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The United States Supreme Court Abandons the “Moment of Threat” Analysis in Police Deadly Force Cases

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In a rare unanimous opinion the United States Supreme Court recently retreated from the “moment of threat” analysis when evaluating police officer use of deadly force cases, finding that it conflicted with the totality of circumstances analysis applicable for assessing the reasonableness of the use of force by law enforcement.¹ This holding requires courts to now consider all the relevant circumstances, including facts and events leading up to the “climactic moment.”

This case arose from a fatal police shooting of a motorist fleeing a traffic stop. An officer on routine patrol received a BOLO about a vehicle with outstanding toll violations. The officer spotted the vehicle and initiated a traffic stop. The driver informed the officer that he did not have his license with him and that the vehicle was a rental in his girlfriend’s name. The officer commented that he smelled marijuana and told the driver to stop “digging around” after the driver rummaged through some papers in side the car. The driver volunteered he might have identification in the truck and opened it from his seat. The officer instructed the driver to exit the car, but he did not. Instead, he started the car. The officer drew his firearm and as the car began to move forward, jumped onto the doorsill while giving commands ordering the driver not to move. The officer fired two shots into the vehicle, fatally wounding the driver.

The driver’s mother filed suit alleging the officer violated the driver’s Fourth Amendment by Using excessive force against him. The District Court granted summary judgment on behalf of the officer, finding that where the court evaluated the use of deadly force, it must narrowly focus on the situation then existing at the moment of the threat that sparked the deadly shooting. In this case, the Court identified that time as the two seconds before the officer fired his weapon which included the time in which the officer was on the doorsill. At that moment, the court held that an officer could reasonably believe his life was in danger or that he was at risk of serious harm. The appellate court affirmed, also applying the moment of threat analysis, in other words, finding that the events leading up to the shooting, including the actions the officer took, were simply irrelevant. Applying this analysis,

¹ *Barnes v. Fenix*, No. 23-1239, 2025 WL 1401083 (2025).

summary judgment was affirmed, however, one judge, writing in a concurring opinion, expressed concern that the moment of threat standard conflicted with the Fourth Amendment's totality of circumstances analysis, and, if the later standard was applied, he would have found the use of force unreasonable. The Supreme Court accepted the case for review and held the moment of threat analysis improperly narrowed the inquiry from the broader, totality of circumstances.

In reaching its decision, the Court recounted the well-settled tenets of Fourth Amendment analysis that an evaluation into the reasonableness of police force requires analyzing the totality of circumstances and that there is no "easy-to-apply legal test" or on/off switch." Instead, the Fourth Amendment requires the court to "slosh its way through" a "factual morass." Stated another way, the determination of whether the use of force was objectively reasonable requires a careful attention to the facts and circumstances relating to the incident as then known to the officer. These non-exhaustive factors are already well-known to well-trained law enforcement officers and include, but are not limited to: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the officers or others; and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight.² Indeed, the IACP National Consensus Policy on Use of Force and many local agencies accreditation approved policies expressly rely on these so-called *Graham* factors.

Under this new paradigm, an officer's conduct leading up to and during a force encounter may be analyzed to evaluate whether the officer's use of force was objectively reasonable, and therefore compliant with the Fourth Amendment. While the Court did not address how an officer's conduct leading up to the use of deadly force can impact the objective reasonableness of the force application, it certainly opened the door to scrutinize officer mistakes that result in an officer involved shooting. It is yet to be determined how the courts will reconcile this open door with the existing law that prevents the courts from second guessing officers who are forced to make split second decisions in life or death situations while exercising the benefit of 20/20 hindsight from the safety of judicial chambers. What is clear is that law enforcement officers, managers, and trainers, should ensure their conduct, policies, and training programs reflect this new standard.

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² *Graham v. Connor*, 490 U.S. 396 (1989).