

12-1117 PLUMHOFF V. RICKARD

DECISION BELOW: 509 Fed. Appx. 388

LOWER COURT CASE NUMBER: 11-5266

QUESTION PRESENTED:

In a civil case against police officers for excessive force, a court must grant qualified immunity unless the use of force was prohibited by clearly established law. Here, the Sixth Circuit denied qualified immunity for force used in 2004 to end a vehicular pursuit that is similar to the force ruled permissible in *Scott v. Harris*, 550 U.S. 372 (2007). The Sixth Circuit denied qualified immunity by distinguishing *Scott* "in the details" from the force used three years earlier in this case. (Pet. App. at 8-9.) The Sixth Circuit applied a similar analysis in *Walker v. Davis*, 649 F.3d 502 (6th Cir. 2011), where it also distinguished *Scott* to deny qualified immunity for pre-2007 conduct. As Judge McKeague noted in his extended dissent, the Sixth Circuit stands alone in this analysis. *Id.* at 504--11 (McKeague, J., dissenting). Petitioners believe this Court has an opportunity to correct the errors in the Sixth Circuit's qualified immunity analysis by agreeing to hear their case. The specific questions presented are as follows:

1. Whether the Sixth Circuit wrongly denied qualified immunity to Petitioners by analyzing whether the force used in 2004 was distinguishable from factually similar force ruled permissible three years later in *Scott v. Harris*, 550 U.S. 372 (2007). Stated otherwise, the question presented is whether, for qualified immunity purposes, the Sixth Circuit erred in analyzing whether the force was *supported* by subsequent case decisions as opposed to *prohibited* by clearly established law at the time the force was used.

2. Whether the Sixth Circuit erred in denying qualified immunity by finding the use of force was not reasonable as a matter of law when, under Respondent's own facts, the suspect led police officers on a high-speed pursuit that began in Arkansas and ended in Tennessee, the suspect weaved through traffic on an interstate at a high rate of speed and made contact with the police vehicles twice, and the suspect used his vehicle in a final attempt to escape after he was surrounded by police officers, nearly hitting at least one police officer in the process.

CERT. GRANTED 11/15/2013