

The Intended Object of a 4th Amendment Seizure – And the Intent that Counts

Tim Miller

Subject Matter Expert for Use of Force

Legal Division

Federal Law Enforcement Training Center

Chapel Crossing Road

Glynco, Georgia, 31523

tim.miller@dhs.gov

The 4th Amendment

- *The right of the people to be secure in their persons...against...unreasonable **seizures**...*
 - Seizure? It's defined as:
 - A governmental termination of movement by a means intentionally applied. Requires a willful act, not an unknowing one. [Brower v. Co. of Inyo \(1989\)](#).
- Significance? The seizure must be objectively reasonable. [Graham v. Connor \(1989\)](#).

Plaintiff v. Defendant

**Focus on when that plaintiff
gets Fourth Amendment
protection**

The Intent to Seize is Clear



Plaintiff v. Defendant

The Legal Process

Seized?

Yes

Objectively Reasonable?

Reasonable in fact?

No

Law Clearly Established?

Yes

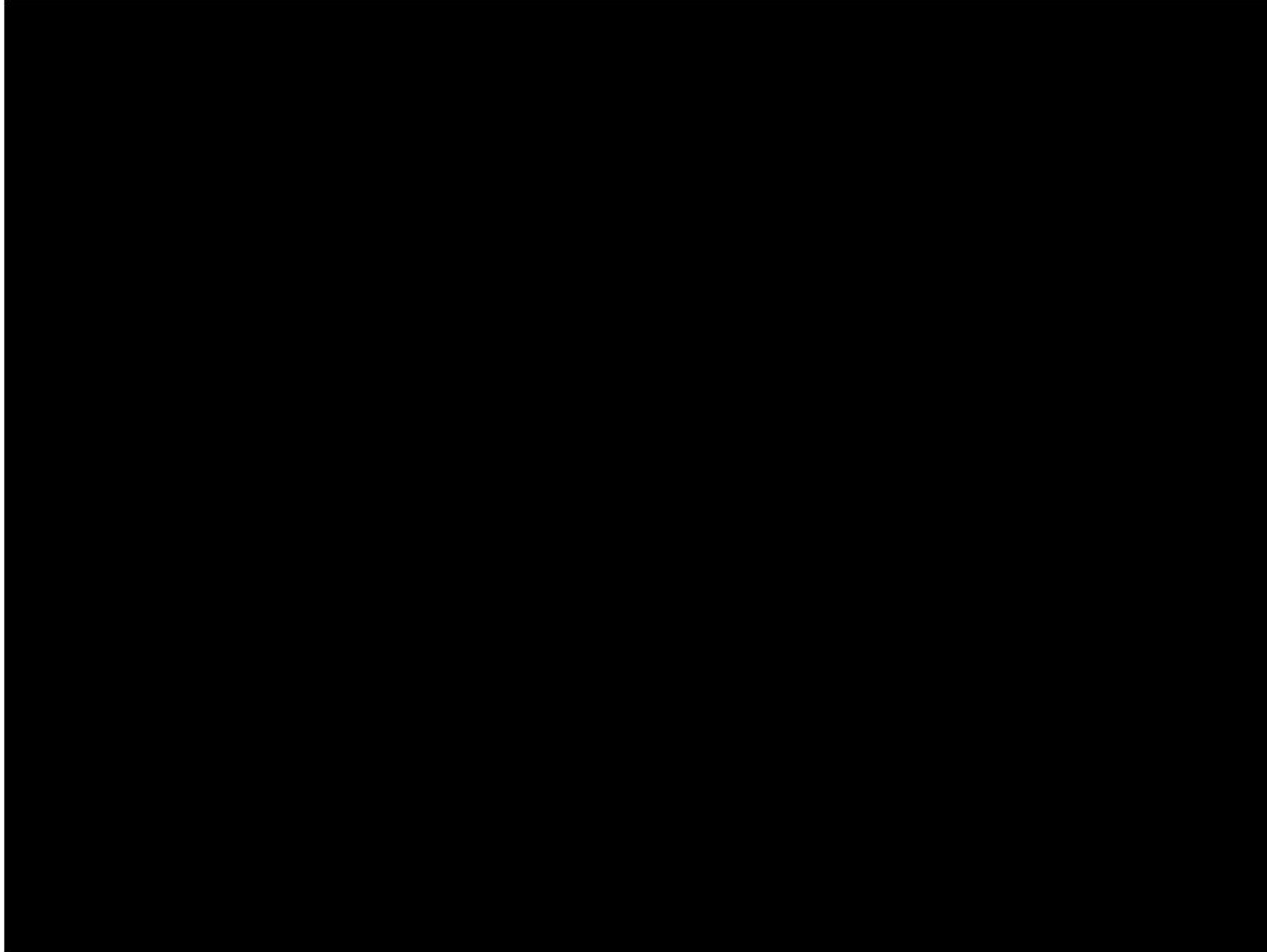
Violation

Yes

Not liable

No

No Intent to Seize



Plaintiff v. Defendant

The Legal Process

Seized?

No

Other Tort?

Yes

Objectively Reasonable?

Yes

Not Liable

No

Reasonable In Fact?

No

Yes

Law Clearly Established?

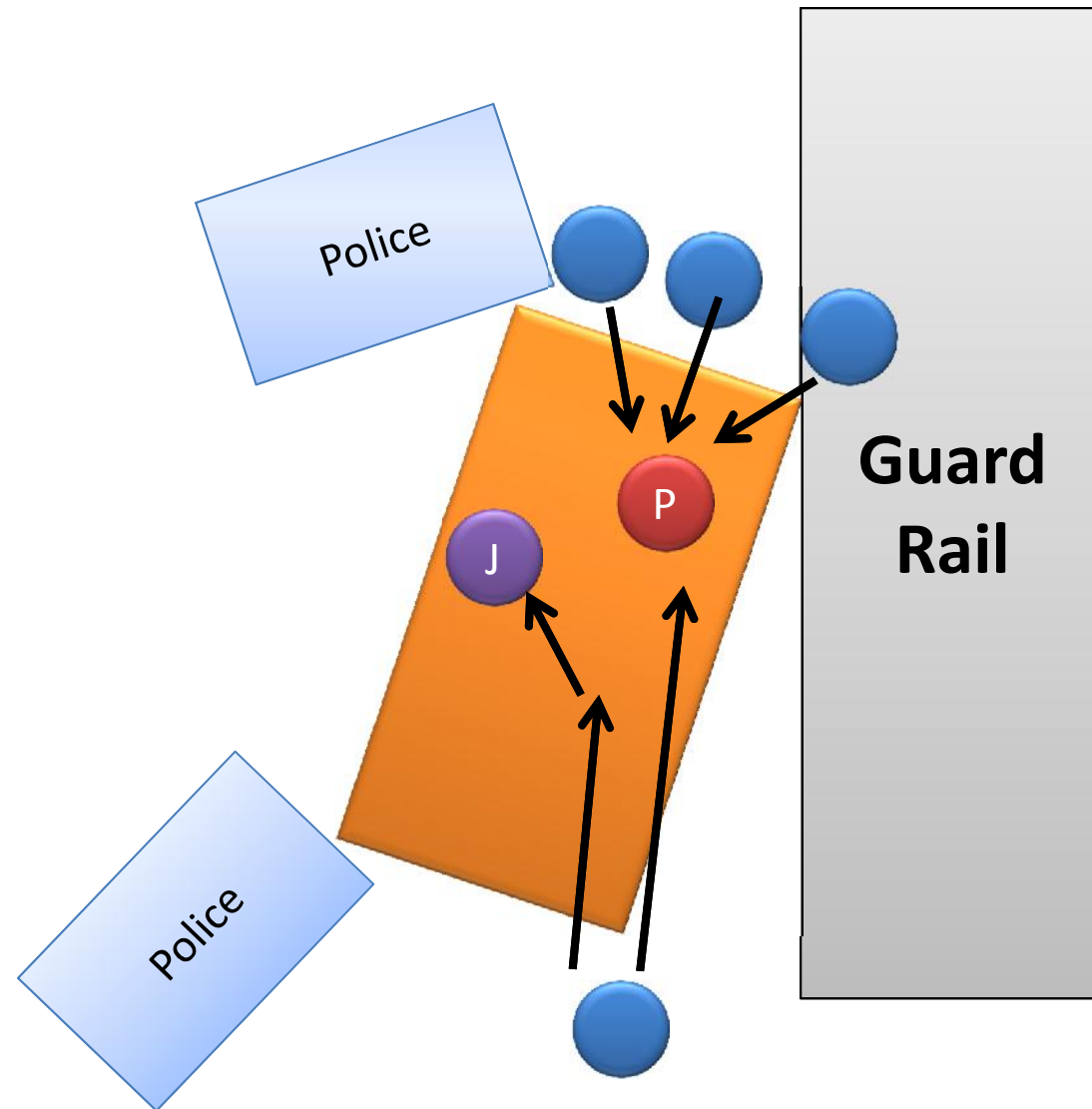
Violation

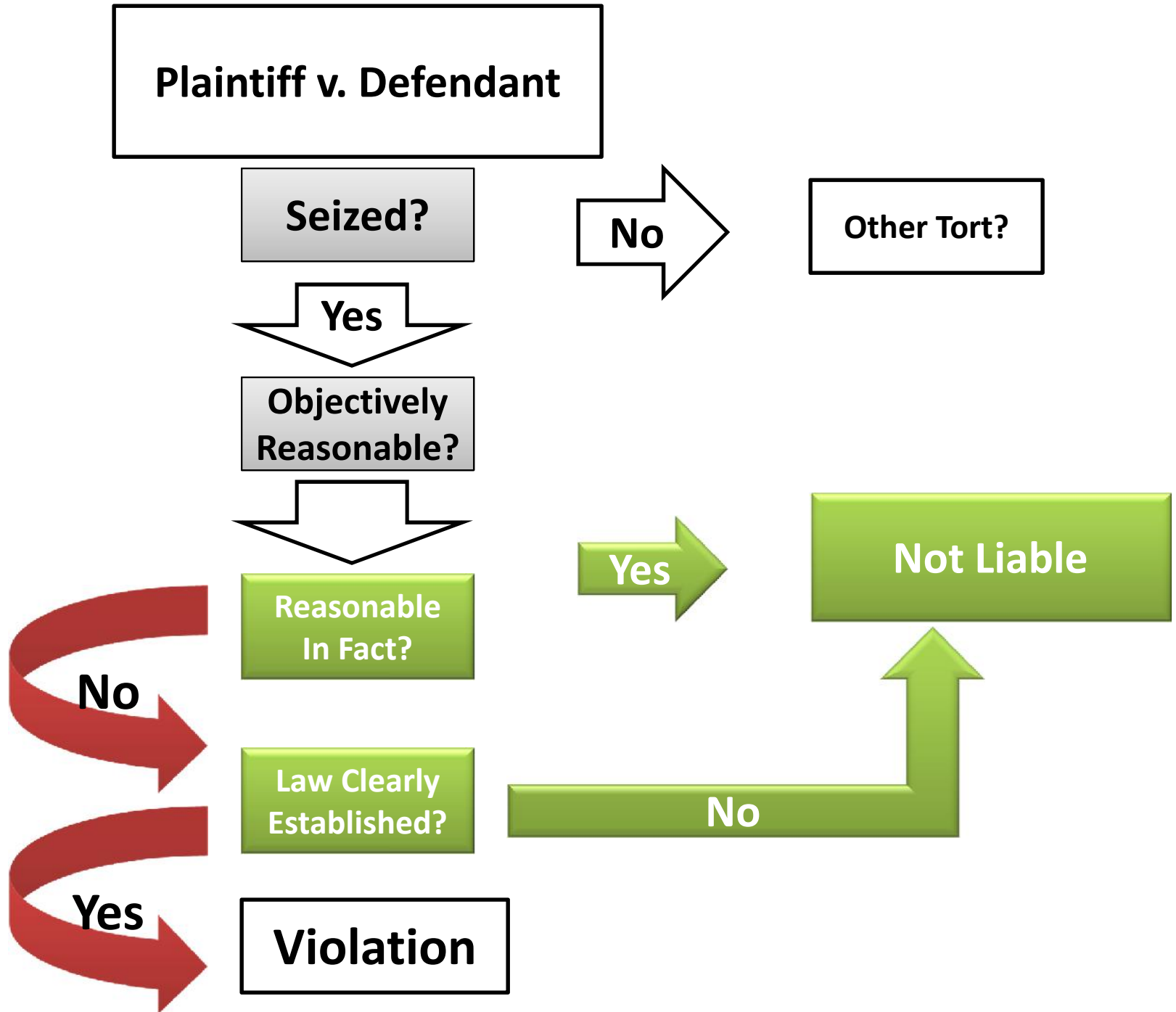
Hostages and By-Standers Are Not Seized



Hostage Shot by Errant Bullet

Estate of Joshua Sawicki v. O'Connell





“An unintended person can be the intended object of a Fourth Amendment seizure...”

Brower v. Co. of Inyo.

These are cases of mistaken identity.

**For example, the officer seizes
Mr. A,
believing he's *Mr. B.***

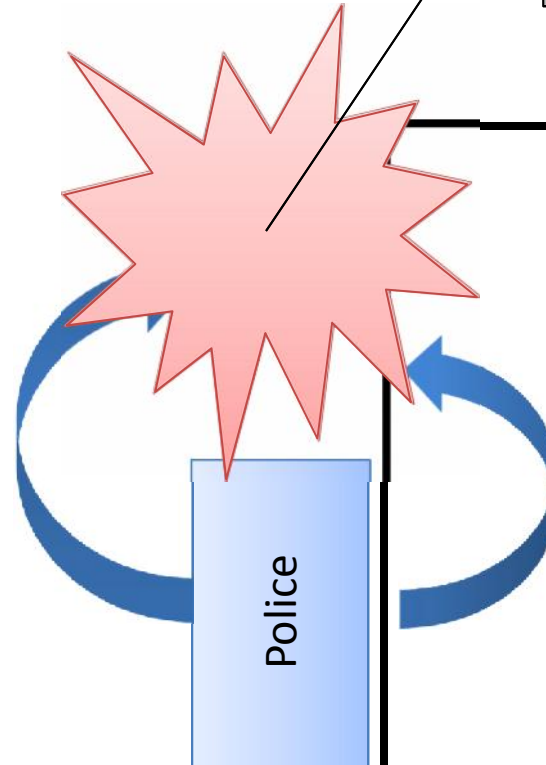
A Case of Mistaken Identity

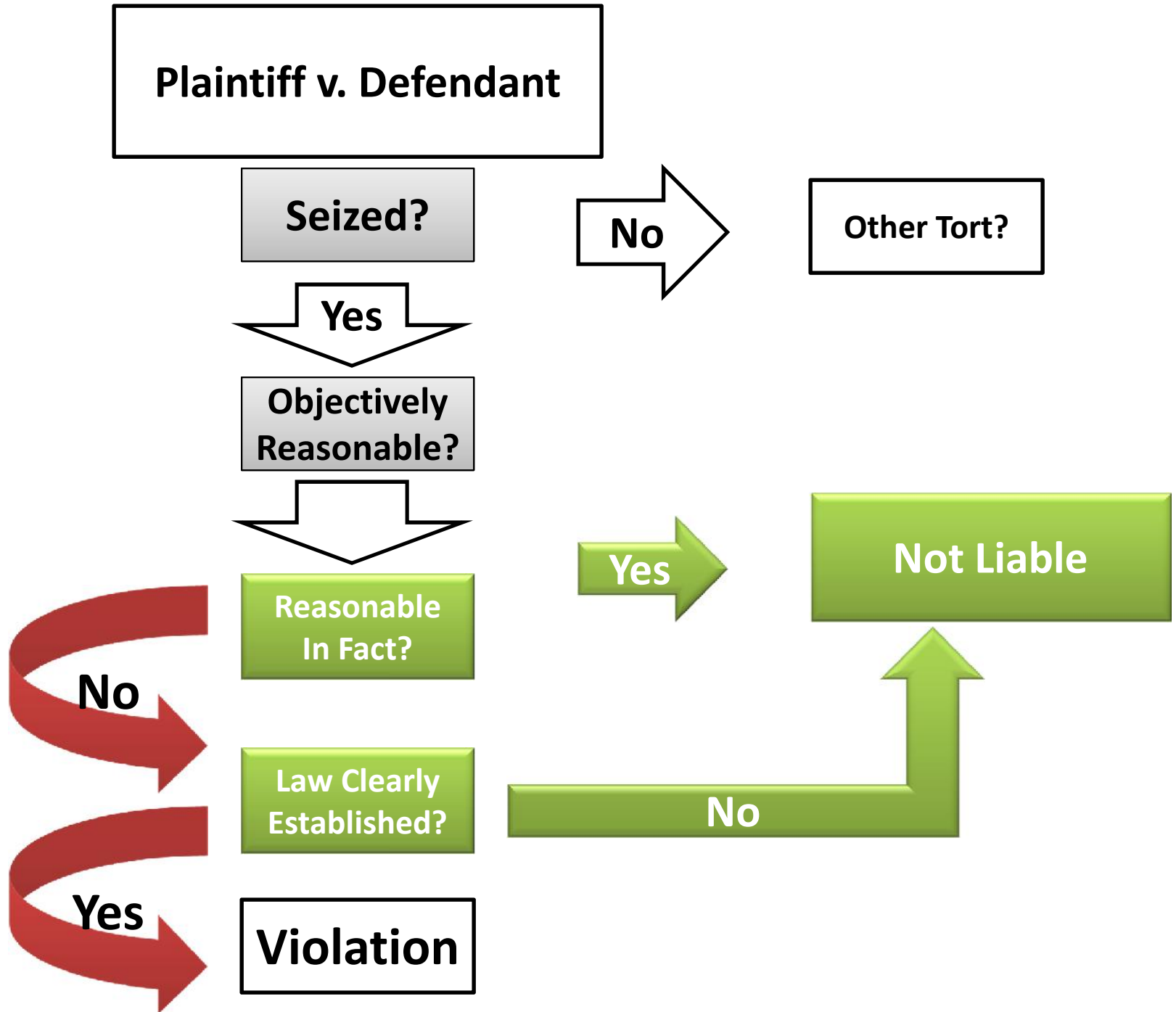
Catlin v. DuPage Co. Major Crimes Task Force

Uh,
Ooh!

Red Roof
Inn

Police





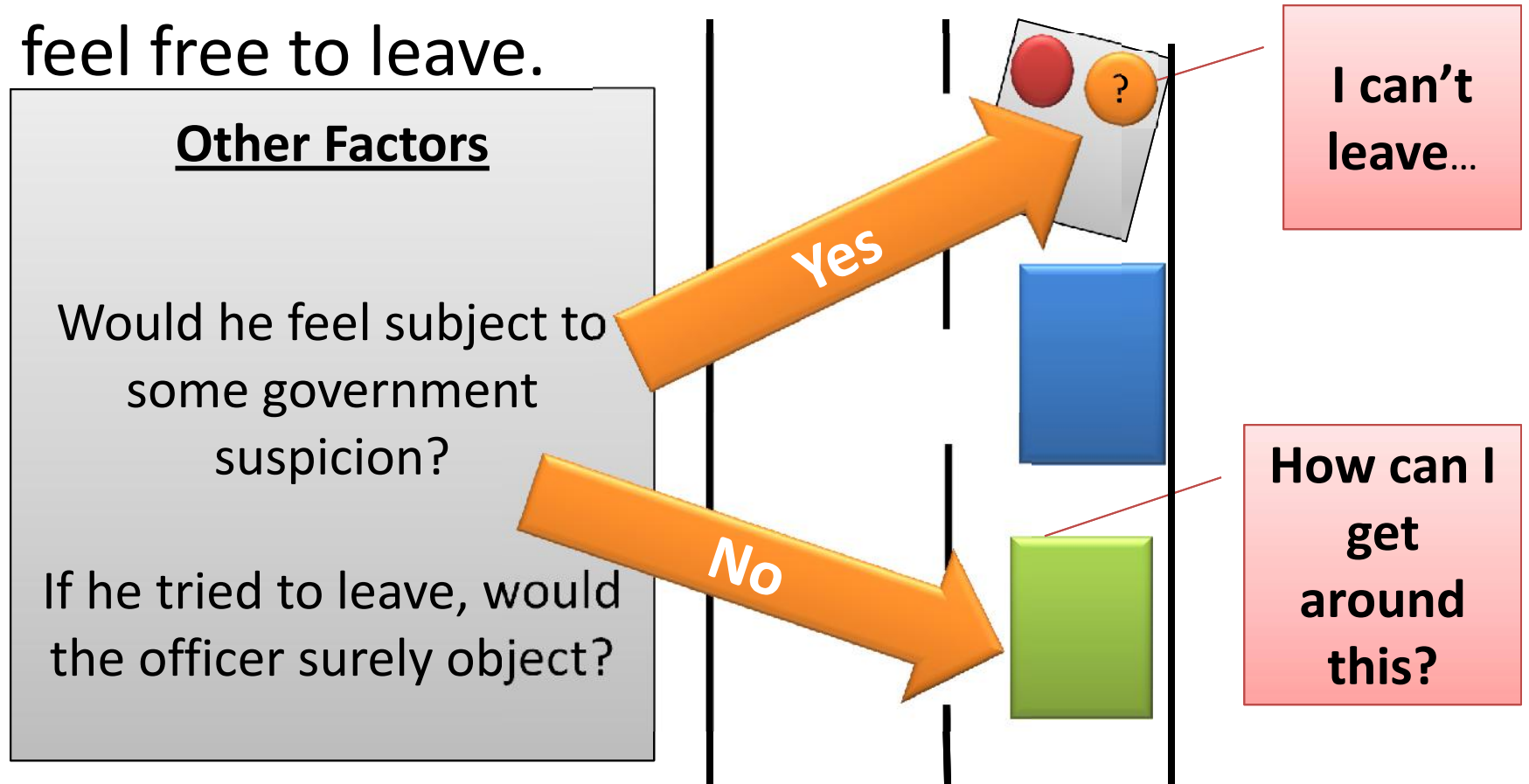
Sum up, a little ...

- The Brower test works when there is an intended object of a seizure.
 - Case of mistaken identity?
 - “An unintended person can be the intended object of a seizure...”
- What about ambiguous cases, where the officer’s intent is uncertain?
 - *E.g., ... Plaintiff says he was the intended object of a seizure, and the officer says no he wasn’t.*
 - The Supreme Court said use the reasonable person test. [Brendlin v. California \(2007\)](#).

Reasonable Person Test

[Brendlin v. California \(2007\).](#)

- A person is seized if a reasonable person in the position of the person confronted would not feel free to leave.



There are Two Tests

- A governmental termination of movement by a means intentionally applied. Requires a willful act, not an unknowing one. [Brower v. Co. of Inyo \(1989\)](#).

Subjective Test

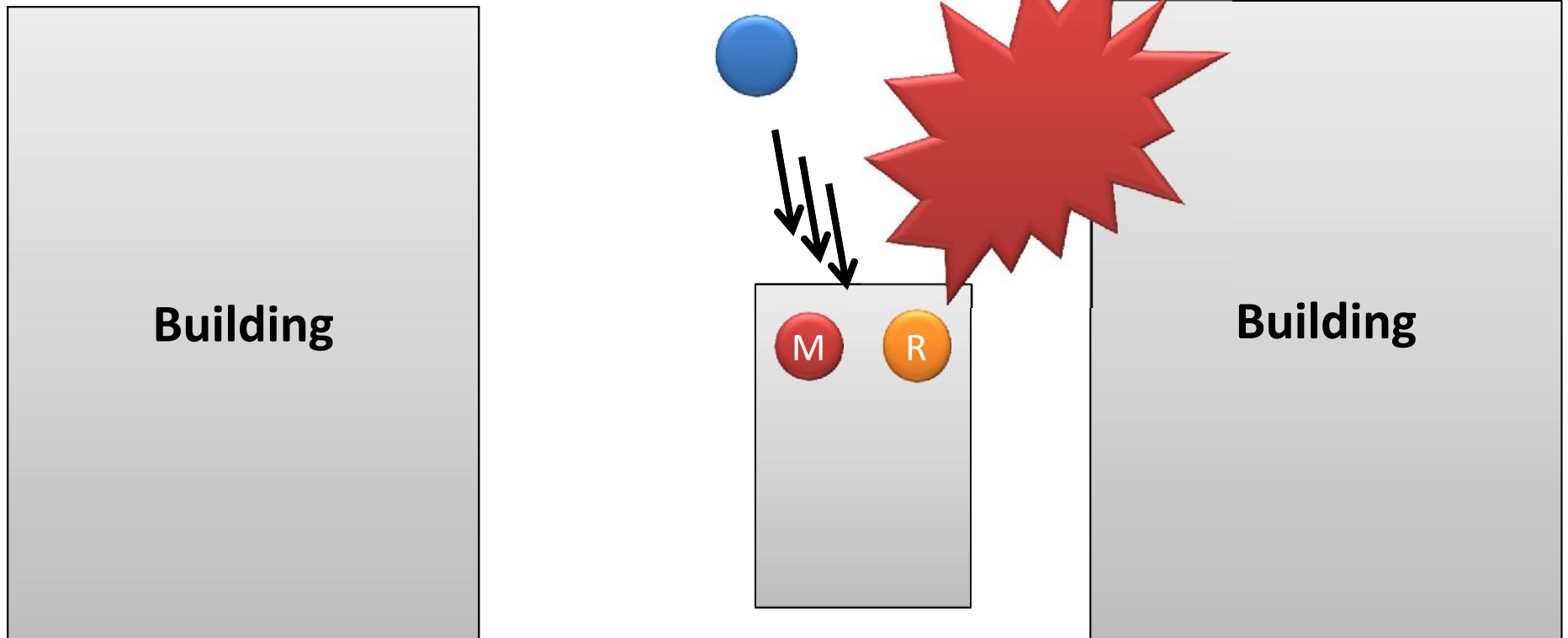
- A person is seized if a reasonable person in the position of the person confronted would not feel free to leave. “*Willfulness is no invitation to look at the subjective intent of the officer.*”
[Brendlin v. California \(2007\)](#)

Objective Test

And, ... The Test Matters

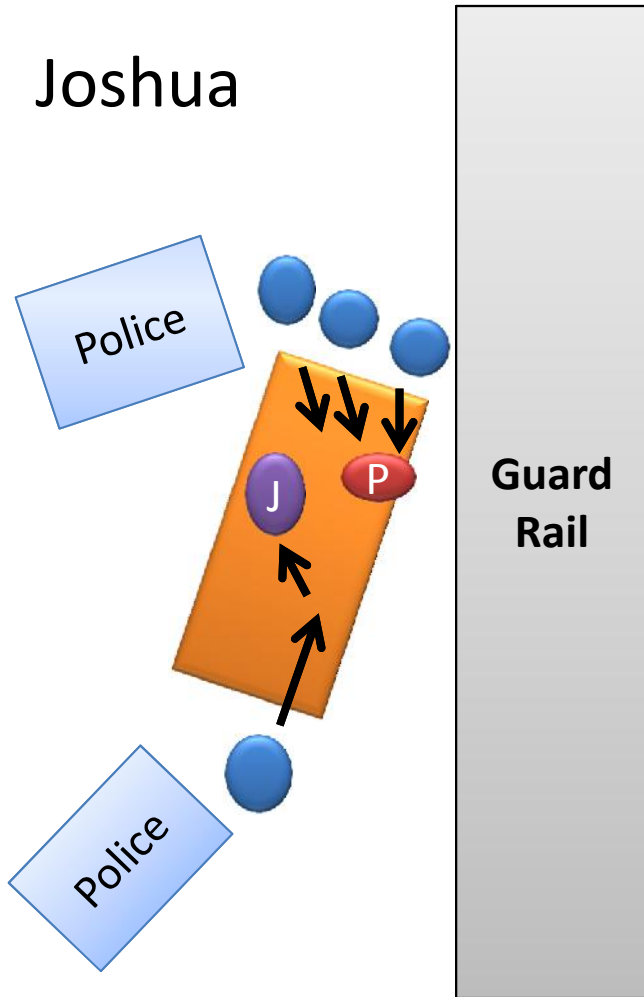
[Rodriguez v. Passinault](#) (6th Cir 2011)

By shooting at the driver of the moving truck, the officer *intended* to stop the vehicle, which effectively seized everyone inside.

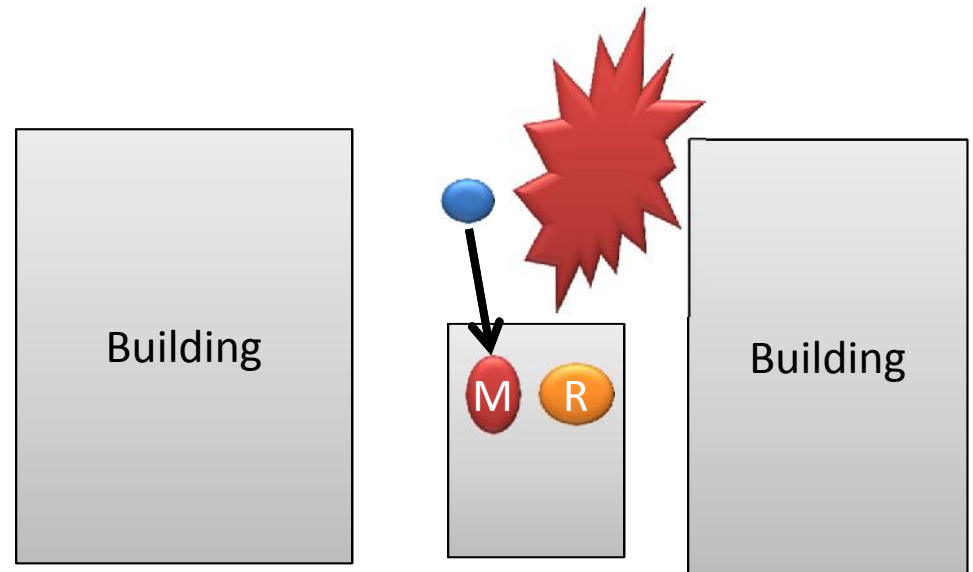


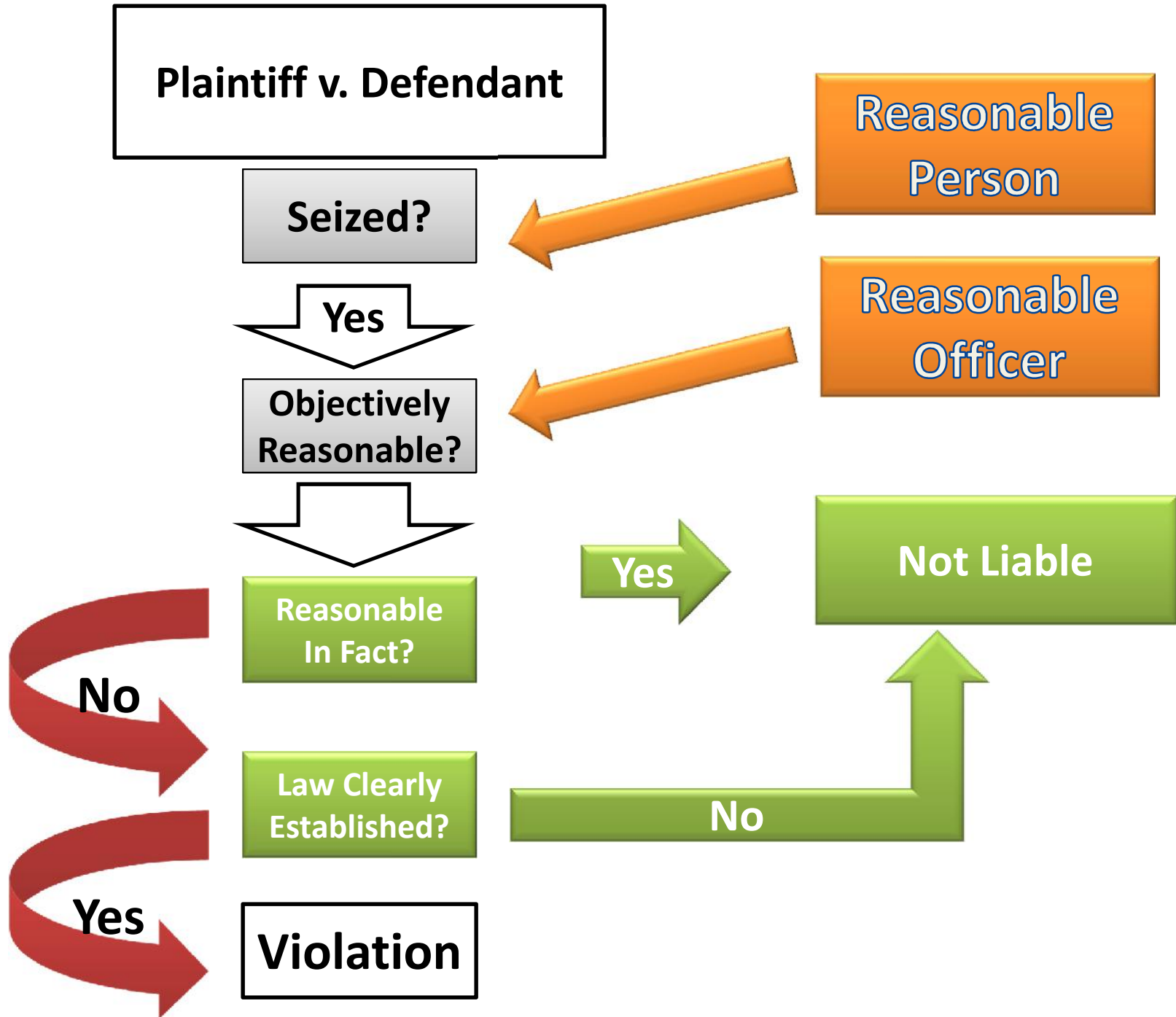
But if Rebecca was seized, why wasn't Joshua?

- Joshua



- Rebecca



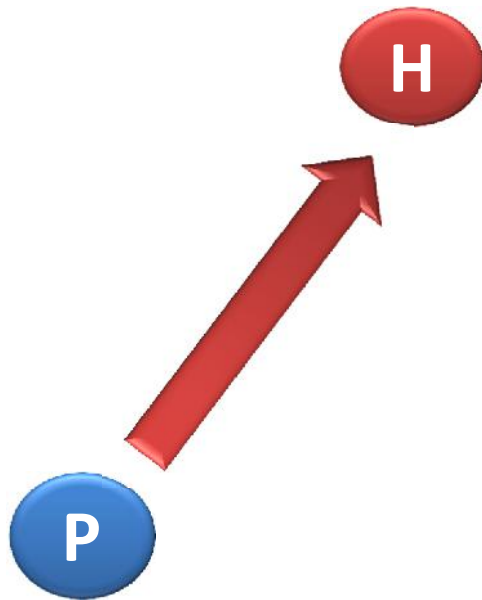


The Intent that Counts
Is the Intent
That Is
Objectively Manifested
Towards the Person Confronted.

Brendlin v. California.

Weapons Confusion Case

Henry v. Purnell (2007)



Both parties stipulate that Officer Purnell intended to draw his Taser, not his Glock handgun.

Officer Purnell argues, “I didn’t terminate Henry’s movement by a means I *intended*.”

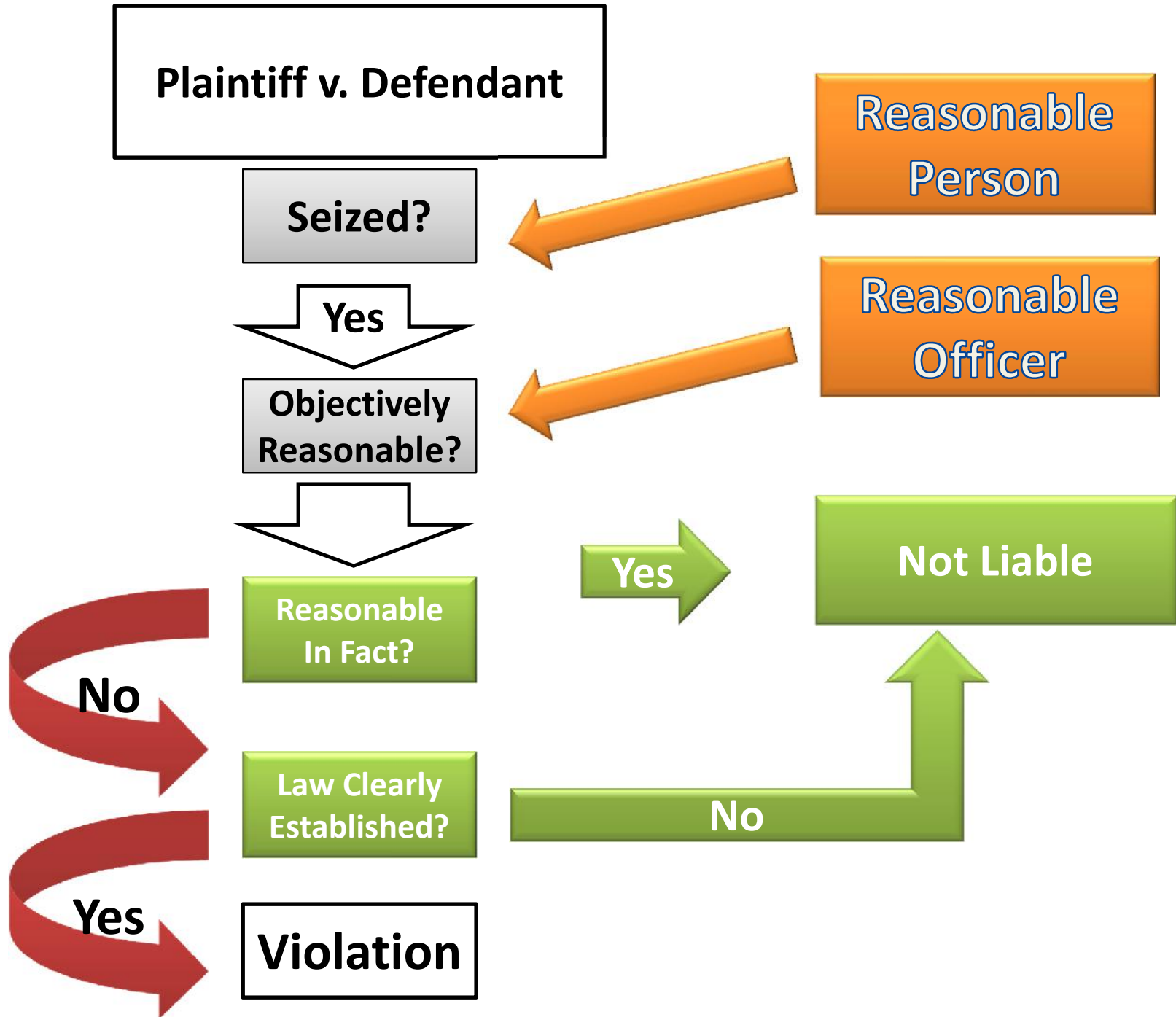
Sixth Circuit holds that Purnell *intended* to set in motion “a means” to stop Henry; the specific means you intended is irrelevant. Brower v. Co. Inyo

The intent that counts is the intent that Purnell objectively manifested. Brendlin v. California.

Henry’s Truck

The Reasonable Person Test

- The intent (...in who is the intended object of a seizure) is determined by a reasonable person?
- Would a reasonable person in the position of the plaintiff believe that officer's [use of force] was directed towards him for purposes of terminating his movement.

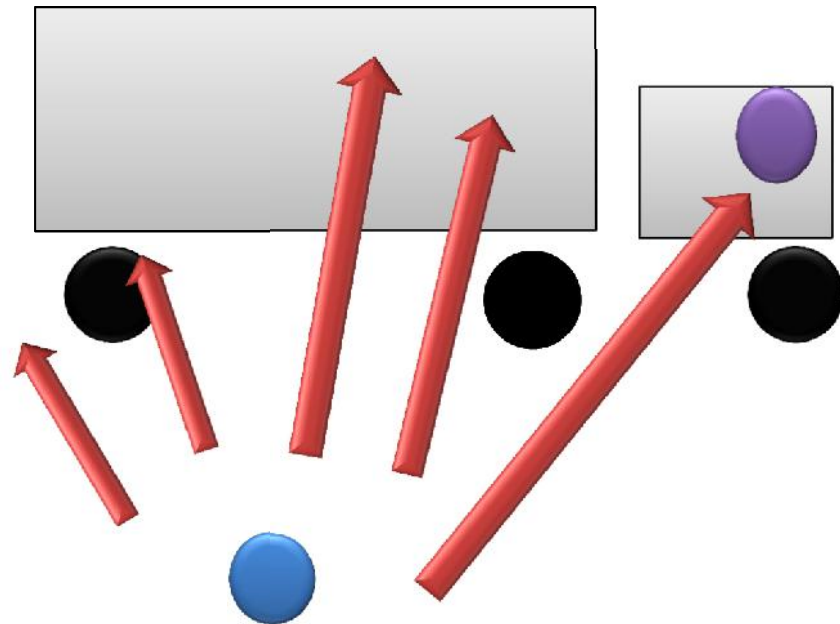


Sum up...

- In every case discussed so far, there has been at least one intended object of a seizure.
- What if the officer did not intend to stop anyone?

A Totally Unintended Seizure?

Garner v. Bd. Of Police Commissioners (8th Cir. 2011)

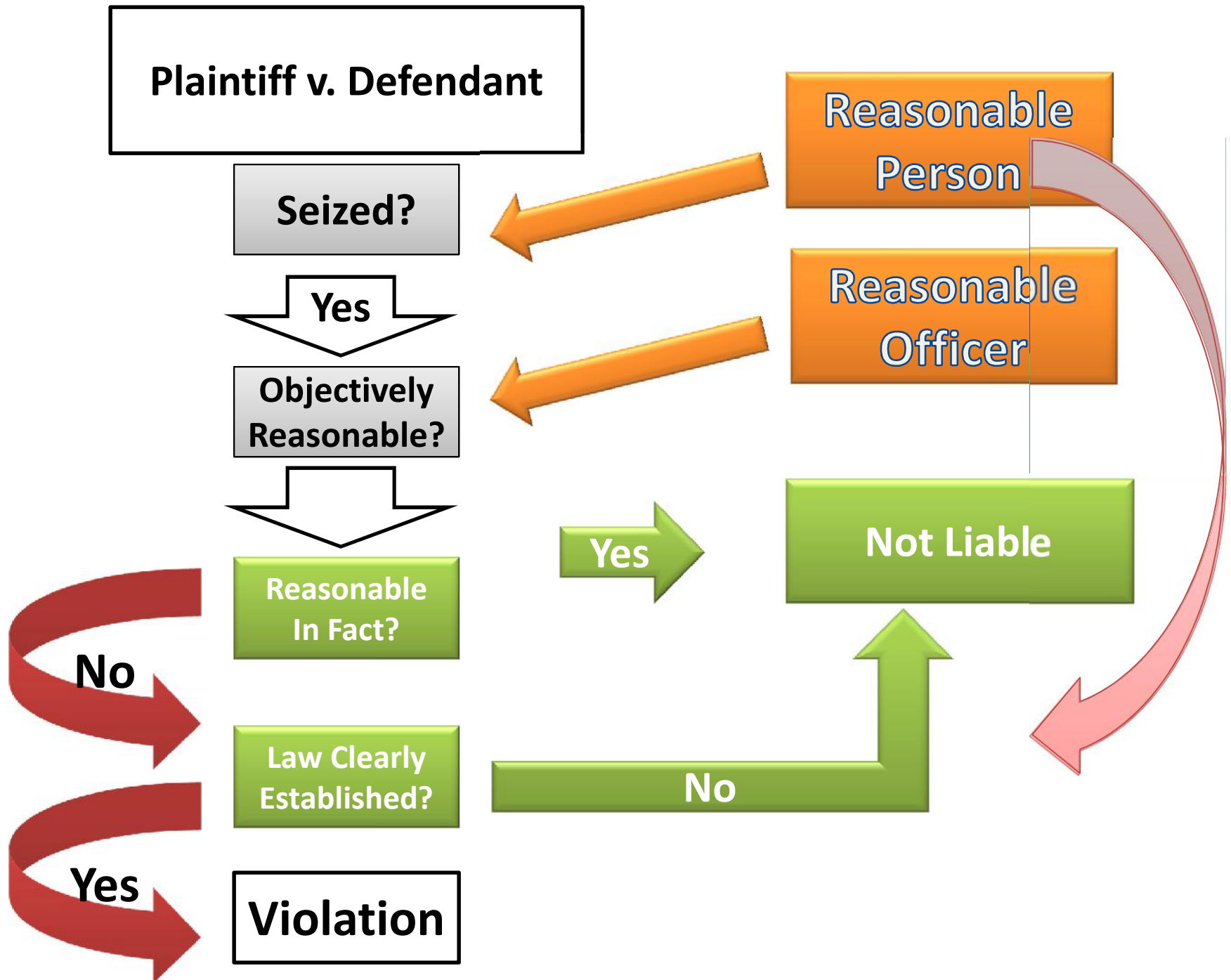


Convenience Store

I did not intend to seize anyone. I was suffering from a hypoglycemic reaction.
Brower test.

The district court used the reasonable person test.
Brendlin.

The 8th Circuit said that the law was not clearly established in 2007 that a LEO could effect a seizure without intending to do so.



Conclusions

- The officer must willfully commit an act.
 - The word, “willful” is no invitation to look at the subjective intent.
- That act must cause the plaintiff to submit to government control.
- Would a reasonable person believe that the officer’s act [use of force] was directed towards him for purposes of terminating his movement? If so, and he submits to governmental control, he’s seized.