US Supreme Court hears oral arguments in police killing of unarmed driver and passenger

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On Tuesday, lawyers in the case of *Plumhoff v. Rickard* presented arguments before the US Supreme Court on the propriety of a police shooting that killed the driver and passenger of a car after a high-speed chase. The justices seemed inclined to find that the defense of qualified immunity protected the officers involved.

Three video cameras from different police vehicles recorded the pertinent events. On July 18, 2004 in West Memphis, Arkansas, a police officer pulled over a vehicle occupied by Donald Rickard, who was behind the wheel, and his passenger, Kelly Allen, for having a broken headlight. At some point after the officer demanded that he exit the vehicle, Rickard drove away from the scene, and the officer followed in pursuit.

Other police vehicles joined the chase, saying that at times the Rickard vehicle reached speeds in excess of 100 miles per hour and swerved around traffic in a dangerous manner. Officer Vance Plumhoff drove the police car leading the chase, and stated over police radio, “he just tried to ram me.” Another officer instructed Plumhoff to continue the chase and to “see if you can get in front of him.”

The pursuit continued into nearby Memphis, Tennessee, where contact occurred between the Rickard vehicle and a police vehicle. Some of the officers involved testified that after this initial contact, the Rickard vehicle aimed toward and struck officer Plumhoff’s vehicle, but the plaintiff’s attorneys argued that this was as a result of momentum rather than malice.

Ultimately, the Rickard vehicle was surrounded on three sides by police cars in a parking lot in a residential neighborhood. Several other police cars were present that were not moved in to further block the Rickard vehicle’s escape. One officer approached the passenger side front window and knocked on the glass. Officer Plumhoff drew his pistol, approached the driver side front window and fired three shots at Rickard. When the Rickard vehicle pulled backwards and apparently tried to flee, police fired 12 more bullets, killing both occupants.

The crux of the plaintiffs’ case arises out of section 1983 of the Civil Rights Act of 1964, which allows a lawsuit against a law enforcement officer who violates a constitutional right. The Act and section 1983 were seen at the time of their passage, in response to the civil rights movement, as essential legal tools for combating official discrimination. The so-called “1983 suit” has always had limitations, most notably the legal defense of qualified immunity.

The latter doctrine derives from the medieval English legal principle of sovereign immunity, summarized best in the adage, “the King can do no wrong.” That is, common tort claims like negligence, slander, battery etc., did not apply to the King, and he was immune from them as a matter of law. The US federal and state governments retain this general principle in relation to lawsuits against governmental authorities, only granting certain waivers under specific circumstances and spelled out in federal code or state statutes.

Under section 1983, law enforcement officers acting under color of state law are said to have a qualified immunity, which, according to American constitutional jurisprudence spanning several decades means that officers can only be found liable for violations of constitutional rights which are clearly established in the law at the time of the alleged violation. In other words,

police need not be familiar with each and every nuance of developing and evolving constitutional jurisprudence. For example, a police officer enforcing a state law banning abortions before the landmark case *Roe v. Wade* was decided and found that the US constitution protects the right to abortion could not be sued in tort for this action.

The justices of the Supreme Court pressed hard for evidence that the police in *Rickard* had in fact violated a "clearly established" constitutional right. Justice Stephen Breyer, one of the moderates on the Court, wondered whether the officers were obliged to use nonlethal force, such as shooting out tires, before shooting to kill the driver.

Some of the justices intimated that the "clearly established" aspect of the relevant analysis was not implicated because the hail of bullets killing the unarmed driver and his passenger did not present any violation of a constitutional right in the first place. In that light, Obama appointee Justice Sonia Sotomayor asked the plaintiff's attorney, "What was wrong with the 12 shots fired at the car as it was driving away?"

All of the justices agreed that shooting the unarmed driver could be justified by the dubious prospect that he would have otherwise resumed a dangerous attempt at evasion, thereby endangering the public. The justices appeared unmoved, however, about the prospect that members of that same public would be injured by 15 bullets fired in a residential neighborhood.

The Obama administration sent Assistant Solicitor General John F. Bash to argue its position, which supported application of the qualified immunity doctrine. This move, as well as the general tenor of the high court, signify a broad deference to an increasingly brutal and out-of-control gendarmerie. In the end, both the Obama administration and the justices on the Supreme Court represent the interests of a narrow financial elite, which has infinitely more to fear from a police force that has been restrained than from the killing of an unarmed civilian and an innocent passenger for a traffic violation.

It is difficult to predict exactly how the Court will rule in this case. As Lyle Denniston of the well-known Scotus (Supreme Court of the United States) blog pointed out, the Court could remand the case to the 6th Circuit Court of Appeals for further proceedings. Both the trial court and the 6th Circuit found that qualified immunity did not apply.

That the case has reached the highest court in the US is itself significant. The Supreme Court may create a "shoot first" rule for police involved in high-speed chases.

Anyone familiar with run-of-the-mill American cop dramas, ubiquitous on television and in film, can recall a protagonist police officer being put through the paces for some sort of misconduct. The cop will invariably confide to a coworker or an attorney, "I should have just shot the bastard," thus killing a key witness and punishing the wrongdoer.

Depending on the outcome of *Rickard*, "just shoot the bastard" could become the very letter of the law.