Chapter 8

Summary Judgment

1. Standard for Summary Judgment

Federal Rules of Civil Procedure

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

Scott v. Harris, 550 U.S. 372 (2007)

Justice SCALIA delivered the opinion of the Court.

We consider whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?

I

In March 2001, a Georgia county deputy clocked respondent's vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit. The deputy activated his blue flashing lights indicating that respondent should pull over. Instead, respondent sped away, initiating a chase down what is in most portions a two-lane

road, at speeds exceeding 85 miles per hour. The deputy radioed his dispatch to report that he was pursuing a fleeing vehicle, and broadcast its license plate number. Petitioner, Deputy Timothy Scott, heard the radio communication and joined the pursuit along with other officers. In the midst of the chase, respondent pulled into the parking lot of a shopping center and was nearly boxed in by the various police vehicles. Respondent evaded the trap by making a sharp turn, colliding with Scott's police car, exiting the parking lot, and speeding off once again down a two-lane highway.

Following respondent's shopping center maneuvering, which resulted in slight damage to Scott's police car, Scott took over as the lead pursuit vehicle. Six minutes and nearly 10 miles after the chase had begun, Scott decided to attempt to terminate the episode by employing a "Precision Intervention Technique ('PIT') maneuver, which causes the fleeing vehicle to spin to a stop." Having radioed his supervisor for permission, Scott was told to "'go ahead and take him out.'" Instead, Scott applied his push bumper to the rear of respondent's vehicle. As a result, respondent lost control of his vehicle, which left the roadway, ran down an embankment, overturned, and crashed. Respondent was badly injured and was rendered a quadriplegic.

Respondent filed suit against Deputy Scott and others under 42 U.S.C. § 1983, alleging, *inter alia,* a violation of his federal constitutional rights, viz. use of excessive force resulting in an unreasonable seizure under the Fourth Amendment. In response, Scott filed a motion for summary judgment based on an assertion of qualified immunity. The District Court denied the motion, finding that "there are material issues of fact on which the issue of qualified immunity turns which present sufficient disagreement to require submission to a jury." On interlocutory appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision to allow respondent's Fourth Amendment claim against Scott to proceed to trial. Taking respondent's view of the facts as given, the Court of Appeals concluded that Scott's actions could constitute "deadly force" under *Tennessee v. Garner,* and that the use of such force in this context "would violate respondent's constitutional right to be free from excessive force during a seizure.

Accordingly, a reasonable jury could find that Scott violated respondent's Fourth Amendment rights." The Court of Appeals further concluded that "the law as it existed at the time of the incident, was sufficiently clear to give reasonable law enforcement officers 'fair notice' that ramming a vehicle under these circumstances was unlawful." The Court of Appeals thus concluded that Scott was not entitled to qualified immunity. We granted certiorari and now reverse.

II

In resolving questions of qualified immunity, courts are required to resolve a "threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry." If, and only if, the court finds a violation of a constitutional right, "the next, sequential step is to ask whether the right was clearly established in light of the specific context of the case." We therefore turn to the threshold inquiry: whether Deputy Scott's actions violated the Fourth Amendment.

III

A

The first step in assessing the constitutionality of Scott's actions is to determine the relevant facts. As this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. When things are in such a posture, courts are required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing the summary judgment motion." In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff's version of the facts.

There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question. There are no allegations or indications that this videotape was doctored or altered in any way, nor any contention that what it depicts differs from what actually happened. The videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals. For example, the Court of Appeals adopted respondent's assertions that, during the chase, "there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and respondent remained in control of his vehicle." Indeed, reading the lower court's opinion, one gets the impression that respondent, rather than fleeing from police, was attempting to pass his driving test:

The video recording is available here.

> Taking the facts from the non-movant's viewpoint, respondent remained in control of his vehicle, slowed for turns and intersections, and typically used his indicators for turns. He did not run any motorists off the road. Nor was he a threat to pedestrians in the shopping center parking lot, which was free from pedestrian and vehicular traffic as the center was closed. Significantly, by the time the parties were back on the highway and Scott rammed respondent, the motorway had been cleared of motorists and pedestrians allegedly because of police blockades of the nearby intersections.

The videotape tells quite a different story. There we see respondent's vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury.

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. Fed. Rule Civ. Proc. 56(c). As we have emphasized, " when the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.* "The mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.* When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.

B

Judging the matter on that basis, we think it is quite clear that Deputy Scott did not violate the Fourth Amendment. Scott does not contest that his decision to terminate the car chase by ramming his bumper into respondent's vehicle constituted a "seizure." The question we need to answer is whether Scott's actions were objectively reasonable.

2

In determining the reasonableness of the manner in which a seizure is effected, "we must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety, and respondent nowhere suggests this was not the purpose motivating Scott's behavior. Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate. Although there is no obvious way to quantify the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase. It is equally clear that Scott's actions posed a high likelihood of serious injury or death to respondent—though not the near *certainty* of death posed by, say, shooting a fleeing felon in the back of the head, or pulling alongside a fleeing motorist's car and shooting the motorist. So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did.

But wait, says respondent: Couldn't the innocent public equally have been protected, and the tragic accident entirely avoided, if the police had simply ceased their pursuit? We think the police need not have taken that chance and hoped for the best. Whereas Scott's action—ramming respondent off the road—was *certain* to eliminate the risk that respondent posed to the public, ceasing pursuit was not. First of all, there would have been no way to convey convincingly to respondent that the chase was off, and that he was free to go. Had respondent looked in his rear-view mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture. Perhaps the police knew a shortcut he didn't know, and would reappear down the road to intercept him; or perhaps they were setting up a roadblock in his path. Given such uncertainty, respondent might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow.

Second, we are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

The car chase that respondent initiated in this case posed a substantial and immediate risk of serious physical injury to others; no reasonable jury could conclude otherwise. Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. The Court of Appeals' judgment to the contrary is reversed.

Justice STEVENS, dissenting.

Today, the Court asks whether an officer may "take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders." Depending on the circumstances, the answer may be an obvious "yes," an obvious "no," or sufficiently doubtful that the question of the reasonableness of the officer's actions should be decided by a jury, after a review of the degree of danger and the alternatives available to the officer. A high-speed chase in a desert in Nevada is, after all, quite different from one that travels through the heart of Las Vegas.

Relying on a *de novo* review of a videotape of a portion of a nighttime chase on a lightly traveled road in Georgia where no pedestrians or other "bystanders" were present, buttressed by uninformed speculation about the possible consequences of discontinuing the chase, eight of the jurors on this Court reach a verdict that differs from the views of the judges on both the District Court and the Court of Appeals who are surely more familiar with the hazards of driving on Georgia roads than we are. The Court's justification for this unprecedented departure from our well-settled standard of review of factual determinations made by a district court and affirmed by a court of appeals is based on its mistaken view that the Court of Appeals' description of the facts was "blatantly contradicted by the record" and that respondent's version of the events was "so utterly discredited by the record that no reasonable jury could have believed him."

Rather than supporting the conclusion that what we see on the video "resembles a Hollywood-style car chase of the most frightening sort," the tape actually confirms, rather than contradicts, the lower courts' appraisal of the factual questions at issue. More importantly, it surely does not provide a principled basis for depriving the respondent of his right to have a jury evaluate the question whether the police officers' decision to use deadly force to bring the chase to an end was reasonable.

Omitted from the Court's description of the initial speeding violation is the fact that respondent was on a four-lane portion of Highway 34 when the officer clocked his speed at 73 miles per hour and initiated the chase. More significantly—and contrary to the Court's assumption that respondent's vehicle "forced cars traveling in both directions to their respective shoulders to avoid being hit,"—a fact unmentioned in the text of the opinion explains why those cars pulled over prior to being passed by respondent. The sirens and flashing lights on the police cars following respondent gave the same warning that a speeding ambulance or fire engine would have provided. The 13 cars that respondent passed on his side of the road before entering the shopping center, and both of the cars that he passed on the right after leaving the center, no doubt had already pulled to the side of the road or were driving along the shoulder because they heard the police sirens or saw the flashing lights before respondent or the police cruisers approached. A jury could certainly conclude that those motorists were exposed to no greater risk than persons who take the same action in response to a speeding ambulance, and that their reactions were fully consistent with the evidence that respondent, though speeding, retained full control of his vehicle.

The police sirens also minimized any risk that may have arisen from running "multiple red lights," In fact, respondent and his pursuers went through only two intersections with stop lights and in both cases all other vehicles in sight were stationary, presumably because they had been warned of the approaching speeders. Incidentally, the videos do show that the lights were red when the police cars passed through them but, because the cameras were farther away when respondent did so and it is difficult to discern the color of the signal at that point, it is not entirely clear that he ran either or both of the red lights. In any event, the risk of harm to the stationary vehicles was minimized by the sirens, and there is no reason to believe that respondent would have disobeyed the signals if he were not being pursued.

My colleagues on the jury saw respondent "swerve around more than a dozen other cars," and "force cars traveling in both directions to their respective shoulders," but they apparently discounted the possibility that those cars were already out of the pursuit's path as a result of hearing the sirens. Even if that were not so, passing a slower vehicle on a two-lane road always involves some degree of swerving and is not especially dangerous if there are no cars coming from the opposite direction. At no point during the chase did respondent pull into the opposite lane other than

to pass a car in front of him; he did the latter no more than five times and, on most of those occasions, used his turn signal. On none of these occasions was there a car traveling in the opposite direction. In fact, at one point, when respondent found himself behind a car in his own lane and there were cars traveling in the other direction, he slowed and waited for the cars traveling in the other direction to pass before overtaking the car in front of him while using his turn signal to do so. This is hardly the stuff of Hollywood. To the contrary, the video does not reveal any incidents that could even be remotely characterized as "close calls."

In sum, the factual statements by the Court of Appeals quoted by the Court were entirely accurate. That court did not describe respondent as a "cautious" driver as my colleagues imply, but it did correctly conclude that there is no evidence that he ever lost control of his vehicle. That court also correctly pointed out that the incident in the shopping center parking lot did not create any risk to pedestrians or other vehicles because the chase occurred just before 11 p.m. on a weekday night and the center was closed. It is apparent from the record (including the videotape) that local police had blocked off intersections to keep respondent from entering residential neighborhoods and possibly endangering other motorists. I would add that the videos also show that no pedestrians, parked cars, sidewalks, or residences were visible at any time during the chase. The only "innocent bystanders" who were placed "at great risk of serious injury," were the drivers who either pulled off the road in response to the sirens or passed respondent in the opposite direction when he was driving on his side of the road.

I recognize, of course, that even though respondent's original speeding violation on a four-lane highway was rather ordinary, his refusal to stop and subsequent flight was a serious offense that merited severe punishment. It was not, however, a capital offense, or even an offense that justified the use of deadly force rather than an abandonment of the chase. The Court's concern about the "imminent threat to the lives of any pedestrians who might have been present," while surely valid in an appropriate case, should be discounted in a case involving a nighttime chase in an area where no pedestrians were present.

What would have happened if the police had decided to abandon the chase? We now know that they could have apprehended respondent later because they had his license plate number. Even if that were not true, and even if he would have escaped any punishment at all, the use of deadly force in this case was no more appropriate than the use of a deadly weapon against a fleeing felon in *Tennessee v. Garner,* . In any event, any uncertainty about the result of abandoning the pursuit has not prevented the Court from basing its conclusions on its own factual assumptions. The Court attempts to avoid the conclusion that deadly force was unnecessary by speculating that if the officers had let him go, respondent might have been "just as likely" to continue to drive recklessly as to slow down and wipe his brow. That speculation is unconvincing as a matter of common sense and improper as a matter of law. Our duty to view the evidence in the light most favor-

able to the nonmoving party would foreclose such speculation if the Court had not used its observation of the video as an excuse for replacing the rule of law with its ad hoc judgment. There is no evidentiary basis for an assumption that dangers caused by flight from a police pursuit will continue after the pursuit ends. Indeed, rules adopted by countless police departments throughout the country are based on a judgment that differs from the Court's. See, *e.g.,* App. to Brief for Georgia Association of Chiefs of Police, Inc., as *Amicus Curiae* ("During a pursuit, the need to apprehend the suspect should always outweigh the level of danger created by the pursuit. When the immediate danger to the public created by the pursuit is greater than the immediate or potential danger to the public should the suspect remain at large, then the pursuit should be discontinued or terminated. Pursuits should usually be discontinued when the violator's identity has been established to the point that later apprehension can be accomplished without danger to the public").

Although *Garner* may not, as the Court suggests, "establish a magical on/off switch that triggers rigid preconditions" for the use of deadly force, it did set a threshold under which the use of deadly force would be considered constitutionally unreasonable:

> Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

Whether a person's actions have risen to a level warranting deadly force is a question of fact best reserved for a jury. Here, the Court has usurped the jury's factfinding function and, in doing so, implicitly labeled the four other judges to review the case unreasonable. It chastises the Court of Appeals for failing to "view the facts in the light depicted by the videotape" and implies that no reasonable person could view the videotape and come to the conclusion that deadly force was unjustified. However, the three judges on the Court of Appeals panel apparently did view the videotapes entered into evidence and described a very different version of events:

> At the time of the ramming, apart from speeding and running two red lights, Harris was driving in a non-aggressive fashion (i.e., without trying to ram or run into the officers). Moreover, Scott's path on the open highway was largely clear. The videos introduced into evidence show little to no vehicular (or pedestrian) traffic, allegedly because of the late hour and the police blockade of the nearby intersections. Finally, Scott issued absolutely no warning (e.g., over the loudspeaker or otherwise) prior to using deadly force.

If two groups of judges can disagree so vehemently about the nature of the pursuit and the circumstances surrounding that pursuit, it seems eminently likely that a reasonable juror could disagree with this Court's characterization of events. Moreover, under the standard set forth in *Garner,* it is certainly possible that "a jury could conclude that Scott unreasonably used deadly force to seize Harris by ramming him off the road under the instant circumstances."

The Court today sets forth a *per se* rule that presumes its own version of the facts: "A police officer's attempt to terminate a dangerous high-speed car chase *that threatens the lives of innocent bystanders* does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." (emphasis added). Not only does that rule fly in the face of the flexible and case-by-case "reasonableness" approach applied in *Garner* and *Graham v. Connor,*, but it is also arguably inapplicable to the case at hand, given that it is not clear that this chase threatened the life of any "innocent bystander." In my view, the risks inherent in justifying unwarranted police conduct on the basis of unfounded assumptions are unacceptable, particularly when less drastic measures—in this case, the use of stop sticks or a simple warning issued from a loudspeaker—could have avoided such a tragic result. In my judgment, jurors in Georgia should be allowed to evaluate the reasonableness of the decision to ram respondent's speeding vehicle in a manner that created an obvious risk of death and has in fact made him a quadriplegic at the age of 19.

2. Burden of Production

Federal Rules of Civil Procedure

Rule 56. Summary Judgment

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or

(4) issue any other appropriate order.

Note on Discovery

Rule 56(c) requires that "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." The "materials in the record" are produced in the discovery process, governed by FRCP Rules 26-32.

Under Rule 26(a), the parties have a duty to disclose certain information pertaining to their claims and defenses:

(1) Initial Disclosure.

> (A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties: must disclose certain information "without awaiting a discovery request":
>
> (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
>
> (ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
>
> (iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and
>
> (iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.
>
> (2) Disclosure of Expert Testimony.
>
> (A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.
>
> (3) Pretrial Disclosures.
>
> (A) In General. In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:
>
> (i) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;
>
> (ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and
>
> (iii) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

The parties may also seek information through the the discovery process. Rule 26(b)(1) defines the scope of discovery:

> Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Rule 26(b) also sets certain limits on discovery and governs the timing of requests.

The discovery methods authorized under the FRCP include depositions (i.e. examination and cross-examination of parties and other potential witnesses) (Rules 30-32); interrogatories (i.e. written questions directed to a party) (Rule 33); requests for production of documents or things (Rule 34); physical and mental examinations (Rule 35); and requests for admission (Rule 36).

The record may also include stipulations by the parties, i.e. agreements as to certain facts. The parties may stipulate to facts provisionally, for the purpose of summary judgment only, while reserving the right to contest the facts at trial if the court does not grant summary judgment.

Stout v. Vincent, 717 Fed. Appx. 468 (5th Cir. 2018)

Per Curiam

We decide whether the district court erred when granting summary judgment in favor of a police officer on the racial profiling claims of a black couple. The district court found that the couple failed to raise any genuine issue of material fact showing that the officer violated their equal protection rights under the Fourteenth Amendment. We affirm.

Facts and Proceedings

Cathryn Scott Stout and Raymond Montgomery, Jr., who are black, were travelling together from Memphis, Tennessee in a Lexus sport utility vehicle ("SUV") on Interstate 55 through central Mississippi. Montgomery noticed Mississippi Highway Safety Patrol ("MHSP") cars parked on the median. Soon after they passed the cars, Trooper Patrick Wall drove up along the side of their SUV in the left lane and looked at them. He then dropped behind their vehicle and turned on his lights and siren. Montgomery, who was driving, pulled over, but he did not feel nervous because he was not speeding and he believed he had done nothing wrong.

Trooper Wall asked Montgomery to step out of the car to show him that the SUV's license plate was partially obscured by a tag holder. The tag holder bore the logo and colors of the Alpha Kappa Alpha Sorority, Inc. ("AKA"), a black sorority to which Stout belonged. Trooper Wall explained to Montgomery that the MHSP was attempting to "crack down" on drivers with tag holders that obscured their plates. Trooper Wall said he would not issue a ticket for the obscured plate, but he asked for Montgomery's license and permission to search the vehicle. Montgomery refused consent for the search.

Trooper Wall called Staff Sergeant Vincent for backup, informing him that Stout and Montgomery were "argumentative and difficult to deal with." When Officer Vincent arrived, Trooper Wall told him that Montgomery exhibited unusual signs of nervousness and the SUV's occupants had offered conflicting stories about

where they were traveling, the purpose of their trip, and how long they intended to stay in Mississippi. Officer Vincent questioned the passengers himself. Stout informed Officer Vincent that she was in the state to perform research for her doctoral degree at Saint Louis University. But Officer Vincent had trouble remembering this fact once litigation had commenced. He remembered only that one of the passengers had explained that they were traveling to a concert. [1]

1 (n.1 in opinion) Officer Vincent remembered that the passengers gave him conflicting answers as to the purpose and length of their stay in Mississippi. Montgomery and Stout deny that they gave conflicting answers to these questions. Because of the procedural posture, we view all factual disputes in a light most favorable to Appellants.

Officer Vincent informed Stout and Montgomery that troopers can run the license of all individuals in a car to check their criminal histories and ensure that they are not wanted for arrest. He further explained that the Mississippi Department of Public Safety uses minor infractions as a pretext to stop for criminal investigations. He said, "The more people we contact, the more people we check out, the more likely we are to catch somebody up to no good."

Trooper Wall ran a check on Montgomery's Tennessee driver's license. The computer showed that he had prior arrests for both possession of narcotics and intent to distribute narcotics. Officer Vincent's training and many years of experience in drug interdiction made him aware that Interstate 55 is used often to transport drugs, particularly between Jackson, Mississippi and Memphis, Tennessee. Officer Vincent requested permission to search the vehicle, but was denied.

Officer Vincent called for a K-9 officer, and Deputy Joseph Mangino soon arrived with his dog. Officer Vincent instructed Montgomery and Stout to turn off their car, get out of the vehicle, and stand away from each other and the car while the dog sniffed around the SUV. [2] When the dog picked up a "suspicious" scent from inside the vehicle, the officers searched the SUV.[^stout3] The inspection was thorough, and more than an hour passed from the initiation of the stop until the officers finally allowed Appellants to leave without issuing a citation.

2 (n.2 in opinion) Officer Vincent told Montgomery and Stout that the dog would sit and freeze if it detected drugs. They never saw the dog sit and freeze. Stout began recording the beginning of the inspection on her phone's camera. Vincent ordered her to put the camera away, and she complied. The limited footage she obtained does not show the dog barking or making any other signals to the troopers.

Stout and Montgomery sued Officer Vincent, seeking injunctive relief and damages for violation of their Fourteenth Amendment rights under 42 U.S.C. § 1983. Specifically, they alleged that impermissible considerations of race motivated their extended detention by Officer Vincent. Officer Vincent moved for summary judgment on the basis of qualified immunity, and the district court granted his motion, concluding Appellants "have not presented any evidence" in support of their claim that Officer Vincent's conduct "was at least partially based on their race." Stout and Montgomery appealed.

Discussion

On appeal, Stout and Montgomery raise only one issue: whether the district court erred when concluding there was no genuine issue of material fact that Officer Vincent's actions were impermissibly motivated by race.

I. Legal Standard

A. Summary Judgment

Under Federal Rule of Civil Procedure 56, a "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The Supreme Court has explained that "a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*. But the moving party has no need to negate its opponents' claims.

If the moving party meets its burden, "the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial." The nonmovant's "burden is not satisfied with some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence."

A court must view all evidence "in the light most favorable to the opposing party." In *Tolan v. Cotton*, the Supreme Court stressed "the importance of drawing inferences in favor of the nonmovant" in qualified immunity cases.If a district court credits evidence of the party seeking summary judgment but fails to properly acknowledge key evidence offered by the nonmoving party, it misapprehends the summary judgment standard.

C. Fourteenth Amendment Racial Profiling

"The Constitution prohibits selective enforcement of the law based on considerations such as race." "The constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause."

Claims of racially selective law enforcement "draw on ordinary equal protection standards." "To state a claim of racial discrimination under the Equal Protection Clause and section 1983, the plaintiff must allege and prove that she received treatment different from that received by similarly situated individuals and that the unequal treatment stemmed from a discriminatory intent."

In another context, we have said that a plaintiff's "subjective belief of discrimination, however genuine, cannot be the basis of judicial relief." Thus, a plaintiff's "subjective belief that he was discriminated against, standing alone, is not adequate evidence to survive a motion for summary judgment."

Finally, "discriminatory intent of one official may not be imputed to another for purposes of imposing individual liability under the civil rights laws."

II. Lack of Evidence of Fourteenth Amendment Violation

The district court concluded that Montgomery and Stout "have not presented any evidence to support their claim" that Officer Vincent's decision to detain them was "at least partially based on their race." The district court further concluded that Montgomery and Stout "have likewise not shown that their race played any role whatsoever in Vincent's formulation of a reasonable Montgomery have failed to produce *any* material evidence showing that race motivated Officer Vincent's conduct, we need not address the issue. suspicion or wrongdoing, or in the actions that were taken by him to dispel that suspicion."

On appeal, Montgomery and Stout detail the evidence they claim demonstrates Officer Vincent's discriminatory intent and unequal treatment:

- They were traveling from Memphis, Tennessee to Jackson, Mississippi, which are both predominantly black cities.
- They are both black.
- They were driving a Lexus SUV.
- Stout believed "they were being held because they are African American and for no other reason."
- Montgomery also believed "it appeared that the only reason Officer Vincent was keeping them was that they were black and driving a Lexus."
- Officer Vincent later remembered that Stout and Montgomery had indicated that the purpose of their trip to Mississippi was a concert when in fact they had told him they were in Mississippi for Stout's graduate student research. According to Stout and Montgomery, this lapse is evidence that Officer Vincent had discriminatory intent because "he did not see a highly educated Black woman and her partner; he saw two Black people in a nice car going to a concert."
- No trooper issued them a ticket or citation, even though the officers claim they found marijuana in the SUV.
- They both stated there was no marijuana in the car that day.
- On the day before Officer Vincent detained Appellants, the City of Mound Bayou approved a resolution against the racial profiling of people of color by the MHSP. The mayor of Winstonville also condemned racial profiling of black people by the MHSP. Officer Vincent has been with the MHSP since 1997.

In light of this evidence, Montgomery and Stout argue that the district court misapplied the summary judgment standard when it concluded that they failed to raise a genuine issue of material fact. They stress that, after the Supreme Court's decision in *Tolan,* this evidence must be viewed as a whole, and not in individual pieces. And the evidence must be viewed in a light most favorable to them.

The Supreme Court's decision in *Tolan,* however, does not relieve a nonmoving party of its burden to "go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial" after a moving party meets its "initial responsibility." Nor does it allow nonmovants to satisfy their burden with metaphysical doubt, conclusory allegations, unsubstantiated assertions, or a scintilla of evidence.

We have no reason to doubt the genuineness of Montgomery and Stout's subjective belief that Officer Vincent detained them only because they are black. But we cannot accept such evidence as a basis for providing judicial relief. Because we are not permitted to impute any alleged discriminatory intent of Trooper Wall to Officer Vincent for the purpose of imposing individual liability under § 1983, we cannot consider any evidence of racial profiling that occurred before Officer Vincent arrived on the scene. Moreover, we cannot attribute the general evidence of racial profiling by the MHSP condemned by the mayor of Winstonville and the City of Mound Bayou to Officer Vincent.

With this evidence removed, all that remains of Appellants' case is that they, a black couple, were detained when driving a nice car on a Mississippi road by an officer who did not write them a ticket and who could not remember their purpose for visiting the state. Even when viewed as a whole, this evidence fails to show that there is a genuine issue for trial regarding whether Officer Vincent treated them unequally and acted with discriminatory intent.

Although Appellants dispute Trooper Wall's report that they were acting nervous and that they gave conflicting accounts as to the purpose of their trip in Mississippi, this does not create a fact issue because Officer Vincent was allowed to rely on the information provided to him by a fellow officer. In light of the report he received from Trooper Wall, the fact that Montgomery had previously been arrested for distributing narcotics, and the fact that Interstate 55 is often used to transport drugs, Officer Vincent had nondiscriminatory reasons to continue detaining Appellants after the initial stop and request assistance from the K-9 officer.

Because Appellants failed to provide any evidence that Officer Vincent acted with discriminatory intent or treated them unequally, they cannot show there are any genuine issues of fact warranting a trial on their Fourteenth Amendment claim of racial profiling. Accordingly, we conclude the district court did not err when it granted summary judgment in favor of Officer Vincent.

3. Review Question

Sally Schlimazel (domiciled in Florida), was injured when she cut her foot on a chair at the home of her neighbor, Freddie Frankel. The chair was designed by Mebelmacher Designs (incorporated and having its principal place of business in NC). Schlimazel sued Mebelmacher in the U.S. District Court for the Middle District of North Carolina, asserting a claim under state law based on strict liability for a defective product. (Assume the court has diversity jurisdiction.)

The evidentiary record based on discovery includes the following evidence:

Summary Sally Schlimazel Deposition Testimony

Schlimazel testified in her deposition that she cut her bare foot on the "outside bottom edge of the chair where the base meets the sides," resulting in severe lacerations. She later examined the chair and determined that the edge was "razor sharp, sharp enough that if you were to rub your finger across the bottom outside edge of the chair, you would shave skin off your finger." The chrome was flush with the plywood but the edge was sharp all the way around the 360 degrees of the base.

Schlimazel went to the emergency room, where a doctor found that Schlimazel had a severed tendon. Following the doctor's advice, Schlimazel underwent surgery, followed by six months of physical therapy.

Summary of Freddie Frankel Affidavit

Schlimazel submitted a sworn affidavit from her neighbor. Freddie Frankel. Frankel stated in the affidavit that he bought the chair at a Miami furniture store a few years before the incident. He'd never noticed the sharp edge on the chair, and as far as he knew, nobody had ever been injured by it before.

Summary of Milo Mebelmacher Deposition Testimony:

Milo Mebelmacher, founder and president of Mebelmacher Designs, testified in his deposition that he designed the Swivel Tub Chair. Mebelmacher licensed the design to Hahn, Inc., which is the exclusive licensed manufacturer of the chairs.

The chair consists of a "tub" seat attached to a plywood base in a manner that permits the "tub" to tilt and swivel. A chrome veneer, about one-sixteenth of an inch thick, is affixed to the outside of the base. The diameter of the base is about two inches less than the diameter of the tub, and the bottom of the tub is about three inches off the floor.

Mebelmacher Deposition, Exhibit A

Tub Chair

The chair was designed for residential use. Mebelmacher assumes that people commonly walk barefoot in their homes. Nonetheless, he never anticipated that someone might put their foot in the area between the tub seat and the top of the base.

He was familiar with the use of clear plastic pieces known as "edge guards." These are used to protect the bottom edge of the metal on chrome-trimmed furniture. The Swivel Tub Chair was not designed with an edge guard because it did not seem necessary. Although it was technically feasible, it would have ruined the look of the chair to add a wood or cloth trim around the edge of the chrome veneer.

If the chair were manufactured with the chrome veneer extending beyond the plywood, it would create a surface that would cut bare skin. This would be a dangerous condition. The Swivel Tub Chair was specifically designed so that the plywood and chrome would be flush. This was not noted on the design drawing because it is so obvious. The drawings do not include all details: "I don't put in all the screws, I don't put in the dowels, I don't put in the mechanisms. I don't specify things that are not my problems. These are done by the engineers in the plant."

A designer's role is to make a conceptual sketch, to provide a full-sized detail and working sketch, and to supervise the making of a model. The purpose of the supervision is to assure that the finished product looks right. The designer's responsibilities are "aesthetic and not engineering." The manufacturer's inspectors occasionally "let something go through that isn't exactly right." In all factories some quality problems get through. Other than the present action, Mebelmacher has not received a single complaint of injury involving any of its furniture designs.

Summary of Julius Hahn Deposition Testimony

Julius Hahn, founder and president of Hahn, Inc., testified that his company manufactures the Swivel Tub Chair at its High Point, North Carolina factory. Hahn distributes the chairs to various retailers around the country, including the Miami store where Mr. Frankel bought the chair allegedly responsible for Schlimazel's injury.

Mebelmacher generally furnishes Hahn with a pencil sketch of the furniture design, as well as a working sketch giving the actual dimensions of the piece and specifying the exterior material to be used. The Swivel Tub Chair was designed so that the chrome veneer edge would be flush with the plywood and the edges of the veneer would be sanded down. Chrome veneer is sharp because it is thin. However, the chair was not designed to have sharp edges. Hahn considers a sharp edge to be a manufacturing defect, not a design defect. Nothing prevented the placement of a protective trim along the bottom of the Swivel Tub Chair. Plastic edge guards have been added to similar chairs in the last few years.

Under the applicable state law, the elements of Schlimazel's claim is as follows:

- The defendant designed the product;
- The product's design rendered it unreasonably dangerous in its normal intended use;
- The defective design was the proximate cause of the plaintiff's injuries.

Also under the applicable law, the defendant in a product liability suit based on an alleged design defect may assert, as an affimative defense, that the dangerous condition of the product resulted from the manufacturing process, not the design itself.

After discovery has concluded, Mebelmacher moves for summary judgment, arguing that Schlimazel has failed to meet her burden of proof that her injury was caused by a defect in the chair, and that any defect in the chair resulted from the manufacturing process, not the design.

Should the court grant summary judgment in favor of Mebelmacher?