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TRAINING BULLETIN

SUPREME COURT GRANTS BROADER IMMUNITY TO POLICE IN VEHICLE PURSUITS

By: Michael P. Stone, Esq. and Muna Busailah, Esq.

On November 9, 2015, the United States Supreme Court issued its opinion in the case of *Mullenix v. Luna (Mullenix)* (No. 14-1143). The main issue before the Court was whether an officer is entitled to qualified immunity where said officer shot at a vehicle in a high-speed pursuit. The Court ruled that the officer, based on existing precedent, had not acted unreasonably, “beyond debate”, in those circumstances and therefore was protected from civil lawsuits on grounds of qualified immunity.

The underlying case involved a highway pursuit between suspect Israel Leija and the Texas Police Department (“TPD”). The TPD followed Leija to a restaurant with a warrant for his arrest. When the TPD approached Leija and informed him he was under arrest, Leija sped off in his vehicle and headed for Highway 27 with the TPD in pursuit. Twice during the chase, Leija called the police dispatcher

and threatened to shoot at police officers if they did not abandon their pursuit. The dispatcher relayed the threats to the officers involved in the pursuit and also reported that Leija might be intoxicated.

During the pursuit, the TPD set up spike strips at three separate locations. Trooper Chadrin Mullenix responded to the pursuit and intended to set up a spike strip under an overpass bridge. However, upon learning of the other spike strip locations, Mullenix decided to pursue another tactic: shooting at Leija’s vehicle in order to disable it. Mullenix had not received training in this tactic and had not attempted it before, but he radioed the idea to his supervisor. Before he was able to receive a response, Mullenix exited his vehicle and took up a shooting position on the bridge with his rifle. As Leija approached the overpass, Mullenix fired six rounds

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at his vehicle and hit Leija four times in his upper body, killing him.

Leija's estate filed a civil suit against Mullenix, claiming Mullenix violated the Fourth Amendment by using excessive force. Mullenix moved for summary judgment on the ground of qualified immunity. The District Court denied the motion and the Fifth Circuit Court of Appeals affirmed. The Supreme Court granted certiorari on the issue of qualified immunity and reversed, holding that Mullenix did not act unreasonably given the circumstances.

Under the doctrine of qualified immunity, officers are shielded from liability as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable officer would have known. The Court stated the relevant inquiry is whether Mullenix acted unreasonably in the circumstances he was presented *based on existing precedent*.

To this end, the Court compared previous cases involving use of force against a fleeing suspect. In *Brosseau v. Haugen*, 543 U.S. 194 (2004), an officer shot at a driver who had not yet driven his car in a dangerous manner to prevent possible harm to other officers and civilians in the area. In *Scott v. Harris*, 550 U.S. 372 (2007), an officer rammed into a fleeing driver in order to prevent injury to others in the area. In *Plumhoff v. Rickard*, 572 U.S. ____ (2014), an officer fatally shot a fugitive who was intent on resuming a chase. In all three cases, the

Court held that the use of deadly force was not unreasonable given the circumstances. The Court noted that analysis in each of these cases is inherently a fact-specific inquiry, not susceptible to bright-lines.

In the present case, the Court considered that while Leija did not pass as many drivers as in the previous examples, he had verbally threatened to kill police officers. Furthermore, he was driving at reckless speeds of up to 110 miles per hour. The danger posed to other police officers and civilians was just as great compared to the previous cases. Thus, the Court held that Mullenix acted reasonably given the circumstances and reversed the lower court's decision denying qualified immunity.

The ruling in *Mullenix* is important because it affirms the reasonableness of deadly force in vehicle pursuits. However, officers are still strongly cautioned because each case is extremely fact specific and qualified immunity will not be granted unless exigent circumstances exist for the use of deadly force. We advise officers to proceed with caution when using deadly force against fleeing suspects and follow their department policy.

Michael P. Stone is the firm's founding partner and principal shareholder. He has practiced almost exclusively in police law and litigation for 35 years, following 13 years as a police officer, supervisor and police attorney.

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