

Supreme Court Approves Deadly Force to Stop a Dangerous Pursuit

In Plumhoff v. Rickard¹, a decision handed down on May 27, 2014, the United States Supreme Court held that officers' use of deadly force to terminate a dangerous car chase did not violate the Fourth Amendment. The Court also held, in the alternative, that the officers were entitled to qualified immunity because they did not violate any clearly established law. While this article reviews the decision please read through to the end to discuss cautions in policy and training application.

In Rickard, the facts are as follows: On July 18, 2004, a Lieutenant with the West Memphis, Arkansas, Police Department pulled over a vehicle driven by Donald Rickard because the vehicle only had one operational headlight. When the Lt. approached the vehicle, he asked Rickard whether he had been drinking, to which Rickard responded he had not. Rickard failed to produce a driver's license upon request and was acting in a nervous manner. Based on these observations, the Lt. ordered Rickard to step out of the car. Rather than comply, Rickard sped away.

The Lt. pursued Rickard's vehicle and was joined by five additional cruisers from the Department. The officers pursued Rickard east on I-40 toward Memphis, Tennessee. The officers attempted to stop Rickard on I-40 with the use of a "rolling roadblock," but the attempt was not successful. During the pursuit, the vehicles were swerving in and out of traffic at high speeds, at times reaching over 100 miles per hour. During the pursuit, the vehicles passed more than two dozen other vehicles.

When Rickard exited I-40, he made a sharp right turn, causing contact between his vehicle and a vehicle driven by Officer Evans. As a result of the contact between the two vehicles, Rickard's vehicle spun out into a parking lot and collided with another cruiser, driven by Officer Plumhoff. Plumhoff and Evans exited their cruisers and approached Rickard's vehicle. Evans pounded on the passenger-side window. At this point, Rickard's vehicle collided with another cruiser. Rickard's tires were spinning and his vehicle was rocking back and forth, indicating he still had his foot on the accelerator even though Rickard's bumper was flush against a police cruiser. At this point, Plumhoff fired three shots into Rickard's vehicle. Rickard then put his vehicle in reverse and, in a 180 degree arc, maneuvered onto another street. This action forced an officer to step to the right to avoid being hit. As Rickard's vehicle was fleeing down the street, two other officers fired an additional twelve shots at the vehicle. There were fifteen total shots fired at Rickard's vehicle during the incident. Rickard then lost control of his vehicle and it crashed. As a result of the combined injuries from gunshot wounds and the crash, both Rickard and his passenger died.

Rickard's daughter filed a §1983 action against six individual police officers, and the mayor and chief of police of West Memphis, alleging that the officers used excessive force in violation of the

Fourth and Fourteenth Amendments. The officers moved for summary judgment based on the theory of qualified immunity. The District Court denied the officers' motion, holding that the officers' actions violated Rickard's Fourth Amendment rights, and were contrary to clearly established law. The officers appealed to the Sixth Circuit Court, which eventually affirmed the order of the District Court denying the officers' motion for summary judgment.

On Appeal, the officers contended that they did not violate Rickard's Fourth Amendment rights and that, in any event, their conduct did not violate clearly established right at the relevant time. The Supreme Court stated that it must first decide whether the officers' actions violated Rickard's Fourth Amendment rights, before deciding whether there existed a clearly established right at the relevant time.

The issue of whether officers used excessive force is governed by the Fourth Amendment "reasonableness" standard. When determining whether the actions were "objectively reasonable, courts must analyze the "totality of the circumstances."² The question of whether an action is "objectively reasonable" is analyzed from the perspective "of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."³

The Supreme Court addressed the respondent's two claims separately. First, the Court addressed her contention that the use of deadly force to terminate the chase of Rickard's vehicle was in violation of his Fourth Amendment rights. To begin its analysis, the Court looked to its decision in *Scott v. Harris*,⁴ in which the Court held that 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."⁵ The Court found that in the present case, Rickard's "outrageously reckless" driving posed a "grave risk to public safety." The Court observed that during the pursuit, the vehicles exceeded 100 miles per hour, lasted over five minutes, and Rickard passed more than two dozen vehicles, forcing them to alter their course. The Court further observed that while it was true that Rickard's vehicle temporarily came to a near standstill when it spun out in the parking lot, the chase did not end there. Even though Rickard's vehicle was flush with another vehicle, he was still pushing down on the accelerator, causing his wheels to spin and vehicle to rock, and was eventually able to put his vehicle in reverse in an attempt to escape.

Based on the above findings, the Court found that the record disproved respondent's claim that the chase had already ended when the officers started shooting. The Court stated, "[u]nder the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road."⁶ The Court found it noteworthy that even after the shots were fired, Rickard still managed to drive away, despite the officers attempts to block his path. Accordingly, the Court found that the officers acted reasonably in using deadly force to end the pursuit.

The Court next analyzed respondent's claim that even if the use of deadly force was permissible, the officers acted unreasonable in firing fifteen shots at Rickard's vehicle. The Court rejected this argument, however, finding that if the officers were justified in firing at Rickard to "end a severe threat to public safety, the officers need not stop shooting until the threat has ended." The Court pointed out that during the 10-second span in which the shots were fired, Rickard continued in his attempts to flee. The Court noted that even after the fifteen shots had been fired, Rickard was able to drive away and continue driving until he crashed.

The Court did point out, however, that it would be a "different case if the [officers] had initiated a second round of shots after an initial round had clearly incapacitated Rickard and had ended any threat of continued flight, or if Rickard had clearly given himself up."

The Court further dismissed petitioner's reliance on the argument that the presence of the passenger in the vehicle supported a finding that too many shots were fired. The Court pointed out that the matter before the Court was whether Rickard's Fourth Amendment rights had been violated and the presence of a passenger in the vehicle does not enhance one's Fourth Amendment rights.

The Court held that while the officers' conduct did not violate Rickard's Fourth Amendment right, even if it had, the officers would still be entitled to qualified immunity. "An official sued under §1983 is entitled to qualified immunity unless it is shown that the official violated a statutory or constitutional right that was clearly established at the time of the alleged conduct." When determining whether the officers were entitled to qualified immunity, the Court looked to its decision in *Brosseau v. Haugen*.⁷ In that case, the Court held that an officer did not violate clearly established law when she fired at a fleeing vehicle to prevent harm to other officers or citizens in the area. The Court found that at the time of the incident, there was no clearly established law that it was unconstitutional to shoot a fleeing driver to protect those whom his flight might endanger. The Court stated that to defeat immunity, the respondent would have to distinguish the facts of the *Brosseau* case from the Rickland case; or show that controlling authority emerged after the holding in *Brosseau* that would alter the Court's analysis. The respondent was unable to do either.

The facts in the current matter were even more favorable to the officers, as compared to *Brosseau*, where the suspect had not yet driven his car in a dangerous manner. In the current case, Rickland had already led the officers on a lengthy, high-speed chase that posed a danger to the officers involved and any citizens in the area. Further, in the present matter, the respondent was unable to provide the Court with any controlling case decided between the time of the *Brosseau* case and the current matter.

The Court held that "the Fourth Amendment did not prohibit [the officers] from using the deadly force that they employed to terminate the dangerous car chase that Rickland precipitated." The Court further held that, in the alternative, the officers were entitled to qualified immunity because they violated no clearly established law.

Use Caution:

Despite this ruling, we strongly caution departments against adopting a general policy allowing officers to shoot their weapons at a moving vehicle. This case, by no means, provides a blanket authorization for department's to adopt such a policy. The Rickard case was fact specific, meaning that the Court's ruling was based on the specific circumstances surrounding this case. Indeed, the Court went so far as to say that this case may have been decided differently if the facts had been altered (e.g. Rickard was incapacitated at the time the shots were fired, or if he attempted to surrender to the officers.) These are the very type of questions that present a question of fact for a tribunal and could very well thwart a department's ability to obtain summary judgment.

When advising departments, we strongly recommend that a department's Vehicle Pursuit policy contain specific language stating that officers are prohibited from discharging firearms at or from a moving vehicle unless officers reasonably believe deadly force is necessary to defend the officer or a third person from the use, or imminent use, of deadly force. The policy should provide that officers will not discharge their firearms at moving vehicles except under extreme circumstances. By adopting such a policy, and ensuring that officers are provided training on the policy, as well as the use of deadly force, may help to protect departments from potential liability.

A summary of this case and the decision in full can be read by [clicking here](#)

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¹ 572 U.S. ____ (2014)

² quoting *Graham v. Connor*, 490 U.S. 386 (1989)

³ *Id.*

⁴ 550 U.S. 372 (2007)

⁵ *Id.* at 386.

⁶ 572 U.S. at ____.

⁷ 543 U.S. 194 (2004)