***Tennessee v. Garner***, [471 U.S. 1](http://en.wikipedia.org/wiki/Case_citation) (1985)

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Following the American Psychological Guidelines

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Abstract

*Tennessee v. Garner*, [471 U.S. 1](http://en.wikipedia.org/wiki/Case_citation) (1985), was a case in which the [Supreme Court of the United States](http://en.wikipedia.org/wiki/Supreme_Court_of_the_United_States) held that under the [Fourth Amendment](http://en.wikipedia.org/wiki/Fourth_Amendment_to_the_United_States_Constitution), when a law enforcement officer is pursuing a fleeing suspect, he or she may use deadly force only to prevent escape if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. On October 3, 1974, [Memphis Police Department](http://en.wikipedia.org/wiki/Memphis_Police_Department_(Tennessee)) Officers were dispatched to a [burglary](http://en.wikipedia.org/wiki/Burglary) call. Upon arrival the neighbor told the officers that someone was breaking into the house next door. Officer Hymon went behind the house and observed someone running across the yard, the suspect, Edward Garner, attempted to climb a fence and escape. Believing that Garner would certainly flee if he made it over the fence, Hymon shot him, striking Garner in the back of the head. Ten [dollars](http://en.wikipedia.org/wiki/United_States_dollar) and a purse taken from the burglarized house were found on his body.

The Department ruled that Hymon acted according to a [Tennessee](http://en.wikipedia.org/wiki/Tennessee) state [statute](http://en.wikipedia.org/wiki/Statute) and official Memphis Police Department policy authorizing [deadly force](http://en.wikipedia.org/wiki/Deadly_force) against a fleeing suspect. Garner's father then brought suit in the [United States District Court for the Western District of Tennessee](http://en.wikipedia.org/wiki/United_States_District_Court_for_the_Western_District_of_Tennessee). The District Court found the statute, and Hymon's actions, to be constitutional. On appeal, the [United States Court of Appeals for the Sixth Circuit](http://en.wikipedia.org/wiki/United_States_Court_of_Appeals_for_the_Sixth_Circuit) reversed the decision. The case was appealed to the United States Supreme Court where they held that the killing of a fleeing suspect is a "seizure" for the purposes of the Fourth Amendment, and is therefore constitutional only when it is reasonable. The court then found that based on the facts in this case, the Tennessee statute failed to properly limit the use of deadly force by reference to the seriousness of the [felony](http://en.wikipedia.org/wiki/Felony).

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One of the most widely contested and debated actions taken by law enforcement in the United States is the use of deadly force. Officer involved shootings can result in public outrage, scandal for the officer and their department, and feelings of guilt or [depression](http://www.papermasters.com/mood-disorders.html) on the part of the Police officer involved following the shooting. While the courts have ruled and most people understand that the use of deadly force is sometimes necessary, not every officer involved shooting is deemed as justified by the [courts](http://www.papermasters.com/us-supreme-court.html) or public opinion. Courts have consistently ruled that Police officers have authority to use both psychological and physical force to apprehend criminals and solve crimes ([Illinois](http://findarticles.com/p/articles/mi_m0DTI/is_9_28/ai_65283534/?lc=int_mb_1001) v. Perkins, 496 U.S. 292 (1990)). The main argument is not over whether deadly force should be used, but rather, when and under what circumstances it should be used. The right of Police officers to use deadly force was confirmed when the United States [Civil Rights](http://www.papermasters.com/civil_rights.html) Commission released a report, which stated:

*“Police officers possess awesome powers. They perform their duties under hazardous conditions and with the vigilant public eye upon them. Police officers are permitted only a margin of error in judgment under conditions that impose high degrees of physical and mental stress. Their general responsibility to preserve peace and enforce the law carries with it the power to arrest and to use force--even deadly force.”(1999)*

For centuries Police officers in the United States had the authority under the laws of the their state, and it was an accepted practice that a Police officer had both the right and the duty to use all necessary force, even deadly force, to prevent the escape from custody of anyone the officer had reason to believe had committed a felony. Felonies

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encompass many crimes from violent acts to property crimes, and the laws did not distinguish between them when authorizing Police officers to use deadly force. However, these laws all changed after the United States Supreme Court ruled on *Tennessee v. Garner.* In this case the Supreme Court looked at whether it was consistent with the United States Constitution for a police officer to prevent by gunfire the escape of a person who the officer had reason to believe had committed a nonviolent property crime, but was neither armed nor an immediate danger to any person?

The facts in the case of *Tennessee v. Garner*, [471 U.S. 1](http://en.wikipedia.org/wiki/Case_citation) (1985) is as follows: At about 10:45 p.m. on October 3, 1974, [Memphis Police Department](http://en.wikipedia.org/wiki/Memphis_Police_Department_(Tennessee)) Officers Leslie Wright and Elton Hymon were dispatched to answer a [burglary](http://en.wikipedia.org/wiki/Burglary) call. The neighbor, who had made the police call, told the officers upon their arrival at the scene that someone was breaking into the house next door. Officer Hymon went behind the house as his partner radioed back to the station. Hymon witnessed someone running across the yard. The fleeing suspect, Edward Garner, stopped at a 6-foot-high [chain-link fence](http://en.wikipedia.org/wiki/Chain-link_fence). Using his flashlight, Hymon could see Garner's face and hands, and was reasonably sure that Garner was unarmed. The police testified that they believed Garner was 17 or 18 years old; Garner was in fact 15 years old. After Hymon ordered Garner to halt, Garner began to climb the fence. Believing that Garner would certainly flee if he made it over the fence, Hymon shot him. The bullet struck Garner in the back of the head, and he died shortly after an [ambulance](http://en.wikipedia.org/wiki/Ambulance) took him to a nearby [hospital](http://en.wikipedia.org/wiki/Hospital). Ten [dollars](http://en.wikipedia.org/wiki/United_States_dollar) and a purse taken

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from the burglarized house were found on his body. (*Tennessee v. Garner*, 471 U.S. 1 (1985), [I])

Elton Hymon was cleared of any wrongdoing after the City of Memphis determined that Hymon acted according to [Tennessee](http://en.wikipedia.org/wiki/Tennessee) state [statute](http://en.wikipedia.org/wiki/Statute) and official Memphis Police Department policy and procedure authorizing [deadly force](http://en.wikipedia.org/wiki/Deadly_force) against a fleeing suspect. The state statute at the time provided that "if, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to effect the arrest." Garner’s father felt that the shooting of his son was unconstitutional and violated his son’s right to reasonable search and seizure under the Fourth Amendment of the United States Constitution. His argument centered around the fact that he believed that Hymon unreasonably seized Edward Garner’s life because he was shot while being unarmed, showing no threat to the officer of public, and had committed a property crime.

Not satisfied with the outcome of the investigation Garner’s father brought suit in the [United States District Court for the Western District of Tennessee](http://en.wikipedia.org/wiki/United_States_District_Court_for_the_Western_District_of_Tennessee) under the [Civil Rights Act of 1871](http://en.wikipedia.org/wiki/Civil_Rights_Act_of_1871), [42 U.S.C.](http://en.wikipedia.org/wiki/Title_42_of_the_United_States_Code) (1983), naming the [City of Memphis](http://en.wikipedia.org/wiki/Memphis,_Tennessee), its mayor, the Memphis Police Department, its director, and Officer Hymon as [defendants](http://en.wikipedia.org/wiki/Defendant). However, the District Court found the statute, and Hymon's actions, to be constitutional. On appeal, the [United States Court of Appeals for the Sixth Circuit](http://en.wikipedia.org/wiki/United_States_Court_of_Appeals_for_the_Sixth_Circuit) reversed the decision. The Court of Appeals held that the killing of a fleeing suspect is a "seizure" for the purposes of the

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Fourth Amendment, and is therefore constitutional only when it is reasonable. The court then found that based on the facts in this case, the Tennessee statute failed to properly limit the use of deadly force by reference to the seriousness of the [felony](http://en.wikipedia.org/wiki/Felony). Additionally, the court held that the shooting violated the due process clause of the Fourteenth Amendment which prohibits any state from depriving "any person of life, liberty or property without due process of law."

The United States Supreme Court agreed with the Sixth Circuit Court and Garner’s father that apprehension by the use of deadly force is a seizure, creating the legal issue as whether the totality of the circumstances justified the seizure. In order to determine the constitutionality of a seizure the court determined that they must weigh the nature of the intrusion of the suspect's Fourth Amendment rights against the government interests which justified the intrusion. They continued in stating that, “The use of deadly force against a subject is the most intrusive type of seizure possible, because it deprives the suspect of his life, ” and that the state failed to present evidence that its interest in shooting unarmed fleeing suspects outweighs the suspect's interest in his own survival.

The Supreme Court examined the [common law](http://en.wikipedia.org/wiki/Common_law) rule on this matter and its rationale. In common law, which is what the United States’ initial laws were based off of, “…it was perfectly legitimate for law enforcement personnel to kill a fleeing felon. At the time when this rule was first created, most felonies were [punishable by death](http://en.wikipedia.org/wiki/Capital_punishment), and the difference between felonies and [misdemeanors](http://en.wikipedia.org/wiki/Misdemeanor) was relatively large. In modern American law, these distinctions in severity had drastically changed. Furthermore, the

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common law rule was developed before modern [firearms](http://en.wikipedia.org/wiki/Firearm), and most law enforcement officers did not carry [handguns](http://en.wikipedia.org/wiki/Handgun). The context in which the common law rule evolved was no longer valid. White further noted that, “…many jurisdictions had already done away with it, and that current research has shown that the use of deadly force contributes little to the deterrence of crime or the protection of the public.” (*Tennessee v. Garner*, 471 U.S. 1 (1985))

Even after the *Tennessee v Garner* case the use of deadly force is still one of the biggest issues in law enforcement today; although the laws and policies concerning deadly have changed following this decision, and it has become more restrictive in application. There still is a need for deadly force, especially in situations involving dangerous individuals attempting to evade capture. The question is, what is more important, the rights and the safety of the accused or the potential risk to the public presented by a fleeing felon? Most would agree that it is important to find a balance where police are allowed to use the force necessary to apprehend criminal offenders while still protecting their constitutional rights. Some argue that the protection of individual rights should be given a higher priority above the apprehension of criminals, while others suggest that stopping a potentially dangerous felon from escaping into the general public is so important that any means necessary to stop the individual should be employed. This debate was at the center of the *Tennessee VS. Garner* case.

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After the Supreme Court ruled that the shooting was a violation of Garner’s rights and sent it back to the lower courts for review it did not end there. The Garner family wanted a financial settlement which the City of Memphis argued was not permitted because no laws at the time had been broken. This posed a new question, whether a new limitation on police conduct should be applied retroactively in a civil lawsuit. The case of *Garner v. Memphis Police Dept*., 8 F. 3d 358 (1993) was heard in front of the [United States Court of Appeals for the Sixth Circuit](http://en.wikipedia.org/wiki/United_States_Court_of_Appeals_for_the_Sixth_Circuit), where they determined that the City of Memphis could be held financially liable for retroactive civil rights violations. The City of Memphis appealed to the United States Supreme Court, but settled with the Garner family for an undisclosed amount of money before the Supreme Court ruled if they would take the case or not. Garner’s father had passed away before the settlement was agreed upon.

This case takes on more importance than usual for me because I have worked with Leslie Wright’s son on the Memphis Police Department for many years and am friends with him away from the job. I have actually spoken to Leslie Wright several times about this case over a few beers and he has been very open about the incident. Leslie Wright did not witness the actual shooting because he had stayed with the squad car to radio in the latest information, you have to remember that this was before hand-held radios and someone was required to stay in the vehicle while the other officer would make contact with the parties involved. When Wright heard the gunshot from behind the house he

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drew his gun and ran towards the back of the house, on the opposite side that Hymon had gone, thinking that his partner might have been shot. When he turned the corner to the rear of the house he observed Garner hanging over the fence at his mid torso, with his legs and feet on one side and his head and arms on the other side of the fence. At that point Hymon removed Garner from the fence and began to check him for any signs of life. Wright ran back to the front of the house to the squad car to radio in the shooting and request medical services. In later court testimony Hymon stated that, “…he was going to get away because, number one, I couldn't get to him. My partner then couldn't find where he was because, you know, he was late coming around. … I couldn't get to him because of the fence here, I couldn't have jumped this fence and come up, consequently jumped this fence and caught him before he got away because he was already up on the fence, just one leap and he was already over the fence, and so there is no way that I could have caught him." He also stated that the area beyond the fence was dark, that he could not have gotten over the fence easily because he was carrying a lot of equipment and wearing heavy boots, and that Garner, being younger and more energetic, could have outrun him. (*Tennessee v. Garner*, 471 U.S. 1 (1985) [footnote 4])

Wright advised me that at the time of the shooting this was standard practice and occurred frequently across the nation. Wright further stated that the NAACP and other civil rights organizations of the time had complained about these incidents for years without much success. However, they felt that taking up this case would be taken more seriously because Hymon was African-American and there would be less resistance

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from the still predominantly white courts and media. Wright and Hymon both gave numerous statements to the Federal Bureau of Investigation and the Justice Department; neither was ever disciplined because it was within the parameters of their policies at the time. Both retired from the Memphis Police Department many years later and now Hymon is a Pastor at New Hickory Hill M B Church in East Memphis. There are also unconfirmed reports that while Hymon was on vacation in California, several years after the first shooting, that he shot and killed a would be robber attacking someone outside of a hotel.