

# Chapter 15— Use of Force

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## Introduction

The use of force is often necessary in police work, particularly when making an arrest. Force used in policing is categorized into two types: deadly force and non-deadly force. Deadly force is force that is likely to produce death or serious bodily injury. All other kinds of force are non-deadly force.

A crucial question is: When is the use of force by the police legal and when is it illegal? This is a difficult question to answer, because situations involving the use of force are never alike. In use of deadly force cases, the safest rule is: follow department policy strictly. Almost all law enforcement agencies presently have clear policies on the use of deadly force. These policies may be more restrictive than those allowed by the Constitution or state law. The more limiting department policies should be followed by the police.

In non-deadly force cases, the rule is: the police should use only reasonable force, meaning only as much force as is needed to accomplish a legitimate goal, such as subduing a resisting suspect or dispersing an illegal demonstration. The difficulty lies in determining what force is reasonable under the circumstances. Regardless of circumstances, the rule is that the police must never use punitive force, referring to force that aims to punish rather than to accomplish a legitimate goal.

This chapter briefs three of the primary deadly force cases handed down by the Supreme Court. In *Tennessee v. Garner*, 471 U.S. 1 (1985), the Court held that the police may not use deadly force to prevent the escape of a suspect unless it is necessary 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 to others. *Garner* limited the use of deadly force by police and declared unconstitutional rules allowing the use of deadly force to prevent escape of any suspect.

*Graham v. Connor*, 490 U.S. 396 (1989), set the test for liability in police use of excessive force cases. The Court held that the test for liability under Section 1983 (as opposed to state tort) cases is “objective reasonableness,” rather than “substantive due process.” The Court held that if the officer’s conduct is objectively reasonable (judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight), there is no excessive use of force even if the officer had bad motives or evil intent. In contrast, if the officer’s conduct is objectively unreasonable, there is a violation against unreasonable searches and seizures, even if the officer’s motives were good. Under *Graham*, then, the motivation for the use of force is irrelevant in police use of force cases; all that is relevant is whether such use was objectively reasonable.

The final case addressed an issue that is becoming a bigger part of police actions and police litigation—high-speed pursuits. In this case, the Court held that police may terminate a high-speed pursuit without violating the Fourth

Amendment even if by using force that may place the fleeing motorist at risk of serious injury or death.

## **Tennessee v. Garner** **471 U.S. 1 (1985)**

**CAPSULE:** The police may not use deadly force to prevent the escape of a suspect unless it is necessary 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 to others.

**FACTS:** Memphis police officers were dispatched to answer a “proowler inside” call. At the scene, they saw a woman standing on her porch and gesturing toward the adjacent house. She told them she had heard glass breaking and that someone was breaking in next door. While one officer radioed the dispatcher, the other went behind the adjacent house. He heard a door slam and saw someone run across the backyard. The fleeing suspect, Edward Garner, stopped at a six-foot-high chain-link fence at the edge of the yard. With the aid of a flashlight, the officer was able to see Garner’s face and hands. He saw no sign of a weapon, and, although not certain, was “reasonably sure” that Garner was unarmed. While Garner was crouched at the base of the fence, the officer called out “Police, halt” and took a few steps toward him. Garner then began to climb over the fence. Believing that if Garner made it over the fence he would elude capture, the officer shot him. Garner was taken by ambulance to a hospital, where he died. Ten dollars and a purse taken from the house were found on his body.

**ISSUE:** Is the use of deadly force to prevent the escape of an individual suspected of a non-violent felony constitutional? NO.

**SUPREME COURT DECISION:** “Deadly force may not be used unless it is necessary to prevent 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.”

**REASON:** “The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. 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. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower of foot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead. The Tennessee statute is

unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspect.”

**CASE SIGNIFICANCE:** This case clarifies the extent to which the police may use deadly force to prevent the escape of an unarmed felon. The Court made it clear that deadly force may be used only if the officer has probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others. In addition, when feasible, the suspect must first be warned. The decision rendered unconstitutional existing laws in more than one-half of the states that imposed no restrictions on the use of force by police officers to prevent the escape of an individual suspected of a felony.

State laws and departmental rules can set narrower limits on the use of force (as in rules stating that use of deadly force may only be used in instances of self-defense), but broader limits are unconstitutional. The court based the decision on the Fourth Amendment, saying that “there can be no question that apprehension by the use of force is a seizure subject to the reasonableness requirement of the Fourth Amendment.”

## **Graham v. Connor** **490 U.S. 396 (1989)**

**CAPSULE:** Police officers may be held liable under the Constitution for using excessive force. The test for liability is “objective reasonableness” rather than “substantive due process.”

**FACTS:** Graham, a diabetic, asked a friend, Berry, to drive him to a convenience store to buy orange juice, which he needed to counteract the onset of an insulin reaction. They went to the store, but Graham saw many people ahead of him in line so he hurried out and asked Berry to drive him, instead, to a friend’s house. Officer Connor became suspicious after he saw Graham hastily enter and leave the store. He followed Berry’s car, made an investigative stop, and ordered Graham and Berry to wait while he determined what happened at the store. Other officers arrived, handcuffed Graham, and ignored Graham’s attempt to explain his condition. An encounter ensued in which Graham sustained multiple injuries. Graham was later released when officer Connor learned that nothing had happened at the store. Graham brought a Section 1983 lawsuit against the police alleging a violation of his Fourth Amendment constitutional protection from excessive force.

**ISSUE:** May police officers be held liable under § 1983 for using excessive force? YES. What should be the standard for liability?

**SUPREME COURT DECISION:** Police officers may be held liable under the Constitution for using excessive force. Such liability must be judged under

the Fourth Amendment’s “objective reasonableness” standard, rather than under a “substantive due process” standard.

**REASON:** “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 Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, nor by the mistaken execution of a valid search warrant on the wrong premises. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chamber,’ violates the Fourth Amendment. 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.” [Citations omitted.]

**CASE SIGNIFICANCE:** This case gives police officers a “break” in civil liability cases involving the use of force. The old “substantive due process” test used by many lower courts prior to the *Graham* case required the courts to consider whether the officer acted in “good faith” or “maliciously and sadistically for the very purpose of causing harm.” This meant that the officer’s “subjective motivations” were of central importance in deciding whether the force used was unconstitutional. The *Graham* case requires a new test: that of “objective reasonableness” under the Fourth Amendment. This means that the reasonableness of an officer’s 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.” This makes a big difference in determining whether such use of force was reasonable. This new test recognizes that police officers often make split-second judgments in situations that involve their own lives and must, therefore, be judged in the context of “a reasonable officer at the scene.”

### **Scott v. Harris** **550 U.S. \_\_\_, 127 S. Ct. 1769 (2007)**

**CAPSULE:** “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.”

**FACTS:** A Georgia county deputy clocked Harris’s vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit. When the deputy attempted to pull Harris over, he sped away, initiating a high-speed chase down a two-lane road at speeds exceeding 85 miles per hour. Officer Scott heard the radio communication and joined the pursuit along with other

officers. After turning into the parking lot of a shopping center, Suspect Harris evaded officers by making a sharp turn, colliding with Scott's police car. This maneuver made Scott the lead pursuit vehicle. Six minutes and nearly 10 miles later, Scott attempted to terminate the pursuit. Prior to this, Scott received permission for the maneuver from his supervisor. Scott used his push bumper to ram the rear of Harris's vehicle, causing Harris to lose control of the vehicle. It left the roadway and crashed. Harris was badly injured and rendered a quadriplegic.

**ISSUES:** (1) Can police officers constitutionally stop a motorist from fleeing by taking actions that place the motorist or bystanders at risk of serious injury or death? YES.

(2) Do police officers violate "clearly established" federal law by using what amounts to deadly force during a high-speed chase? NO.

**SUPREME COURT DECISION:** (1) "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."

(2) Police officers do not violate "clearly established" federal law when they use what amounts to deadly force during a high-speed chase under circumstances similar to this case; therefore, they are not civilly liable under federal law.

**REASON:** "In determining the reasonableness of the manner in which a seizure is effected, '[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.' *United States v. Place*, 462 U.S. 696, 703 (1983). Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety, and respondent [Harris] nowhere suggests this was not the purpose motivating Scott's behavior. Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate. Although there is no obvious way to quantify the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase." "It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little

difficulty in concluding it was reasonable for Scott to take the action that he did.”

**CASE SIGNIFICANCE:** This case is a significant case for police officers because it affords them protection from civil liability under federal law (42 U.S.C. § 1983) if they use deadly force (in this case the chase of suspect’s motor vehicle and the maneuvers used by the police to stop the suspect’s vehicle) in connection with a vehicle chase as long as the suspect’s behavior constitutes a danger to the public. The suspect in this case became a quadriplegic as a result of the police chase. He sued the police officer, saying the officer violated his “clearly established” constitutional right (a requirement for plaintiff to succeed in § 1983 civil liability cases in federal law) under the Fourth Amendment by ramming the fleeing suspect’s vehicle in a high-speed chase. The Court rejected this allegation, ruling that the officer’s actions were reasonable under the Fourth Amendment because the videotape of the car chase showed that, contrary to Harris’s claim, his driving posed “an imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase.” The Court argued that it is reasonable for police officers to use deadly force to prevent harm to innocent bystanders, even if such use of deadly force puts the fleeing motorist at serious risk of injury or death. In this case, the Court took the rather unusual step of viewing the video of the motor vehicle chase to make a finding of fact (usually a function of the trial court): that the behavior of the suspect constituted a danger to the safety of others. The Court then weighed the need to prevent the harm the suspect could have inflicted on others as opposed to the harm the officer could have inflicted, and did inflict, on the suspect. It concluded that the use of deadly force was reasonable. It also concluded that there was no violation of a “clearly established” constitutional right because lower court decisions on this issue varied and therefore the right was not clearly established. This is a case of balancing public safety against the constitutional rights of the accused. Under the circumstances of this case, public safety prevailed. Although this was a motor vehicle case, it is reasonable to assume that the same standard of “an imminent threat to the lives of others” will likely be applied by the Court in non-motor vehicle cases.

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