

Peace Officer's "Provocation" Does Not Make Reasonable Use of Force Unreasonable

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A peace officer's reasonable use of force no longer may be challenged by claiming that the officer provoked the violent confrontation that included the use of force. The United States Supreme Court overturned the Ninth Circuit Court of Appeal's "provocation rule." The Supreme Court held that after "a use of force is deemed reasonable" under the proper framework for analyzing excessive force claims, the use of force "may not be found unreasonable by reference to some separate constitutional violation," which had been the interpretation of the Ninth Circuit.

Under the "provocation rule," a peace officer's otherwise reasonable use of force would be deemed unreasonable if the officer 1) "intentionally or recklessly provokes a violent confrontation" and 2) "the provocation is an independent Fourth Amendment violation." In ***County of Los Angeles v. Mendez***, however, the Supreme Court held that the Fourth Amendment provides no basis for the "provocation rule." The Court overturned the Ninth Circuit's rule because "it uses another constitutional violation to manufacture an excessive force claim where one would not otherwise exist."

The operative question in excessive force cases therefore remains "whether the totality of the circumstances justify[es] a particular sort of search or seizure." *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985). To the extent a plaintiff has other Fourth Amendment claims, they must be analyzed separately. Courts may no longer look back in time to see if there was a different Fourth Amendment violation that was somehow tied to the officer's eventual use of force in order to evaluate the reasonableness of the force used.

For further information about this decision or other law enforcement issues, please contact **Jennifer Petrusis**.