

JUN 24 2008

*Castillo v. City and County of San Francisco*, 06-16087

NOONAN, Circuit Judge, dissenting:

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

Qualified immunity is a court-created rule that protects the police from liability for violating the constitutional rights of other persons. It is a rule said not to protect “the plainly incompetent.” *Morse v. Frederick*, 127 S. Ct. 2618, 2640 (2007).

In our case Alexis Castillo, an employee of Air Train at San Francisco airport, was arrested by county police who believed he was committing the felony of carrying a box cutter or straight razor in a section of the airport off-limits to weapons.

What did the arresting officers know: that Castillo had a “full security clearance,” that the FBI agent in charge of security at the airport would not have arrested him; that it was common practice to confiscate contraband detected by screening, not treat the possessor of the contraband as a felon engaged in his employment; and that Castillo had explained that he had no knowledge of the scissors wrapped within an unopened plastic covering of a brand-new shirt. It stretches my notion of competent police work to believe that on such facts a competent police officer would have thought it reasonable to arrest Castillo.

I respectfully dissent.