

JP 113



IN THE DISTRICT COURT FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

NATHAN BOYD,

Plaintiff,

v.

CITY OF TULSA, et al.

Defendants.

NOV 21 2016

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No.: CJ-2016-1510
Judge Rebecca Nightengale

PLAINTIFF'S OPPOSED MOTION TO FILE AN AMENDED PETITION

Pursuant to the Rules of the Fourteenth District Court Judicial District, Plaintiff Nathan Boyd (hereinafter "Boyd"), submits the following Opposed Motion to file an Amended Petition to include a claim for declaratory relief relative to the deadly force policy implemented by Defendant City of Tulsa.¹

1. On Friday, November 18, 2016, Defendant City of Tulsa ("City") served its responses to Plaintiff's first set of discovery. Those responses included a copy of City's deadly force policy.

2. Plaintiff contends the deadly force policy is unconstitutional on its face. The policy is confusing, ambiguous, and permits the use of deadly force in situations that are inconsistent with the Fourth Amendment, as interpreted by the United States Supreme Court.

¹ The undersigned has requested permission from opposing counsel prior to seeking the relief requested. As of this filing, the undersigned has not heard back from counsel, and consequently, the motion is submitted as opposed.

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3. The deadly force policy reads as follows:

Deadly force may be used if the officer has probable cause to believe that the suspect poses an imminent threat of serious physical harm, either to the officer or others . . . An officer may use deadly force when making an arrest [].

The officer must reasonably believe that such force is necessary to prevent the arrest from being defeated by resistance or escape, there is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious physical harm, and the escape of the subject poses an imminent threat to the officer or others. [] When feasible, a verbal warning will be given to the offender prior to the use of deadly force.

The use of deadly force is not authorized when its use would constitute a greater threat to innocent human lives than the actions of the suspect. Officers or employees must always be aware of the probable and possible result of their use of force. Officers or employees are never justified in using deadly force in a reckless manner disregarding the safety of themselves, other officers, or innocent bystanders. Officers or employees must identify and acquire the specific threat before using deadly force.

* * *

IMMEDIATE THREAT – a significant threat that an officer reasonably believes will result in death or serious physical harm to the officer or others. The threat is not limited to being instantaneous. A person may pose an immediate threat even if they are not at that moment pointing a weapon at the officers or others.

4. City's deadly force policy does not require the officer to consider the "totality of circumstances." That term, "totality of the circumstances," is not used anywhere in the policy.

5. City's deadly force policy does not require the officer to use the objectively reasonable officer standard. On the contrary, the policy permits the use of deadly force where the officer subjectively believes that force is necessary, even where the objective officer would not.

6. City's deadly force policy also uses the terms "imminent" and "immediate" interchangeably, without saying if the definitions are synonymous. While the difference may be semantics on the surface, the application could have serious consequences for citizens of this City.

7. Individually, and in combination, these deficiencies place officers in the precarious position of adhering to their training, while simultaneously violating the federal constitution.

8. City leaders should not tolerate policies that place City officers in such situations; policies must be clear, articulate, and conform with prevailing constitutional principles, for not only the citizens, but the officers who enforce the laws.

9. For these reasons, Plaintiff respectfully requests the opportunity to file an Amended Petition to include a claim against the City for declaratory relief regarding its deadly force policy.

10. This is the first request for extension by either party, and Plaintiff submits that granting the relief requested will not impact any deadlines.

Respectfully submitted,

BRYAN & TERRILL

s/J. Spencer Bryan

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CERTIFICATE OF SERVICE

I affirm that on this 21st day of November 2016, I mailed the foregoing by first class mail or by electronic mail to the following:

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s/J. Spencer Bryan

J. Spencer Bryan