



DPS Legal Review

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US SUPREME COURT: DEADLY FORCE DURING DANGEROUS CAR CHASE

Near midnight on July 18, 2004, Lt. Forthman of the West Memphis, Arkansas, Police Department pulled over a vehicle because the vehicle had only one operating headlight. Donald Rickard was the driver of the vehicle and there was one passenger in the passenger seat. Forthman noticed an indentation, “roughly the size of a head or a basketball” in the windshield of the car. He asked Rickard if he had been drinking and Rickard said no. Because Rickard failed to produce his driver’s license upon request and appeared nervous, Forthman asked him to step out of the car. Rickard did not comply and sped away.

Forthman gave chase and was soon joined by five other police cruisers driven by Sergeant Plumhoff and Officers Evans, Ellis, Galtelli, and Gardner. The officers pursued Rickard east on Interstate 40 toward Memphis, Tennessee. While on I-40, they attempted to stop Rickard using a “rolling roadblock” but were unsuccessful. The vehicles were “swerving through traffic at high speeds” and attained speeds over 100 miles per hour. During the chase, Rickard and the officers passed more than two dozen vehicles.

Rickard eventually exited I-40 in Memphis, and shortly afterward he made “a quick right turn” causing contact between his vehicle and Evans’ cruiser. As a result of that contact, Rickard’s vehicle spun out into a parking lot and collided with Plumhoff’s cruiser. Now in danger of being cornered, Rickard put his car into reverse “in an attempt to escape.” As he did so, Evans and Plumhoff got out of their cruisers and approached Rickard’s car, and Evans, gun in hand, pounded on the passenger-side window. At that point, Rickard’s car “made contact with” yet another police cruiser. Rickard’s tires started spinning, and his car “was rocking back and forth” indicating that Rickard was accelerating even though his bumper was flush against a police cruiser. At that point, Plumhoff fired three shots into Rickard’s car. Rickard then “reversed in a 180 degree arc” and “maneuvered onto” another street forcing Ellis to “step to his right to avoid the vehicle.” As Rickard continued fleeing down the street, Gardner and Galtelli fired 12 shots toward Rickard’s car, bringing the total number of

shots fired to 15. Rickard then lost control of the car and crashed into a building. Rickard and the passenger both died from some combination of gunshot wounds and injuries suffered in the crash that ended the chase.

A lawsuit was brought against the officers and the mayor and the chief of police alleging excessive force in violation of the Fourth and Fourteenth Amendments.

HOLDING: The Court held the Fourth Amendment did not prohibit the officers from using the deadly force that they employed to terminate the dangerous car chase started by Rickard. The Court noted that the officers were entitled to qualified immunity for the conduct at issue because they violated no clearly established law.

The Fourth Amendment standard for excessive force “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing government interests at stake.” The Court must also analyze the totality of the circumstances. The standard is whether the use of force was objectively reasonable, which the Court determines from the viewpoint of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Scott v. Harris* held that a police officer’s attempt to terminate a dangerous high-speed car chase that threatened the lives of innocent bystanders did not violate the Fourth Amendment, even when it placed the fleeing motorist at risk of serious injury or death. In this case, the chase exceeded 100 miles per hour, lasted over five minutes, passed more than two dozen other vehicles, and the defendant continued to flee once temporarily stopped by accelerating against another police cruiser. At the moment when the shots were fired, a reasonable police officer could have concluded that the defendant was intent on resuming his flight and that, if allowed to do so, he would once again pose a deadly threat for others on the road.

The lawsuit alleged that, even if the use of deadly force was reasonable, the officers acted unreasonably in firing 15 times. The Court rejected the argument reasoning that officers are justified in firing at a suspect in order to end a severe public threat and that they do not have to stop shooting until the threat has ended. Here, the defendant continued to attempt to flee even after shots were fired, thus, the officers additional shots continued in order to cease the continuing threat. *Note:* Issues related to

the passenger were not addressed in this opinion. Plumhoff v. Rickard, No. 12-1117, slip op. (U.S., May 27, 2014).

CONTINUED DETENTION BASED ON REASONABLE, ARTICULABLE SUSPICION

The defendant's truck was pulled over by an officer for a tag light infraction. The officer observed the defendant's two passengers bending toward the floorboard, as if trying to hide something, as he approached the truck. The officer asked the defendant for his driver's license and noticed his hands were shaking. The officer introduced himself to the other two passengers. The defendant's daughter made eye contact and was engaging with the officer but the daughter's boyfriend acted nervously and did not look at the officer. The officer asked the defendant to exit the vehicle and observed the defendant was fidgety. The defendant's pupils were constricted and the officer asked him if he had taken any medication. The defendant said he had taken his prescribed oxycodone earlier in the day. The officer was a state certified drug recognition expert and found the explanation satisfactory to explain the defendant's pupils.

The officer continued the detention to investigate whether the defendant was a less safe driver because of his consumption of the oxycodone. The defendant consented to field sobriety tests. Although some of the tests indicated the defendant was impaired, the officer did not feel the results were sufficient to arrest the defendant for driving under the influence. However, the officer suspected "something else" and continued the detention based upon the results of the defendant's horizontal gaze nystagmus test indicating possible use of a depressant, the defendant's constricted pupils, the admission to taking oxycodone, signs of impairment consistent with a drug other than oxycodone, the passengers' reaching down into the truck, and the nervousness of the driver and one of the passengers. The defendant consented to a search of his truck and to a pat down by the officer for weapons and contraband. The two passengers consented to allow the officer to pat them down. A small pillbox was discovered in the defendant's daughter bra which contained one oxycodone pill and one methadone pill. The defendant admitted the pills were his and he had given the pillbox to his daughter to hide.

The defendant was convicted of possession of oxycodone and possession of methadone. The defendant filed a motion to suppress arguing that the officer did not have reasonable, articulable suspicion to continue the detention once he finished dealing with the traffic violation and concluded the driving under the influence investigation and that the consents to the pat down searches were invalid.

HOLDING: The Court held that the officer's continued detention of the vehicle was justified based upon reasonable, articulable suspicion of other illegal activity. Once the purpose of a traffic stop has been fulfilled, the continued detention of a vehicle and its occupants amounts to an additional detention, which "passes muster under the Fourth Amendment when the officer has a reasonable, articulable suspicion of other illegal activity." In this case, there were three detentions: 1) the tag light violation; 2) the investigation of defendant's suspected driving under the influence; and 3) the search of the defendant and his passengers. The defendant did not challenge the first two detentions or the scope of the pat-down search of his daughter. The defendant argued there was no reasonable, articulable suspicion for the third detention. The Court concluded the defendant's admission to having taken narcotics which did not explain the signs of impairment consistent with the use of a depressant; the passengers reaching down when the officer approached; the nervousness of one of the passengers; the officer's training as a certified drug recognition expert; and the horizontal gaze nystagmus test were articulable reasons for the officer to conduct the third detention. The officer's suspicion was not based upon a hunch, but was based upon specific facts that, based on his training as a drug recognition expert, led him to believe that the defendant was under the influence of a controlled substance. The suspicion, combined with the behavior demonstrated by the passengers and the defendant, and the reasonable inferences drawn from the evidence, provided a substantial basis for the denial of the motion to suppress. Baker v. State, 2014 WL 1778045 (Ga.App.).

ALS REMINDERS

🔗 A copy of a final decision on an ALS case can be obtained from the OSAH website at www.osah.ga.gov. You will need the docket number, the petitioner's zip code, and you will need to know if the petitioner was represented by an attorney. You may also contact Dee to obtain a copy of a final ALS decision.

QUOTABLE WISDOM WORKS

"If you don't like something change it. If you can't change it, change your attitude about it."
~ Maya Angelou

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