scheme." He found the majority to have improperly intertwined *public* carry with *concealed* carry. The result was inconsistent with *Heller,* which had determined that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." *District of Columbia v. Heller,* 554 U.S. 570, 635 (2008). *Heller* had then emphasized that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions," which it labeled as "presumptively lawful." *Id.* at 626-27 & n.26.

The dissent identified an entirely different set of historical antecedents, which depicted concerns about the unrestricted public carry of weapons. "[W]e can be sure that 'the right we inherited from our English ancestors' left ample leeway for restrictions on the public carrying of firearms in the interest of public safety." It also found the majority's allegiance to *Moore v. Madigan* to be flawed, because *Moore* involved Illinois' virtual blanket prohibition against all public carry of firearms. Here, the issue was limited to concealed carry. Because concealed carry *per se* was not a core Second Amendment right, the dissent found that the legislature's weighing of public good against private restriction satisfied intermediate scrutiny and made the San Diego "good cause" permitting requirement constitutional.

http://www.nraila.org/media/5744087/peruta_nra_9th_cir_amicus.pdf (last accessed Feb. 19, 2014)

Search and Seizure: No "Seizure" of Decedent or Vehicle Where Insufficient Evidence That Police Caused Fleeing Car to Crash

Wourms v. Fields and City of Evansville, No. 13-1178 (7th Cir. Feb. 5, 2014).

In April 2007 Dane Wourms, an intoxicated 16-year old, got in a car and took to the streets. His mother called the police and said her son was drunk and "going crazy." The police identified the car, which was driving erratically, and signaled the teenager to pull over. Wourms sped up and a chase ensued. He hit speeds as high as 75-80 miles an hour in a 25-mile an hour zone and fled police for some time before he crashed, dying as a result of the collision.

Wourms' father, as personal representative, filed suit under Section 1983 alleging an unconstitutional seizure of the son's person and property based on the theory that the police intentionally rammed the car. He sued the police officer involved and the joined the City as a potential indemnitor. Determining that no reasonable jury could find that the police car actually hit Wourms' car – a necessary finding for a Fourth Amendment claim under Section 1983--the district court granted summary judgment to the officer. Wourms' estate appealed.

HELD: The Seventh Circuit affirmed.

DISCUSSION: The Circuit Court found that the police had a legal right to signal Wourms to pull over because his erratic driving and excessive speed alone constituted reckless driving. Nonetheless, if the cars did collide, and analysis revealed excessive force was used, the court believed a colorable Fourth Amendment claim existed. Plaintiff was thus required to provide enough evidence that a reasonable jury could find a collision took place. Plaintiff first argued the police used Precision Immobilization Technique (PIT) – where the chasing car hits the rear of the front vehicle at an angle, causing it to lose control. The court pointed out this is a legitimate technique that is not necessarily unreasonable under the Fourth Amendment, but it did not need to consider reasonableness in this case because the facts did not support the theory that the police car made contact with Wourms' car. First, the scratches and marks on Wourms' bumper did not match those of the police car, which three experts, including one retained by Wourms, testified to. Next, no paint transferred between cars, which usually happens when cars collide. Moreover, there was no debris on the road and no tire marks made by the police car near the crash site, both typical results when this maneuver is used. Finally, the officer testified that he did not make contact with Wourms' car.

Plaintiff opposed the expert testimony with what the Court called "amateurish conjecture" by arguing the skid marks made by the rear wheels of Wourms' car could only be explained by the car having been hit. But the court believed the experts, who took the position that the skid marks were caused by the car turning at a high rate of speed.

Plaintiff further opposed the experts by saying the dents in the rear fender of Wourms' vehicle were made by the license plate screws on the front of the police car. But the court pointed out that while this would be evidence of contact, it wasn't here, because plaintiff had argued a PIT maneuver was used—therefore the marks should have been at an angle, not straight against the back of Wourms' bumper as was the case.

The court took issue with plaintiff's interpretation of witness testimony. The witness stated she saw the vehicles speed by her while she was stopped at a light and that they were 5 to 10 seconds apart. The court pointed out that given where the cars passed her and ultimately came to rest, the police car did not have enough time to catch up to Wourms and make contact with the car.

The Court of Appeals found that no reasonable jury could believe that the police car contacted Wourms' car and caused the accident. Thus no seizure took place within the meaning of the Fourth Amendment.

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2014/D02-05/C:13-1178:J:Posner:aut:T:fnOp:N:1285552:S:0 (last accessed Feb. 19, 2014).