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Shooting of a Fleeing Unarmed Man Does Not Appear to Be Justified, Experts Say

By MANNY FERNANDEZ

Can a police officer legally shoot a fleeing suspect in the back?

That simple question — being asked around the country after a video of a white police officer in North Charleston, S.C., shooting and killing an unarmed black man as he ran away from the officer provoked widespread shock and condemnation — has a not-so-simple answer: It depends.

In the legal test of whether an officer is justified in shooting a fleeing person, certain factors must be present, including a belief by the officer that the suspect committed or was about to commit a dangerous and serious felony such as an assault, legal experts said. The other factors include whether the suspect threat-

ens the officer with a weapon or whether the officer believes the suspect will cause death or serious injury to the officer, other officers or to the public if not apprehended.

Law professors, former prosecutors and police officers who watched the North Charleston video said it did not appear to them that the circumstances of the shooting met any of those legal parameters, and they said that based on what they saw in the video, the officer was not legally justified in opening fire.

“Whatever happened, this suspect was running away,” said Stephen A. Saltzburg, a professor at the George Washington University Law School in Washington and a former deputy assistant attorney general in the criminal division of the Justice Department.

“That is, the suspect was trying to avoid the officer. It is highly doubtful that the officer could legitimately claim that he thought that the suspect posed a danger to the life or the serious health of

A key test involves a serious crime and a serious threat.

anybody else in the community.”

One police officer with more than a decade of law enforcement experience, who asked that his name not be used because he was not authorized to speak to the news media, said that he wondered why the North Charleston

officer did not chase the man, but instead chose to stand and fire at him.

“We watched it at roll call,” the officer said of the video. “Everyone cringed. Because the video itself looks horrendous. It looks like he’s just shooting an unarmed man.”

A narrow set of circumstances must be in play for an officer to be justified in shooting a fleeing suspect, including that the suspected crime was a serious felony, legal experts said. Kenneth Williams, a professor at South Texas College of Law in Houston who is an expert on police use of force, used a hypothetical situation as an explanation. “Let’s say I shoplifted out of Macy’s and I started running away from the police,” Professor Williams said. “The police would not be justified

in that circumstance with shooting me.”

The North Charleston man, Walter L. Scott, 50, was shot in the back, and the officer, Michael T. Slager, 33, who now faces murder charges and was fired on Wednesday, is shown in the video firing eight times as Mr. Scott appears to be 15 to 20 feet away and fleeing. The officer said Mr. Scott took his Taser stun gun, but Mr. Scott appeared to have nothing in his hands as he fled.

The shooting occurred after Mr. Scott ran following a traffic stop for a broken taillight.

The court case at the center of the issue of shooting a fleeing suspect, *Tennessee v. Garner*, a Supreme Court ruling from 1985, held that the police in Memphis had acted unreasonably in shooting an unarmed suspect in the

back and killing him as he fled from a house he was suspected of burglarizing. The ruling effectively set a national requirement that officers shoot only when life is endangered and established that they cannot shoot unarmed, nondangerous suspects solely out of concern that they might escape.

“If the person is running away and is not armed, and the only thing you stopped them for was a traffic ticket, I can’t imagine why you’d be justified in shooting them,” said Bruce A. Barkett, a New York area defense lawyer and a former Nassau County prosecutor on Long Island. “Under New York law, even if he had stolen the officer’s stun gun and was running away with it, it doesn’t appear that he’d be justified in shooting him.”