Use of Force

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(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. 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 justifies 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.

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.

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Ewolski v. 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. 0210898OPN (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.

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 placed 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 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.

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.'"

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