



## Ivory v. City of Minneapolis

2004 | Cited 0 times | D. Minnesota | August 4, 2004

### MEMORANDUM OPINION AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Plaintiff was accidentally shot in the aftermath of a failed undercover drug deal. Plaintiff alleges that the Minneapolis police officers involved in the incident used excessive force in violation of the Fourth Amendment and Minnesota law and should be liable for his injuries. Plaintiff further alleges that the city of Minneapolis and the Chief of Police should be held liable for the officers' actions, as well as for negligent training and instruction of the officers.

#### I. BACKGROUND

David Garman ("Garman") and defendants Michael Ramsdell ("Ramsdell"), Michael Kaneko ("Kaneko"), and Aaron Morrison ("Morrison") are all Minneapolis police officers assigned to the Community Response Team working out of the Third Minneapolis Precinct. The Community Response Team is a plain-clothes unit that, among other things, investigates drug crimes. Sometime in 2000, Garman, working undercover, met plaintiff Michael Ivory ("plaintiff"). Garman let plaintiff know that he would be interested in purchasing a large quantity of marijuana. Several months later, Garman met plaintiff again, this time at Mickey's Diner in St. Paul. Garman introduced plaintiff to Kaneko, who was with him. Garman and plaintiff again discussed a large purchase of marijuana.

On November 21, 2000, plaintiff called Garman and informed him that a friend had a quantity of marijuana for sale. Garman initially asked to buy 1/4 pound of marijuana, but subsequently increased his order to 1/2 pound. Garman and plaintiff agreed to meet at Mickey's Diner in St. Paul. Garman gathered a team of Minneapolis officers, briefed his supervisor, and contacted the St. Paul narcotics unit and St. Paul force unit to advise them of the operation. Later that evening, Garman and plaintiff spoke again.

Garman told plaintiff that Garman's friend who plaintiff had previously met, i.e. Kaneko, would meet him at Mickey's Diner.

Plaintiff and his friend, James Fye, pulled into the Mickey's Diner parking lot, and parked next to the unmarked truck that Kaneko and another undercover officer were driving. Fye was driving; plaintiff was in the passenger seat. Plaintiff got out of Fye's car, and got into Kaneko's truck. Plaintiff told Kaneko that Fye had the marijuana that Kaneko was supposed to buy, but that Fye didn't want to make the sale at Mickey's Diner because there were too many police in the area. Kaneko responded that he didn't want to go elsewhere, but wanted to talk to Fye to see if Fye could be convinced to



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proceed with the sale in the parking lot. Kaneko approached Fye's car on the driver's side, and plaintiff got back in the passenger seat of Fye's car. Fye confirmed that the marijuana was in the trunk of the car, but told Kaneko that he wanted to go elsewhere to make the exchange. Before any purchase was actually made, Ramsdell and Morrison pulled into the lot, got out of their car, and moved to arrest Fye and plaintiff. As Ramsdell and Morrison approached the car, they identified themselves as police, and ordered Fye and plaintiff out of the car. Kaneko remained standing next to Fye's window. Fye quickly backed the car up approximately 11/2 -car lengths, simultaneously turning it to the north. Ramsdell ended up in front of the car, with his gun drawn. Fye drove the car forward, initially striking Morrison with the mirror. As the car went forward, it then hit Ramsdell, causing him to lose his balance and pushing him up onto the hood. Kaneko moved off to the side, so that Ramsdell could fire his weapon into the car without worrying about hitting Kaneko. Ramsdell slid off the hood towards the passenger side of the car, landing on his knee. Ramsdell began firing shots into the car at Fye. Once Ramsdell was off the hood of the car, Morrison also began firing shots at Fye. As the car began driving out of the parking lot and down the street, Kaneko fired one shot at Fye, concerned that the car might be dragging Ramsdell.

The car continued several blocks the wrong way down the street, before crashing into a building. Fye was killed; plaintiff was shot twice in the head and once in the shoulder and sustained significant injuries. St. Paul police who had arrived on the scene arrested plaintiff, and transported him to the hospital for treatment. St. Paul police later took a statement from plaintiff in the hospital.

St. Paul police investigated the incident, and determined that the shootings were proper. Each of the officers involved gave a report or was interviewed as part of the investigation. The head of internal affairs in Minneapolis reviewed the St. Paul investigation, and sent a letter to the Chief of Police reporting that all officers had "followed Minneapolis Police Department Policies and Procedures."

Plaintiff asserts a claim of excessive force under 42 U.S.C. § 1983 and various common law claims against all defendants. Plaintiff also asserts a claim of negligent training and instruction against the Chief of Police<sup>2</sup> and the City of Minneapolis ("City"). The parties have brought cross motions for summary judgment. For the following reasons, the Court denies plaintiff's motion for summary judgment and grants defendants' motion for summary judgment.

## II. ANALYSIS

### A. Summary Judgment Standard of Review

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Only disputes over facts that might affect the outcome of the suit under the governing substantive law will properly preclude the



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entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is not appropriate if the dispute about a material fact is genuine, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* Summary judgment is to be granted only where the evidence is such that no reasonable jury could return a verdict for the nonmoving party. *Id.*

The moving party bears the burden of bringing forward sufficient evidence to establish that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The nonmoving party is entitled to the benefit of all reasonable inferences to be drawn from the underlying facts in the record. *Vette Co. v. Aetna Casualty & Surety Co.*, 612 F.2d 1076, 1077 (8th Cir. 1980). However, the nonmoving party may not merely rest upon allegations or denials in its pleadings, but it must set forth specific facts by affidavits or otherwise showing that there is a genuine issue for trial. *Forrest v. Kraft Foods, Inc.*, 285 F.3d 688, 691 (8th Cir. 2002).

### B. Excessive Force

Plaintiff has sued Morrison, Ramsdell, and Kaneko in their individual and official capacities under 42 U.S.C. § 1983, alleging excessive force in violation of the Fourth Amendment.<sup>3</sup> Plaintiff has also sued the Chief of Police and City of Minneapolis. Morrison, Ramsdell, and Kaneko assert that they are each entitled to qualified immunity on the claims raised against them in their individual capacities. All defendants assert that they are entitled to summary judgment on the claims relating to the officers' official behavior because there is no evidence of a policy or custom of unconstitutional behavior.

#### 1. Qualified Immunity

Police officers are considered state officials, and may therefore assert a qualified immunity defense. In determining whether a state official is entitled to qualified immunity, the Court's first inquiry is whether the facts alleged, taken in the light most favorable to the plaintiff, demonstrate violation of a federal constitutional right. *Saucier v. Katz*, 533 U.S. 194, 200 (2001). If they do not, then summary judgment in favor of the defendant is appropriate. If the plaintiff's allegations show such a violation, then the Court must inquire whether the right was clearly established, "in light of the specific context of the case." *Id.* at 201. "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* "The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular officer conduct." *Id.* at 205. In other words, "if the law did not put [a defendant] on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate." *Id.* at 202.

##### a. Constitutional Violations



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The first step in analyzing a claim of excessive force under § 1983 entails identifying the specific constitutional right allegedly infringed by the application of force. *Graham v. Connor*, 490 U.S. 386, 394 (1989) (citing *Baker v. McCollan*, 443 U.S. 137, 140 (1979)). Where the claim arises out of the arrest, investigatory stop, or other seizure of a free citizen (as opposed to a prisoner), it is properly characterized as invoking the Fourth Amendment's guarantee of the right to be free from unreasonable seizures. *Id.* at 394-95. Plaintiff alleges that Morrison, Ramsdell, and Kaneko violated his Fourth Amendment right to be free from unreasonable seizure by shooting him in order to affect the seizure of plaintiff and Fye.<sup>4</sup> To establish a seizure in violation of the Fourth Amendment, a plaintiff must prove that (1) his person was seized; and (2) the seizure was unreasonable. *Katz v. United States*, 389 U.S. 347 (1967).

### (1) Seizure

A seizure in the constitutional sense occurs when a government actor has in some way restrained the liberty of a person to a degree that a reasonable person would not feel free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (plurality); *McCoy v. City of Monticello*, 342 F.3d 842, 846-47 (8th Cir. 2003). Not every act resulting in a restraint of liberty constitutes a seizure. See *Brower v. County of Inyo*, 489 U.S. 593, 596-97 (1989). Rather, a Fourth Amendment "seizure" requires an intentional act on the part of the government actor. *Id.* "The Fourth Amendment addresses 'misuse of power,' not the accidental effects of otherwise lawful government conduct." *McCoy*, 342 F.3d at 847 (quoting *Brower*, 489 U.S. at 596-97).

In this case, the officers intended to stop Fye's vehicle, and eventually accomplished the stop by intentionally shooting at and killing the driver of the vehicle. Defendants argue that the officers only intended to stop Fye, not plaintiff, and that the accidental shooting of plaintiff therefore cannot constitute a seizure of plaintiff. The Court disagrees. Plaintiff was seated in the passenger seat of Fye's car when Morrison, Ramsdell, and Kaneko fired shots into the car killing Fye, wounding plaintiff, and preventing plaintiff from leaving the car or the location where the car eventually crashed. Morrison, Ramsdell, and Kaneko knew that plaintiff was in the car, and could not have stopped and seized Fye without also seizing plaintiff. The Court finds that plaintiff was seized within the meaning of the Fourth Amendment.

### (2) Unreasonable Seizure

However, a seizure alone is not sufficient to establish § 1983 liability. *McCoy*, 342 F.3d at 847. The seizure must also be unreasonable. *Brower*, 489 U.S. at 599. A claim of excessive force in the effectuation of a seizure is analyzed under the Fourth Amendment's "objective reasonableness" standard. *Graham*, 490 U.S. at 395-97. Whether the seizure is reasonable is determined by the totality of the circumstances and must be judged from the viewpoint of a reasonable officer on the scene, irrespective of the officer's underlying intent or motivation. *Id.* at 396-97; *McCoy*, 342 F.3d at 848. The Court specifically considers "the severity of the crime at issue, whether the suspect poses an



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immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Id.* at 396-97. "[T]he 'reasonableness' of a particular seizure depends not only on when it is made, but also on how it is made." *Id.* at 395 (quoting *Tennessee v. Garner*, 471 U.S. 1, 7-8 (1985)). Thus, the pertinent question for the Court is whether it was unreasonable for Morrison, Ramsdell, and Kaneko to use deadly force, i.e., shoot into the car at Fye, in order to stop the car.

A police officer may constitutionally use deadly force to prevent the escape of a suspect where the officer has probable cause to believe the suspect poses a significant threat of death or serious harm to himself or others. *Garner*, 471 U.S. at 11-12; *Hernandez v. Jarman*, 340 F.3d 617, 622 (8th Cir. 2003); see also Minn. Stat. § 609.066 (defining appropriate use of deadly force by police); Minneapolis Police Department Rule 5-308 (same). A car can certainly be used as a deadly weapon, such as when a suspect accelerates toward an officer requiring him to move to try to avoid being hit or run over. *United States v. Yates*, 304 F.3d 818, 823 (8th Cir. 2002). However, force that is reasonable while the suspect poses a threat may no longer be reasonable once that threat is no longer present. See *Rahn v. Hawkins*, 2003 WL 22014730, \*2 (8th Cir. 2003) (citing *Ellis v. Wynalda*, 999 F.2d 243, 247 (7th Cir. 1993)).

Morrison and Ramsdell had just attempted to arrest Fye and plaintiff for possession and attempted sale of narcotics. Although Fye was the primary seller and was driving, plaintiff was also involved in the failed deal, and the officers had intended to arrest him as well. Fye, with plaintiff in the car, backed the car up in an erratic fashion, hitting Morrison with the mirror of the car and nearly hitting Ramsdell. Although Ramsdell was standing only a short distance in front of the car, Fye then drove forward, pushing Ramsdell on to the hood of the car and clearly attempting to evade arrest by leaving the scene. The officers reasonably attempted to stop the car with Fye and plaintiff in it.

However, it is less clear whether the manner in which the officers attempted to stop the car was reasonable. Morrison, Ramsdell, and Kaneko argue that their primary justification for shooting at Fye to stop the car was that Fye had used the car as a weapon and hit Morrison and attempted to run over Ramsdell, and that Fye, in attempting to get away might endanger other people. Kaneko also argues that when he fired his shot, he could not see Ramsdell and thought the car might be dragging Ramsdell. They point out that this series of events transpired over a course of approximately fifteen seconds.

Plaintiff, however, points out that there is no evidence that Fye or plaintiff had weapons or were threatening violent action. Plaintiff asserts that a non-violent drug sale simply does not justify the use of deadly force to apprehend fleeing suspects, and that this is especially true where the suspects are fleeing in a car on to public roads, making it difficult to aim and shoot accurately. Firing multiple



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shots at a moving vehicle is, arguably, more likely to put the public at significant risk than to stop the car. Additionally, plaintiff claims that Ramsdell placed himself in front of Fye's car, rather than trying to get out of the way. Thus, plaintiff appears to argue, Fye was not trying to endanger the officers and was not using the car as a deadly weapon, and the officers had no reason to respond with deadly force. Finally, plaintiff points out that even assuming that Fye's attempting to leave the scene put the officers in danger, once Ramsdell rolled off the hood and Fye pulled out of the parking lot, any danger to the officers was over.

The Court recognizes that the events in question transpired in a very short time frame, and that any undercover operation is tense, uncertain, and in many cases potentially dangerous. The Court also acknowledges that while it is easy to parse events after the fact and determine that a different decision or course of action would have been preferable, it is nearly impossible to do so in the heat of the moment. Nevertheless, while it is a close question, the Court concludes that a jury could find at least some of the officers' actions objectively unreasonable and, therefore, a violation of plaintiff's Fourth Amendment rights. It is not necessary to examine their actions more closely, however, because the Court also concludes that all of the officers' actions are protected by qualified immunity.

### b. Reasonable Under Clearly Established Law

In examining a claim of qualified immunity on summary judgment, the Court determines whether the facts allege the violation of a clearly established constitutional right. *Siegert v. Gilley*, 500 U.S. 226, 231 (1991) (emphasis added). Thus, even assuming that Morrison's, Ramsdell's, or Kaneko's conduct violated plaintiff's Fourth Amendment rights, each could nevertheless be immune from liability if reasonable officers could differ on the lawfulness of their actions.

It is beyond question that the Fourth Amendment right to be free from unreasonable seizure extends to seizures by police officers. Additionally, it has long been established that any seizure must be reasonable under all the circumstances. *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968). Defendants concede that "there is no question that plaintiff's right, as a general proposition, to be free from excessive force was clearly established." As noted previously, it is equally clear that police are authorized to use deadly force in response to certain dangerous situations, and police are called on to make difficult, split-second decisions as to when to do so.

Undercover operations are frequently dangerous. Drug deals often involve weapons and result in violence. Undercover officers participating in a drug deal must therefore be especially vigilant of their own and others' safety. In this case, a possible drug deal went sour unexpectedly, and Fye attempted to flee the scene and evade arrest, without regard for the safety of the officers or anyone else. More specifically, Morrison was faced with a situation in which a suspect driving erratically in an attempt to avoid arrest had just hit him with the mirror of the escape car and apparently attempted to run over another officer. The suspects were driving away, into traffic. Ramsdell had just been hit and nearly run over by a suspect in a car attempting to avoid arrest.<sup>5</sup> Kaneko had just





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witnessed the same events, had lost sight of Ramsdell, and feared that Ramsdell might be caught under the car.<sup>6</sup>

It was reasonable for the three officers to view Fye's escape attempt as threatening and dangerous. A reasonable officer in the position of Morrison, Ramsdell, or Kaneko could have concluded that his life and his fellow officers' lives were in danger, and that members of the public would soon be in danger. A reasonable officer could also conclude that both Minnesota and federal law permitted him to respond with deadly force in accordance with both Minnesota and federal law.

While it would unquestionably have been better for the officers to have stopped shooting the instant the danger Fye and his vehicle posed had dissipated, the law does not demand that an officer always "pursue the most prudent course of conduct as judged by 20/20 hindsight vision." *Cole v. Bone*, 993 F.2d 1328, 1334 (8th Cir. 1993). Fye created a dangerous, uncertain situation, which unfolded in the extremely short span of fifteen seconds. The point at which the officers were clearly safe can only be said for sure with the assistance of hindsight, and the officers had no more than seconds in which to make that judgment and respond. In short, it cannot be said that "no reasonably competent officer would have concluded that the defendant should have taken [this] disputed action," *Malley v. Briggs*, 475 U.S. 335, 341 (1986), and Morrison, Ramsdell, and Kaneko are therefore entitled to immunity from plaintiff's § 1983 claim.

### 2. Municipal Liability<sup>7</sup>

Plaintiff has also alleged that if Officers Morrison, Ramsdell, and Kaneko violated his Fourth Amendment right to be free from unreasonable seizure, then the City of Minneapolis is vicariously liable. A political subdivision, such as the City of Minneapolis, may not be held vicariously liable under § 1983 for the unconstitutional acts of its employees. See *Monell v. Dept of Soc. Services*, 436 U.S. 658, 694 (1978). A city may, however, be held directly liable for the unconstitutional acts of its employees when those acts implement or execute an unconstitutional policy or custom of the city. *Id.* at 690-91.

The Eighth Circuit has been careful to distinguish between "policy" and custom." *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999); see also *Ware v. Jackson County, Mo.*, 150 F.3d 873, 880 (8th Cir. 1998). "A 'policy' is an official policy, a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters." *Id.* A municipal custom, on the other hand, exists if there is a "continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees," "deliberate indifference to or tacit authorization of such conduct," and proof that the custom was the moving force behind the constitutional violation." *Id.* (citation omitted).

Plaintiff asserts that defendants' actions violated numerous department rules, and that these violations were not investigated by the Minneapolis Police Department. Specifically, plaintiff claims



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that Morrison, Ramsdell, and Kaneko violated a number of Minneapolis Police Department Manual Rules that, taken together, detail the appropriate use of force, including deadly force, by police officers and prescribe reporting and review requirements related to the use of force.<sup>8</sup> Plaintiff seems to contend that the alleged lack of an investigation into violation of these rules indicates that such violations are commonplace and condoned by the City and Department. The Court disagrees.

Plaintiff has not identified any official policy that arguably played a role in his getting shot. To the contrary, the department rules identified by plaintiff, if followed, help to protect plaintiff from unconstitutional behavior by the police. Further, there is insufficient evidence from which a jury could find that the City and Department had a custom of encouraging or permitting unconstitutional violation of these rules.

A single incident of unlawful behavior cannot establish a custom of permitting such behavior, and cannot give rise to municipal liability. *McGautha v. Jackson County, Mo., Collections Dept.*, 36 F.3d 53, 57 (8th Cir. 1994). Further, it is undisputed that the St. Paul police department investigated the use of deadly force during this incident and determined that the officers acted appropriately. The Minneapolis police department reviewed the St. Paul report and on that basis determined that the officers had followed all necessary rules and procedures. Thus, the City did not fail to investigate the alleged violation of plaintiff's constitutional rights, and there is no evidence of a custom of either deliberate indifference to or tacit authorization of such conduct. The City is entitled to summary judgment on this claim.

### C. Common Law/State Law Claims

Plaintiff also alleges assault and battery, negligent use of a firearm, and intentional infliction of emotional distress against Morrison, Ramsdell, and Kaneko. Plaintiff again asserts that the City is vicariously liable for the above claims. Plaintiff also alleges that the City and Police Chief are liable for negligent training and instruction of the officers. Morrison, Ramsdell, and Kaneko, assert that they are entitled to official immunity. The City asserts that it is entitled to vicarious official immunity or discretionary immunity for each of these claims. The Court agrees with the officers and the City.

#### 1. Official Immunity

Official immunity is a common law doctrine that protects government officials from suit for discretionary actions taken by them in the course of their official duties. *Kari v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998); *Pletan v. Gaines*, 494 N.W.2d 38, 40 (Minn. 1992). The goal of official immunity is to protect public officials from the fear of personal liability, which might deter independent action and impair effective performance of their duties. *Elwood v. Rice County*, 423 N.W.2d 671, 678 (Minn. 1988). "Malice" or bad faith, which will strip an individual of official immunity, means intentionally doing a wrongful act without legal justification or excuse, or a willful





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violation of a known right. *Davis v. Hennepin County*, 559 N.W.2d 117, 123 (Minn. Ct. App. 1997).

Police officers are generally considered discretionary officials. *Johnson v. Morris*, 453 N.W.2d 31, 42 (Minn. 1990); see also *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 (Minn. 1999); *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992). Morrison, Ramsdell, and Kaneko unquestionably were called on to exercise discretion in deciding on the appropriate response to the failed drug deal and attempted escape. The Court determined above that it was not clearly established, or known, that the officers' use of deadly force in the situation at issue constituted excessive force. Thus, it cannot be said that the officers, in shooting at Fye and hitting plaintiff, willfully violated a known right. See *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991) (granting official immunity because no clearly established law or regulation prohibited the conduct). Therefore, the officers are entitled to official immunity with respect to plaintiff's state law claims.

### 2. Vicarious Liability

If the conduct of an employee is protected by official immunity, the employer may also be vicariously immune from liability. *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316-17 (Minn. 1998). Vicarious official immunity generally applies for the same reasons that official immunity applies: to prevent the "stifling attention" that would be detrimental to the employees' performance. *Id.* at 316 (quotation omitted). Whether official immunity is available vicariously is a policy question for the court. *Pletan v. Gaines*, 494 N.W.2d at 42. In *Pletan v. Gaines*, the court weighed the need to protect the public against the concern that the public not be put unnecessarily at risk. *Id.* The court determined that police officers were entitled to official immunity for decisions made during high-speed pursuits because officers required to make immediate decisions under emergency circumstances should be able to do so without fear of later scrutiny or criticism. *Id.* The court recognized that refusing to grant the city vicarious official immunity for the same actions would necessarily require examination of the officers' actions, defeating the purpose of granting the officers official immunity. *Id.* The Minnesota Supreme Court's reasoning and result is equally applicable to the case at bar. The Court therefore grants vicarious official immunity to the City for plaintiff's state law claims.

### 3. Negligent Failure to Train

Plaintiff alleges that the Chief of Police, in his official capacity, and the City are liable for negligent failure to train the officers in the use of deadly force. The city claims it is entitled to discretionary immunity pursuant to Minn. Stat. § 466.03, subd. 6. Section 466.03, subd. 6 establishes that a municipality is immune from tort liability for "[a]ny claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused." See *Watson by Hanson v. Metro. Transit Comm'n*, 553 N.W.2d 406, 412-13 (Minn. 1996). In *Maras v. City of Brainerd*, 502 N.W.2d 69 (Minn. Ct. App. 1993), the Minnesota Court of Appeals considered a claim that the city defendant had failed to adequately train its police officers in the use of deadly force to



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apprehend a misdemeanor. 502 N.W.2d at 78. The court determined that "the training a city provides to its police officers is a policy decision" that is "protected by discretionary immunity" under § 466.03. Id. The City is entitled to discretionary immunity and summary judgment on plaintiff's negligent failure to train claim.

### ORDER

Based on the foregoing, all the records, files, and proceedings herein, IT IS HEREBY ORDERED that:

1. Defendants' Motion for Summary Judgment [Docket No. 13] is GRANTED.
2. Plaintiff's Motion for Summary Judgment [Docket No. 24] is DENIED.
3. The case is DISMISSED with prejudice.

### LET JUDGMENT BE ENTERED ACCORDINGLY.

1. The Court notes that Robert Olson is no longer the police chief for the city of Minneapolis. Pursuant to Fed. R. Civ. P. 25(d)(1), the Court therefore substitutes Olson's successor, William McManus, as a party to the suit.
2. Plaintiff also purports to assert claims against Robert Olson, the former Chief of Police, individually. However, plaintiff has provided no evidence that Olson participated in any of the events in question in such a way as to give rise to individual liability. The Court therefore dismisses all claims against Olson.
3. Plaintiff also alleges deprivation of liberty in violation of the 14th Amendment's due process clause, excessive punishment in violation of the 8th Amendment and infringement of the right to travel. "[A]ll claims that law enforcement officers have used excessive force - deadly or not -- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." *Graham v. Connor*, 490 U.S. 386, 395 (1989). Further, the Eighth Amendment's protections do not attach until after conviction and sentence. *Ingraham v. Wright*, 430 U.S. 651, 671, n.40 (1977). The Court therefore does not address these asserted grounds for relief under § 1983. Additionally, any claim that the incident in question violated plaintiff's constitutional right to travel is meritless.
4. Plaintiff also contends that Morrison, Ramsdell, and Kaneko used excessive force in attempting to arrest him and Fye. The seizure and attempted arrest of plaintiff by Morrison, Ramsdell, and Kaneko refer to precisely the same set of events, and are thus properly considered as one claim. The Court notes that St. Paul police, not Morrison, Ramsdell, or Kaneko, arrested plaintiff once the car crashed.
5. Plaintiff's argument that Ramsdell positioned himself in front of the car is not persuasive. Police are authorized to stop suspects, and sometimes do so by blocking an exit path. Seeing Ramsdell in front of the car, Fye's response should have been to stop.



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6. Plaintiff questions how Kaneko could have failed to see Ramsdell safely on the ground. Kaneko had just seen Ramsdell get hit by the car, which was continuing to flee the scene. While Kaneko undoubtedly would have seen Ramsdell if he had done a lengthier survey of the scene, the situation called for immediate action. In the few seconds that had passed, it was not unreasonable for Kaneko to conclude that Ramsdell was still in danger.

7. A suit against a public employee in his or her official capacity is merely a suit against the public employer. See *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Thus, the claims against Morrison, Ramsdell, and Kaneko in their official capacity are addressed in this section.

8. Plaintiff alleges violation of Rules 5-301, 5-303, 5-306, 5-307, 5-308, 5-310, 5-311, and 5-312

