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Seventh Circuit Dismisses Police Officer's Appeal in Case on Qualified Immunity Doctrine

Today, the U.S. Court of Appeals for the Seventh Circuit issued a decision in *Ferguson v. McDonough*, permitting Joseph Ferguson's civil rights claims to proceed. The NAACP Legal Defense and Educational Fund, Inc. (LDF), working with Rights Behind Bars, represented Mr. Ferguson, who was tased without reason by a police officer in the middle of a street in Kenosha, Wisconsin.

The officer, Ryan McDonough, asserted that he was entitled to summary judgment and that qualified immunity shielded him from civil liability for any injuries suffered by Mr. Ferguson during the encounter. The district court held that the officer was not entitled to qualified immunity because a reasonable interpretation of the encounter could conclude that Mr. Ferguson was not actively resisting arrest.

The officer appealed, arguing that his conduct did not violate clearly established law, that Mr. Ferguson was actively resisting arrest, and that a dashcam video of the encounter conclusively supported his account. LDF sought to dismiss the appeal, arguing that the video could support Mr. Ferguson's account of being tased without reason—a clear Fourth Amendment violation.

In its decision, the Seventh Circuit recognized that, in the moment Mr. Ferguson was tased, he stood, backed against his car, with his hands in the air and his pants at his knees. It held that the dashcam video did not conclusively support the officer's account, could reasonably be concluded to support Mr. Ferguson's account, and did not discredit the district court's findings. Recognizing that it did not have jurisdiction over factual disputes, the Seventh Circuit dismissed the officer's appeal.

"Qualified Immunity is meant to protect officers only in novel legal landscapes, where a reasonable officer could be confused about what the Constitution requires," said LDF Assistant Counsel Kevin E. Jason. "Clearly, tasing a person is a significant escalation of force and any reasonable officer would know that verbal noncompliance or passive resistance is not a justification to tase someone. Qualified immunity does not and should not apply to such situations. Officers may not sidestep a jury's analysis of a violent

encounter by filing an appeal when video evidence is consistent with the victim's account. We commend the Court's ruling, which dismisses this appeal and reaffirms the district court's findings."

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization. LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

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