

ROBINSON V. SAULS: ELEVENTH CIRCUIT PARTIALLY
REVERSES SUMMARY JUDGMENT ON FOURTH
AMENDMENT *BIVENS* CLAIM AFTER FINDING THAT
VIDEO EVIDENCE CONTRADICTING POLICE TESTIMONY
CREATED A GENUINE DISPUTE OF MATERIAL FACT

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In *Robinson v. Sauls*, the Eleventh Circuit reversed summary judgment on Monteria Robinson’s Fourth Amendment *Bivens*¹ claims filed against three officers involved in a gunfight with an armed fugitive.² The United States District Court for the Northern District of Georgia granted summary judgment in favor of the officers.³ On appeal, the Eleventh Circuit found there was a genuine dispute of fact because video evidence contradicted the testimony of the officers present at the gunfight.⁴ The court also stated that shooting an unconscious victim is “an obvious use of excessive force.”⁵ Thus, the Eleventh Circuit reversed and remanded the case for two of the *Bivens* claims.⁶

Jamarion Robinson attempted to burn down the house of his mother, Monteria Robinson.⁷ Ms. Robinson called the police, but Mr. Robinson fled before the police arrived.⁸ The police then obtained a warrant for his arrest.⁹ Later, two officers encountered Mr. Robinson, who aimed a gun at one of the officers before fleeing.¹⁰ Law enforcement then obtained a second arrest warrant for aggravated assault against a police officer.¹¹ Ms. Robinson informed officers that Mr. Robinson “had become increasingly unstable, violent, and

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¹ *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

² *Robinson v. Sauls*, 46 F.4th 1332, 1335 (11th Cir. 2022).

³ *Robinson v. Sauls*, 521 F. Supp. 3d 1282, 1303 (N.D. Ga. 2021), *aff’d in part, rev’d in part*, 46 F.4th 1332 (11th Cir. 2022).

⁴ *Robinson*, 46 F.4th at 1335–36.

⁵ *Id.* at 1346.

⁶ *Id.*

⁷ *Id.* at 1336.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Robinson*, 46 F.4th at 1336.

¹¹ *Id.*

unpredictable” and that “[he] might be suffering from unmedicated mental health issues.”¹²

A few weeks later, law enforcement discovered where Mr. Robinson was staying and sent a team to arrest him.¹³ Officer Kristopher Hutchens knocked on the door, repeatedly asking Mr. Robinson to come outside.¹⁴ After receiving no response, the team “breached the door with a battering ram.”¹⁵ A set of stairs was visible from the front door, where Officer Eric Heinze observed a pair of feet at the top of the stairs and told Mr. Robinson to come down with his hands up.¹⁶ As Mr. Robinson came down the stairs, the officers observed that he was holding a semiautomatic handgun.¹⁷ After Mr. Robinson aimed the gun at the officers, the officers opened fire and hit Mr. Robinson several times before he retreated back up the stairs.¹⁸ The gunfight continued for several minutes.¹⁹ Eventually, Detective Danny Doyle shot Mr. Robinson in the hip, causing him to fall down at the top of the stairs.²⁰ The officers moved to the base of the stairs, and Mr. Robinson attempted to raise his gun toward the officers from a prone position.²¹ In response, the officers fired more shots at Mr. Robinson.²² He stopped moving and did not respond to the officers.²³ To confirm that Mr. Robinson was unconscious, the officers threw a flashbang device at him.²⁴ Mr. Robinson did not react when the flashbang detonated; thus, Officer Hutchens placed Mr. Robinson in handcuffs.²⁵ Mr. Robinson died at the scene.²⁶

The officers denied firing shots after the flashbang detonated.²⁷ However, a video taken by a bystander from a nearby apartment evidenced that gunfire could be heard “[a]bout [twenty] seconds after the

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Robinson*, 46 F.4th at 1337.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Robinson*, 46 F.4th at 1337.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1338.

²⁷ *Id.*

flashbang exploded.”²⁸ After reviewing the video, an officer testified that the sound of gunfire following the flashbang explosion could only have been produced either by Officer Doyle’s rifle or Officer Heinze’s handgun, not Officer Hutchens’ rifle.²⁹ Additionally, forensic gunpowder tests conducted by law enforcement, the autopsy, and medical expert witness testimony were inconclusive in establishing whether the officers improperly shot Mr. Robinson at close range after he was unconscious.³⁰

Ms. Robinson filed suit in the United States District Court for the Northern District of Georgia and alleged *Bivens* claims against Officers Heinze, Hutchens, and Doyle, arguing that they had violated her son’s Fourth Amendment rights by shooting him when he no longer posed a threat.³¹ The officers moved for summary judgment based on qualified immunity.³² In response to the officers’ motion, Ms. Robinson contended that the bystander video created a genuine dispute of fact; however, the district court found this argument unpersuasive and concluded the video was “not sufficiently probative to create a genuine issue for trial.”³³ Thus, the district court granted summary judgment in favor of the officers.³⁴

On appeal, the Eleventh Circuit reviewed the three *Bivens* claims *de novo*.³⁵ Because Ms. Robinson conceded that the officers used reasonable force while Mr. Robinson was still standing, the court first turned its attention to the events that occurred after Mr. Robinson fell but before the flashbang detonated.³⁶ Because a medical expert could not determine if Mr. Robinson was incapable of firing a gun after falling—and found the pattern of wounds consistent with the officers’ testimony on Mr. Robinson’s positioning during the gunfight—the court held there was no genuine dispute of fact on this issue.³⁷ The court concluded that “the district court correctly granted summary judgment

²⁸ *Robinson*, 46 F.4th at 1338.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 1339. Ms. Robinson filed suit on behalf of her deceased son. *Id.* Several other claims were filed against other officers who were present at the gunfight but the only claims that were properly appealed were the three *Bivens* claims against Officers Heinze, Hutchens, and Doyle. *See id.* at 1339 n.4.

³² *Robinson*, 46 F.4th at 1339.

³³ *Id.* at 1340.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 1341.

³⁷ *Id.* at 1341–42.

. . . to the extent [Ms. Robinson's] *Bivens* claims were based on the[] [officers] shooting Mr. Robinson after he fell."³⁸

Next, the Eleventh Circuit focused on the events after the flashbang detonated, stating:

[I]t is undisputed that Mr. Robinson did not react to the flashbang's explosion. At this point, the officers believed that Mr. Robinson was unconscious, and they no longer considered him a threat. Nonetheless, a burst of gunfire was audible on the bystander video approximately [twenty] seconds after the flashbang exploded.³⁹

Because expert testimony revealed that Officer Hutchens' rifle could not have created the sound heard in the video after the flashbang, the court ruled that the district court properly granted summary judgment in his favor.⁴⁰

However, the Eleventh Circuit determined that the video contradicted the testimony of Officers Heinze and Doyle and thus created a genuine dispute of material fact on Ms. Robinson's claims against them.⁴¹ The court explained "a reasonable jury could find that Officer Heinze misrepresented what occurred in the apartment after the flashbang exploded and that Mr. Robinson received some of his bullet wounds from the burst fire after the flashbang."⁴² The officers argued that the video was not enough to contradict Officer Heinze's testimony because the video did not show "where the alleged shots were fired, or by whom."⁴³ The court disagreed with this reasoning and explained that the footage of the officer turning towards the apartment door immediately after the sound of gunfire strongly suggested that the gunfire came from inside the apartment.⁴⁴ Thus, summary judgment was improper because "the prudent course" when there is a likelihood of misrepresentative testimony is to "permit the jury to sort through it."⁴⁵ The court concluded that because the video evidence—when viewed in the light most favorable to Ms. Robinson—went against Officer Heinze's testimony and created a genuine dispute of material fact, the district court should not have granted summary judgment in favor of Officers Heinze and Doyle.⁴⁶

³⁸ *Robinson*, 46 F.4th at 1342.

³⁹ *Id.*

⁴⁰ *Id.* at 1343.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Robinson*, 46 F.4th at 1342.

⁴⁵ *Id.* (quoting *Montano v. City of Chicago*, 535 F.3d 558, 567 (7th Cir. 2008)).

⁴⁶ *Id.* at 1343.

Addressing the officers' qualified immunity argument, the Eleventh Circuit next found that shooting an unconscious suspect clearly went beyond the legal standard for a reasonable amount of force and concluded that a jury could find Officers Heinze and Doyle used excessive force.⁴⁷ Because there was no dispute the officers were acting within their authority, the burden shifted to Ms. Robinson to prove "(1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation."⁴⁸ To prove a constitutional right had been clearly established, the Eleventh Circuit examined the relevant caselaw that would have been objectively known to officers at the time of Mr. Robinson's death.⁴⁹ Under *Hunter v. Leeds*,⁵⁰ a Fourth Amendment right should have been known to officers at the time of Mr. Robinson's death.⁵¹ In *Hunter*, the Eleventh Circuit "concluded . . . that by at least 2013 it was readily apparent that using deadly force on a suspect who had been but was no longer a threat was unconstitutionally excessive."⁵² Thus, *Hunter* showed that "it was clearly established in 2016 that shooting an incapacitated suspect constituted excessive force in violation of the Fourth Amendment."⁵³ The court concluded that, if a jury found Officers Heinze and Doyle fired at Mr. Robinson after the flashbang explosion confirmed he was unconscious, the officers would not be entitled to qualified immunity.⁵⁴

Ultimately, the Eleventh Circuit affirmed summary judgment in favor of Officer Hutchens and concluded the district court had properly found Officers Heinze and Doyle were entitled to qualified immunity up to the point of the flashbang detonating.⁵⁵ However, the court reversed and remanded summary judgment for Ms. Robinson's claim that Officers Heinze and Doyle employed excessive force *after* the flashbang detonated.⁵⁶

The Eleventh Circuit's decision in *Robinson* illustrates how video evidence can be used to contradict the testimony of officers after

⁴⁷ *Id.* at 1344–45.

⁴⁸ *Id.* at 1340–41 (quoting *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004)).

⁴⁹ *Id.* at 1344–45.

⁵⁰ 941 F.3d 1265 (11th Cir. 2019).

⁵¹ *Robinson*, 46 F.4th at 1345.

⁵² *Id.* (citing *Hunter*, 941 F.4th at 1281).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 1346.

⁵⁶ *Id.*

adversarial encounters.⁵⁷ Even though the video did not show footage of the accused officers, the court found the audio of gunfire—paired with another officer turning toward the direction of gunfire—was enough to raise a genuine dispute of material fact and overcome a motion for summary judgment.⁵⁸ This case also reaffirms that an officer firing at an unconscious suspect is a Fourth Amendment violation.⁵⁹ Considering how often video evidence produced by bystanders as well as officers plays a critical role in *Bivens* cases, this case can serve as a useful precedent for attorneys trying to utilize or overcome video evidence during the summary judgment phase.

⁵⁷ See *Robinson*, 46 F.4th at 1338.

⁵⁸ See *id.* at 1342.

⁵⁹ See *id.* at 1345.