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Dundon v. Kirchmeier

United States Court of Appeals, Eighth Circuit - November 3, 2023 - 85 F.4th 1250

Protestors, who were allegedly injured by police officers' use of force to disperse crowd while they were protesting construction of oil pipeline, brought § 1983 action alleging claims against individual officers for using excessive force in violation of their Fourth and Fourteenth Amendment rights, *Monell* claim against municipalities alleging unconstitutional policies, and claim against police chief and county sheriffs for supervisory liability based on deliberate indifference for actions of officers.

The United States District Court for the District of North Dakota granted summary judgment in favor of the defendants. Protestors appealed.

The Court of Appeals held that:

- It was not clearly established that officers' use of force designed to disperse protesters violated constitutional right under Fourth Amendment, and thus, officers were entitled to qualified immunity;
- Municipalities' use-of-force policies were facially lawful, and thus, protesters were required to show that failures to adopt adequate safeguards were product of deliberate indifference to establish *Monell* liability;
- Municipalities were not subject to *Monell* liability, given lack of clearly established right; and
- Law enforcement chiefs were not subject to supervisory liability, given lack of clearly established right.

It was not clearly established that police officers' use of force designed to disperse a crowd constituted a seizure under the Fourth Amendment, and thus officers who deployed water, tear gas, rubber bullets, and bean bags to disperse a crowd at protest over oil pipeline were entitled to qualified immunity from excessive-force claims in § 1983 action by protesters who were allegedly injured by the officers' use of force; one decision from another Court of Appeals fell short of robust consensus of authority clearly establishing use of force to disperse was seizure under Fourth Amendment, and subsequent Eighth Circuit precedent concluded that law was not clearly established on relevant point.