A 1989 Supreme Court decision is unwittingly covering police brutality

The Washington Post

Photo above: Demonstrators against police brutality march in Washington on Saturday.

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June 08, 2020

How the story could have been different if a police camera or a spectator's cell phone had recorded the events of November 12, 1984 in front of a convenience store on West Boulevard in Charlotte.

At that time and place, Dethorne Graham, a diabetic African-American working in road repair for the state, experienced an insulin reaction and rushed into the store for orange juice - then came running back when he saw the line at the cash register. too long.

He and a friend left, followed by a police patrol car. The inside officer, MS Connor, thought that rushing in and out of Graham was the behaviour of a shoplifter.

Moments later, Graham and his partner were stopped. When Graham began to behave erratically because of an illness, Connor and four other police officers handcuffed him and pushed him into the car while a crowd of spectators gathered. The police cursed Graham and accused him of faking illness - until they realized the mistake and took him home. With injuries including a broken foot, Graham sued the police in a federal court.

In 1989, Graham v. Connor reached the Supreme Court-where the court's decision would set legal standards for police brutality lawsuits that resonate today.

Every police use of force since then reflects the absorption of constitutional lessons by police authorities that judges extracted from the violent treatment by Charlotte's police of an innocent and desperately ill man. Training for police officers nationwide - probably including Derek Chauvin of Minneapolis - teaches that they cannot be prosecuted if they behave in accordance with Graham v. Connor's participation.

That statement, in an opinion written by Judge William H. Rehnquist, is that courts should evaluate the use of force under the Fourth Amendment, which governs "seizures"-not under the expansive "due process" doctrine underlying liberal decisions like Roe v. Wade and later Obergefell v. Hodges , the 2015 gay marriage case.

The courts should determine not whether the policeman acted with malicious intent, as suggested by the previous legal doctrine of lower courts, but whether he behaved "reasonably" in those circumstances, Rehnquist wrote.

"Reasonable," in turn, would not be determined in retrospect or in relation to the view of a reasonable civilian, but from the standpoint of "a reasonable officer on the scene," said the chief justice. Courts should keep in mind the "tense, uncertain and rapidly evolving" world of the police officer. Incidentally, Connor was black; other officers on the scene, including one who hit Graham's face on the hood of the car, were white.

This formulation postpones the prospect of law enforcement, which is not surprising, given that President Richard M. Nixon appointed the conservative Rehnquist to the court in 1971 to undo restrictions on police created by the liberal Warren Court in the 1960s.

And in 1989, this was a popular goal: The rate of violent crime was almost double what it is today and is rising. Responding like many other politicians to public anxiety, then Sen. Joe Biden (D-Del.) criticized President George HW Bush's drug war plan because "it did not include enough police to capture violent offenders.

Graham's lawyers and others thought Graham v. Connor could help the plaintiffs by making it possible to prove police brutality without exploiting the inherently obscure issue of officers' intent. In a court that included the liberal icons Thurgood Marshall, William J. Brennan Jr. and Harry A. Blackmun, the decision in the case was 9-0, although these three expressed minor reservations in a brief competing opinion.

Graham v. Connor, however, was no great help to victims of police brutality, as Dethorne Graham himself learned quickly when the Supreme Court returned his case to the district court for trial in North

Carolina-and a jury found police conduct reasonable. Similar results occurred case after case, to the extent that police now consider Graham as their legal shield.

As legal scholar Osagie K. pointed out. Obasogie of the University of California at Berkeley, the friendly police reasonableness test of Graham v. Connor is in practice no less vague or manipulable than the previous doctrine, while characterizing claims of brutality as violations of the Fourth Amendment reformulates them as occasional, non-systemic abuses.

Reflecting these concerns after the police murder of Stephon Clark in Sacramento in 2018, a recent California law strengthened the rules of the deadly forces for that state.

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Rehnquist's opinion did not even mention race; he reported Graham's injuries and anguish, but in plain language. This could not have happened if cell phone video and social media had existed in 1984.

One link between Graham v. Connor and today's court is that Judge John G. Roberts Jr. was an officer of the law (and friend) of both Rehnquist and the distinguished federal appeals judge whose doctrine of Rehnquist police brutality changed: Henry J. Friendly of New York.

Sooner or later, it will be Roberts and his colleagues' turn to reformulate the constitutional law on the use of force by police. Technology and a mass social movement seem to ensure that when the court speaks, it cannot be in the bloodless abstractions of Graham v. Connor .

https://www.washingtonpost.com/opinions/a-1989-supreme-court-ruling-is-unintentionally-providing-cover-for-police-brutality/2020/06/08/91cc7b0c-a9a7-11ea-94d2-d7bc43b26bf9_story.html