



## POINTING A GUN, EXCESSIVE FORCE AND THE FOURTH AMENDMENT



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Can simply pointing a gun at persons located at the scene of a search warrant be considered excessive force? The Seventh Circuit Court of Appeals had to answer that very question in *Baird v. Renbarger*<sup>i</sup>. In this case, an officer with the Shelbyville Police Department was dispatched to Baird's automobile shop to conduct a VIN verification on a vehicle owned by Baird. The officer verified the VIN, although he believed it had been altered.

When the officer returned to the police station, he obtained a search warrant for the vehicle to further examine the VIN. Then next day, he and two other Shelbyville police officers, two Indianapolis police officers and an investigator from the National Insurance Crime Bureau (NICB) went to Baird's shop to execute the search warrant. Officer Renbarger from the Shelbyville Police Department carried a 9mm submachine gun during the execution of the search warrant.

When the officers entered the shop, Officer Renbarger, pointing his submachine gun, ordered everyone to the center of the building and had them sit on the floor. He then went into some surrounding shops and a warehouse and had the occupants, including a group of Amish men, join the others. Everyone was completely compliant.

When the officer's located the car at issue, the NICB investigator examined the VIN and determined that it had not been altered. Everyone was released and the officers left the scene.

Baird, and others at the scene, filed suit against Officer Renbarger for violating their Fourth Amendment right to be free from unreasonable seizures, in other words, excessive force. The district court found that it was "objectively unreasonable for Officer Renbarger to round up and detain the individuals in Joe Baird's shop by aiming a submachine gun at them."<sup>iii</sup> The officer appealed to the Seventh Circuit Court of Appeals.

The issue before the Seventh Circuit was *whether it was objectively unreasonable to seize and the individuals in and around Baird's shop by pointing a submachine gun at them.*

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The lead United States Supreme Court case regarding whether a particular use of force is objectively reasonable is *Graham v. Connor*.<sup>iii</sup> In *Graham*, the court stated that there are three factors that should be considered when evaluating whether a use of force was “objectively reasonable.” The three factors are as follows:

- The severity of the crime at issue;
- Whether the suspect poses an immediate threat to the safety of the officers or others; and
- Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.<sup>iv</sup>

The Seventh Circuit Court of Appeals then applied the facts of Baird’s case to the three factors from *Graham*. First, the court noted that the crime at issue, particularly altering a VIN, is a non-violent crime. The court stated “this is a far cry from crimes that contain the use of force as an element, crimes involving the possession of illegal weapons, or drug crimes, all of which are associated with violence.”<sup>v</sup>

As to the second factor from *Graham*, the court said that there was no reason to suspect that there was a threat to the officers involved. The court noted that officers had been at that location before and they made no mention of any suspected danger posed by the suspects. Additionally, there was no reason articulated to suspect that any of the subjects were known to be armed or dangerous.

As to the third factor from *Graham*, the court noted that none of the suspects resisted detention or attempted to flee.

Officer Renbarger argued that there was the potential for danger because he did not know the identities of all those on the scene and that he was outnumbered. However, the court stated “[the officer’s] subjective concerns do not transform this setting into one calling for such a heavy-handed use of force.”<sup>vi</sup>

The Seventh Circuit Court of Appeals then examined some of their precedent involving the pointing of guns. In *Jacobs v. City of Chicago*, the court held that pointing a gun at an elderly man’s head for ten minutes after realizing that he was not the subject of their investigation and after the man offered no resistance was disproportionate to any danger the man presented to the officers or the community.<sup>vii</sup> Additionally, in *McDonald v. Haskins*, the court held that pointing a gun at a nine year old while threatening to pull the trigger was objectively unreasonable.<sup>viii</sup> Lastly, the court cited numerous cases from other circuits that have held similarly.<sup>ix</sup>

The court also noted that, often, it is objectively reasonable for officers to point guns at subjects that they detain. The court stated

**while police are not entitled to point their guns at citizens when there is no hint of danger, they are allowed to do so when there is reason to fear danger.”<sup>x</sup>**

For example, in *Williams v. City of Champaign*, the court found it reasonable to point guns at someone whom they reasonably believed may have committed a double robbery moments before.<sup>xi</sup> Further, in *L.A. County v. Rettele*, the United States Supreme Court found it objectively reasonable to point guns and detain subjects suspected of a non-violent crime, but known to own a handgun.<sup>xii</sup> Additionally, in *Muehler v. Mena*, the United States Supreme Court held that it was reasonable to point guns at and detain people at a location of search warrant that concerned a drive-by shooting by

gang members who were known to be armed.<sup>xiii</sup> The court also noted precedent from other circuits that have held that pointing a gun when there is a reasonable belief of danger or violence to police was constitutionally permissible.<sup>xiv</sup>

In light of the application of the factors in *Graham* to the facts of this case, and the body of case law based on facts similar to the *Baird* case, the Seventh Circuit Court of Appeals stated “**pointing a gun at a compliant adult in a non-threatening situation, as in this case, can also constitute excessive force.**”<sup>xv</sup> As such, Officer Renbarger was not entitled to qualified immunity.

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<sup>i</sup> 576 F. 3d 340 (7<sup>th</sup> Cir. 2009)

<sup>ii</sup> *Id.* at 343

<sup>iii</sup> 490 U.S. 386 (1989)

<sup>iv</sup> *Id.* at 396

<sup>v</sup> *Baird*, 576 F. 3d at 344

<sup>vi</sup> *Id.*

<sup>vii</sup> 215 F. 3d 758 (7<sup>th</sup> Cir. 2000)

<sup>viii</sup> 966 F. 2d 292 (7<sup>th</sup> Cir. 1992)

<sup>ix</sup> *Baird*, 576 F. 3d at 346 (citing Other circuits have also held that pointing guns at persons who are compliant and present no danger is a constitutional violation. See, e.g., *Motley v. Parks*, 432 F.3d 1072, 1089 (9th Cir. 2005) (*en banc*) (holding an infant at gunpoint constitutes excessive force); *Robinson v. Solano County*, 278 F.3d 1007, 1015-16 (9th Cir. 2002) (*en banc*) (pointing a gun at an unarmed suspect who poses no [\*\*14] danger constitutes excessive force); *Holland v. Harrington*, 268 F.3d 1179, 1192-93 (10th Cir. 2001) (holding children at gunpoint after the officers had gained complete control of the situation "was not justified under the circumstances"); *Baker v. Monroe Township*, 50 F.3d 1186, 1193-94 (3d Cir. 1995) (detention at gunpoint violated the Fourth Amendment as there was "simply no evidence of anything that should have caused the officers to use the kind of force they are alleged to have used"). We note that these cases so often involve children because they are much less likely to present the police with a credible threat. In other words, the unreasonableness of the gun-pointing is more apparent in these cases, though pointing a gun at a compliant adult in a non-threatening situation, as in this case, can also constitute excessive force.

<sup>x</sup> *Id.*

<sup>xi</sup> 524 F. 3d 826 (7<sup>th</sup> Cir. 2008)

<sup>xii</sup> 550 U.S. 609 (2007)

<sup>xiii</sup> 544 U.S. 93 (2005)

<sup>xiv</sup> *Baird*, 576 F. 3d at 346 (citing See, e.g., *Aponte Matos [\*347] v. Toledo Davila*, 135 F.3d 182, 191-92 (1st Cir. 1998) (individual attempted to enter house that was being searched for weapons); *Sharrar v. Felsing*, 128 F.3d 810, 822 (3d Cir. 1997) (suspect [\*\*15] was believed to have a handgun); *Edwards v. Giles*, 51 F.3d 155, 156-57 (8th Cir. 1995) (suspect fled police); *Courson v. McMillian*, 939 F.2d 1479, 1496 (11th Cir. 1991) (drug crime suspects outnumbered police officer, were intoxicated, and one was verbally aggressive); *Collins v. Nagle*, 892 F.2d 489, 495-97 (6th Cir. 1989) (individual approached scene in which officers were dealing with uncooperative suspects).

<sup>xv</sup> *Id.*