Weapon Posture and Threat Assessment

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What It Is

In police use-of-force analysis, the fact that a subject was armed is legally incomplete. Courts do not treat mere weapon possession as equivalent to an immediate deadly threat. The more specific question is what the weapon – together with the subject's movement, orientation, distance, prior conduct, and manifest intent – objectively communicated about how imminent and serious the threatened harm was.

For edged weapons, this distinction matters especially because a knife or hatchet generally requires closing distance or a throwing motion before it can inflict injury. That makes weapon posture and threat geometry central, not peripheral.

"Brandishing" Has No Single Constitutional Definition

Federal and state criminal statutes define "brandishing" differently, and there is no constitutional rule that brandishing alone justifies deadly force or that mere possession alone prohibits it. Courts examine the totality. For research and reporting purposes, "brandishing" should be treated as a label that requires decomposition into observable components: weapon visible, weapon in hand, weapon raised, weapon pointed or oriented, weapon waved, weapon thrust, weapon swung, weapon moved toward another person.

Possession Alone Carries Less Threat Significance

Where a weapon is held lowered, no one is within immediate reach, the person is stationary or moving away, and no threatening movement or orientation has occurred, courts have repeatedly found that possession alone does not establish an immediate deadly threat.

The Fourth Circuit has developed the clearest line of authority:

- Hensley v. North Carolina v. Price (4th Cir. 2017): Officers shot a man holding a firearm pointed toward the ground. The court held that lawful possession of a firearm, without more, does not justify deadly force.
- Knibbs v. Momphard (4th Cir. 2022): A deputy shot a homeowner through a window after hearing him load a shotgun not pointed at the deputy. The court stated that failure to obey commands while possessing a weapon justifies deadly force only when the person makes some sort of furtive or other threatening movement with the weapon signaling an intent to use it imminently.
- Byers v. Painter (4th Cir. 2026): Byers held a hatchet at his side, ignored commands to drop it, verbally challenged officers, and was approximately 25 feet away – moving away, not toward them. The majority

> held that possession plus noncompliance does not equal an immediate deadly threat without additional threatening conduct. The court noted that a hatchet is less dangerous at 25 feet than a firearm in analogous circumstances.

The Tenth Circuit reaches similar results through the *Larsen* factors. Baca v. Cosper (10th Cir. 2025): Amelia Baca was holding knives, had reportedly threatened family members, was ordered to drop them, and took two slow steps – but did not charge and made no slicing or stabbing motions. A reasonable jury could find she did not present an immediate threat when shot.

Noncompliance and Possession Must Not Be Merged

One of the most persistent analytical errors in this area is treating weapon possession plus ignored commands as equivalent to an active deadly threat. Appellate decisions repeatedly resist this. A person can possess a weapon, refuse to drop it, and still not be making an immediate threatening movement. The distinction matters: noncompliance is relevant to the overall picture, but it does not independently establish imminence.

What Courts Look For Instead

The *Estate of Larsen v. Murr* (10th Cir. 2008) framework asks:

1. Did officers order the suspect to drop the weapon?
2. Did the subject make hostile motions with the weapon?
3. What was the distance?
4. What did the subject's conduct communicate about intent?

These elements are the consistent thread across circuits. The character and direction of movement, the orientation of the weapon, and proximity to a potential victim carry more weight than the bare fact of possession.

Weapon Orientation and Position

Relevant positions for edged weapons include: hanging at side, held at waist, held point-down, held across body, raised above shoulder, extended toward another person, cocked or drawn back for striking, actively thrusting, actively swinging. Courts do not provide a universal hierarchy, but weapon orientation appears as a recurring factor in threat assessment.

Direction of travel matters equally. A person holding a knife and advancing presents a different threat geometry from a person holding a knife and backing away. In *Byers*, the majority repeatedly emphasized increasing distance from officers. In *Ventura v. Rutledge* (9th Cir. 2020), movement toward a recently assaulted third party was the relevant variable, even with the knife lowered.

Distance Is Relational, Not Absolute

Distance should not be coded as a bare number without identifying the reference point. Relevant measures include: subject to officer, subject to civilian, subject to prior victim, subject to weapon if dropped, subject to barrier. For edged weapons, who can be reached matters more than an abstract distance value.

Furtive Movement

The phrase "furtive movement" carries significant weight in the case law but should not be treated as a conclusory label. A movement is significant because of what it reasonably communicates in context. Potentially threatening movements include raising a knife, drawing back for a strike, turning suddenly with a weapon toward a person, or reaching for a dropped weapon. *Byers* shows how contested this assessment can be: the majority characterized the movement as a slight upward tilt; the dissent read the same footage as a threatening raising of the blade. The disagreement did not change the legal standard – it illustrates that whether a movement crosses the threshold is often itself a factual dispute.

Verbal Threats Without Weapon Movement

Hostile statements alone do not carry the same constitutional weight as hostile weapon use. In *Byers*, the majority found that a verbal challenge to "come get it" without corresponding weapon movement did not establish an immediate deadly threat. Verbal threats can be relevant to the totality but should be analyzed separately from physical weapon conduct.

CEW Deployment and Weapon Retention

A subject who is deployed on with a CEW and achieves neuromuscular incapacitation may retain a weapon involuntarily – their hand may grip the weapon during the electrical cycle, or they may lack voluntary motor control during the active phase. Continued possession after CEW exposure does not automatically equal continued voluntary brandishing. Weapon retention, motor capacity during incapacitation, and behavioral intent should be analyzed separately.

Weapon Possession After Being Shot

A wounded subject may continue gripping a weapon, retain it during collapse, or drop it only after falling. Movement of a weapon during or after a shooting may reflect involuntary responses rather than renewed attack. However, weapon accessibility remains relevant: if the subject raises the weapon again, attempts to regain footing with it, or moves toward another person, the threat geometry is different from passive retention during collapse.

Self-Directed Weapon Use

A person holding a knife to their own body presents a different threat than one directing the knife toward another. Self-directed possession can still create serious risk, but for Fourth Amendment deadly-force purposes courts distinguish danger to self from immediate danger to an officer or third party. This is particularly important in welfare-check and mental-health-crisis contexts.

What This Body of Law Does Not Establish

- Mere weapon possession is harmless
- "Brandishing" has one universal constitutional definition
- Officers must wait for an actual swing or stab
- Every raised knife creates an immediate deadly threat
- Every lowered knife is non-threatening
- Refusal to drop a weapon is irrelevant
- Distance alone resolves the threat question
- Verbal threats alone always justify deadly force
- A person moving away can never remain dangerous
- An edged weapon is categorically less dangerous than a firearm
- Every ambiguous weapon movement must be resolved in favor of the subject

Policy Implications

1. Train officers to articulate weapon posture, not just weapon presence. A report stating "subject was armed with a knife" provides limited use-of-force analysis. A better report describes where the weapon was, how it moved, and toward whom it was oriented.
2. Distinguish possession from threatening deployment in use-of-force review. Use-of-force review systems should separately capture weapon position, weapon movement, subject direction of travel, distance, and commands – not collapse all of these into a single "armed/brandishing" variable.
3. Do not treat noncompliance with drop commands as a freestanding justification for deadly force. The significance of noncompliance depends on what else the subject is doing – weapon movement, direction of travel, proximity to a potential victim, and available response time.
4. For edged weapons, interpret distance in relation to the potential victim, not just the officer. The subject may be 25 feet from the officer but 10 feet from a third party. The relevant geometry is who is within the weapon's effective reach given the subject's current position and movement.

5. Code weapon posture as a multidimensional variable. Preferred coding separates: possession (yes/no/within reach), weapon position (lowered/raised/pointed/strike-ready), weapon movement (none/raised/thrust/swung/thrown), and subject locomotion (stationary/retreating/advancing). This prevents the source's label from becoming the analytical conclusion.

HOW TO CITE

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