

International Association of Chiefs of Police
LEGAL OFFICERS' SECTION

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The Effective Use of Technology in Defending Police Use of Force Lawsuits

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Applicable Legal Standard

- *Graham v. Connor*, 490 U.S. 386 (1989):
whether the force used was reasonable under the circumstances...from the perspective of a reasonable officer on the scene...and considering that officers must make split second decisions in tense, uncertain and rapidly evolving circumstances

Applicable Legal Standard

- *Smith v. Freland*, 954 F.2d 343 (6th Cir. 1992)

“We must avoid substituting our personal notions of police procedure for the instantaneous decision of the officer on the scene...What constitutes reasonable action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.”

Applicable Legal Standard

- *Anderson v. Russell*, 247 F. 3d 125 (4th Cir. 2001)
“...our focus is on the circumstances as they existed at the moment force was used.”

Elliott v. Leavitt, 99 F.3d 640 (4th Cir. 2002)

“And no court can expect any human being to remain passive in the face of an active threat on his or her life...”

Waterman, et al. v. Batton, et al.

- United States District Court for the District of Maryland, Case No. CCB-02-1745, 294 F. Supp.2d 709 (2003)
- United States Court of Appeals for the Fourth Circuit, Case No. 04-1096, 393 F.3d 471 (4th Cir. 2004)

The Incident

- Waterman speeds through airport
- Officers pursue; Waterman fails to stop
- 18 miles northbound I-95 through Fort McHenry Tunnel
- Officers on foot mobilize in toll plaza beyond tunnel
- Officers command him to stop, weapons drawn

The Incident

- Waterman slows; appears to stop or almost stop
- Decides not to stop, puts car in gear and accelerates forward in direction of officers
- 8 shots fired by 3 officers, striking both Waterman and vehicle
- Waterman continues to drive until intercepted by police vehicle

The Officers' Defense

- The shooting of Waterman was *not* an unreasonable seizure under the 4th amendment
- Force used to protect selves, others and to prevent escape

District Court Opinion

- “...the key question of material fact in this case is whether any of the officers were in a position to be in reasonable apprehension of serious physical injury.”
- “...there are genuine disputes in this case as to where the officers were standing relative to Waterman’s vehicle at the moment of acceleration.”

Appellate Court Opinion

- “....the critical reality here is that the officers did not have even a moment to pause and ponder [the] many conflicting factors.”
- Considering the split-second nature of [their] decision “we conclude as a matter of law that [the officers] had probable cause to believe that [the] oncoming vehicle posed an immediate threat of imminent harm....”

Two Issues to Consider

- In the trial court: *The Role of Expert Witnesses* – see The Police Chief, June 2004 at p. 48
- In the appellate court: The use of force by continuing to fire shots after the vehicle has passed is constitutionally *unreasonable*

Our Litigation Challenge

- Use the in car video footage to our advantage
- Show the perspective of the officer on the scene
- Make it easy for the court to review/understand the facts
- Reduce the volume of the record
- Comply with the court's electronic filing requirements

Technical Support

- Executive Exhibits, Towson MD
- www.executiveexhibits.com
- Packer Engineering, Inc., Offices in Illinois, Michigan and Maryland
- www.packereng.com

