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Tabitha Johnson

The University of Tennessee College of Law, tjohn122@vols.utk.edu

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**QUALIFIED IMMUNITY OR JUSTIFIED BRUTALITY?: AN
EXAMINATION OF THE QUALIFIED IMMUNITY
DOCTRINE IN *PETERSON V. KOPP***

Tabitha Johnson

Peterson v. Kopp, 754 F.3d 594 (8th Cir. 2014)

TABLE OF CONTENTS

I. Introduction	261
II. Factual Background	262
III. Rationale	263
IV. Conclusion	267

I. INTRODUCTION

In the wake of overwhelming discontent regarding cases on civilians’ rights and police immunities, it is now of paramount importance to examine the laws that influence these decisions. *Peterson v. Kopp* provides an epitomization of these laws.¹ In *Peterson*, plaintiff Robert Peterson (“Peterson”) brought a 42 U.S.C. § 1983 action against defendants, the Metropolitan Council and officer Michael Kopp (“Kopp”), asserting that Kopp: (1) arrested him without probable cause; (2) arrested him in retaliation for exercising free speech; (3) used excessive force in his arrest; and (4) used excessive force in retaliation for exercising his right to free speech.² The United States Court of Appeals for the Eighth Circuit applied the doctrine of qualified immunity, holding that Peterson’s allegations of wrongful arrest, retaliatory arrest, and excessive force during the arrest were unwarranted under the doctrine.³ The court remanded Peterson’s retaliatory use of force claim for further examination.⁴

¹ *Peterson v. Kopp*, 754 F.3d 594, 603 (8th Cir. 2014) (upholding qualified immunity for a police officer accused of exercising excessive force and effectuating an arrest without probable cause).

² *Id.* at 596.

³ *Id.* at 600-03.

⁴ *Id.* at 603.

II. FACTUAL BACKGROUND

Near midnight on April 25, 2011, Peterson and a friend sat on four-foot tall bicycle lockers at a bus stop in St. Paul, Minnesota.⁵ While waiting for a bus, three men “asked Peterson about the hookah pipe sticking out of his backpack.”⁶ Peterson, his friend, and the three men decided to smoke the hookah pipe together and take a later bus.⁷ An on-duty police officer, Kopp, approached the group after seeing the interaction between Peterson, his friend, and the three men.⁸ After asking the group which buses they were waiting for and realizing that those buses had departed, Kopp ordered the group to disband.⁹ The majority of the group left, yet Peterson remained on the lockers as he disassembled his hookah pipe.¹⁰ After most of the individuals departed, Kopp then argued with one of the individuals over whether he “was entitled to wait at a public bus stop.”¹¹ The individual eventually left the scene after a “30-90 second[]” altercation.¹² For the duration of this altercation, Peterson still remained on top of the lockers disassembling his hookah pipe, a process that Peterson reported took “approximately one minute.”¹³

While Peterson continued to disassemble his hookah pipe, he told Kopp that he was in the process of leaving and that Kopp did not “have to be rude.”¹⁴ Peterson then proceeded to ask the officer for his badge number as he pulled out his phone.¹⁵ Kopp refused to disclose any of the requested information to Peterson, retorting that Peterson had “no right to [his] badge number.”¹⁶ Peterson responded that he had the right.¹⁷ Kopp subsequently pulled Peterson from the bicycle lockers by grasping his arm.¹⁸ After being pulled from the lockers, Peterson “took a few steps backward, put his hands up, and said, ‘[y]ou can’t handle me like that.’”¹⁹ Then, “Kopp pepper sprayed

⁵ *Id.* at 596-97.

⁶ *Id.* at 597.

⁷ *Peterson*, 754 F.3d at 597.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Peterson*, 754 F.3d at 597.

¹⁴ *Id.* (internal quotation marks omitted).

¹⁵ *Id.* (internal quotation marks omitted).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Peterson*, 754 F.3d at 597.

Peterson . . . in the face.”²⁰ When Peterson cried, “[p]olice brutality,” Kopp retorted, “[y]ou want to see police brutality?”²¹ Kopp “then pushed Peterson into the bicycle lockers, handcuffed him, and placed him in the back of the squad car.”²²

Resulting from the incident, Peterson faced “a citation for . . . trespass.”²³ Furthermore, Peterson suffered from “pain, discomfort, and sensitivity to his face and eyes for 5–7 days after his arrest” and from apprehension of being in public for fear that a “painful experience . . . could happen at any point, anywhere.”²⁴ After his charge was dismissed, Peterson sued Kopp and the Metropolitan Council for violating the First and Fourth Amendment, alleging wrongful arrest, retaliatory arrest, excessive force in the arrest, and excessive force in retaliation for exercising freedom of speech.²⁵

III. RATIONALE

Peterson alleged that Kopp violated his First and Fourth Amendment rights for wrongful arrest, retaliatory arrest, excessive force in the arrest, and excessive force out of retaliation for exercising his freedom of speech.²⁶ The Eighth Circuit held that the doctrine of qualified immunity justified the majority of Kopp’s actions during the altercation with Peterson; however, the Eighth Circuit remanded Peterson’s retaliatory force claim to the district court.²⁷ The Eighth Circuit held that the doctrine of qualified immunity shielded government officials from liability “unless the official’s conduct violated a clearly established constitutional or statutory right of which a reasonable official would have known.”²⁸ The doctrine of qualified immunity breaks down into a two-step test.²⁹ In determining if Kopp was entitled to qualified immunity for all of Peterson’s allegations, the court evaluated: (1) “whether the facts that a plaintiff has alleged . . . make out a violation of a constitutional right; and (2) whether the right at issue was clearly established at the time of [the] defendant’s alleged

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* (internal quotation marks omitted).

²⁵ *Peterson*, 754 F.3d at 597.

²⁶ *Id.* at 596.

²⁷ *Id.*

²⁸ *Id.* at 598 (quoting *Chambers v. Pennycook*, 641 F.3d 898, 904 (8th Cir. 2011)).

²⁹ *Id.*

misconduct.”³⁰

Using the qualified immunity analysis, the Eighth Circuit first addressed Peterson’s allegation of unlawful arrest.³¹ Peterson argued that the arrest was unlawful because Kopp did not have probable cause.³² On the contrary, the court held that Kopp had probable cause for Peterson’s arrest.³³ The Eighth Circuit determined that “when the totality of the circumstances at the time of the arrest are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense,” the officer has probable cause and is thus shielded by qualified immunity.³⁴ Furthermore, an officer only needs “arguable probable cause” to gain the protection of qualified immunity.³⁵ Arguable probable cause exists when an officer mistakenly believes that a suspect’s actions constitute adequate probable cause for an arrest, given that the suspicion for probable cause is reasonable.³⁶

The Eighth Circuit determined that Kopp had arguable probable cause to arrest Peterson for violating state law and demonstrating resistance to complying with Kopp’s orders.³⁷ The Eighth Circuit determined that Peterson violated Minnesota’s trespass law by “refus[ing] to depart from the premises on demand of the lawful possessor.”³⁸ Furthermore, although Peterson averred that he was not disobeying orders and was simply disassembling his hookah pipe, the Eighth Circuit found otherwise, determining that Peterson’s nonverbal conduct amounted to disobedience.³⁹ Peterson’s actions of disassembling his hookah pipe, stopping the disassembly process to use his cell phone, and asking for Kopp’s badge number—all while remaining on the lockers—constituted arguable probable cause.⁴⁰ Peterson rebutted the Eighth Circuit’s conclusion, stating that he was arrested for asking for Kopp’s badge number, a request protected by the First Amendment.⁴¹ However, the court held that even if Kopp arrested Peterson for demonstrating his First Amendment right to free

³⁰ *Id.* (quoting [Pearson v. Callahan, 555 U.S. 223, 232 \(2009\)](#)) (internal quotation marks omitted).

³¹ *Peterson*, 754 F.3d at 598.

³² *Id.*

³³ *Id.*

³⁴ *Id.* (quoting *Ulrich v. Pope Cnty.*, 715 F.3d 1054, 1059 (8th Cir. 2013)).

³⁵ *Id.*

³⁶ *Id.* (quoting *Ulrich*, 715 F.3d at 1059).

³⁷ *Peterson*, 754 F.3d. at 598-99.

³⁸ *Id.* at 598 (quoting MINN. STAT. § 609.605, subd. 1(b)(3)(2014)).

³⁹ *Id.* at 599.

⁴⁰ *Id.*

⁴¹ *Id.*

speech, the other valid reasons for arrest—such as Peterson’s disobedience and violation of Minnesota law—supersede the First Amendment violation.⁴²

The Eighth Circuit then addressed Peterson’s excessive force claim.⁴³ During his arrest, Peterson contended that Kopp used excessive force, thus violating Peterson’s Fourth Amendment right “to be free from unreasonable seizures.”⁴⁴ In determining whether Kopp used excessive force in Peterson’s arrest, the court used an “objective reasonableness” test.⁴⁵ The Eighth Circuit explained that this test took into account that an officer’s actions “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”⁴⁶ In determining whether an officer’s actions in pursuing an arrest were reasonable, the Eighth Circuit evaluated “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.”⁴⁷ The court concluded that Peterson’s purported crime was not severe, he was not posing a threat to others, nor was he fleeing.⁴⁸ As Peterson’s disobedience was passive and non-threatening to others, Kopp’s infliction of physical force onto Peterson was deemed excessive.⁴⁹

While Kopp’s arrest failed the excessive force test, the Eighth Circuit held that Kopp was entitled to qualified immunity because Peterson’s injuries sustained from the altercation with Kopp were de minimis.⁵⁰ The injuries were de minimis because Peterson “did not seek medical care and his injuries resolved themselves without medical intervention.”⁵¹ To support its conclusion, the court provided a wealth of similar cases for comparison.⁵² The court further noted that a recent decision changed the law regarding the applicability of qualified immunity for de minimis injuries; however, the court also

⁴² *Id.*

⁴³ *Peterson*, 754 F.3d at 599.

⁴⁴ *Id.* at 600.

⁴⁵ *Id.*

⁴⁶ *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396-97 (1989)).

⁴⁷ *Id.* (quoting *Graham*, 490 U.S. 386 at 396).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Peterson*, 754 F.3d at 601.

⁵¹ *Id.*

⁵² Compare *Jones v. Shields*, 207 F.3d 491, 495 (8th Cir. 2000) (finding pepper spray injuries de minimis when symptoms subsided within forty-five minutes), with *Lawrence v. Bowersox*, 297 F.3d 727, 731 (8th Cir. 2002) (finding pepper spray injuries more than de minimis when effects lingered for years afterwards).

clarified that it rendered the ruling after the altercation between Kopp and Peterson.⁵³ Therefore, Kopp was reasonable in assuming that, as long as the injuries he inflicted upon Peterson were de minimis, he would remain entitled to qualified immunity as his actions were “constitutionally permissible” at the time.⁵⁴

Lastly, the Eighth Circuit addressed Peterson’s two retaliation claims.⁵⁵ Peterson alleged that Kopp both pepper sprayed and arrested him for participating in a constitutionally protected activity.⁵⁶ In determining whether Kopp acted in retaliation, the court determined that Peterson must show that “he engaged in a protected activity,” that “the government official took adverse action against him that would chill a person of ordinary firmness from continuing in the activity,” and that “the adverse action was motivated at least in part by the exercise of the protected activity.”⁵⁷ The Eighth Circuit consolidated the three prongs of the test by stating that a plaintiff need only show that “he was ‘singled out because of [his] exercise of constitutional rights’” in order to prevail on a retaliation claim.⁵⁸ The court further implemented a fourth prong to this traditional test.⁵⁹ To satisfy the test, Peterson would also need to prove a “lack of probable cause or [a lack of] arguable probable cause.”⁶⁰

The Eighth Circuit first applied the aforementioned test to Peterson’s claim of retaliatory arrest.⁶¹ In applying this four-prong test, the Eighth Circuit held that “Kopp [was] entitled to qualified immunity on Peterson’s retaliatory arrest claim because, as detailed above, Kopp had at least arguable probable cause for the arrest,” as exemplified through his actions prior to his arrest.⁶²

The Eighth Circuit then evaluated Peterson’s claim of being pepper sprayed out of retaliation.⁶³ The court determined that Peterson presented enough evidence to prove that Kopp pepper sprayed him out

⁵³ *Peterson*, 754 F.3d at 601. The court noted that, at the time of the altercation between Peterson and Kopp, “it was ‘an open question in [the Eighth Circuit] whether an excessive force claim require[d] some minimum level of injury.’” *Id.* (citing *Chambers v. Pennycook*, 641 F.3d 898, 904 (8th Cir. 2011)).

⁵⁴ *Id.*

⁵⁵ *Id.* at 601-02.

⁵⁶ *Id.* at 602.

⁵⁷ *Id.* (quoting *Revels v. Vincenz*, 382 F.3d 870, 876 (8th Cir. 2004)).

⁵⁸ *Id.* (quoting *Baribeau v. City of Minneapolis*, 596 F.3d 465, 481 (8th Cir. 2010)).

⁵⁹ *Peterson*, 754 F.3d at 602.

⁶⁰ *Id.* (referring to *Galarnyk v. Fraser*, 687 F.3d 1070, 1076 (8th Cir. 2012)).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 602-03.

of retaliation.⁶⁴ In reaching its conclusion, the Eighth Circuit noted that it was significant to Peterson's contention that, shortly before being pepper sprayed, Peterson demanded Kopp's badge number.⁶⁵ This—along with Kopp's outright refusal to provide Peterson with the requested information—justified the court's decision to remand the issue.⁶⁶ The court ultimately held that “[a] reasonable jury could conclude . . . that Kopp pepper sprayed Peterson in retaliation for asking for his badge number, and Peterson's First Amendment right was clearly established at the time of the incident.”⁶⁷ For these reasons, the Eighth Circuit remanded the retaliatory force claim for further review.

IV. CONCLUSION

Despite its arrival during a tumultuous era for civilian rights, *Peterson* does not stray from the majority of its precedents regarding the evaluation of qualified immunity. Peterson's claims of wrongful arrest, retaliatory arrest, and excessive force all proved futile under the Eighth Circuit's application of qualified immunity, while Peterson's claim of retaliatory force has been remanded for further examination. It is clear from the holdings in *Peterson* that the doctrine of qualified immunity still reigns supreme in cases of purported police brutality. Unless there is a reevaluation of the doctrine on a fundamental and moral level, *Peterson* will provide precedent for further police brutality cases.

⁶⁴ *Id.* at 603.

⁶⁵ *Peterson*, 754 F.3d at 603.

⁶⁶ *Id.*

⁶⁷ *Id.*

