

CPOA CASE SUMMARIES – AUGUST 2025

CONSTITUTIONAL LAW

A. Officer's use of less-lethal force that seriously injured bystander filming near a protesting crowd not unreasonable given that protesters objectively posed an immediate threat to the safety of officers, citizens, and property.

Cheairs v. City of Seattle, 2025 U.S. App. LEXIS 19330 (9th Cir. Aug. 1, 2025)

Facts: A Minneapolis police officer arrested George Floyd on May 25, 2020, during which Mr. Floyd died. A few days later, demonstrations protesting Mr. Floyd's death began in Seattle. On June 7, 2020, protesters became violent. The Seattle Police Department ("SPD") equipped the officers responding to the protests with less-lethal munitions, including blast balls. One type of blast ball used that night was oleoresin capsicum (OC). OC blast balls create a flash of light, emit a loud noise, and also disperse OC powder (i.e. pepper spray). Protestors breached police fencing that SPD had installed to close off the streets surrounding the Capitol Hill's East Precinct police station. Shortly after midnight, the situation significantly escalated. Deciding the protest had devolved into a riot, the incident commander ordered the line officers to advance from midblock on Pine toward 11th. At approximately 12:04 a.m., the incident commander authorized the officers to begin deploying OC blast balls. Using a public address system, SPD broadcast several orders for the crowd to immediately disperse, and that the police would use chemical agents or less-lethal munitions. After SPD began deploying less-lethal munitions, the crowd alternated between retreating in response to tear gas and blast balls, and moving forward towards the police line.

Meanwhile, Taylor Cheairs - who had been at dinner but was aware of the protests - decided to walk toward the "interaction between the protesters and the police" to "see and film what was happening at the front." The record contained no evidence that Cheairs was there to participate in the protest. Cheairs walked up to a position on a sidewalk at the intersection of 11th and Pine that was abreast of all but a few of the protesters at the front of the crowd. Cheairs positioned himself to get a better vantage point but stayed on the sidewalk. The video record suggests that, at the time Cheairs arrived, about 15 yards separated the protesters from the police line. The audio portion of Cheairs's first iPhone recording captured one of SPD's dispersal orders. Officer Carl Anderson was SPD's Chemical Agent Response Team Leader on the night of June 7-8, 2020. Officer Anderson's body-cam video recorded that he threw several blast balls in the ten minutes between 12:04 a.m. and 12:14 a.m. One of the blast balls Officer Anderson threw overhand landed on the pavement near the curb where Cheairs was standing, bounced and exploded, and struck Cheairs in the groin as he was filming the protest. Cheairs was seriously injured.

Cheairs sued the City of Seattle, SPD, and several unnamed police officers pursuant to 42 U.S.C. section 1983. He claimed in part that the officer who threw the blast ball that injured him (later identified by Defendants in discovery as Officer Anderson) used excessive force. The District Court granted summary judgment in favor of Defendants. Cheairs appealed.

Held: The Ninth Circuit Court of Appeals considered whether SPD used excessive force against

Cheairs in violation of his Fourth Amendment rights. The Court held that a reasonable jury could conclude that Cheairs was seized when struck by the blast ball. However, whether Cheairs's Fourth Amendment claim survived the motion for summary judgment depended on whether the record supported his contention that a jury could find that Officer Anderson's use of force was unreasonable. *Graham v. Connor*, 490 U.S. 386, 396 (1989).

Considering whether the use of force was excessive, the Ninth Circuit explained that the government's interest in the use of force depends on: "(1) the severity of the crime; (2) whether the suspect posed an immediate threat to the safety of the officers or others; and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight." *Sabbe v. Wash. Cnty. Bd. of Comm'rs*, 84 F.4th 807, 822 (9th Cir. 2023). The "immediate threat" factor is the most important. *Id.* Based upon the video evidence, the Court stated that a reasonable officer in Officer Anderson's shoes would have concluded, before Officer Anderson deployed the OC blast ball grenade that injured Cheairs, that probable cause existed to arrest at least some of the protesters for disregarding the dispersal orders, or for assaulting or attempting to assault police officers on the line. The Court noted that Officer Anderson deployed the blast ball that struck Cheairs in accordance with SPD policy and in response to an increasingly hostile, threatening crowd. The Court emphasized that the blast ball that injured Cheairs struck the pavement before it detonated. Had it been thrown in a way calculated to explode at head height, it would have presented a far greater risk of injury and thus could have constituted an unreasonable use of force.

Based on the record before it, the Ninth Circuit found that it was reasonable for the police to perceive that the protesters at the front of the crowd, near whom Cheairs stood, objectively posed an immediate threat to the safety of officers, citizens, and property. Therefore, having considered the totality of the circumstances, the Court of Appeals concluded that the force Officer Anderson employed was not excessive. Accordingly, the Ninth Circuit Court of Appeals affirmed the judgment of the District Court.

B. Despite defendant retaining a privacy interest in abandoned iPhone, because subsequent search was warrant-based and reasonable, there was no Fourth Amendment violation.

United States v. Hunt, 2025 U.S. App. LEXIS 22069 (9th Cir. Aug. 27, 2025)

Facts: In December 2017, Dontae Hunt was talking on his black iPhone walking by his apartment parking lot when he was shot five times and dropped his iPhone. The record showed that Hunt fled to seek medical help after he was shot. Eugene (Oregon) police visited the crime scene, where they found the black iPhone near some shrubs a short distance from the shooting location. The police took it into evidence as part of their investigation into the shooting. No one ever came looking for the phone, so it remained in evidence for over two years. The federal government later started a separate drug investigation which eventually focused on Hunt. Federal agents filed an affidavit in January 2020 to search several electronic devices, including the black iPhone found at the scene where Hunt had been shot and still held by the local police. At the time, federal agents still lacked confirmation that the black iPhone belonged to Hunt, though they suspected so because police found it on the ground where Hunt was shot. The search of the black iPhone produced more evidence of Hunt's drug dealing activities.

Based on evidence from the searches of the residence where he was found and the black iPhone, Hunt was charged with several drug-related and other crimes. The District Court denied Hunt's motion to suppress, and Hunt was convicted of the crimes. He appealed.

Held: The Fourth Amendment guarantees to the people the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . .” U.S. CONST. amend. IV. The Ninth Circuit Court of Appeals explained that the abandonment doctrine - a well-established exception to the Fourth Amendment's prohibition against a warrantless search and seizure - states that a person who abandons property forfeits a reasonable expectation of privacy by voluntarily abandoning that property. *United States v. Fisher*, 56 F.4th 673, 686 (9th Cir. 2022).

The Court noted that a cellphone's ability to store vast data likely allows the government to learn more about the cellphone's owner than would a search of the person's entire home or every piece of mail received. *Riley v. California*, 573 U.S. 373, 396-97 (2014). However, the Court of Appeals rejected Hunt's invitation to jettison the abandonment doctrine for digital data. Instead, the Court followed the reasonable expectation of privacy framework set by the Supreme Court and adapted the abandonment doctrine to account for the unique characteristics of cellphone data. The Ninth Circuit held that based on the specific facts of each case, courts should analyze the intent to abandon the digital device separately from the intent to abandon the device's data—and not reflexively conflate the two.

The Ninth Circuit found here that Hunt's actions did not suggest an intent to abandon his black iPhone or its data. Considering the circumstances, Hunt likely only intended to get medical attention and flee from the shooter as soon as possible without thinking or even knowing what happened to the phone. The Court held that the District Court clearly erred in finding that Hunt intended to abandon the black iPhone, and it logically followed that he did not intend to abandon the data in it either. Though Hunt did not follow up with the police, the record did not establish that he had reason to suspect the police collected the black iPhone from the crime scene.

However, the Ninth Circuit concluded on the merits that Hunt's Fourth Amendment claim failed because the federal agents obtained a warrant and searched his phone within a reasonable period. The Court explained that the Eugene police had a legitimate law enforcement reason to seize the black iPhone as evidence for its investigation into the shooting. Moreover, police had a legitimate law enforcement reason to retain the iPhone after its initial collection simply because it represented lost property with no identified owner to whom the police could return it. Here, the record did not suggest that the Eugene police did anything with the black iPhone other than hold it in evidence. The Ninth Circuit Court of Appeals accordingly affirmed.