

57. USE OF FORCE

(June 2018)

I. POLICY

The use of force by law enforcement is a matter of critical concern to the public and the law enforcement community. Officers are involved on a daily basis in numerous and varied encounters with people, and when warranted to do so, may use force in carrying out their duties.

It is the policy of the Department that each incident involving the application of any degree of physical force upon the person of another must be evaluated based on the facts known to the officer at the time of the incident. The totality of the circumstances will be considered when reviewing use of force incidents.

Under no circumstances may the use of physical force be more than that which is necessary to achieve a lawful purpose. Officers are permitted to use only the amount of force that is objectively reasonable and necessary to protect themselves or others from what is reasonably believed to be a threat of death or bodily harm, to effectuate an arrest, or gain compliance with a lawful order. The use of verbal orders should be used to gain compliance. Whether the use of force is reasonable shall be judged from the perspective of an officer at the time of the incident, based upon facts known or reasonably available to him or her.

Every member of the Police Department shall refrain from using force unnecessarily and shall prevent similar conduct by others. The use of excessive force will subject officers to discipline, possible criminal prosecution, or civil liability. The use of

chokeholds and similar carotid holds by members of the Department is prohibited.

The use of reasonable physical force by officers is authorized in situations that cannot be otherwise controlled.

Any time an officer uses force, they shall ensure that appropriate medical treatment or first aid is provided to the subject of the force without unnecessary delay.

NOTE: For restrictions and prohibitions on the use of specific weapons including Firearms, *See: VOLUME II, CHAPTER 58. WEAPONS.*

II. CHECKLIST (N/A)

III. DEFINITIONS

Critical Firearm Discharge: Any discharge of a firearm by a Prince George's County Police Officer, with the exception of range and training firings, and discharges at animals for the purpose of humanely destroying them

Force: Any physical coercion used to effect, influence, or persuade a subject to comply with an order from an officer; the term shall include the use of chemical irritants and the deployment of canine, but shall not include ordinary, unresisted handcuffing, or unresisted use of the hobble strap and unresisted escort.

Hard Personal Weapons: Strike applied and intended to overcome a physical assault or active threat of assault upon the officer or another (a strike with a closed fist or a kick)

Less Lethal Force: Any force that is neither likely nor intended to cause death or serious physical injury

Lethal Force: Any force likely to cause death or serious physical injury, including, but not limited to, the use of a firearm

Personal Weapon: Any use of hands, elbows, knees, and feet to deliver strikes for the purpose of stunning or distracting a suspect to overcome resistance

Reasonable Belief: Facts or circumstances that an officer knows or should know that cause a reasonable and prudent officer to act or think in a similar way under similar circumstances

Serious Physical Injury: Bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in long-term impairment of the functioning of the body

Serious Use of Force: An incident in which an officer's action resulted in:

- Death, or the likelihood of death
- Hospitalization
- A broken bone
- Loss of consciousness
- Serious disfigurement
- Disability
- All incidents where a person receives a bite from a Departmental canine
- Firearms discharge directed at a person
- All Critical Firearm Discharges

Soft Personal Weapons: Strike applied to a nerve motor point as a stunning or distraction technique to cause a motor dysfunction and balance displacement in order to control a resistant subject (an open hand strike or knee strike to a nerve motor point)

Use of Force Review: The process of reviewing a use of force incident, conducted by a Supervisor, Internal Affairs or other departmentally approved unit

Use of Force Review Report: A written review of a use of force incident, completed on a Supervisor's Use of Force Review Report, PGC Form #5150

IV. FORMS

- Booking Record
- Case Record
- Use of Force Review Report (PGC Form #5150)

V. PROCEDURES

Officers may use force to:

- Effect an arrest
- Prevent escape
- Overcome resistance to a lawful order or action
- Protect others or themselves from bodily harm

1. Use of Force Continuum Overview

The Use of Force Continuum is designed to provide an overview and visual representation of the force options available to officers. It is a fluid instrument, which attempts to depict the dynamics of a confrontation. The continuum is only a guide and cannot take into consideration every possible situation that an officer may face.

Certain factors, when considered collectively, may influence an officer's determination of how much force to use to overcome a subject's resistance. Examples of factors include, but are not limited to:

- ❑ Officer/subject factors such as age, size, strength, injury, exhaustion, and number of officers versus number of subjects
- ❑ Whether the subject is under the influence of drugs or alcohol or mental defect
- ❑ Proximity to weapons
- ❑ Availability of other options
- ❑ Seriousness of the offense
- ❑ Exigent circumstances

It is important to note that an officer does not need to use the lowest level of force on the continuum when the officer can articulate that a higher level of force was reasonable. This continuum should be viewed as a sliding scale, not a ladder. An officer may use force at any level on the continuum, provided that the force selected is objectively reasonable.

Engagement of Tactical Options

Whenever possible, officers should use communication skills to attempt to control situations. Verbal communication is essential throughout the arrest process to de-escalate the situation. Distance gives an officer more time to evaluate and react appropriately to a threat. An officer should continually reassess their options throughout an incident and take into account that high-risk incidents are fluid and continually changing. An officer should look for indicators of imminent assault. An officer should consider using cover and concealment when it is available and movement (dynamic cover) when it is not. Whenever possible, subjects should be allowed to submit to arrest before force is used.

Disengagement of Tactical Options

Rushing in to make an immediate apprehension is not always necessary or

appropriate. Frequently, such action reduces an officer's range of available options. Methods of tactical disengagement include, but are not limited to:

- ❑ Area containment
- ❑ Surveillance
- ❑ Waiting out a subject
- ❑ Summoning reinforcements
- ❑ Requesting specialized units

2. Use of Force Continuum

Subject's Actions

Conduct observed or intentions reasonably perceived by the officer.

- ❑ **Cooperative or Compliant:** Complies with verbal commands or other directions
- ❑ **Passive or Non-responsive:** Uncooperative when taken into custody or fails to respond to verbal commands or other directions
- ❑ **Active Resistance:** Physically evasive movements to defeat the officer's attempt at control, to include bracing, tensing, pushing, or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested
- ❑ **Aggression:** Physical assault, or active threat of assault, upon the officer or another
- ❑ **Life Threatening Assault:** An attack or threat to attack wherein an officer reasonably believes that the assault will result in serious physical injury or death

Officer's Actions

Conduct designed to overcome resistance through force that is objectively reasonable and necessary to achieve a lawful objective.

When possible, the subject should be allowed to submit to arrest before force is used.

- ❑ **No Force Necessary:** (Uniformed Officer or Identifiable Off-Duty or Plain Clothes Officer) Command presence including the display of authority as a peace officer, and non-verbal communication such as body language and manner of approach; verbal direction includes statements and commands given to the subject
- ❑ **Low Level Control (Escort Techniques):** Low Level Control includes escort techniques used to remove a non-cooperative subject; for example, open hand escort to direct movement
- ❑ **Intermediate Level of Control (Chemical agents, conducted electrical weapons (CEW), Pressure Points, Joint Manipulation, and Control Holds):** Includes the use of Departmentally issued chemical agents, CEWs, and the use of approved pressure points, joint control holds, and takedowns; it may also include soft personal weapons strikes used to stun or distract prior to applying control holds; the use of soft personal weapons in this instance is not a means intended to defeat resistance, but rather to gain control; for example, an open hand strike to the upper torso or a knee strike to nerve motor point in the leg for the purpose of stunning and distracting a subject in order to apply a control hold
- ❑ **High Level of Control:** Includes the use of hard personal weapon strikes, Departmentally issued tactical baton, less lethal launchers, the WRAP™ system, and Canine; the use of hard personal weapons strikes in this instance is intended to overcome a subject's aggressive resistance when necessary to

gain control; for example, a closed fist strike or kick delivered to neutralize an active assault on an officer

- ❑ **Lethal Force:** Includes the use of a firearm or any force which has a reasonable likelihood of causing death or serious physical injury; officers may only use lethal force when they have an objectively reasonable belief the suspect poses an imminent threat of death or serious physical injury to the officer or another person

3. Lethal Force

Officers may only use lethal force when they have an objectively reasonable belief that the suspect poses an imminent threat of death or serious physical injury to the officer or to another person.

A decision to use lethal force can only be justified by facts known to the officer at the time the decision is made. Facts unknown to the officer, no matter how compelling, cannot be considered in subsequent investigations, reviews, or hearings.

Any firearm discharge directed toward a human or animal is lethal force. Firearms shall not be discharged when less than lethal force would suffice.

A verbal warning shall be given before the use of lethal force whenever possible. Except as noted in this section, firearms may only be discharged in defense of self or others when:

- ❑ The officer reasonably believes that the subject poses an imminent threat of death or serious physical injury to himself or herself or to another person
- ❑ No reasonable alternative for apprehending a fleeing subject exists and the officer has probable cause to believe

that the person has committed a felony involving the infliction or threatened infliction of serious injury or death and escape of the person would pose an imminent threat of death or serious injury to the officer or to another person

It is the policy of the Department not to shoot at occupants of a vehicle; however, there are rare times when shooting at a vehicle may be justified. The following are examples of such instances – these are not all inclusive:

- ❑ The occupants of the vehicle are using deadly force, and innocent persons would not be unduly jeopardized by the officers' actions.
- ❑ When an officer or person is pinned or being dragged by the vehicle and innocent persons would not be unduly jeopardized by the officers' actions.

Officers must avoid placing themselves in situations where vehicles may strike them.

Firearms may be used to destroy seriously injured animals or those posing an imminent threat to human safety. *See: VOLUME II, CHAPTER 58. WEAPONS* also.

4. Reporting the Use of Force

Any officer, who uses force, including the discharge of oleoresin capsicum (OC) Spray, shall immediately notify a Supervisor. Officers shall also notify a Supervisor upon receipt of an allegation of excessive force. *See: VOLUME I, CHAPTER 4. COMPLAINTS.*

5. Use of Force Review

The Use of Force Review is an administrative procedure intended to assess:

- ❑ Whether or not officers are properly trained in use of force techniques
- ❑ Whether or not the techniques, if properly executed, were effective
- ❑ If the use of force was within Departmental guidelines

Use of Force Reviews are not investigations, and in no way diminish the rights established by the Law Enforcement Officers' Bill of Rights (LEOBR).

Supervisor's Responsibilities

A Supervisor shall respond to the scene of every use of force and ensure that:

- ❑ The situation has been stabilized and all parties are safe
- ❑ The involved officers and subject are examined for injuries
- ❑ Photographs of any injuries to officers and/or the subject are taken
- ❑ The subject is interviewed for complaints of pain
- ❑ An attempt is made to get a statement from the subject
- ❑ Medical attention is provided to those in need
- ❑ Transport from the scene is arranged for any arrestees
- ❑ A Use of Force number is obtained from PSC
- ❑ A Use of Force Review Report is completed
- ❑ The officer handling the incident completes a Case Record

For those incidents that involve the discharge of OC Spray, the Supervisor shall additionally ensure that the officer:

- ❑ Documents the basis for the discharge
- ❑ Documents the justification provided for the level of force used
- ❑ Includes the duration of the discharge

VOLUME II, CHAPTER 57. USE OF FORCE

- Includes an estimate of the distance at which the discharge occurred

If OC is discharged at a restrained individual, the Supervisor shall notify the Special Investigation Response Team (SIRT). SIRT will determine investigative responsibility for these incidents and will inform the Supervisor of such.

If the use of force is serious, the Supervisor shall notify SIRT. SIRT shall be responsible for investigating these incidents. For a comprehensive list of Serious Incidents, **See: III. DEFINITIONS.** The Supervisor shall obtain a Use of Force number from PSC and is responsible for documenting the incident on a Use of Force Review Report. The Supervisor shall indicate in the narrative that SIRT will review the use of force (if applicable).

Supervisors shall conduct a review of each use of force incident when:

- An officer under their supervision takes action resulting in or alleged to have resulted in injury of a person whether intentional or accidental
- An officer strikes a person
- An officer employs approved pressure points, joint control holds, or takedowns
- An officer uses a firearm, tactical baton, OC, chemical agent, CEW, less-lethal launcher, or the WRAP™ restraint system, **See: VOLUME II, CHAPTER 58. WEAPONS and VOLUME I, CHAPTER 17. EQUIPMENT**

A Use of Force Review is not required when:

- A full custody arrest is made without the use of force and transport occurs, but the subject is released without being charged, i.e. handcuffed and released

- An individual is handcuffed for officer safety and released
- An officer points a weapon at an individual
- An officer employs an unresisted escort
- An officer utilizes the Hobble strap without the use of force

Handcuff and release incidents shall be documented in a Case Record that details the circumstances of the incident. The use of the Hobble strap shall also be documented in a Case Record. These reports will be reviewed and signed by a Shift Commander or Acting Shift Commander.

Reports documenting handcuff and release incidents and the use of the Hobble strap shall be forwarded to the following locations prior to the end of the officer's shift:

- Affected District/Division Commander/Manager
- Affected Deputy Chief
- Commander, Internal Affairs Division (IAD)
- Commander, Training and Education Division (TED)

Supervisor's Responsibilities for Documenting the Use of Force

Supervisors will review, evaluate, and document each use of force incident, and will prepare a Use of Force Review Report.

The Use of Force Review Report will include a precise description of the facts and circumstances that either justify or fail to justify the officer's conduct. As part of this review, the Supervisor will evaluate the basis for the use of force, and determine whether or not the officer's actions were within PGPD policy.

Any Supervisor who approves the involved officer's use of force is prohibited from conducting the Use of Force Review. Under this circumstance, a Supervisor of equal rank or above will be responsible for completing the review. Supervisors involved in use of force incidents shall not sign and approve their own Use of Force Reports. The Supervisor that conducts the Use of Force Review shall approve these reports.

The review shall be completed within 7 days of the incident and shall include:

- ❑ Statements obtained from all civilian witnesses, when feasible
- ❑ The identity of all officers who were involved in the incident or were on the scene when it occurred
- ❑ All reports which indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment
- ❑ Photographs or videotapes taken of the incident or of injuries, before and after cleaning and treatment
- ❑ Any other relevant documents or observations

Supervisors shall ensure that all of the required information is included on the Use of Force Review Report.

If an officer working secondary employment is involved in a use of force incident, the on duty sector Supervisor shall respond and ensure that the steps detailed in this section are completed prior to end of the Supervisor's shift. These documents shall be forwarded to the involved officer's Supervisor, who shall be responsible for completing the review. Once completed, copies of all documents generated during the review shall be forwarded to the District station where the use of force incident

occurred, if different from the involved officer's usual assignment.

While conducting the Use of Force Review, the Supervisor shall critically evaluate all information obtained. If the Supervisor becomes aware of facts that they believe indicate the need for an internal investigation, the Supervisor shall stop their review and contact the Commander, SIRT. The Supervisor shall cease questioning of the possible respondent officer(s), but complete the Use of Force Review. This shall be done to prevent any potential violation of the provisions of the Law Enforcement Officers' Bill of Rights (LEOBR), which could negatively impact the officer or the Department.

If SIRT concludes that an investigation is appropriate, all documents obtained by the Supervisor, up to that time, shall be turned over to the assigned SIRT investigator. The Supervisor must still complete the Use of Force Review Report.

If SIRT decides that an investigation is not appropriate, the Supervisor shall complete the review, noting the SIRT investigator who was contacted and their decision in the Use of Force Review Report.

Based on the review, the Supervisor shall conclude whether or not the use of force was justified and within Departmental policy. This conclusion shall be based on the totality of the circumstances, Departmental policy, and training.

Command Review – Concurrence or Non-Concurrence

Upon completion of the review, the Use of Force Review Report, the Case Record, witness statements, and any other relevant documents shall be forwarded for command

review. At any point during the command review, questions that clarify the officer's actions may be directed to the Supervisor responsible for conducting the review.

Any reviewing member within the chain of command may attach comments, direct that additional evidence be gathered, or recommend that a formal investigation be conducted.

Each command officer receiving the review shall evaluate the facts and circumstances presented, and either concur or non-concur with the Supervisor's findings.

If the reviewing command officer concurs with the Supervisor's finding, they shall indicate so and sign the in the appropriate place. Additional comments may be added to the Use of Force Review Report but no further action is required.

If the reviewing command officer does not concur with the Supervisor's finding, they shall indicate so and sign the Use of Force Review Report in the appropriate place. The command officer must document the specific facts or circumstances that form the basis for their decision on the Use of Force Review Report. The law, directive, or other governing policy either violated or not violated must be cited, and the actions at issue described.

District/Division Commander/Manager Review

District/Division Commanders/Managers may extend the seven day time limit for Supervisors to complete their review due to extenuating circumstances.

The appropriate District/Division Commander/Manager shall conduct the final

review within 14 days of the incident. During their review, the District/Division Commander/Manager shall evaluate the Use of Force Reviews conducted by the Supervisor, identifying any deficiencies in the review. Any discrepancies noted shall be documented in writing by the District/Division Commander/Manager on the Use of Force Review Report. Supervisors shall be responsible for correcting any deficiencies identified by the District/Division Commander/Manager.

District/Division Commanders/Managers shall hold Supervisors accountable for the quality of their reviews. They shall ensure that appropriate disciplinary or corrective action is taken when a Supervisor fails to:

- Conduct a timely and thorough review
- Recommend appropriate corrective action
- Implement appropriate corrective action

If the District/Division Commander/Manager concurs with the findings of the Use of Force Review Report, they shall forward a copy to:

- Commander, Internal Affairs Division (IAD)
- Office of the Chief
- Affected Deputy Chief
- Commander, Training and Education Division (TED)

The District/Division Commander/Manager shall maintain a file containing the original Use of Force Review Reports, and witness statements, along with copies of all other noted reports. The files shall be kept secure and access shall be limited.

If the District/Division Commander/Manager does not concur with the findings of a review; they shall document the specific facts and circumstances that form the basis for their decision on the Use of Force Review Report.

If District/Division Commander/Manager deems it appropriate, they shall forward the Use of Force Review Report, the Case Record, witness statements, and any other relevant documents to their Deputy Chief, who may request an investigation by SIRT. In other instances, the review shall be maintained as noted above.

6. SIRT Responsibilities

SIRT will respond to the scene of all serious use of force incidents. Serious incidents include those resulting in:

- Death, or the likelihood of death
- Hospitalization
- A broken bone
- Loss of consciousness
- Serious disfigurement
- Disability
- All incidents where a person receives a bite from a Departmental canine
- Firearms discharges directed at a person
- All Critical Firearm Discharges
- Striking a handcuffed individual (but not simply handcuffing)

OC Used on Restrained Subjects

Whenever an officer uses OC Spray against a restrained person, the officer shall notify their Supervisor. The Supervisor shall notify SIRT. SIRT will determine investigative responsibility for these incidents and will inform the Supervisor of such.

The Supervisor shall obtain a Use of Force Number from PSC and document the

incident on a Use of Force Review Report. The Supervisor shall document the notification to SIRT and indicate in the narrative if they will be conducting an investigation of the incident. The Supervisor shall ensure that the Use of Force Review Report is forwarded to SIRT prior to the end of their shift.

SIRT shall review each use of OC on a restrained individual. If appropriate, SIRT shall investigate the incident, to include taking tape-recorded statements from the officer, the subject, and other witnesses when feasible.

Auditing Use of Force Incidents

To ensure that all use of force numbers and related reports are accounted for, IAD will be required to conduct a monthly audit on this information. When a discrepancy is discovered, it will be resolved between IAD and the affected District/Division Commander/Manager.

7. Executive Review Panel Duties & Responsibilities

The Executive Review Panel (ERP) was established by the Chief of Police to review all critical firearm discharges, investigations of serious uses of force, and to conduct evaluations of all uses of force on a quarterly basis. The ERP membership will rotate, but will include a member of the Command Staff, a member of the Training and Education Division (TED), the affected Deputy Chief, and a representative from the County Attorney's Office. Additional board members will be appointed by the Chief of Police.

Duties of the Panel

The ERP meets monthly to review critical firearm discharges and serious use of force investigations. The ERP shall review these investigations for compliance with Departmental policy, as well as for tactical and training issues.

The panel's review shall occur within 90 days of the end of a criminal review of an incident. The panel shall conduct an analysis of all uses of force by members of the Department on a quarterly basis, and forward the results of the analysis to the Chief of Police.

In addition to these reviews, the ERP shall conduct an annual analysis of critical firearm discharges to detect patterns or problems. This analysis shall be submitted to the Chief of Police by February 1st of the following calendar year.

The ERP will act as a quality control mechanism for all shooting and firearm discharge investigations, with responsibility to return to the investigating unit all incomplete or mishandled shooting or firearm discharge investigations or Use of Force Reviews. The ERP has the authority and responsibility to recommend to the Chief of Police, investigative protocols and standards for all critical firearm discharge investigations and Use of Force Reviews.

The ERP has exclusive authority to change the duty status of any officer placed on administrative leave. All requests from District/Division Commanders/Managers for a change in an officer's duty status, including placing the officer on administrative duty, shall be made in writing through the chain of command to the Chief of Police or their designee.

Review Procedures

The panel's review shall include investigative files and interviews of the principal investigators and Supervisors. The panel shall prepare a written report with their findings and recommendations to the Chief of Police. This report shall become a part of the official investigative file for the incident.

The report shall include a description of the incident including all uses of force. It will also include a summary of all evidence that supports their findings, and an analysis that supports those findings.

The panel shall consider the following in making the recommendation to the Chief of Police:

- Whether the use of force was consistent with Departmental training and policy
- Whether the involved officer used proper tactics
- Whether lesser force alternatives were available

Responsibilities of the Chief of Police

After considering the findings and recommendations of the ERP, the Chief of Police shall advise the Commander, IAD of the final decision regarding closure of the incident.

Confidentiality of Files

IAD shall retain a copy of the ERP findings for five years, in accordance with the Records Retention Schedule and LEOBR. Access to these files is limited to the ERP and IAD.

8. Animals

Where an officer discharges a firearm for the purpose of humanely destroying an injured animal, no Use of Force Review shall be conducted. The involved officer shall complete a Case Record, and a Use of Force Review Report (the Discharge of Firearms portion).

If an officer destroys an animal for any other purpose, a Use of Force Review shall be conducted. The involved officer's Supervisor shall complete a Use of Force Review Report including the Discharge of Firearms portion. *See: VOLUME II, CHAPTER 3. ANIMAL COMPLAINTS.*

9. Civil Disturbances & Barricades

During civil disturbances and barricades, force that is used at the direction of the on-scene commander shall be documented on a single Use of Force Review Report. The Supervisor or ranking officer present when force is used shall be responsible for completing the report. The on-scene commander shall ensure completion of an after-action report. SIRT shall conduct the Use of Force Review for any incident when the on-scene commander authorized the involved officers to use force.

Officers who independently use force while involved in a civil disturbance incident or a barricade without the authorization of the on-scene commander will complete a Use of Force Review Report and a Supervisor not involved in the incident shall conduct the review.

10. Fed-Ex Field

Situations occurring at Fed-Ex Field shall be handled according to procedures established

by the Special Operations Division (SOD) and detailed in the SOD Standard Operating Procedures (SOP).

VI. GOVERNING LEGISLATION & REFERENCE

This General Order addresses:

- ❑ Commission on Accreditation for Law Enforcement Agencies, Standards 1.3.1, 1.3.2, 1.3.6, 1.3.7, 11.3.1, 26.1.8, 46.1.4, 82.2.1

Governing Legislation:

- ❑ Prince George's County Code 18/156
- ❑ Graham v. Connor
- ❑ Tennessee v. Garner

Graham vs. Connor (490 U.S. 386, 109 S.Ct. 1865)

In Graham v. Connor, the U.S. Supreme Court determined the standard to be used to judge constitutional claims of excessive force brought by citizens against police officers.

Facts of the Case

On November 12, 1984, Graham, a diabetic, asked Berry, a friend, to drive him to a convenience store to purchase orange juice to prevent the onset of an insulin reaction. Upon entering the store and seeing the number of people ahead of him, Graham hurried out and asked Berry to drive him to a friend's house instead.

Connor, a city police officer, became suspicious after seeing Graham hastily enter and leave the store. Connor followed the car Graham was riding in and made an investigatory stop.

Although told that Graham was suffering from an insulin reaction, Officer Connor ordered both men to wait while he investigated what had happened in the store.

Backup officers arrived on the scene, handcuffed Graham, ignoring attempts to explain and treat his condition. During the encounter, Graham sustained multiple injuries. He was released when Connor learned that nothing had happened in the store.

Graham filed suit against all the officers involved, alleging the use of excessive force in making the investigatory stop.

Court Review of the Case

During the trial, the District Court considered the following four factors in determining whether the officers used excessive force:

- ❑ The need for the application of force
- ❑ The relationship between the need and the amount of force that was used
- ❑ The extent of the injury inflicted
- ❑ Whether the force was applied in a good faith effort to maintain and restore discipline, or maliciously and sadistically for the purpose of causing harm

Using the above factors, the District Court found that the amount of force used was appropriate under the circumstances. The Fourth Circuit Court of Appeals heard the appeal from the District Court and agreed with the District Court's decision.

Supreme Court Decision

The case was appealed to the U.S. Supreme Court. The Supreme Court determined that allegations of excessive force by law

enforcement officers – deadly or not – during an arrest, investigatory stop, or other seizure of a citizen should be analyzed under the Fourth Amendment.

According to the U.S. Supreme Court, 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 benefit of hindsight. This “reasonableness” must include the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly changing – about the amount of force that is necessary in a particular situation. Thus, the test used by the District Court is incompatible with a proper analysis under the Fourth Amendment.

The proper analysis is whether the officers' actions are “*objectively reasonable*” in light of the facts and circumstances confronting them, regardless of their underlying motive or intent.

The test of “reasonableness” under the Fourth Amendment cannot be precisely defined. However, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime, whether the suspect posed an immediate threat to officers or citizens, and whether the suspect actively resisted arrest or attempted to flee.

In sum, the U.S. Supreme Court determined that an officer's good intentions will not make an unreasonable use of force constitutional, nor will an officer's bad intentions make a Fourth Amendment violation out of a reasonable use of force.

Tennessee vs. Garner (471 U.S. 1, 105 S. Ct. 1694)

In this case, the United States Supreme Court held that officers cannot resort to deadly force unless they have probable cause to believe that the suspect has committed a felony and poses an immediate and significant threat to the safety of the officer, or a danger to the community at large. The Court affirmed the Court of Appeals decision limiting the use of deadly force to apprehend a fleeing felon.

Facts of the Case

On October 3, 1974, a Memphis, Tennessee police officer and his partner were dispatched to a call for a prowler inside a residence. Upon arriving on the scene, a neighbor advised that someone was breaking in to the house next door. As his partner radioed for assistance, the officer went to the back of the house where he heard the door slam and saw someone running across the backyard.

The suspect stopped at a six-foot chain link fence at the edge of the yard. With the aid of a flashlight, the officer could see the suspect's face and hands. He saw no signs of a weapon, and though not certain, was "reasonably sure" that the suspect was unarmed. While the suspect was crouched at the base of the fence, the officer ordered him to stop. When the officer took a few steps toward the suspect, he started climbing the fence.

The officer was convinced that the suspect would elude capture if he got over the fence, so the officer shot the suspect. The suspect was taken to a hospital where he died on the operating table. Ten dollars and a purse taken from the house were found on his body.

In using deadly force to prevent escape, the officer was acting under the authority of a Tennessee statute and following department policy.

The Memphis Police Department's Firearms Review Board and Grand Jury reviewed this incident and neither took any action.

Court Review of the Case

The suspect's father took the matter into the Federal District Court seeking damages for the violation of the suspect's constitutional rights. The claims were dismissed in the United States District Court.

The Court of Appeals reversed and remanded the decision. It held that the killing of a fleeing suspect is a "seizure" under the Fourth Amendment, and the use of deadly force to prevent escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.

The Tennessee statute did not adequately limit the use of deadly force because it failed to distinguish between felonies of different magnitudes.

Supreme Court Decision

The U.S. Supreme Court held that apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement.

To determine whether such a seizure is reasonable, the suspect's rights must be balanced against the police department's need make an arrest and enforce laws. This balancing process stipulates that, even though there is probable cause to seize a suspect, an officer may not always do so by killing him. The use of deadly force to prevent the escape of all felony suspects,

whatever the circumstances, is unreasonable under the Constitution.

The Supreme Court went on to say that while burglary is a serious crime, the officer in this case could not reasonably have believed that the suspect – unarmed, young, and of a thin build – posed any threat. The Court further held that the fact that an unarmed suspect burglarized a dwelling at night does not automatically mean he is dangerous.

The Supreme Court affirmed the decision of the Court of Appeals on March 27, 1985.

