so, however, as well as having viewed the scene of the tragic incident, the district court found the officers' testimony sufficiently persuasive and consistent with the other evidence to determine that Officer Stockton shot David Kile only because he was in fear of Kile's attacking him at short range with a knife. The court specifically pointed out that he attached greater credibility to the statement of Dennis Kile, given shortly after the event, that Dennis did have a knife in his hand when the fatal encounter occurred. Appellant's forensic and medical evidence do not convince us that the court clearly erred in finding that David Kile was in the midst of a dangerous attack on Officer Stockton when the shooting occurred. Nor does this evidence convince us that Officer Stockton used objectively unreasonable force in repelling the attack, within a matter of one or two seconds, by firing six shots at Kile, four of which directly hit him but only one of which proved fatal. The findings of the district court are not clearly erroneous.

Appellant also challenges the district court's application of the qualified immunity standard. Contrary to appellant's assertion, the court did not consider immunity solely from the subjective standpoint of the police officer. Rather, the court considered the circumstances surrounding the shooting, including the distance between Stockton and David at the time of the shooting, and the other factors affecting Stockton's decision to use deadly force. The court ruled:

[i]n light of the confined nature of the patio; the size of David . . . the immediate prior act of David Kile's

self-stabbing and his aggressive movement toward Officer Stockton, Officer Stockton['s] use of deadly force was reasonable at 13 feet or 6 to 8 feet under the circumstances he was facing.

Based on this analysis, Officer Stockton was entitled to qualified immunity. See Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.), cert. denied, 113 S.Ct. 462 (1992).

Appellant finally contends that the court erred in dismissing her pendent state law claim. This action was not erroneous, because the district court's findings that Officer Stockton acted reasonably under § 1983 necessarily precluded recovery under state law. Kyle v. City of New Orleans, 353 So.2d 969 (La. 1977).

The judgment of the district court is **AFFIRMED**.