



LEGAL UPDATE

June 2024 – September 2024

The following updates are on the topic of use of force by officers. A brief summary of each case is provided below. Be advised that case law is complex and fact dependent and may be narrowly tailored in some circumstances. For that reason, each case title has the link to the case decision which will provide all of the pertinent facts for each case. Additionally, at the end of each case there is a link for any associated video if available.

Date of Decision

Case Summary (Link in the title):

June 07, 2024



[CALONGE V. CITY OF SAN JOSE](#)

San Jose Police Department

On October 31, 2019, the San Jose Police Department responded to a report of someone brandishing a gun (it is important to note that one caller expressed concern for the safety of students of a nearby high school that just released its students around the time of the call). That person was decedent, Francis Calonge, who suffered from schizophrenia. As 3 different officers started shouting different commands, Calonge paused, crossed the street and began heading the opposite direction of the officers and generally towards a near by school. Just over one minute elapsed from when Officer Carboni exited his patrol car and when he fired his gun, striking Calonge in the heart.

The Ninth Circuit held that the use of deadly force against Calonge walking down the street carrying a gun in his waistband, posing no immediate threat, and failing to comply with conflicting commands violated [the] Fourth Amendment. The officers never instructed Calonge to stop or attempt to arrest him, as such. The court held that a jury could reasonably conclude that the officers violated the Fourth Amendment by shooting him in the absence of any immediate threat. Lastly, the court noted that no officer warned Calonge that deadly force would be used. Therefore, the grant summary of judgement was reversed to Officer Carboni on the Fourth Amendment claim and remanded for further proceedings.

[Associated video](#)

Note: Officers should remember that they should give warnings when feasible before using force in accordance with GO 580.02 and review the provisions of Penal Code §835.

July 11, 2024



[ROSENBAUM V. CITY OF SAN JOSE](#)

San Jose Police Department

On September 10, 2019, the San Jose Police Department responded to a domestic violence report at Rosenbaum's partner's home. Prior to the officers entering the house, they were made aware of Rosenbaum's firearm ownership and that he was under the influence of alcohol or narcotics. After announcing their presence, Officer Dunn released K9 Kurt to clear the first floor of the home. Rosenbaum was on the second floor and officers instructed him to come down the stairs and that he was under arrest. Rosenbaum kept asking why he was under arrest. Officers warned him if he did not come down the stairs, a police dog would

be sent upstairs and bite him. K9 Kurt was ordered upstairs and when officers made their way, Rosenbaum was in full surrender and unarmed.

The Ninth Circuit ruled that the City of San Jose used excessive force when they deployed a police dog that bit Rosenbaum for more than 20 seconds after he had already surrendered. It was established that the San Jose Police Officers violated Rosenbaum's Fourth amendment rights when they allowed the K9 to continue biting the suspect after he was under officer's control and fully surrendered.

In addition, the Court held that allowing the police dog to bite Plaintiff for over twenty seconds was a clearly established Fourth Amendment violation, therefore, the bystander officers as well as the canine officer were not entitled to qualified immunity as to that claim.

Note: Officers should remember that they are required to intercede in cases of excessive force when feasible and act in accordance with General Order 580.07 and Government Code § 7286.

July 30, 2024

[SCOTT V. SMITH](#)

Las Vegas Metropolitan Police Department

On March 3, 2019, Roy Scott called the police to report multiple assailants outside of his apartment. Dispatch notified the officers that Scott was possibly mentally ill. Scott would not open the door and asked officers to break down the door. Officers told him that they would not break down the door. After 7 minutes of asking him to come out, Scott opened the door. He came out holding a metal pipe and dropped it when officers asked him to do so. Officers asked if he had any other weapon and Scott gave one of the officers a knife with the handle out without making any threatening gestures. Scott told officers he had schizophrenia and wanted to be put in the "car." Officers concluded that he met the qualifications for a medical hold for his mental health and safety. Officers then began to grab his arms to cuff him and ended up taking Scott to the ground.

Officer Huntsman used bodyweight compression on Scott's back and neck during and shortly after handcuffing him. While Smith restrained Scott's lower body, Huntsman kept his bodyweight on Scott's back and neck for about one to two minutes while Scott's pleas turned increasingly incoherent and breathless. Scott was pronounced dead after paramedics removed him from the scene. Scott's death was ruled to be caused by restraint asphyxia. The court held that Officer Smith and Huntsman were not justified in using deadly force against Scott, a mentally ill person who was not suspected of committing a crime and presented little or no danger. The court ruled that, based upon the undisputed and disputed facts, there were alternative less forceful tactics that the officers could have used as Scott posed no threat to anyone or himself, thus, there was no immediate need to take him into custody. The court also, held that the use of bodyweight compression was greater than reasonable force under the circumstances concluding that officers were not entitled to qualified immunity on the Fourth Amendment excessive force claim.

[Associated video](#)

Note: Officers should remember that SPD training and Government Code § 7286.5(b)(4); (b)(4) "prohibit any action in which pressure or body weight is unreasonably applied against a restrained person's neck, torso, or back..."

Of note, in cases for summary judgement, the defendant(s) (generally the officers or government entity) must prove that they did not violate any clearly established case law. If the court declines to find for summary judgement it does not necessarily mean that the officers did something wrong but, that the court believes there are sufficient facts for the case to go to trial for a jury to decide; and that the law was clearly established at the time of the incident. For that reason, officers should carefully evaluate their conduct in similar circumstances. Please feel free to reach out to the Compliance Team with any questions or any cases of interest for future editions.