

No Separate Jury Charge for Deadly Force; Panckeri Testified He Was Placed In A Deadly Choke Hold When He Was Not Resisting

Acosta v Hill, 2007 US App. LEXIS 24265 (9th Cir., October 17, 2007):

In Acosta, when bouncers physically removed Plaintiff (female) from Murphy's Club, a bar in San Diego's Qualcomm Stadium, she failed to comply with orders to leave the stadium, then kicked security officers and police officers. She was placed in a carotid restraint hold, and then handcuffed. She continued to struggle by kicking so she was taken to the ground and her legs were tied together. Subsequently, she filed a Section 1983 claim against the security guards, police officers and City of San Diego alleging various constitutional claims, including unconstitutional use of deadly force. At trial, the jury was given an excessive force instruction based upon a reasonableness standard, but not a separate deadly force instruction. The jury found for defendants and plaintiff appealed, arguing that the jury should have been given a separate deadly force instruction. **The Ninth Circuit affirmed finding that the district court did not err by refusing to give a separate deadly force instruction. The recent Supreme Court case of Scott v. Harris, forecloses Plaintiff's deadly force argument as Scott stated that there is no special Fourth Amendment standard for unconstitutional deadly force. Instead, all that matters is that the officers' actions were reasonable.** The court overruled Monroe v. City of Phoenix, 248 F.3d 851, 859 (9th Cir. 2001) as Monroe, held that an excessive force instruction based on the Fourth Amendment's reasonableness standard is not a substitute for deadly force instruction.