


**POLICE USE OF FORCE: AN OVERVIEW**

Presented by: Professor Kami Chavis Simmons



---

---

---

---

---

---

---

---

**INTRODUCTION**


"Use of Force" Arises in

- Both civil and criminal litigation
- Detention
- Arrest
- suspect transportation
- pre-trial confinement

Sources of Law:

- 4<sup>th</sup> Amendment (federal and state constitutional law)
- Federal Statutes
- State Statutes

But how courts analyze "use of force" cases?



---

---

---

---

---


---

---

---

**FACTORS INFLUENCING [INCREASED?] POLICE USE OF FORCE**

- Officer safety/Community safety
- Lack of community trust/racial tensions
- Lack of proper law enforcement training or development of a department policy on the proper use of force
- Increased visibility of police uses of force



---

---

---

---

---

---

---

---

RECENT INCIDENTS RAISING EXCESSIVE FORCE QUESTIONS

- Phillip White
- Lavall Hall
- Ernest Satterwhite
- Levar Jones
- Spring Valley Case

---

---

---

---

---

---

---

---

HOT BUTTON ISSUES

- Improved Training for Police Officers (Procedural Justice Training/De-escalation)
- Implementation of Police Body-Worn Cameras
- Developing a National Database of Officer-Involved Shootings
- Increasing Community Policing

---

---

---

---

---

---

---

---

*TENNESSEE V. GARNER (1985)*

- The Supreme Court held that apprehension by use of deadly force is a seizure subject to the 4<sup>th</sup> Amendment's reasonableness requirement
- Deadly force may not be used unless:
  - it is necessary to prevent escape **and**
  - the officer has probable cause to believe the suspect poses a significant threat of death or serious bodily injury to the officer or others
- When determining the constitutionality of a seizure, courts must balance the intrusion on the individual's 4<sup>th</sup> Amendment interests against the importance of the governmental interests alleged to justify the intrusion

---

---

---

---

---

---

---

---

► What use of deadly force is acceptable after *Garner*?

- Can you use deadly force on someone who is pointing a gun at you?
- How about anyone who is just carrying a gun and running away from you?
- What if the Officer who Garner had just seen him commit murder before he started to flee?

---

---

---

---

---

---

---

---

*GRAHAM V. CONNOR*

- Held that claims of excessive use of force by law enforcement officials in the course of an arrest, investigatory stop, or other seizure of a person are properly analyzed under the 4<sup>th</sup> Amendment's "objective reasonableness" standard
- The "reasonableness" of the use of force should be analyzed on a case-by-case basis looking at the totality of the circumstances
  - Ex: severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, whether the suspect is actively resisting arrest or attempting to evade by flight

---

---

---

---

---

---

---

---

*GRAHAM CONT.*

- Reasonableness is judged from the perspective of a reasonable officer on the scene
  - Courts should take into account the fact that officers are forced to make split second decisions in circumstances that are tense, uncertain, and rapidly evolving
- The true question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them *WITHOUT* regard to their underlying intent or motivation

---

---

---

---

---

---

---

---

*GRAHAM CONT.*

- Analysis is done at the time the force was used
  - Courts should not allow for "armchair reflection"
- Here, even under the largely deferential standard, the court held that the officers used excessive force in apprehending the defendant

---

---

---

---

---

---

---

---

N.C. GEN. STAT. § 15A-401(D): STATUTORY USE OF FORCE

- (d)(1) A law enforcement officer is justified in using force upon another person when he reasonably believes it necessary:
  - (a) To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or
  - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest while preventing or attempting to prevent an escape
- Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force

---

---

---

---

---

---

---

---

§ 15A-401(D)(2) USE OF DEADLY FORCE

- (d)(2) A law-enforcement officer is justified in using **deadly physical force** upon another person for a purpose specified in subdivision (1) of this section only when it is or appears to be reasonably necessary thereby:
  - (a) to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.
  - (b) to effectuate an arrest or prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or
  - (c) to prevent the escape of a person from custody imposed upon him as a result of conviction for a felony

---

---

---

---

---

---

---

---

OBJECTIVE REASONABLENESS

- Courts should consider the following:
  - Officer perception in light of the particular circumstances
  - The amount of force necessary is judged from the perspective of a reasonable officer on the scene without retrospective analysis
  - Officers are typically insulated from liability for good faith mistakes
  - Use of force continuum is helpful to guide officers but deviation from department policy is not necessarily unreasonable
  - Displaying a deadly weapon almost always justifies deadly force when there exists an immediate threat to the safety of the officer or others
  - Balance the nature and quality of intrusion on suspects 4<sup>th</sup> Amendment interests against the countervailing government interests

---

---

---

---

---

---

---

---

HYPOTHESIS

- In North Carolina, an officer is authorized to use necessary force to prevent an escape from custody or to effectuate an arrest
- However, the officer cannot use unreasonable or excessive force
- An officer loses immunity under North Carolina law when he does that which a person of reasonable intelligence would know to be contrary to his or her duty
- Whether an officer is shielded from liability depends on the objective reasonableness of the officers conduct
- Hypo
  - Police received a tip that D was selling drugs and conducted an "open-air" drug bust
  - D was walking down the street when officers approached in an unmarked SUV
  - Officer leaped from the SUV and knocked D to the ground by tackling him which resulted in injuries
  - Injuries including: cut part of his face to the bone, cut nose and broke it in two places, knocked out one tooth immediately and eight more were lost
- Here:
  - Were officers' actions objectively reasonable under the 4<sup>th</sup> Amendment reasonableness standard?

---

---

---

---

---

---

---

---

STATE V. ANDERSON

- North Carolina Court of Appeals
  - "an officer of the law has the right to use such force as he may reasonably believe necessary in the proper discharge of his duties to effect an arrest . . . the officer is properly left with the discretion to determine the amount of force required under the circumstances as they appeared to him at the time of the arrest"
- However, "The right to use force to defend oneself against the excessive use of force during an arrest may arise"
- Furthermore, "the defendant is entitled to an instruction that defendant was justified in interfering with the arrest if the arrestee was herself justified in resisting the arrest"

---

---

---

---

---

---

---

---

### THE REASONABLENESS OF THE MOMENT STANDARD

- Standard derived from *Graham v. Connor*
  - Courts are to assess the use of force at the precise moment of its use rather than before or after the fact considerations
- 4<sup>th</sup> Circuit in *Greenridge v. Ruffin*
  - Held that the conduct at the moment of the use of force was the applicable test in the circuit
- Pre-use of force is irrelevant and "reasonableness of the moment" is the standard to be applied. See *Elliot v. Leavitt*
- *Davis v. Scherer* where the Supreme Court held that violation of police department or some other policy does NOT constitute a violation of the 4<sup>th</sup> Amendment reasonableness standard
  - 4<sup>th</sup> Circuit adopted this in *Abney v. Coe*

---

---

---

---

---

---

---

---

### THE "COULD HAVE BELIEVED" STANDARD

- The Supreme Court in *Hunter v. Bryant* set forth this standard absolving police officers of liability "if a reasonable officer could have believed [the conduct in issue] to be lawful, in light of clearly established law and the information the officer[] possessed"
- The fourth circuit has applied this same standard. See *Park v. Shifflet; Rowland v. Pery*
- *Pitman v. Nelms*
  - 4<sup>th</sup> circuit held as a matter of law that a police officer did not use excessive force in shooting a fleeing suspect from the rear
  - Two officers had stopped a car containing two individuals
  - The driver took off with the officers arm stuck in the car window
  - Once the officer was free, his partner fired his gun hitting the passenger
  - The court found the shooting did not violate Graham and an objectively reasonable officer would have believed the shooting was justified.

---

---

---

---

---

---

---

---

### SUSPECT FLEEING IN A VEHICLE?

- Generally officers can use deadly force to stop a suspect fleeing in a vehicle
- *Brosseau v. Haugen*
  - Supreme Court concluded a car is a deadly weapon
- *Scott v. Harris*
  - Officers have a duty to protect the public by stopping a suspect fleeing in a vehicle
  - Officers can use deadly force to stop a suspect fleeing in a vehicle
- *Abney v. Coe*
  - 4<sup>th</sup> Circuit case similar to the Scott case
  - Suspect was driving erratically at a high rate of speed
  - Officers were justified in using their patrol cars to end the chase by performing a PIT maneuver

---

---

---

---

---

---

---

---

QUALIFIED IMMUNITY ANALYSIS

- Qualified immunity defense for law enforcement officials "provides ample protection to all but the plainly incompetent or those who knowingly violate the law"
- Qualified immunity requires two step analysis:
  - (1) whether the plaintiff has properly alleged a violation of a clearly established constitutional right
  - (2) if so, then look to see whether the officers actions were objectively reasonable
- If part (1) is not satisfied, courts need not move to part (2)
- *Slattery v. Rizzon*
  - 4<sup>th</sup> Circuit case where the court stated qualified immunity is designed to remove most civil liability actions from the legal process well in advance of trial
  - We want officers to feel comfortable performing their duties without the possibility of extensive litigation

---

---

---

---

---

---

---

---

QUALIFIED IMMUNITY CONT.

- *Grad v. Kassa*
  - As long as a public officer lawfully exercises the judgement and discretion with which he is afforded, keeps within the scope of his official authority, and acts without malice or corruption, he is protected from liability
- *Anderson v. Russell*
  - Suspect was on his knees with his hands in the air facing the officer
  - Suspect lowered his hands to turn off his radio (located in his back pocket)
  - Officer thought he was reaching for a weapon so he shot the suspect three times
  - 4<sup>th</sup> Circuit held that the officer did NOT violate the 4<sup>th</sup> Amendment
    - Officer was reasonable in thinking the suspect was reaching for a weapon

---

---

---

---

---

---

---

---

CAN OFFICERS BE SUED IN THEIR INDIVIDUAL CAPACITY?

*WILCOX V. CITY OF ASHEVILLE* 730 S.E.2D 226 (2012)

- "As long as a public officer lawfully exercises the judgment and discretion with which he is invested by virtue of his office, keeps within the scope of his official authority, and acts without malice or corruption, he is protected"
- Therefore, a public official is immune from suit unless his action was:
  - (1) Outside the scope of his official duty
  - (2) Done with malice
  - (3) Corrupt
- Pursuant to N.C. Gen. Stat. § 15A-401(d), officers may be subject to liability for reckless or heedless indifference to the safety and rights of others when using deadly force

---

---

---

---

---

---

---

---

*WILCOX CONT.*

- Facts regarding each officer
- Officer Gonce:
  - Heard that there was a passenger in the vehicle and was called off the pursuit
  - Positioned himself in front of his car to deploy "stop sticks"
  - As the vehicle approached him (at around 25 mph), Gonce fired 6 bullets, one of which hit Wilcox
- Court found that the evidence, in the light most favorable to Wilcox, is sufficient to raise a genuine issue of fact as to the existence of the elements of malice
  - No imminent threat to himself or another to justify the use of deadly force contrary to his duty
  - Firing six bullets into a slow moving vehicle knowing there was a passenger is sufficient to raise an issue of fact whether Gonce's actions were wanton and reckless

---

---

---

---

---

---

---

---

*WILCOX CONT.*

- Officer Hogan:
  - Arrived on scene as passenger in third officer's police car
  - Officer testified he could not remember radio communications about the number of passengers but he too had been called off the pursuit
  - Took position on the sidewalk as the vehicle approached (20 mph now as it had run over the stop sticks)
  - Fired 9 bullets as the car approached, reloaded, and fired another 8 bullets from a position behind the vehicle
- Court determined sufficient evidence to raise a genuine issue of material fact as to whether Hogan's actions support a finding of malice
  - No threat to himself and there is no indication he was aware of any threat to his fellow officers contrary to his duty
  - Fired 17 bullets into a slow moving car without regard to the position of other officers is sufficient to raise a genuine issue of fact as to whether Hogan's actions were wanton and reckless

---

---

---

---

---

---

---

---

*WILCOX CONT.*

- Officer Intveld:
  - She was called off the pursuit
  - She too was unaware of the number of passengers
    - Remembered hearing that the "vehicle was occupied"
  - As the vehicle approached (at 20 mph) she fired 4 bullets
- Court found that the evidence, in the light most favorable to Wilcox, is sufficient to raise a genuine issue of fact as to the existence of the elements of malice
  - No imminent threat to herself or others to justify the use of deadly force contrary to her duty
  - Intveld fired into a vehicle with number of occupants unknown without knowledge of the position of others which is sufficient to raise a genuine issue of fact as to whether her actions were wanton and reckless
- Court held that the trial court properly denied the officer's motion with regard to their liability in their individual capacities

---

---

---

---

---

---

---

---



ADDITIONAL POINTS ON USE OF FORCE

- Number of shots fired itself cannot be determinative as to whether force was reasonable
- Bullet trajectory does not determine whether the shooting was justified
- Officers may have acted reasonably even if they acted on a mistaken belief

---

---

---

---

---

---

---

CONCLUSION

- Courts grant great deference to the officers on scene in "use of force" cases
- *Tennessee v. Garner* tells us that deadly force should only be used when it is necessary to prevent the escape of a suspect and the officer has probable cause to believe the suspect poses a significant threat of death or serious bodily injury to the officer or others
- *Graham v. Connor* instructs courts to analyze "use of force" claims from the perspective of a reasonable officer on the scene to determine if the officers actions were objectively reasonable under the totality of the circumstances
- Will the recent events change the application of the standards?

---

---

---

---

---

---

---