

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2011

4
5 (Argued: October 14, 2011 Decided: April 16, 2012)

6 Docket Nos. 09-5025-cv(L), 10-3008-cv(CON)

7 - - - - -
8 JOHN TERRANOVA, as the Administrator of the Estate of NICHOLAS
9 TERRANOVA,

10 Plaintiff-Appellant,

11
12 DEVIN BALDWIN and LAMAR OLIVER,

13 Consolidated-Plaintiffs-Appellants,

14 v.

15 STATE OF NEW YORK and KEVIN QUINTERO, New York State Trooper,

16 Defendants,

17
18
19 RAFAEL TORRES, New York State Trooper and AARON RILEY, New York
20 State Trooper,

21 Defendants-Appellees.*

22 - - - - -
23
24 B e f o r e: WINTER, LYNCH, and CARNEY, Circuit Judges.

25 Appeal from a judgment entered in the United States

26 District Court for the Southern District of New York (Cathy

* The Clerk of the Court is instructed to conform the caption in accordance herewith.

1 Seibel, Judge), following a jury verdict finding that
2 defendants-appellees did not use unreasonable force in
3 executing a traffic stop. Appellants principally challenge the
4 district court's decision not to give a jury instruction on the
5 use of deadly force. We affirm.

6 MICHAEL J. GRACE, Grace & Grace,
7 Yorktown Heights, New York, for
8 Plaintiffs-Appellants.
9

10 OREN L. ZEVE, Managing-Administrative
11 Assistant Solicitor General (Barbara
12 D. Underwood, Solicitor General,
13 Benjamin Gutman, Deputy Solicitor
14 General, and Richard O. Jackson,
15 Assistant Solicitor General, of
16 counsel, on the brief), for Eric T.
17 Schneiderman, Attorney General for the
18 State of New York, for Defendants-
19 Appellees.

20 WINTER, Circuit Judge:

21 John Terranova, Devin Baldwin, and Lamar Oliver appeal
22 from a jury verdict finding New York State Troopers Raphael
23 Torres and Aaron Riley (collectively "Troopers") not liable for
24 injuries that appellants, and, with respect to Terranova, the
25 mortal injuries that appellant's decedent Nicholas Terranova,
26 sustained during a traffic stop. Appellants claim that the
27 Troopers violated appellants' Fourth Amendment right to be free
28 from unreasonable seizure through the use of excessive force.
29 We hold that the district court did not err by declining to
30 instruct the jury regarding the use of "deadly force" in
31 addition to a correct instruction on excessive force.
32 Affirmed.

1 BACKGROUND

2 On the night of June 2, 2003, Riley was stationed on the
3 Sprain Brook Parkway and received reports that motorcyclists
4 were speeding and driving erratically while traveling north on
5 the parkway. Speculating that the motorcyclists might return
6 south, Riley enlisted the help of Torres to assist in stopping
7 the motorcyclists if they returned southbound. Torres took a
8 position south of Riley, who positioned himself to alert Torres
9 to stop traffic if the motorcyclists passed. The Troopers
10 testified that this plan was conceived to avoid a potentially
11 dangerous high-speed chase.

12 At approximately 11:30 p.m., several motorcycles
13 approached Riley's position and slowed to approximately 60 mph
14 when they saw him on the side of the road. This group included
15 appellants and a friend, Kyle Figueroa. After passing Riley,
16 appellants increased their speed to greater than 80 mph.
17 Figueroa was going significantly faster. The speed limit was
18 55 mph.

19 When the motorcyclists passed, Riley radioed to Torres to
20 stop traffic, and Riley followed the motorcyclists. Torres
21 chose a portion of the parkway with a long straightaway where
22 vehicles could see his lights and stop safely. He then drove
23 in a serpentine motion to slow traffic and brought it to a
24 stop, causing several vehicles to clog the right and center
25 lanes. In the left lane, Figueroa, who had reached the

1 roadblock faster than appellants, had also come to a stop.
2 According to Torres, none of the vehicles had any difficulty
3 stopping.

4 As appellants approached the traffic stoppage, they saw
5 the brake lights of the stopped vehicles and the emergency
6 lights on Torres's cruiser. Baldwin, who was in front, had
7 slowed to between 30 and 35 mph as he approached Figueroa in
8 the left lane. When Baldwin was approximately 15-20 feet from
9 Figueroa, a BMW that had been stopped in the center lane
10 abruptly moved into the left lane, and Baldwin collided with
11 that vehicle. Terranova, who was behind Baldwin, drove into
12 the median to avoid the collision and came to stop on the
13 grass. Oliver, who was behind Terranova, also drove into the
14 median to avoid the accident and jumped off his motorcycle.
15 Oliver's unmanned motorcycle struck Terranova in the chest, and
16 Terranova died from the injuries he sustained.

17 Both Figueroa and the driver of the BMW testified that
18 Torres directed the BMW to enter the left lane, but Torres
19 stated that the BMW changed lanes of its own accord.

20 Appellants then brought this action seeking damages under
21 42 U.S.C. § 1983 for violation of their Fourth Amendment
22 rights, claiming that they were seized without justification
23 and that the Troopers used excessive force. The case proceeded
24 to trial.¹

¹ The State of New York and Trooper Quintero were dismissed as defendants prior to trial and are not a part of this appeal. See Terranova v. New York, 144 F. App'x 143, 147 (2d Cir. 2005) (upholding dismissal of claims against the State of New York); Terranova v. Torres, 603 F. Supp. 2d 630, 631 n.2 (S.D.N.Y. 2009) (granting summary judgment in favor of Trooper Quintero).

1 During trial, the district court originally proposed to
2 give instructions to the jury that included a separate "deadly
3 force" charge with regard to the factors outlined by the
4 Supreme Court in Tennessee v. Garner, 471 U.S. 1 (1985), as
5 preconditions to the lawful use of deadly force. However, the
6 district court ultimately removed that instruction, concluding
7 that, under Scott v. Harris, 550 U.S. 372 (2007), it was
8 inappropriate to instruct the jury on the Garner factors in
9 cases with dissimilar facts. The resulting jury instructions
10 informed the jurors that they were to decide whether the force
11 used was objectively reasonable and specified the various
12 factors that might affect that determination, such as the
13 severity of the violation, the threat posed by the appellants,
14 whether the appellants attempted to evade the police, and what
15 other options, if any, were available to the Troopers.

16 The jury rendered a verdict in favor of the Troopers.
17 Appellants then filed motions for judgment notwithstanding the
18 verdict and for a new trial, which were denied. This appeal
19 followed.

20 DISCUSSION

21 We review jury instructions de novo with regard to whether
22 the jury was misled or inadequately informed about the
23 applicable law. Henry v. Wyeth Pharm., Inc., 616 F.3d 134, 146
24 (2d Cir. 2010).

1 Claims that the police used excessive force are "judged
2 under the Fourth Amendment's 'objective reasonableness'
3 standard." Brosseau v. Haugen, 543 U.S. 194, 197 (2004)
4 (quoting Graham v. Connor, 490 U.S. 386, 388 (1989)). This
5 requires a "balancing of the . . . intrusion on 'the
6 individual's Fourth Amendment interests' against the
7 countervailing governmental interest at stake," Graham, 490
8 U.S. at 396 (quoting Garner, 471 U.S. at 8), and involves the
9 consideration of factors such as "the severity of the crime at
10 issue, whether the suspect poses an immediate threat to the
11 safety of the officers or others, and whether he is actively
12 resisting arrest or attempting to evade arrest by flight." Id.

13 Appellants make no claim that the district court's
14 instructions failed to convey the proper standards as to
15 objectively reasonable force. However, appellants argue that
16 Garner established constitutional preconditions for the use of
17 deadly force and that, by failing to instruct the jury on the
18 Garner factors, the court left the jurors inadequately informed
19 as to the law. We disagree.

20 In Garner, a police officer shot a fleeing suspect. 471
21 U.S. at 3-4. The suspect, who was "young, slight, and
22 unarmed," had broken into a house, and when the police arrived,
23 the suspect attempted to flee. Id. at 4, 21. Fearing that the
24 suspect, who was climbing a fence, would successfully escape,
25 the officer shot him in the back of the head. Id. at 4. In

1 concluding that the officer's use of force was unreasonable,
2 the Court stated: "[I]f the suspect threatens the officer with
3 a weapon or there is probable cause to believe that he has
4 committed a crime involving the infliction or threatened
5 infliction of serious physical harm, deadly force may be used
6 if necessary to prevent escape, and if, where feasible, some
7 warning has been given." Id. at 11-12.

8 Following Garner, some courts held that "the Supreme Court
9 . . . established a special rule concerning deadly force,"
10 which could require a separate jury instruction in any case in
11 which police conduct created a substantial risk of death or
12 serious bodily injury. Vera Cruz v. City of Escondido, 139
13 F.3d 659, 661, 663 (9th Cir. 1997), modified, Smith v. City of
14 Helmet, 394 F.3d 689, 705 (9th Cir. 2005) (holding that "deadly
15 force" means all force that creates a substantial risk of death
16 of serious bodily injury rather than force that is reasonably
17 likely to cause death); see also Adams v. St. Lucie Cnty.
18 Sheriff's Dep't, 962 F.2d 1563, 1570-71 (11th Cir. 1992)
19 (applying Garner to a vehicular chase on summary judgment).
20 However, the Court's more recent decision in Scott, involving
21 facts similar to those in the present matter, rejected the view
22 that Garner created a special rule, separate from the usual
23 reasonableness analysis, that applies to any form of police
24 conduct that might possibly result in death or serious injury.

1 In Scott, police officers initiated a high-speed chase in
2 an attempt to stop the plaintiff, who was driving recklessly
3 and at high speeds. 550 U.S. at 379-80. The chase was
4 ultimately terminated when a police officer ran into the rear
5 of the plaintiff's vehicle, causing an accident that resulted
6 in serious injuries to the plaintiff. Id. at 375. There, as
7 here, the plaintiff argued that the Garner factors should
8 determine whether the use of deadly force was appropriate. Id.
9 at 381-82. However, the Court rejected that approach, stating,
10 "Garner was simply an application of the Fourth Amendment's
11 'reasonableness' test . . . to the use of a particular type of
12 force in a particular situation." Id. at 382 (citing Graham,
13 490 U.S. at 388). The Court made clear that consideration of
14 the factors that might have justified the shooting in Garner
15 was not needed in cases involving police actions of less
16 coercion. More specifically, it held that Garner does not
17 apply in cases involving accidents that occur when police
18 attempt to stop a vehicle. See id. at 383 ("Whatever Garner
19 said about the factors that might have justified shooting the
20 suspect in that case, such 'preconditions' have scant
21 applicability to this case, which has vastly different facts.
22 'Garner had nothing to do with one car striking another or even
23 with car chases in general.'" (quoting Adams, 962 F.2d 1563,
24 1577 (11th Cir. 1992) (Edmondson, J., dissenting)).²

² The Court reached this conclusion after acknowledging that the officer's actions placed the plaintiff "at risk of serious injury or death." Id. at 374.

1 We therefore conclude that, absent evidence of the use of
2 force highly likely to have deadly effects, as in Garner, a
3 jury instruction regarding justifications for the use of deadly
4 force is inappropriate, and the usual instructions regarding
5 the use of excessive force are adequate. Id.; see also Penley
6 v. Eslinger, 605 F.3d 843, 850 (11th Cir. 2010) (“[N]one of
7 these [Garner] conditions are prerequisites to the lawful
8 application of deadly force.”); Pasco ex rel. Pasco v.
9 Knoblauch, 566 F.3d 572, 579-80 (5th Cir. 2009) (finding no
10 specific Garner application to car chases and that the inquiry
11 depends instead on what was objectively reasonable); Acosta v.
12 Hill, 504 F.3d 1323, 1324 (9th Cir. 2007) (holding that after
13 Scott, a separate jury charge specifically on the use of deadly
14 force is unnecessary).

15 The present matter is easily distinguishable from Garner
16 given the type of force used -- a traffic stop as opposed to
17 firing a gun aimed at a person. While a traffic stop poses
18 some risks, it is designed only to apprehend suspects and,
19 here, prevent injury to other motorists as well as appellants.
20 It is not designed to achieve those goals by seriously injuring
21 the suspects.

22 The appropriate inquiry is, therefore, whether the force
23 used was objectively reasonable. The absence of a deadly force
24 instruction neither misled the jury nor left them uninformed as
25 to the applicable law.

CONCLUSION

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We have considered appellants' additional claims and find

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them to be without merit. For the foregoing reasons, we

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affirm.