

He died after a cop kneeled on his neck for 14 minutes. Now, his family can finally sue.

Tony Timpa died after a police officer kneeled on his neck for 14 minutes. A court originally denied his family the right to sue.

Joanna C. Schwartz | USA TODAY



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Civil rights attorneys say that the Fifth Circuit Court of Appeals – which hears appeals from federal courts in Texas, Mississippi and Louisiana – is where righteous police misconduct cases go to die.

But earlier this month, the Fifth Circuit issued a decision in a case, *Timpa v. Dillard*, that offers renewed hope that people whose constitutional rights have been violated can get justice in court.

Tony Timpa called the Dallas police in August 2016 to ask for help. The 32-year-old, white, college-educated executive was off the medication he usually took for anxiety and schizophrenia, as he told the police dispatcher.

But when five Dallas police officers arrived on the side of the road where Timpa was, they did not give him the help he needed. Instead, they handcuffed him behind his back, zip-tied his feet, and Officer Dustin Dillard put his knee and bodyweight on Timpa's back.

The officers' body cameras recorded Timpa crying for help, pleading with them, saying "you're gonna kill me!" over and over again. After nine minutes under Officer Dillard's knee, Timpa stopped moving.

Suing cops takes forever because they get 3 chances to appeal.
Why should they?

After 11 minutes, Timpa went limp, then silent. The officers joked and laughed that Timpa had fallen asleep. All of this was caught on the officers' body cameras. They had been trained that keeping someone in a prone position under an officer's bodyweight was dangerous.

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But Dillard kneeled on Timpa for more than 14 minutes. When an ambulance arrived, Dillard can be heard in the body camera video saying, "I hope I didn't kill him." More laughter.

Once Timpa was in the ambulance, paramedics announced that he wasn't breathing and performed CPR. He was pronounced dead at the scene.

Timpa's family sued. In July 2020, just five weeks after George Floyd was murdered under the knee of Derek Chauvin, a judge in Texas granted qualified immunity to the officers who killed Timpa in almost exactly the same way.

Judge gave officers qualified immunity

Qualified immunity is a defense to civil liability for police officers and other government officials, even if they have violated the Constitution, if they have not violated "clearly established" law. The Supreme Court's decisions have repeatedly made clear that the law is not clearly established unless there is a prior court decision with nearly identical facts.

The judge hearing *Timpa v. Dillard* assumed that the officers violated the Constitution, but granted them qualified immunity from a civil lawsuit because there was no prior court case holding that it was unconstitutional to hold an unarmed person in a prone position for more than 14 minutes.

A court found in a previous case that officers used excessive force when they

hogtied a person – restraining his hands and feet behind his back – and placed him face down, killing him. But the judge concluded that the prior case did not “clearly establish” that what the officers did to Timpa was unconstitutional.

Although the officers handcuffed Timpa's wrists, zip-tied his ankles and placed him face down in a prone position, the officers did not attach ankle and wrist restraints. So, he was not hogtied. Based on that minor factual distinction, the judge concluded the law was not clearly established and dismissed the lawsuit.

On Dec. 15, the Fifth Circuit reversed the trial court’s decision making clear that officers violated the Fourth Amendment and are not entitled to qualified immunity when they use force on someone who is “restrained and subdued.”

The appeals court also said that Timpa's family did not need to find a prior court decision where force was used under the same circumstances to get past qualified immunity.

Court rules family can file lawsuit

Perhaps the judges were compelled by a recent Supreme Court decision that made clear that keeping someone in a prone position can violate the Constitution, or the similarities to Floyd’s case.

Perhaps the judges were persuaded by wide-ranging criticisms of qualified immunity doctrine, or to the Supreme Court’s recent decision in *Taylor v. Riojas* that determined prior similar cases were unnecessary when a constitutional violation is obvious.

Whatever the reason, the Timpa case is an important decision for people

whose rights have been violated in Texas, Mississippi and Louisiana.

This decision is the Timpas only hope for justice. Unlike Chauvin, who was prosecuted, convicted and sent to prison for more than 22 years, the officers who killed Timpa did not face criminal penalties. A grand jury indicted three of the officers, but the Dallas district attorney dropped the charges. The Dallas Police Department gave a written reprimand to the officers and sent them back to work.

The Timpas have not won their lawsuit – they only won the right to go to trial. And juries are notoriously hostile to plaintiffs in civil rights cases. But the Fifth Circuit’s decision is a step in the right direction – for the Timpas and for the Constitution.

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