Spring 2011

Stephanie Miller, Best of Section A, Best Overall

Stephanie Miller

NO. 09-9100

IN THE

Supreme Court of the United States

BEAU RADLEY,

Petitioner,

v.

FAIR COUNTY POLICE DEPARTMENT and
ARTHUR GOODE,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTEENTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

I. Whether Fourth Amendment protection against excessive force extends beyond initial seizure?

II. If the Court were to apply a rule of continuing seizure to the Fourth Amendment protection against the use of excessive force, to what point beyond initial seizure should that protection extend?

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(S)**

UNITED STATES CONSTITUTION AND STATUTES

OTHER MATERIALS

OPINIONS BELOW

The opinion for the United States District Court for the Southern District of Fair is unreported but may be found in the Record at R. 11-13.

The opinion for the United States Court of Appeals for the Fifteenth Circuit is likewise unreported but may be found in the Record at R. 16.

STATEMENT OF JURISDICTION

The court of appeals entered judgment on March 15, 2010. (R. at 16). Petitioner filed his petition for writ of certiorari on May 15, 2010. (R. at 17). This Court granted the petition on October 7, 2010. (R. at 18). This Court's jurisdiction rests on 28 U.S.C. § 1254(1) (2006).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth, Eighth, and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983 are reproduced in an Appendix to this brief.

STATEMENT OF THE CASE

The facts that serve as the basis for this action are as alleged in the February 1, 2009 Complaint (R. at 2-4) and are not contested for purposes of ruling on the legal issues presented. *Cf*. R. at 11-12 (factual allegations as set forth in the Complaint are accepted as true by the District Court for purposes of ruling on the defendant's motion to dismiss).

On September 23, 2008, Petitioner Beau Radley (Radley) was driving home from a business meeting along Highway X in Fair County. (R. at 3). During that drive, Radley was pulled over by John Marlin (Marlin), a police officer employed by Respondent Fair County Police Department (Fair County). *Id.* Marlin, alleging that Radley was driving drunk, insisted that Radley take a breathalyzer test. *Id.* Radley refused the test and was taken into custody by

Marlin. *Id.* Marlin handcuffed Radley's hands behind his back, and Radley was put into the back seat of Marlin's squad car. *Id.* Marlin then took Radley to the Fair Police Station. *Id.*

Upon arrival at the police station, Radley was escorted by Marlin into the booking room and handed off to Respondent Arthur Goode (Goode), a police officer also employed by the Fair County Police Department. *Id.* Marlin left the booking room and left Radley in the sole custody of Goode. *Id.* Radley's arms were still handcuffed behind his back. *Id.* Upon Marlin's exit, Goode called Radley "scum" and "white trash," to which Radley gave no response. *Id.* Radley's handcuffs were removed by Goode for the booking process and, upon completion, were recuffed too tightly. *Id.* Radley complained to Goode that the handcuffs were too tight. *Id.* Goode did nothing to fix the handcuffs. *Id.*

At this point, Marlin returned to the booking room. *Id.* Radley complained to Marlin that the handcuffs were too tight, and Marlin checked and then loosened the handcuffs. *Id.* Goode then escorted Radley, whose hands were still handcuffed behind his back, from the booking room to a holding cell. *Id.* This entire time Radley was again in the sole custody of Goode. *Id.* In the holding cell, Goode pushed Radley to the ground and hit Radley in the back with his knee. *Id.* Goode told Radley that he "shouldn't have embarrassed [Goode]." *Id.* Goode threatened that if he had come back, he would make Radley "regret it." *Id.*

Hours later, when Radley was certain that Goode was off duty, Radley complained about his injuries to one of the officers on duty and was taken to the Fair County Hospital for examination. *Id.* Radley sustained bruising around his wrists from the handcuffs placed on him by Goode, as well as a cut lip and bruising along his jaw from being pushed to the ground while his hands were still handcuffed behind his back. (R. at 4).

On February 1, 2009, Radley filed a complaint against Goode and Fair County in the United States District Court for the Southern District of Fair alleging that Respondents' use of excessive force violated his Fourth and Fourteenth Amendment rights as enforced by 42 U.S.C §1983 (2006). (R. at 2-4). On February 13, 2009, Respondents filed a motion to dismiss the Fourth Amendment component of Radley's 42 U.S.C. § 1983 claim for failure to state a claim upon which relief can be granted. (R. at 5-7). In their motion to dismiss, Respondents argued that Fourth Amendment protection does not extend to arrestees, such as Radley, who have completed the booking process. (R. at 5). Respondents also argued that even if the Fourth Amendment continues to protect beyond the initial seizure, it cannot continue once an arrestee, like Radley, is no longer in the custody of the arresting officer. (R. at 6).

On March 1, 2009, Radley filed a memorandum in opposition to Respondents' motion to dismiss. (R. at 8-10). In his memorandum, Radley argued that the Fourth Amendment protection extends at least until an arrestee, like Radley, has been arraigned of formally charged. (R. at 9).

On March 12, 2009, the United States District Court for the Southern District of Fair, the Honorable Candice Gorder, USDJ, granted Respondents' motion to dismiss. (R. at 11-13). The District Court found that the Fourth Amendment protection continues beyond the initial seizure, but that such protection extends only while the arrestee, such as Radley, remains in the custody of the arresting officer. (R. at 13).

On April 1, 2009, Radley filed a notice of appeal with the District Court. (R. at 14). On April 14, 2009, the United States Court of Appeals for the Fifteenth Circuit granted Radley's appeal to address the question of whether the Fourth Amendment protection against unreasonable searches and seizures extends to an arrestee who is no longer in the custody of the

arresting officer but has yet to be arraigned or formally charged. (R. at 15). On March 15, 2009, the United States Court of Appeals for the Fifteenth Circuit, in a per curiam opinion, affirmed the judgment of the District Court. (R. at 16).

On May 15, 2010, Radley filed his petition for Writ of Certiorari with this Court. (R. at 17). On October 7, 2010, this Court granted Radley's petition for Writ of Certiorari to address the following issues: (1) Whether Fourth Amendment protection against excessive force extends beyond initial seizure; and (2) If the Court were to apply a rule of continuing seizure to the Fourth Amendment protection against the use of excessive force, to what point beyond initial seizure should that protection extend? (R. at 18).

SUMMARY OF THE ARGUMENTS

I.

This Court in *Graham v. Connor* articulated that a Fourth Amendment standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person. However, the question of whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive physical force beyond the point at which arrest ends and pretrial detention begins was expressly left unanswered. Fourth Amendment protection against excessive force clearly extends beyond the initial seizure. This Court has previously defined "seizure" as occurring when, by means of physical force or show of authority, government actors have in some way restrained the liberty of a citizen. An arrestee awaiting arraignment certainly falls under this definition. Interpreting this Court's decision accordingly, a majority of the circuit courts of appeal, including the Fifteenth Circuit Court of Appeals in this case, have adopted a Fourth Amendment "continuing seizure" protection against the use of excessive force, holding

that "seizure" extends beyond the point of arrest. Such an interpretation is most in keeping with this Court's Fourth Amendment jurisprudence.

II.

Fourth Amendment protection extends at least until an arrestee has been arraigned or formally charged. In *Graham*, this Court made clear that a pretrial detainee is protected by the Fourteenth Amendment. However, pretrial detainee status does not begin until post-arraignment, while the individual is awaiting trial. An arrestee awaiting arraignment who has yet to be given the opportunity to appear before a judicial officer for a probable cause determination retains his Fourth Amendment protections. As probable cause has yet to be determined, a more relaxed standard for excessive force is not appropriate for an arrestee. To hold otherwise is contrary to the long standing value of presumed innocence and would violate a key component of our nation's justice system. Moreover, extending Fourth Amendment protection until arraignment provides a workable, bright-line rule, setting a clear standard for police officers when determining the level of force to use in varying situations. By limiting Fourth Amendment protection to an arrestee only so long as that person is in the custody of the arresting officer, the Fifteenth Circuit Court of Appeals in this case erred.

ARGUMENTS

STANDARD OF REVIEW

A district court's fact findings and the reasonable inferences to be drawn from them are reviewed for clear error. Its legal conclusions are reviewed *de novo.*

I. THE FOURTH AMENDMENT PROTECTION AGAINST EXCESSIVE FORCE EXTENDS BEYOND INITIAL SEIZURE.

A. A "Continuing Seizure" Approach Conforms to This Court's Precedent and Upholds the Language and Spirit of the Fourth Amendment

The Fifteenth Circuit Court of Appeals properly decided that the Fourth Amendment continues to protect arrestees beyond their initial seizure. 42 U.S.C. § 1983 confers a cause of action to those persons who have been deprived of their rights by another person acting under the color of any statute, ordinance, regulation, custom, or usage of any State, including claims of excessive force by police officers. 42 U.S.C. § 1983 (2006). In *Graham v. Connor* this Court held that all excessive force claims brought under § 1983 are not governed by a single generic standard. *Graham v. Connor,* 490 U.S. 386, 393 (1989). Instead, this Court decided an analysis of a section 1983 claim begins by identifying the specific constitutional right allegedly infringed by the challenged application of force. *Id.* at 394. The Fourth and Eighth Amendments are the two primary sources of constitutional protection against physically abusive governmental conduct. *Id.* The Fourth Amendment protects against unreasonable seizures of the person. U.S. CONST. amend. IV. The Eighth Amendment bans cruel and unusual punishment. U.S. CONST. amend. VIII. Courts have interpreted the Fourteenth Amendment as protecting citizens in the period between "seizure" and "punishment." *See Graham,* 490 U.S. at 395, n.10. The Constitutional protections against excessive force for a person arrested, detained, and then convicted vary depending on the person's status. Fourth Amendment protection applies to excessive force claims that arise in the context of an arrest, investigatory stop or other "seizure" of a free citizen. *Id.* at 395. Eighth Amendment protection applies to prisoners post-conviction. *See id.* at 394. The Fourteenth Amendment Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment. *Id.* at 395 n.10. The Fourteenth

Amendment's Due Process Clause provides that no State shall deprive any person of life, liberty, or property, without due process of law. U.S. CONST. amend. XIV, § 1. As the arrestee moves through the criminal justice system, his constitutional rights vary, as do the standards for judging his claims against excessive force. A Fourth Amendment claim is judged by an "objective reasonableness" test, a Fourteenth Amendment claim under a "shocks-the-conscience" standard, and an Eighth Amendment inquiry turns on whether the force amounts to "unnecessary and wanton infliction of pain." *See Graham,* 490 U.S. at 393-99. However, this Court expressly left undecided the question of whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive force beyond the point at which arrest ends and pretrial detention begins. *Id.* at 395 n.10.

Petitioner Beau Radley's excessive force claim falls under the Fourth Amendment's umbrella. In *Terry v. Ohio* this Court defined "seizure" as occurring when by means of physical force or show of authority, government actors have in some way restrained the liberty of a citizen. *Terry v. Ohio,* 392 U.S. 1, 19 n.16 (1968). This language implies that seizure is not an exact point in time, but a continuum relating to the time in which the liberty of the citizen is restrained. Furthermore, this Court has extended "seizure" not only to when an officer arrests an individual, but also whenever an officer restrains the freedom of a person to walk away. *Tennessee v. Garner,* 471 U.S. 1, 7 (1985). At the time Radley's excessive force claim arose, he did not have the freedom to walk away and therefore was still undergoing "seizure" when his excessive force claim arose. Also, nowhere in the language of the Fourth Amendment is there a suggestion that a different standard for "unreasonableness" should apply when analyzing excessive force in a post-arrest situation versus pre-arrest conduct. The letter of the Constitution does not provide for or imply such a distinction, and this Court should decide accordingly. The

Fourth Amendment explicitly provides protection against the sort of physically intrusive governmental conduct to which Radley was exposed, and should therefore be the guide to analyzing excessive force claims arising during "seizure." *See Graham*, 490 U.S. at 395.

In *Graham*, the petitioner Dethorne Graham, a diabetic, brought a Section 1983 claim when law enforcement officers used physical force against him during the course of an investigatory stop. *Id.* at 388. During the investigatory stop, one of the officers shoved Graham's face against the hood of the car, and four officers then grabbed Graham and threw him headfirst into the police car. *Id.* at 389. It reasonably follows from the facts of the case that Graham was already under the control of the police officers at the time the force occurred. *See Id.* This Court decided a Fourth Amendment standard was most appropriate for those circumstances. *See id.* at 395. By deciding to use a Fourth Amendment standard for a person already under the control of a police officer, this Court effectively employed a "continuing seizure" approach.

B. The Majority of Circuit Courts Have Adopted a "Continuing Seizure" Doctrine Applying the Fourth Amendment's Objective Reasonableness Test to the Use of Force by Police Officer After the Initial Arrest

Since *Graham*, the majority of circuits deciding the issue, including, now, the Fifteenth Circuit, have adopted a "continuing seizure" doctrine applying the Fourth Amendment's objective reasonableness test to the use of force by police officers after the initial arrest. *See, e.g.*, *Aldini v. Johnson*, 609 F.3d 858, 866 (6th Cir. 2010) (until a probable cause hearing); *United States v. Johnstone*, 107 F.3d 200, 206-07 (3d Cir. 1997) ("seizure" is a continuum that can extend beyond the initial restraint); *Austin v. Hamilton*, 945 F.2d 1155, 1162 (10th Cir. 1991) (until the arrestee's first judicial hearing) *Powell v. Gardner*, 891 F.2d 1039, 1044 (2d Cir. 1989) (at least to arraignment and remains in custody of the arresting officer).

Very few courts have rejected the "continuing seizure" doctrine. *See, e.g., Riley v. Dorton,* 115 F.3d 1159, 1164 (4th Cir. 1997) (en banc); *Valencia v. Wiggins,* 981 F.2d 1440, 1443 (5th Cir. 1993); *Wilkins v. May,* 872 F.2d 190,194 (7th Cir. 1989). However, these cases can be distinguished and should not be followed in this case. In *Valencia*, the court held that the Fourth Amendment test is inappropriate only when the official use of force occurs after the incidents of arrest are completed, after the plaintiff has been released from the arresting officer's custody, and after the plaintiff has been in detention awaiting trial for a significant period of time. *Valencia,* 981 F.2d at 1443-44. In that case, the plaintiff's excessive force claim arose during an incident that occurred three weeks after his arrest while he was still in detention awaiting trial. *Id.* at 1442. In the case at hand, Radley had only been in custody for a few hours when Goode used excessive force, a miniscule period of time as compared to *Valencia*. A few hours in custody is not a significant period of time, so Radley's Fourth Amendment rights had not expired, even under the *Valencia* standard, at the moment excessive force was used. *See id.* Furthermore, the *Valencia* standard requires that the detainee be awaiting trial when his Fourth Amendment rights expire. *Id.* at 1444. Radley had not yet been arraigned or even formally charged at the time Goode used excessive force, so he was not "awaiting trial."

The Fourth Circuit in *Riley*, relied upon this Court's decision in *Bell v. Wolfish*, 441 U.S. 520 (1979), claiming that *Bell* instructs the court to analyze excessive force under the Due Process Clause of the Fourteenth Amendment and not the Fourth Amendment. *Riley,* 115 F.3d at 1162. However, this cannot be the case, as *Graham,* decided ten years after *Bell,* expressly declined to decide whether Fourth Amendment protection applies between arrest and pretrial detention. *See Graham,* 490 U.S. at 395 n.10. Also, the plaintiff in *Riley* was arrested pursuant to a valid warrant, so probable cause had already been established. *See Riley,* 115 F.3d at 1161.

Radley had not yet been arraigned, formally charged, nor had a probable cause hearing been held with regards to his arrest. The Seventh Circuit decided *Wilkins* before this Court decided *Graham*. Applying a now obsolete test, the court in *Wilkins* decided that the plaintiff, a person arrested but not charged or convicted, was protected by the Due Process Clause, not the Fourth Amendment. *See Wilkins*, 872 F.2d at 193. However, one year later, and after *Graham*, the Seventh Circuit held that the Fourth Amendment will determine the standard of force on a person in custody most of the time. *See Titran v. Ackman*, 893 F.2d 145, 147 (7th Cir. 1990).

This Court should follow the trend of the United States Courts of Appeals and uphold the Fifteenth Circuit's decision that the Fourth Amendment continues to protect arrestees beyond their initial seizure. Such an interpretation is most in keeping with this Court's Fourth Amendment jurisprudence.

II. THE FOURTH AMENDMENT PROTECTION AGAINST UNREASONABLE SEIZURE EXTENDS AT LEAST UNTIL AN ARRESTEE HAS BEEN ARRAIGNED OR FORMALLY CHARGED.

A. Radley's Status at the Moment Excessive Force Was Used Does Not Fall Under This Court's Definition of Pretrial Detainee, So His Claim Is Best Analyzed Under a Fourth Amendment Standard.

In *Graham*, this Court made clear that a pretrial detainee is protected by the Fourteenth Amendment. *Graham*, 490 U.S. at 395 n.10. However, Radley was not a pretrial detainee when Goode used excessive force against him. Pretrial detainee status does not begin until post-arraignment, while the individual is awaiting trial. Radley was arrested without a warrant, and had not yet been arraigned, formally charged, nor had a probable cause hearing been held on his behalf. In *Bell*, this Court defined a pretrial detainee as one who has not been adjudged guilty of any crime, but only has had a judicial determination of probable cause. *See Bell v. Wolfish*, 441 U.S. at 536. Radley had not yet had a judicial determination of probable cause, therefore he was not yet a pretrial detainee, and it is more appropriate to judge his claim by a Fourth Amendment

standard. Radley, when struck by Goode, could best be classified as an arrestee. As previously mentioned, the majority of circuit courts apply the Fourth Amendment, "objective reasonableness" standard to arrestees under the "continuing seizure" approach. Therefore, as Radley does not fall under this Court's definition of pretrial detainee, he is an arrestee and any excessive force claims made by an arrestee should be judged by the Fourth Amendment standard.

B. A More Relaxed Force Standard Is Not Appropriate For an Individual Pre-arraignment.

After arrest the Fourth Amendment applies, after arraignment the Fourteenth Amendment applies, and after conviction the Eighth Amendment applies. Each standard places a higher burden on the plaintiff than the preceding standard. *See Aldini,* 609 F.3d at 864. An arrestee protected by the Fourth Amendment must prove that the government agent's use of force was objectively unreasonable, while under a Fourteenth Amendment claim, plaintiff must prove the use of force "shocks-the-conscience." *See Graham,* 490 U.S. at 393-94. An individual being processed through the criminal justice system is subjected to an increasingly relaxed standard of force. When arraignment and a probable cause hearing have yet to be performed, a more relaxed standard for force is not appropriate. To hold otherwise is contrary to the long established presumption of innocence and would violate a key component of our nation's justice system. Additionally, establishing the line between the Fourth and Fourteenth Amendment protection at the probable cause hearing or arraignment creates an incentive to hold the hearing as soon as possible, which is certainly beneficial to the judicial process as it would minimize the time a presumptively innocent individual spends in jail. *Aldini,* 609 F.3d at 867.

In *Albright v. Oliver,* this Court, deciding whether a Fourth or Fourteenth Amendment right is violated when a citizen is arrested without probable cause, held the petitioner's Fourth

Amendment right to freedom from seizure was the violated constitutional right. *Albright v. Oliver,* 510 U.S. 266, 271 (1994). Justice Ginsburg, in a concurring opinion, employed the "continuing seizure" approach and argued that a person is effectively seized until trial, because such a person is "scarcely at liberty" during the pretrial period. *Id.* at 279 (Ginsburg, J., concurring). Even though *Albright* did not involve an excessive force claim, it is clear Justice Ginsburg sought to extend Fourth Amendment protection of an arrestee until trial, due to the fact that his liberty is still being restrained by the state.

C. The "Arresting Officer" Rule Is Arbitrary and Unprecedented in This Court's Jurisprudence, and Therefore Should Not be Utilized When Determining an Arrestee's Constitutional Rights.

The Fifteenth Circuit Court of Appeals adopted the "arresting officer" rule, thus holding that the Fourth Amendment protection extends only while the arrestee remains in the custody of the arresting officer. The court based its decision on the standards set out in the Second and Sixth Circuits. *See, e.g., Powell v. Gardner,* 891 F.2d 1039, 1044 (2d Cir. 1989) (Fourth Amendment standard should probably apply until arraignment, and remains in the custody of the arresting officer); *McDowell v. Rogers,* 863 F.2d 1302, 1306 (6th Cir. 1988) (Fourth Amendment seizure continues while the person remains in the custody of the arresting officers). However, whether the arrestee is in the custody of the arresting officer is not the proper standard for the Fourth Amendment protection. There is nothing in the language of the Constitution or in this Court's precedent that makes a distinction in the application of Constitutional rights on the basis of whether an individual remains in the custody of the arresting officer. Furthermore, the Sixth Circuit has since applied a Fourth Amendment standard to arrestees detained following a warrantless arrest prior to a probable cause hearing, regardless of whether arrestee was in the custody of the arresting officer. *Aldini,* 609 F.3d at 867.

Also, it seems the circuit courts that have looked to the "arresting officer" as a guideline for determining the extent of seizure, did not intend to make it the delimiting point for seizure in all situations of arrest. In *Powell* and *McDowell*, looking to the custody of the arresting officer was appropriate in each case because each plaintiff was in the custody of the arresting officer at the time the alleged excessive force occurred. *See Powell*, 891 F.2d at 1041; *McDowell*, 863 F.2d at 1304. Therefore, the circumstance of the arrestee remaining in the custody of the arresting officer should not be considered the final inquiry as to whether the Fourth Amendment continues to protect such an arrestee.

Moreover, in *Garner*, this Court held that "seizure" occurs not only when an officer arrests an individual, but also whenever that officer restrains the individual's freedom to walk away. *Garner*, 471 U.S. at 7. An arrestee remaining in the custody of the arresting officer is not necessary for that arresting officer to continue to restrain the arrestee's freedom to walk away. When an arresting officer transfers custody to another officer temporarily or when the officer places the arrestee in a jail cell, that officer is still restricting the movement and freedom of the arrestee. Thus, the more appropriate standard is that embraced by the Sixth, Ninth, and Tenth Circuits, which hold that the Fourth Amendment applies to a person arrested without warrants until a probable cause hearing is held. *See, e.g., Aldini*, 609 F.3d at 867 (set the dividing line between the Fourth and Fourteenth Amendment zones of protection at the probable-cause hearing); *Pierce v. Multnomah County*, 76 F.3d 1032, 1043 (9th Cir. 1996) (with a warrantless arrest, the Fourth Amendment extends until arrestee is released or a probable cause has been established); *Austin*, 945 F.2d at 1160 (Fourth Amendment applies to the treatment of arrestees detained without a warrant). Since at the moment of excessive force Radley had been detained without a warrant and had not yet been arraigned, he was still protected by the Fourth

Amendment and, as such, has a cause of action under the Fourth Amendment as enforced by 42 U.S.C. § 1983.

D. A Bright-line Rule Extending Fourth Amendment Protection Until Arraignment Would Provide a Workable Standard to Guide Police Officers as to What Type of Force They Can Use and When They Can Use It.

Adopting a "continuing seizure" approach which extends seizure until at least arraignment would provide police officers a delineation as to what type of force they can use and when they can use it. Erica Haber, *Demystifying a Legal Twilight Zone: Resolving the Circuit Court Split on when Seizure Ends and Pretrial Detention Begins in § 1983 Excessive Force Cases*, 19 N.Y.L Sch. J. Hum. Rts. 939, 966 (2003). Citizens should feel secure in their right to be free from excessive force, and police officers should be provided with a clear framework for the amount of force they are permitted to use in any given situation. Such a clear, bright-line rule will provide both citizens and police officers a reasonable expectation of the amount of force police officers are permitted to use. Armed with a proper guideline for appropriate force, police officers will adjust and implement the corresponding appropriate force in a particular situation. Hopefully, this will result in fewer lawsuits, relieving a small part of district courts already over-crowded dockets.

Extending seizure until arraignment provides a bright-line rule that would provide a workable standard for police officers. Unlike the arresting officer rule, arraignment represents an important procedure in the criminal justice system where the accused is presented with his crime and a judicial officer reviews the probable cause. An arraignment is evidence of the value our society places on the presumption of innocence. It is also a set point in time which allows all parties to clearly understand the nature of the proceeding and the rights involved.

This Court should adopt a bright-line approach, extending seizure until arraignment, and reject the Fifteenth Circuit's "arresting officer" approach. This approach is most consistent with the presumption of innocence and this Court's precedent.

CONCLUSION

The Fourth Amendment protection against excessive force extends beyond the initial seizure at least until an arrestee has been arraigned or formally charged. For the aforementioned reasons, Petitioner Beau Radley urges this Court to affirm the Fifteenth Circuit Court of Appeals as to the recognition of a "continuing seizure," but reverse it as to its use of the "arresting officer" as the delimiting point, and direct that the case be remanded to the District Court for proceedings consistent with this Court's order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel for petitioner certifies that this brief has been prepared and served upon all opposing counsel in compliance with the rules of the freshman moot court competition.

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STEPHANIE MILLER

Counsel for Petitioner

APPENDIX

APPENDIX

FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons of things to be seized.

EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial

capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.