CASE LAWS THAT AFFECT TRAINING & DEADLY FORCE

42 USC #1983, Civil Rights

Monell v. Department of Social Services 1987, U.S. 658, 98 S Ct. 2018

-- Deliberate Indifference Standard / Supervisors must support and buy into Policy

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Tennessee v. Garner, 471 U.S. 1, 11, 105 S.Ct. 1694, 1701, 85 L.Ed.2d 1 (1985)

-Fleeing Felon - Suspect must be threat or future threat to citizens or officers

A Memphis police officer shot and killed appellee-respondent Garner's son as, after being told to halt, the son fled over a fence at night in the backyard of a house he was suspected of burglarizing. The officer used deadly force despite being "reasonably sure" the suspect was unarmed and thinking that he was 17 or 18 years old and of slight build.

The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against, as in this case, an apparently unarmed, non-dangerous fleeing suspect; such force may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others

Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." Tennessee v. Garner

The use of deadly force will be deemed objectively reasonable "where the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others.

Policy on Lethal Force - Officers not required to give verbal warnings before using lethal force, recommended if it does not endanger officers or bystanders

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Fronk v. M eager, 417 N.W .2d 807 (N.D. 1987)

Officer used PR 24 on suspect for DUI – Officer not trained

Ruling - If you provide the tool -- You must provide the training

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Beluw v. Rupport 1987
PLAKAS v. DRINSKI | 811 F.Supp. 1356 (1993)

There are, however, cases which support the assertion that, where deadly force is otherwise justified under the Constitution, there is no constitutional duty to use non-deadly alternatives first.

If Shooting is justified -- No need to resort to lower lever of force

There may be state law rules which require retreat, but these do not impose constitutional duties. **See Reed v. Hoy, 909 F.2d 324, 330-31 (9th Cir.1989).**

Ford v. Childers, 855 F.2d 1271, 1275 (7th Cir. 1988)

Fleeing Felon shoot rule

- suspect robbed bank ran off officer shot him in the back

NO problem complies with Tenn V Garner - some questions about if the officer warned and if the suspect heard it.

The existence of probable cause is a question for the jury only "if there is room for a difference of opinion."

Forrester v. City of San Diego, 25 F.3d 804, 807-08 (9th Cir. 1994)

Anti-abortion demonstrators who were arrested for trespass and unlawful assembly and Chief did not want officers to carry or drag arrestees, so they used pain and were sued for excessive force. Officers not required to carry and drag.

Use of Pain compliance
Officer not required

"the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Graham v. Connor,

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Graham v. Connor, 490 U.S. at 397, 109 S.Ct. at 1872,

Cops stopped the suspect for leaving the store too fast, looked suspicious, handcuffed and investigated, then let them go after they found out the second suspect was diabetic, they sued.

Officer decision based on facts and circumstances know to him/her -- Scope of intrusion, type of force

Fourth Amendment's "objective reasonableness" standard
Fourth Amendment, which guarantees citizens the right "to be secure in their persons . . . against unreasonable seizures,
The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, **without regard to their underlying intent or motivation**

Additionally, it is imperative that in determining the reasonableness of the officer's conduct, the focus is on the very moment when the officer makes the "split second judgments" which led to the use of deadly force.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments

— in circumstances that are tense, uncertain, and rapidly evolving — about the

amount of force that is necessary in a particular situation.

Reed v. Hoy, 909 F.2d 324, 330-31 (9th Cir.1989)

On August 18, 1984, Deputy Daniel Hoy was dispatched to the residence of plaintiff Robert Reed to investigate a reported domestic disturbance. When Hoy arrived at Reed's house, Reed was crouched outside the house, with his back to Hoy. Hoy greeted Reed, and informed Reed that he was investigating a possible crime. Hoy asked if he could speak to Mrs. Reed. Reed angrily replied that his wife did not want to speak to Hoy and told Hoy "to get the hell off [his] property." Hoy then stated that he was investigating a possible family disturbance and indicated that he would leave as soon as he spoke to Mrs. Reed.

After a further brief, verbal exchange, Reed picked up a 36-inch bamboo stick used to stake flowers, and again demanded that Hoy leave the premises. In response, Hoy drew his nightstick. Hoy again requested to see Mrs. Reed. Reed walked to the porch, put down the bamboo stick, and picked up a splitting maul. He advanced toward Hoy, again demanding that Hoy leave his property. Reed testified that he was very angry and that his purpose was to scare Hoy. Hoy retreated, walking backwards. He told Reed to put down the maul, but Reed refused.

Hoy continued walking backwards, and Reed continued to advance, closing the distance between the two. Hoy again asked Reed to put down the maul. When Reed refused and continued to advance toward him, Hoy drew his service revolver and pointed it at Reed, again requesting that Reed put down the maul. Hoy testified that Reed continued to advance, grabbing the maul with both hands, and raising it in a threatening manner. Hoy then shot Reed in the chest

Officer has no duty to retreat...

Sager v. City of Woodland Park , 543 F. Supp. 282 (1982)

Put liability from Officer to Instructor and from Instructor to Administrator --
Provided Officer did technique within the guidelines he was taught

Three kinds of liability = Personal, Vicarious, and Respondent/Superior
(you) (partial you) (supervisor/department)

U.S. Supreme Court. Whiteley v. Warden, 401 U.S. 560 (1971).

If training is not documented, It didn't happen.

City of Canton, Ohio v. Harris 489 U.S. 378 (1989)

Lack of training = "Deliberate Indifference"

1. Injury 2. Violation of Civil Rights 3. Caused by lack of training

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Bordanaro v. McLeod, 871 F. 2d 1151 - 1989 - Court of Appeals

Expanded Deliberate Indifference to Recruitment, Training, Retention, Supervision, and Discipline -

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Doe v. Borough of Barrington, 729 F. Supp. 376 (DNJ 1990)

Must plan for Projected training needs -- Don't provide tools w/o training.

Elliott v. Leavitt, 99 F.3d 640, 642-43 (4th Cir. 1996)

Officer shot a handcuffed suspect arrested for DUI missed gun S1 pulled gun while handcuffed in back of car and pointed at officer.
Ruling -- Constitution does not require officers to gamble with their lives in the face of a serious threat.

- 4th Amendment does not require Officers to wait for the Suspect to shoot before they decide to act.
- Court ruled: The fact that 22 rounds were shot, shows that the Officers believed they faced a serious threat.

Frazier v. City of Philadelphia, 927 F. Supp. 881 (E.D. Pa. 1996) Suspect hand-cuffed after he was shot -- as long as policy supports it

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Kinneer v. Gall US Dist. Ohio 1996 / May 1997

Hog tie Suspect face down -- No No

Soller v. Moore, 84 F. 3d 964 - 1996 - Court of Appeals

Off duty officer shot and killed a DUI passenger. Does not matter what policy is for off duty involvement, only if the officer used reasonable force. Officer won.

Martinez v. County of Los Angeles (1986) - 186 Cal. App.

A PCP subject with a knife came at officers, they retreated all the way to the supermarket then shot the suspect when he was within 15 feet.

Cox v. Treadway 75f 30 230 (6th Cir 1996)

"Heat of Battle Instruction"

The calculation of reasonableness must embody allowances for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.

Let me point something out. The standard is not what is appropriate in the quiet and sanctity of a courtroom where the evidence is presented but rather a standard appropriate to the circumstances in which the incident happened. Excessive force is that which exceeds reasonable force.

Fuller v. Vines 9th Cir, 36F 2D (95)

Pointing guns are not seizure under 4th Amendment if no arrest is made.

Seizure only takes place if you physically take custody or the Suspect submits to you. If no arrest and only detention then no seizure.

PHYSICAL SKILLS INSTRUCTOR POINTS

Effects of Stress - Decrease cognitive function --
Don't teach fine motor skills for stress situations
Fine Skills require 3-5000 repetitions to become automatic

Highest areas of litigation for law enforcement -- Use of Force & Driving

Policy language: Get rid of Necessary and replace it with Reasonable.

Report Documentation: How call received, how many units, how far away, single or double units, are you uniformed or plain clothes, marked unit or unmarked, what did you see on arrival, verbal commands, S say or do, S body language, S actions, S resist, duration of resistance, did you attempt to de escalate, S hand-cuffed, (double lock), S transported (where), drugs or alcohol, area or environment conditions, size of S, prior injuries to Officer, verbiage like "Tense, uncertain, and rapidly evolving"

McDonald v. Haskins, 966 F.2d 292, 293 (7th Cir.1992)

The Court looks to "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Does NOT matter What Officer thinks.

Sherrod v. Berry, 856 F.2d 802, 805 (7th Cir.1988)

The court stressed that under the Fourth Amendment, the constitutionality of the officer's action was not judged with hindsight, but only by "an examination and weighing of the information [he] possessed immediately prior to and at the very

moment he fired the fatal shot."

Carter v. Buscher, 763 F.Supp. 392, 394 (C.D.Ill. 1991)

The court held that "pre-seizure conduct is not subject to Fourth Amendment scrutiny."

Greenidge v. Ruffin, 927 F.2d 789, 791-92 (4th Cir.1991)

The court's focus should be on the circumstances at the moment force was used and on the fact that officers on the beat are not often afforded the luxury of armchair reflection.

U.S. Supreme Court - Pennsylvania v. Mimms, 434 U.S. 106 (1977)

After police officers had stopped respondent's automobile for being operated with an expired license plate, one of the officers asked respondent to step out of the car and produce his license and registration. As respondent alighted, a large bulge under his jacket was noticed by the officer, who thereupon frisked him and found a loaded revolver. Respondent was then arrested and subsequently indicted for carrying a concealed weapon and unlicensed firearm. His motion to suppress the revolver was denied and after a trial, at which the revolver was introduced in evidence, he was convicted. The Pennsylvania Supreme Court reversed on the ground that the revolver was seized in violation of the Fourth Amendment.

Officers can ask you out of car when you stopped

Held: 1. The order to get out of the car, issued after the respondent was lawfully detained, was reasonable, and thus permissible under the Fourth Amendment. The State's proffered justification for such order -- the officer's safety -- is both legitimate and weighty, and the intrusion into respondent's personal liberty occasioned by the order, being, at most, a mere inconvenience, cannot prevail when balanced against legitimate concerns for the officer's safety.

2. Under the standard announced in *Terry v. Ohio,* 392 U. S. 1, 392 U. S. 21-22 -- whether

"the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate"

-- the officer was justified in making the search he did once the bulge in the respondent's jacket was observed.

POLICE HAVE NO DUTY TO PROTECT

DeShaney v. Winnebago County Department of Social Services, 1989

Facts of case: Dad had custody of child, mom complained of abuse, social worker noted abuse for over a year and did NOTHING but kept records of abuse, did not remove or protect child.. Dan ended up beating the child so badly the child went into a coma and never came out.

DeShaney argued that the Due Process Clause came into play. Count ruled Due Process only applied to states NOT pesky citizens. Due Process clause is to protect people from the State not protect people from each other.

Court ruled: People have NO RIGHT to Gov aid. Due process only applies if the State assumed Custody of a person AGAINST THEIR WILL and then failed to provide for their safety.

An exception to this ruling is “State-Created Danger”
When states acted or created more danger then you can sue the government.

2ND RULING

Town of Castle Rock, Colorado v. Gonzales (2005)

Facts of case: Mom gets restraining order against husband prohibiting contact with her and 3 daughters. A month later the Dad kidnaps all 3 children. She begged the police to get her children and enforce the order. The police did nothing and refused to help. Later Dad goes to the police station, opens fire, Gov PROTECTS themselves and kills dad. When police search his truck they find the three girls dead in the truck.

The Tenth Circuit Court of Appeals agreed that police should have acted. The Supreme Court Reversed decision and ruled POLICE HAVE NO DUTY ACT AND CITIZENS CANNOT FORCE

POLICE TO ACT. The court cited Police Discretion, so police can decide when to act or not act. Unless Congress passes Law that POLICE must PROTECT, Police have NO duty to protect.
There is a Special Relationship doctrine where if the gov takes custody of you, then they have a duty to protect. People waiting to get rescued are NOT in government custody, no duty to protect.

Another case that confirms this is: **Salas v. Carpenter (5th Circuit 1992)**

Sheriff moved SWAT out and put in untrained county people, during hostage negotiations. Suspect killed country clerk. Sheriff not held responsible per court; this was just a failed rescue effort.

Another case from the **11th Circuit Hernandez v. Peterson - the Parkland Shooting**

“A plaintiff can only allege a substantive due process claim in two situations. First, when the pers was in the government's custody and second, when a government official’s conduct is arbitrary or shocks the conscience.”

“When Split-second judgments are required, an officials conduct will shock the conscience only when it stems from a “purpose to cause harm” “

“Ordinarily there are no custodial relationships in the public school system, even if officials are aware of potential dangers or have expressed an intent to provide aid on school grounds.”

Warren v. District of Columbia[1] **(444 A.2d. 1, D.C. Ct. of Ap. 1981**) is a District of Columbia Court of Appeals case that held that the police do not owe a specific duty to provide police services to specific citizens based on the public duty doctrine.

Police have NO DUTY TO PROTECT YOU

Qualified immunity is a type of legal immunity. "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Pearson v. Callahan* .

In Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Supreme Court held that federal government officials are entitled to qualified immunity. The Court reasoned that "the need to protect officials who are required to exercise discretion and the related public interest in encouraging the vigorous exercise of official authority." With regard to certain government officials, including the President, prosecutors, and similar officials, the Court upheld absolute immunity. This doctrine shields those individuals from criminal prosecution and lawsuits, as long as their actions in question were within the scope of their jobs. For all other federal officials, the Court also held that federal officials who are trying to qualify for absolute immunity have the burden to prove "that public policy requires an exemption of that scope." For government officials trying to qualify for absolute immunity, the Court also established a 2-part test that the official must satisfy

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Malley v. Briggs

In Malley v. Briggs, 457 U.S. 335 (1986), the Supreme Court examined immunity for police officers with regard to acting on the basis of a faulty warrant. The Court held that qualified immunity does not apply to a police officer when the officer wrongfully arrests someone on the basis of a warrant, if the officer who could not reasonably believe that there was probable cause for the warrant. Reasonability is

determined by the action that an objectively reasonable officer would take.

Anderson v. Creighton

In Anderson v. Creighton, 483 U.S. 635 (1987), the Supreme Court held that when an officer of the law (in this case, an FBI officer) conducts a search which violates the Fourth Amendment, that officer is entitled to qualified immunity if the officer proves that a reasonable officer could have believed that the search constitutionally complied with the Fourth Amendment. The relevant question that a court should ask is whether a reasonable officer could have believed the warrantless search to be lawful, considering clearly established law and the information which the officer possessed. The Supreme Court also held that "subjective beliefs about the search are irrelevant."

Saucier v. Katz

In Saucier v. Katz, 533 U.S. 194 (2001), the Supreme Court held that a ruling on a qualified immunity defense must be made early in the trial court's proceeding, because qualified immunity is a defense to stand trial, not merely a defense from liability. When there is a summary judgment motion for qualified immunity, the court should rule on the motion, even if a material issue of fact remains on the underlying claim. The Court also elaborated a 2-part test for whether a government official is entitled to qualified immunity:

1. First, a court must look at whether the facts indicate that a constitutional right has been violated,
2. If so, a court must then look at whether that right was clearly established at the time of the alleged conduct

Under the *Saucier* test, qualified immunity applies unless the official's conduct violated such a right.

Pearson v. Callahan

In Pearson v. Callahan, 555 U.S. 223 (2009), the Supreme Court held that while the *Saucier* test is helpful, it does not need to be applied in qualified immunity claims. Rather, a trial court should have more discretion in whether it should apply *Saucier*. The Court also held that "[a]n officer conducting a search is entitled to

qualified immunity where clearly established law does not show that the search violated the Fourth Amendment."

Safford v. Redding

In Safford Unified School Dist. #1 v. Redding, 129 S.Ct. 2633 (2009), the Supreme Court held that even when an individual's Fourth Amendment right to be safe from unreasonable search and seizure is violated, the person performing the search may still be immune under qualified immunity, if "clearly established law does not show that the search violated the Fourth Amendment." However, this holding was in the context of a school official conducting a search of a student for illicit items. The Supreme Court has historically given more deference to searches performed on students while in school, so this holding is more narrow than previous qualified immunity decisions.

Use of force-
Torres v. Madrid, No. 19-292 (SCOTUS 2021)-Police went to an apartment complex to arrest a woman (not Torres) on a warrant. Police saw Torres and tried to talk with her. She was high on methamphetamines and fled in a vehicle. Police shot Torres, but she escaped. She was caught and arrested the next day at a hospital. She sued for excessive use of force. The district and 10th Circuit courts held that since the officer's use of force did not lead to an actual seizure of her, she could not sue. She appealed to SCOTUS. SCOTUS held: The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.

Caniglia v. Strom, 20-157, (SCOTUS, 2021)-Caniglia was taken to a hospital for a psychiatric evaluation for being suicidal. After he was transported, the police entered his home without a warrant or consent to collect the firearms. Caniglia sued. The district court granted summary judgment to the officers. The First Circuit Court heard the case and decided that the officers' removal of the firearms was justified as a "community caretaking exception" to a warrant requirement. The court's justification was based on the case Cady v. Dombrowski. The Supreme Court reversed in a unanimous decision. It held that there was no "community caretaking exception" allowing the warrantless search of a home. The exception in the Cady v. Dombrowski case was limited to a vehicle.

Cunningham v. Shelby County Tennessee, No. 20-5375 (6th Cir. 2021)-Deputies responded to a call of a suicidal person. The woman told dispatch that she had a .45 cal. gun and would kill anyone that came to her residence. Deputies arrived. The woman walked into the driveway carrying the gun. She raised it up and a deputy shot her. She continued to raise the gun and walk forward. Another deputy fired. 10 shots were fired and 8 struck the woman. She died at the scene. The gun she had was a BB gun. The incident was recorded on a deputy's dashcam.

The deputies were sued for excessive force. The district court judge denied the deputies' motion for summary judgment on claims of qualified immunity. The judge analyzed the shooting by reviewing the shooting video frame by frame.

The Circuit Court held that the deputies' actions were supported by the circumstances and their actions were reasonable. The Court further stated that the district court's actions of reviewing the video frame by frame violated Graham v. Connor by judging the reasonableness of the use of force based on 20/20 hindsight. The frame-by-frame analysis did not tell the full story considering how quickly the incident occurred. The deputies' perspective did not include the stop-action viewing of the incident when determining the use of force. The case was reversed and the district court was ordered to grant summary judgment to the deputies.

Lange v. California, No. 20-18 (SCOTUS 2021)-A California Highway Patrol Officer tried to stop Lange on traffic using emergency lights for playing loud music and honking his horn. Lange did not stop. He drove to his home and pulled into his garage. The officer followed Lange into his garage. He saw signs of intoxication and arrested him. Lange moved to suppress evidence after the officer entered the garage. The lower court denied the request. Lange appealed to the California Court of Appeal. This court held that Lange could not defeat an arrest begun in a public place by retreating into his home. The pursuit of a suspected misdemeanant, the court held, is always permissible under the exigent-circumstances exception to the warrant requirement.

SCOTUS refused to create a categorical rule allowing the warrantless home entry when a suspected misdemeanant flees the police. The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled.

SCOTUS held in the case US v. Santana in 1976 that we can pursue a felon into a home without a warrant, but it never established a ruling on pursuing misdemeanants, until now.

Zuress v. Newark, No. 19-3945 (6th Cir. 2020)-Zuress was actively resisting arrest and was bitten by a police dog. The dog continued to bite for 24 seconds after she was subdued. She sued, claiming excessive use of force. The Court held that the deployment of the dog was justified and that the continued bite for 24 seconds was not an excessive use of force. The fact of the case was that for 24 seconds the officer was trying to get the dog to release the bite. While the officer was working to get the dog to release his bite, the continued bite was not a "means intentionally applied." Therefore, the continued bite was not a Fourth Amendment violation.

Russo v. City of Cincinnati, 953 F.2d 1036 (6th Cir. 1992)-Police officers used a Taser multiple times on a mentally ill potentially homicidal subject armed with two knives. The court ruled that it was not excessive force when officers used a less-lethal means to avoid lethal force.

Use of Force Case Law From - CaseLaw4Cop.net

Tennessee v. Garner, 471 U.S. 1 (USSC)(1985)-The use of deadly force to stop a fleeing felon is not justified unless it is necessary to prevent the escape, and it complies with the following requirements. The officer has to have probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

Graham v. Connor, 490 U.S. 386 (1989)-This case sets aside the standard for determining the excessive use of force as established in the 1973 case of Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973). If the use of force violates the 4th Amendment of the U.S. Constitution, then the standards listed in this Amendment will be used."All claims that law enforcement officials have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are properly analyzed under the Fourth Amendment's 'objective

reasonableness' standard, rather than under a substantive due process standard." In other words, was the decision of the officer reasonable based on the information he had at the time.

The case further dictates that the arrest must be reasonably proportionate to the need of force as measured by:

- The severity of the crime.
- The danger to the officer.
- And, the risk of flight.

Russo v. City of Cincinnati, 953 F.2d 1036 (6th Cir. 1992)-Police officers used a Taser multiple times on a mentally ill potentially homicidal subject armed with two knives. The court ruled that it was not excessive force when officers used a less-lethal means to avoid lethal force.

Plakas v. Drinski, 19 F.3d 1143 (7th Cir. 1994)-If the actions of the suspect justify the use of deadly force, the officer is not required to use less-than-lethal force before employing deadly force. The court noted that "...where deadly force is otherwise justified under the Constitution, there is no constitutional duty to use non-deadly alternatives first."

US v. Dotson, 49 F.3d 227 (6th Cir)(1995)-"Once police have the reasonable suspicion needed to justify an investigatory stop, they may use the forcible means necessary to effectuate that stop, provided their actions are reasonable under the circumstances."

Gallegos v. City of Colorado Springs No. 961298 (1997)(10th Cir.)-A police officer can take precautionary measures to restrain a person during a "Terry" stop. In this case, the officer had reasonable suspicion to detain Gallegos. Gallegos refused to stop for the officer. The officer grabbed him. He pulled away and kept walking. This occurred a couple of times until Gallegos turned and took a fighting stance. Gallegos was taken to the ground with an arm bar.

Montoute v. Carr, 114 F.3d 181 (11th Cir. 1997)-Police responded to a shots fired call at a party. Ofc Carr, heard a gunshot, then encountered Montoute carrying a sawed-off shotgun. Carr and another officer repeatedly ordered Montoute to drop the shotgun. He refused and kept approaching. He then passed the officers and took off running. Carr shot him in the buttock.

Montoute filed a 1983 suit. The court held: "In view of all of the facts, we cannot say that an officer in those volatile circumstances could not reasonably have believed that Montoute might wheel around and fire his shotgun again, or might take cover behind a parked automobile or the side of a building and shoot at the officers or others. Indeed, if the officers had allowed Montoute to take cover, or perhaps circle back around to the crowd, he could have posed even more danger than when he had presented a clear target as he approached them." The court ruled in favor of the officer.

United States v. Myers, 106 F.3d 936 (10th Cir. 1997)-Officers used a flash-bang during the execution of a search warrant at Myer's residence. Myers had a history of drug trafficking, fire-bombing, and possession of a firearm. Myer's wife and children were in the home. The court held that the use of the flash-bang was reasonable under the circumstances. The court did have concern about using the flash-bang with children in the home.

Headwaters Forest v. Humboldt County, 9817250 - (2000)(9th Cir.)-The protestors were nonviolent and unarmed. None were physically menacing. They posed no danger to themselves. A reasonable factfinder could have concluded that using pepper spray bore no reasonable relation to the need for force.

Cruz v. City of Laramie, 239 F.3d 1183 (10th Cir 2001)-The case involves the use of hog-tie restraints which is the restraining of a person’s hands and feet together behind the back. Held: We do not reach the question whether all hog-tie restraints constitute a constitutional violation per se, but hold that officers may not apply this technique when an individual's diminished capacity is apparent. This diminished capacity might result from severe intoxication, the influence of controlled substances, a discernible mental condition, or any other condition, apparent to the officers at the time, which would make the application of a hog-tie restraint likely to result in any significant risk to the individual's health or well-being. In such situations, an individual's condition mandates the use of less restrictive means for physical restraint.

Deorle v. Rutherford, No. 9917188ap (2001)(9th Cir.)-The use of less than deadly force, in this case a bean bag shotgun round, that can cause serious injury may be utilized only when:

- There is a strong government interest that warrants its use, and
- When feasible verbal warnings of its use are given.

Deorle was a mentally disturbed person that was upset, but was complying with verbal commands from officers on the scene. Off. Rutherford was armed with a bean bag shotgun. As Deorle unarmed walked toward him, Off. Rutherford without warning shot him with a bean bag at 30 ft. The bean bag hit Deorle in the eye causing the loss of the eye and other serious physical injuries. The only crime Deorle committed to this point was a minor disturbance. The court ruled that this was an excessive use of force. The US Supreme Court refused to hear this case on appeal.

Ewolski v. City of Brunswick, No. 02a0133p (2002)(6th Cir.)-The court advised the following: "We are aware of no controlling precedent since Russo holding that the use of non-lethal force against an armed and volatile suspect constitutes excessive force." In this case the police were attempting to arrest suspect Lekan after he shot a police officer. The police used tear gas and psychological tactics in an attempt to avoid deadly force.

Martinez v. New Mexico Dept. Of Public Safety, 47 Fed. Appx. 513 (10th Cir. 2002)-It is unreasonable to use pepper-spray as a pain compliance technique where the suspect is restrained in handcuffs and is only being verbally resistant. In this case Martinez was arrested for a warrant. She was handcuffed and escorted to the patrol car. Martinez refused to sit in the unit until the Trooper showed her his identification. Instead of showing the ID, he sprayed her with pepper spray.

Vinyard v. Wilson, No. 02-10898 (11th Cir. 2002)-Vinyard was arrested for disorderly conduct. She was secured in handcuffs and placed in the caged rear seat of the patrol unit. Vinyard got into a verbal exchange with the arresting officer during transport. He pulled the unit over and pepper sprayed her. Vinyard did not resist arrest. She made no attempt to flee. She was secured and only posed a nuisance to the officer. Therefore, his actions were an excessive use of force.

Boyd v. Benton County, 374 F.3d 773 (9th Cir. 2004)-It is not reasonable to use a flash-bang device under the Fourth Amendment by throwing it blindly into a room occupied by several innocent sleeping bystanders absent a strong governmental interest. In this case officers threw a flash-bang device in a room where Boyd was sleeping on the floor. The device went off next to her burning her arm.

Before deploying a flash-bang, the officer needs to-

1. Weigh the severity of the threat.

2. Look at the deployment area to minimize injury.

3. Give a warning where possible.

Isom v. Town of Warren Rhode Island, 360 F.3d (1st Cir. 2004)-Isom was emotionally disturbed. He was armed with an ax and entered a liquor store where he took hostages. An officer pepper sprayed him. He turned, raised the ax, and charged the officers. He was shot and killed. The family sued claiming the pepper spraying of Isom inflamed the situation leading to the use of deadly force. The Court held that the actions of the officers were reasonable.

Kesinger v. Herrington, 381 F. 3d 1243 (11th Cir. 2004)-Kesinger was a mentally ill person standing in traffic wanting to commit suicide. A plain-clothed detective named Herrington saw him and stopped his vehicle. He motioned Kesinger to get out of the traffic. Kesinger charged him down. Kesinger told him that both of them were going to die. Herrington retreated to his vehicle. Kesinger attacked him. He heard two loud banging sounds and his car windows shattered. He thought he was being shot at. Herrington returned fire and killed Kesinger. Kesinger broke the windows with his fists. He did not have a gun. The Court held that the shooting was justified.

Scott v. Harris, 000 US 05–1631 (2007)-Deputy Timothy Scott, petitioner here, terminated a high-speed pursuit of respondent's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. Respondent was rendered quadriplegic. He filed suit under 42 U. S. C. §1983 alleging, inter alia, the use of excessive force resulting in an unreasonable seizure under the Fourth Amendment.

Held: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

Points of the court's reasoning:

- The respondent placed himself and the public in danger by fleeing the police in a reckless and high speed manner in his vehicle.
- He ignored the lights and sirens of many police cars for over 10 miles.
- The police dash video showed the suspect placing numerous people in danger by the manner of his driving.
- Purely innocent citizens might have been hurt if the officer did not stop the suspect.
- The citizens would not be equally protected if the police quit chasing the suspect. The police need not have to take that chance and hope that the suspect would slow down and drive normally if they quit chasing.
- There was no way to convey to the suspect he was free to go after the officers ended the pursuit. The suspect may think the officers were just changing tactics and continue to drive in a reckless manner.
- The officer's actions to use a tactical maneuver would insure that the suspect would no longer threaten the safety of innocent citizens.
- The court refuses to create a rule that puts within a suspect's grasp the means to escape the police just by fleeing in a reckless and dangerous manner. The Constitution assuredly does not impose this invitation to impunity-earned-by recklessness.

*It should be noted that the dash video was very important in establishing the facts on behalf of Deputy Timothy Scott.

Parker v. Gerrish, 08-1045 (1st Cir 2008)-Parker was being arrested for driving drunk. He minimally resisted by holding his hands together behind his back which was making it difficult to handcuff him. He also cursed at the officers. Ofc Gerrish shot him with a Taser. The court held that this was excessive force.

Bryan v. McPherson, 08-55622 (9th Cir.)(2009)-Bryan was stopped on traffic for not wearing his seatbelt. He was upset by other recent events. He was yelling and cursing at himself. He exited the vehicle and ignored getting back into it by the officer. He was hitting his thighs and yelling gibberish. Bryan made no threat to the officer, nor acted in an aggressive manner to him. Bryan

was standing 20 feet away and made no attempt to flee. Bryan was facing away from the officer. Without warning, the officer tased Bryan. Bryan fell to the ground and damaged 4 of his teeth and received other injuries to his face.

The Court held that this was an excessive use of force. It held only that the X26 and similar devices constitute an intermediate, significant level of force that must be justified by "'a strong government interest [that] compels the employment of such force.'"

Crowell v. Kirkpatrick, 09-4100 (2nd Cir. 2010)-Protestors chained themselves to a several hundred pound barrel. The officers considered and tried several alternate means to remove the protestors. The protestors had someone at the scene call for other protestors to return to the scene, which would further complicate the situation for the officers. They warned the protestors to unchain themselves or be drive-stunned with a Taser. The officers further warned that the Taser would be very painful. The protestors refused the request. The officers drive-stunned them. The court held: "Given the totality of those circumstances, it is difficult to see how a rational factfinder could conclude that the officers' actions were anything other than reasonable."

Glenn v. Washington County, 661 F.3d 460 (9th Cir. 2011)-Lukus Glenn was drunk and armed with a pocket knife. He held the knife to his throat and threatened to commit suicide. The police shot him 6 times with a bean bag shotgun. As he moved away from the shots, other officers shot him multiple times with their pistols, killing him.

The Court held that police are justified in using deadly force to stop someone from being a threat to the police or others. It does not include themselves. The Court further stated, "...officers could have used some reasonable level of force to try to prevent Lukus from taking a suicidal act. But we are aware of no published cases holding it reasonable to use a significant amount of force to try to stop someone from attempting suicide. Indeed, it would be odd to permit officers to use force capable of causing serious injury or death in an effort to prevent the possibility that an individual might attempt to harm himself. We do not rule out that in some circumstances some force might be warranted to prevent suicide, but in cases like this one the "solution" could be worse than the problem. On the facts presented here, viewed favorably to the plaintiff, the officers' use of force was not indisputably reasonable.

Brown v. Cwynar, No. 11-1948 (3rd Cir, 2012)-73 yrs old male was tased for resisting arrest. Cwynar was being disorderly. The police contacted him and tried to detain him. He got in his

vehicle. The officer got in the vehicle to stop him from leaving. The officer drive-stunned him on the arm twice with little effect. The officer got Cwynar out of the vehicle and on the ground. Cwynar laid on his hands and would not let the officers handcuff him. He was being belligerent. He was given a warning that he would be tased. He did not comply. Another officer dry-stunned him in the upper back. He complied and was handcuffed. The Court held that the amount of force applied by the officer was proportional to the threat he perceived, and was therefore reasonable.

Gorman v. Warwick Township, 10-CV-6760 (US district Court for the eastern district of Pennsylvania, 2012)-Gorman was stopped and arrested for driving drunk. She refused to get in the police car after arrest. She stiffened up and activity resisted getting in the vehicle. The officer gave her several warnings that she would be Tasered if she did not get in the vehicle. She refused to cooperate. The officer gave her a drive-stun. She then cooperated. The Court held: "... that the force that was applied in this case was employed for the sole purpose of placing Plaintiff into the police car and was, we find, the minimal amount of force needed under the circumstances to accomplish this objective."

Nelson v. City of Davis, 10-16258 (9th Cir. 2012)-Nelson and his friends were at a party in an apartment complex. Officers arrived. Nelson was leaving, but was waiting for instructions from police. The officers without warning, fired a pepperball gun at Nelson striking him in the eye causing permanent damage. The court held that, "...a reasonable officer should have known that the firing of the pepperball gun towards Nelson and his friends, given the minimal governmental interests at stake, was in violation of Nelson's clearly established Fourth Amendment right, even when that force was applied in the larger context of crowd dispersal."

Aldaba v. Pickens, 13-7034 (10th Cir. 2015)-The justification for use of force on a mentally ill person with a serious and deteriorating medical condition who needs treatment differs from a criminal who is a threat to the community. In this case the officers tased a patient at a hospital multiple times and forced him to the ground and handcuffed him. The patient died. The officers were not entitled to qualified immunity.

Armstrong v. Pinehurst, No. 15-1191 (4th Cir. 2016)-Armstrong was mentally ill. He left a hospital to avoid being involuntarily committed. Police found him nearby. He sat on the ground and clung to a pole to avoid being taken into custody. There were several officers present. Officers tried to pry him from the pole. An officer then used a taser multiple times in drive stun mode with no effect. Armstrong was then forcibly pulled from the pole and handcuffed. He was held face down. Armstrong stopped breathing, and died shortly after.

The 4th Circuit Court held:

Where, during the course of seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a taser in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force. When officers encounter a minimally threatening mentally ill person, the officer is expected to de-escalate the situation and adjust the use of force downward.

Mullenix v. Luna, 14-1143 (SCOTUS, 2016)-Suspect Leija who was possibly intoxicated fled from a police officer trying to arrest him on a warrant. A high speed pursuit ensued. Leija twice called the police and told them that he had a gun and he would shoot the officers if they did not abandon the pursuit. An officer set up road spikes. Tpr Mullenix armed himself with a rifle and took up position on an overpass above the officer with the spikes. He decided to try and shoot Leija's vehicle engine to disable it. He fired multiple shots at Leija hitting him 4 times. Leija's vehicle hit the spikes, crashed, and rolled. Mullenix was sued for Excessive Force. The lower courts refused to grant qualified immunity to Mullenix. The court held: Leija was engaged in a high speed pursuit, he was intoxicated, he twice threatened to shoot officers, he was speeding toward an officer that was manning the road spikes putting his life in danger. Mullenix was entitled to qualified immunity in shooting Leija.

Perea v. Baca, No. 14-2214 (10th Cir. 2016)-Officers stopped Perea for running a stop sign on his bike. They gave Perea no warning or commands before chasing him on foot and pushing him off of his bike. He resisted. He was shot with Taser probes. The officer followed with 9 more shocks in "stun mode". Perea ultimately died. The court held that the officers used excessive force:

1. The use of the Taser 10 times in two minutes was disproportionate to the seriousness of Perea's crime.

2. Perea did not pose a threat to anyone which would justify such use of force.

3. Perea's resistance (thrashing and swinging a crucifix) did not justify the officers' severe response.

County of Los Angeles v. Mendez, No. 16-369 (SCOTUS, 2017)-Deputies with the Los Angeles County Sheriff's Dept. went to a residence to look for a reportedly armed and dangerous parolee. The deputies were briefed to the incident that Mendez and Garcia lived in a shack on the property. Without a warrant or warning, the deputies entered the shack. Mendez and Garcia, who was pregnant, were startled from sleep when the deputies entered. Mendez was holding a BB gun he used to kill pests. The deputies shot both the subjects seriously injuring them. Both subjects sued the deputies for excessive force. The lower court ruled that the deputies' actions were reasonable under Graham v. Connor. The court, however, applied the 9th Circuit's Provocation Rule under which the court held that the deputies' actions were unreasonable. The 9th Circuit upheld this ruling. The Supreme Court issued a writ of certiorari.

The Provocation Rule makes an officer's otherwise reasonable use of force unreasonable if, (1) the officer "intentionally or recklessly provokes a violent confrontation" and (2) "the provocation is an independent Fourth Amendment violation.

The Supreme Court held unanimously that if there is no excessive force claim under Graham there is no excessive force claim at all. The Provocation Rule is an unwarranted and illogical expansion of Graham. The 9th Circuit's ruling was vacated.

Hammett v. Paulding County, No. 16-15764 (11th Cir. 2017)-Deputies served a search warrant at Hammett's home. The deputies knocked and announced. They then entered through an unlocked door. A deputy found Hammett inside. He had his hands in his waistband. The deputy gave him several orders to raise his hands. Hammett did not comply. Hammett approached the deputy and raised his hand toward the deputy. The deputy saw an object in Hammett's hand. Believing he was being ambushed with a weapon, the deputy shot Hammett. Another deputy also shot. Hammett died from his injuries. The object Hammett had was pepper spray. The deputies were sued. The court held that there was no clear violation of the Constitution and the deputies had qualified immunity.

Mitchell v. Schlabach, No. 16-1522 (6th Cir 2017)-A Michigan police officer stopped Mitchell on traffic on a report that he assaulted someone and was driving drunk. Mitchell stopped then sped away causing a car chase. Mitchell fled through neighborhoods and drove at speeds of 100 mph in the pouring rain. After a 10 minute chase, Mitchell crashed in a ditch. The officer drew his gun and approached Mitchell, who had exited his vehicle. The officer repeatedly ordered Mitchell to get on the ground. Mitchell, instead, turned and walked toward the officer. He had clenched fists, wide eyes, and walked quickly toward the officer. He refused to follow any commands. The officer was pointing his gun at Mitchell. The officer backed away from Mitchell, but Mitchell closed the gap and got within approx. 21 ft of the officer. The officer shot him once. Mitchell continued to purposely approach the officer. He shot again, killing Mitchell. A family member sued the officer for excessive use of force. The court held that the officer was alone in an unpopulated forest after a 100 mph chase. Mitchell disregarded a gun being pointed at him and charged the officer. The officer was justified in shooting him. The officer had qualified immunity.

Kisela v. Hughes, No. 17-467 (SCOTUS 2018)-Officers saw Hughes with a knife approach another woman and stopped about six feet away. They ordered her twice to drop the knife. She did not. Officer Kisela shot Hughes four times. She lived and sued. The district court granted qualified immunity to the officer. The 9th Circuit Court reversed. The Supreme Court admonished the 9th Circuit for their poorly reasoned decision and reversed their decision.

Callwood v. Jones, No. 16-1745 (11th Cir 2018)-The suspect Illidge appeared to suffer from excited delirium. He was naked, covered in scratches, and was walking down the street. The first officer on scene contacted Illidge and asked him to stop and speak with the officer. Illidge ignored him and continued walking. Illidge then suddenly turned and approached the officer. The officer warned Illidge to stop or he would be tased. Illidge continued approaching. The officer tased him with no effect. Illidge walked away toward a nearby home. Illidge was tased a second time. He fell to the ground. The officer tried to restrain him. Illidge displayed super-human strength. He was tased three more times with no effect. Illidge threw the officer at least ten feet then ran away. Several officers arrived and assisted in restraining Illidge. He was handcuffed and hogtied. He continued to actively kick and resist. He was tased at least fourteen more times during the encounter. The officers repeatedly talked to Illidge telling him to calm down. Illidge suddenly went limp and died.

The officers were sued by a family member for excessive use of force. Both the lower court and the 11th Circuit Court found that the officers actions did not clearly violate established law and they were entitled to qualified immunity. The Circuit Court stated that Illidge resisted the officers' attempts to stop him, ignored their commands to calm down, appeared to suffer from excited delirium, and displayed "superhuman" strength. He struggled and kicked even after he was restrained. Given these facts the officers were entitled to qualified immunity.

Church v. Anderson, No. 17-2077 (8th Cir. 2018)-Ofc Anderson contacted Church in his vehicle early in the morning. The officer detected an odor of alcohol and burnt marijuana. The officer escorted Church to his patrol car. Church, who out weighs Ofc Anderson by 80 lbs, punched the officer in the head. Church continued to pummel him. Ofc Anderson was lightheaded and exhausted. He felt Church pulling on his gun belt. The officer warned Church that he would shoot if Church did not stop hitting him. He did not. Ofc Anderson shot Church in the abdomen. Church approached the officer again. He fired two more times. Church lived and was found guilty by the jury for assault on a police officer. Church sued Ofc Anderson. The district court granted Ofc Anderson qualified immunity. Church appealed. Church claimed that the court should presume that Ofc Anderson used excessive force because he was issued audio/video recording equipment and did not use it. The court would not even consider this argument. Church further claimed that he was unarmed and the officer did not use a less violent means to subdue him. Finally, the officer did not give him a second warning after the first shot. The Court held that Church posed an immediate threat to Ofc Anderson's safety and was actively resisting arrest. Church out weighed Ofc Anderson and Ofc Anderson feared that he would lose consciousness and Church would use his gun to kill him. As to the officer's failure to use alternate means to subdue Church, the court said an officer need not "pursue the most prudent course of conduct as judged by 20/20 hindsight vision." Because deadly force was justified, Ofc Anderson did not need to give a second warning before shooting. Ofc Anderson's actions were objectively reasonable and is entitled to qualified immunity.

E.W. v. Dolgos, No. 16-1608 (4th Cir. 2018)-SRO Dolgos handcuffed a calm, compliant ten-year-old who was surrounded by multiple adults in a closed room for hitting another child three days earlier. Although not injured by the handcuffing and only being handcuffed for 2 minutes, the lower court and Circuit Court ruled that handcuffing a minor under these circumstances was an excessive use of force. The Circuit Court ruled, however, that E.W.'s right

not to be handcuffed under these circumstances was not clearly established at the time it occurred. Dolgos, therefore, had qualified immunity.

McGrew v. Duncan, No. 18-2022 (6th Cir 2019)-Officers raided McGrew's residence. An officer threw her to the ground and handcuffed her. The officer applied the cuffs too tightly. She asked the officer more than once to loosen the cuffs because they were too tight. The officer cursed at her and refused to loosen the cuffs. The Court held that the officer does not have qualified immunity. The manner of handcuffing and the officer's bad faith conduct that led to McGrew's wrists being injured is excessive force.

Torres v. Madrid, No. 19-292 (SCOTUS 2021)-Police went to an apartment complex to arrest a woman (not Torres) on a warrant. Police saw Torres and tried to talk with her. She was high on methamphetamines and fled in a vehicle. Police shot Torres, but she escaped. She was caught and arrested the next day at a hospital. She sued for excessive use of force. The district and 10th Circuit courts held that since the officer's use of force did not lead to an actual seizure of her, she could not sue. She appealed to SCOTUS. SCOTUS held: The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.

Cunningham v. Shelby County Tennessee, No. 20-5375 (6th Cir. 2021)-Deputies responded to a call of a suicidal person. The woman told dispatch that she had a .45 cal. gun and would kill anyone that came to her residence. Deputies arrived. The woman walked into the driveway carrying the gun. She raised it up and a deputy shot her. She continued to raise the gun and walk forward. Another deputy fired. 10 shots were fired and 8 struck the woman. She died at the scene. The gun she had was a BB gun. The incident was recorded on a deputy's dashcam.

The deputies were sued for excessive force. The district court judge denied the deputies' motion for summary judgment on claims of qualified immunity. The judge analyzed the shooting by reviewing the shooting video frame by frame.

The Circuit Court held that the deputies' actions were supported by the circumstances and their actions were reasonable. The Court further stated that the district court's actions of reviewing the video frame by frame violated Graham v. Connor by judging the reasonableness of the use of force based on 20/20 hindsight. The frame-by-frame analysis did not tell the full story considering how quickly the incident occurred. The deputies' perspective did not include the

stop-action viewing of the incident when determining the use of force. The case was reversed and the district court was ordered to grant summary judgment to the deputies.

***Mulhern v. City of Scottsdale*, 165 Ariz. 395, 397 (Ariz. Ct. App. 1990)**

Three expert witnesses in the use of deadly force by police officers testified at trial. All of them, including the plaintiffs' expert, agree that if the deceased ran at the officer with his right arm extended holding the pistol, then the officer was unquestionably justified in shooting. Plaintiffs' expert witness even agreed that if the suspect were immobile, holding his weapon limply at his side, whether the officer should shoot would be a very close call. The expert testimony was that any overt movement by an armed suspect justifies the officer's use of deadly force because of the unpredictability of the suspect and the officer's disadvantage in having to react to the suspect's actions. Even a change in facial expression would be enough, according to the plaintiffs' own expert.

"Rodriguez v. United States." *Oyez,* www.oyez.org/cases/2014/13-9972. Accessed 26 Nov. 2022

POLICE CANNOT DETAIN TO WAIT FOR DOG

On March 27, 2012, a Nebraska K-9 police officer pulled over a vehicle driven by Dennys Rodriguez after his vehicle veered onto the shoulder of the highway. The officer issued a written warning and then asked if he could walk the K-9 dog around Rodriguez's vehicle. Rodriguez refused, but the officer instructed him to exit the vehicle and then walked the dog around the vehicle. The dog alerted to the presence of drugs, and a large bag of methamphetamine was found.

Rodriguez moved to suppress the evidence found in the search, claiming the dog search violated his Fourth Amendment right to be free from unreasonable seizures. The district court denied the motion. On appeal, the United States Court of Appeals for the Eighth Circuit affirmed, holding the search was constitutional because the brief delay before employing the dog did not unreasonably prolong the otherwise lawful stop.

Question

Is the use of a K-9 unit, after the conclusion of a traffic stop and without reasonable suspicion of criminal activity, a violation of the Fourth Amendment prohibition on unreasonable search and seizures?

Conclusion

Sort:

- *by seniority*
- by ideology

6–3 DECISION FOR RODRIGUEZ

MAJORITY OPINION BY RUTH BADER GINSBURG

Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures.

Yes. Justice Ruth Bader Ginsburg delivered the opinion for the 6-3 majority. The Court held that the use of a K-9 unit after the completion of an otherwise lawful traffic stop exceeded the time reasonably required to handle the matter and therefore violated the Fourth Amendment's prohibition against unreasonable searches and seizures. Because the mission of the stop determines its allowable duration, the authority for the stop ends when the mission has been accomplished. The Court held that a seizure unrelated to the reason for the stop is lawful only so long as it does not measurably extend the stop's duration. Although the use of a K-9 unit may cause only a small extension of the stop, it is not fairly characterized as connected to the mission of an ordinary traffic stop and is therefore unlawful.

Justice Clarence Thomas wrote a dissent in which he argued that the use of a K-9 unit at the conclusion of an otherwise lawful traffic stop did not violate the Fourth Amendment as long as it was conducted reasonably, which this one was. Justice Thomas also argued that the rule announced in the majority's opinion would result in arbitrary enforcement of Fourth Amendment protections and created artificial lines between common police practices at traffic stops. Additionally, there was no Fourth Amendment violation in this case because the police officer had a reasonable suspicion to continue to hold Rodriguez and use the

K-9 unit. Justice Samuel A. Alito, Jr., and Justice Anthony M. Kennedy joined in the dissent. In his separate dissent, Justice Kennedy noted that the appellate court did not address the issue of whether the officer had a reasonable suspicion to use the K-9 unit, and that court should be allowed to do so. Justice Alito also wrote a separate dissent in which he argued that the majority opinion's analysis was arbitrary because it relied on the order in which the officer conducted his inquiries.

Brower v. County of Inyo, 489 U.S. 593 (1989)

Police cannot use Roadblocks, considered unreasonable seizure.

CASE ON WHY COPS CAN SHOOT AND KILL HOSTAGES:

http://www.thinklikeacop.org/cops%20can%20shoot%20hostages.pdf\

Terry *v. Ohio* — Established the legality of so-called "Stop & Frisk" searches.
Pena v. Leombruni — Addresses suspect's known mental state regarding force.

City of Canton, Ohio v. Harris 489 U.S. 378 (1989) Lack of training = "Deliberate Indifference" 1. Injury 2. Violation of Civil Rights 3. Caused by lack of training - Failure to Train

Thompson v. Hubbard — Case where suspect appeared to be drawing a gun and no gun found.

Smith v. Freland — Examined policy violation but no violation of Constitutional law.

Bush v. City of Tallahassee — Addresses excessive force applied through Graham.

Green v. N.J. State Police — Addresses excessive force applied through Graham.

Forrett v. Richardson — Unarmed fleeing felon applied through Tennessee v. Garner.

Wardlaw v. Pickett — Punching an approaching verbally argumentative person.

Popow v. Margate — Addresses shooting an innocent person (training).