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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of September – 2026

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Davis v. City of Elgin, Illinois, No. 25-1299, July 9, 2026

THE CASE: Officers used “plastic bullets” against Davis. Could the Officers be held liable for using excessive force?

FACTS: A woman called the police to report that Davis threatened his ex-wife and a roommate with a shotgun while under the influence of alcohol. Dispatch called the ex-wife, and she confirmed that after an argument, Davis went into his bedroom, reappeared with what seemed to be a rifle, laid it on the kitchen table, and remarked that he should shoot her and her nephew. Though the gun was covered with a blanket, the ex-wife saw enough to see that his finger was on the trigger. She then said, however, that Davis claimed he had only been joking. In response, the Department sent patrol officers, four different S.W.A.T. teams, an armored vehicle, a robot, negotiators, snipers, and high-ranking members of the police department to Davis’s home. The police surrounded the house but were unaware that Davis had left, gone to his neighbor’s, and fallen asleep. A police negotiator eventually reached Davis by phone, but Davis hung up. On a later call, Davis threatened to harm himself with a knife, and the negotiator relayed over the radio to the other officers that Davis was threatening to slit his own throat. As a result, the officers worried that Davis was armed with knives. And based on the calls with Davis, the negotiator believed that Davis threatened to hurt the officers, that he would release dogs on them, and that he would use knives against them, though Davis denied that he directly threatened the officers over the phone.

At this point, a Sergeant authorized the use of non-lethal impact weapons to subdue Davis if and when he came outside so that he would not retreat into the house. Eventually, Davis came outside. A negotiator asked him to come down from the porch, but Davis refused. In accordance with the Sergeant’s plan, an Officer fired at Davis with plastic ammunition. [The expected outcome from such a shot is blunt force trauma or maybe broken bones.] The shot hit Davis’s right forearm and snapped the bone in half. Davis fled back into the house. About ten minutes later, Davis reemerged. He stepped onto the front porch and attempted to demonstrate that he was unarmed. But he then shouted at the officers: “[s]o I want to know who’s that [expletive] was who shot me because I want to [bust or punch] his ... face in.” In response, officers shot him two more times with plastic bullets, hitting his thigh. Then, as Davis began to lower himself to the ground, an officer fired one more shot, which also hit him. Davis eventually pled guilty to disorderly conduct. He then filed this civil rights action, alleging that the officers used excessive force against him in violation of the Fourth Amendment. The district court granted summary judgment for the defendants and Davis appealed.

USE OF FORCE AND QUALIFIED IMMUNITY RULES AND GUIDELINES LISTED IN THIS CASE:

A. Qualified immunity offers police officers a shield to civil liability when they do “not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” **B.** The shield is pierced when (1) officers violate the Constitution or a federal statutory right and (2) their conduct is clearly established as unlawful. **C.** As to the second step of that analysis, “[t]he relevant inquiry is whether existing precedent placed the conclusion that the officer acted unreasonably under these circumstances beyond debate.” **D.** If the Officer’s conduct was “so egregious and unreasonable that, notwithstanding the lack of an analogous decision, no reason-able officer could have thought he was acting lawfully,” Officers may be found liable for their constitutional violations even if no caselaw exists that clearly establishes the Officer’s conduct as unlawful. [In short, to hold an Officer liable for the use of force, the Plaintiff must show both that the Officers violated his constitutional rights and that the constitutional rights that was violated were “clearly established. However, even if the violations of his rights was not clearly established, i.e., no caselaw was found, the Officers could still be held liable if their acts were “so egregious and unreasonable that, notwithstanding the lack of caselaw, no reasonable officer could have thought he was acting lawfully.”]

ARGUMENT: Davis stated that his constitutional rights were violated by the Officers and precedent clearly established that the officers’ conduct was unreasonable under these circumstances because case law showed that using such “a high level of force” against an unarmed subject who poses no immediate threat to the officers is unconstitutional.

KEY CASE: *Phillips v. Community Ins. Corp.*, 678 F.3d 513 (7th Cir. 2012). In *Phillips*, police officers suspected Tamara Phillips of driving a stolen vehicle and driving under the influence of drugs or alcohol. After approaching to stopped car, the Officers commanded that she get out of her car. She did not follow the order. In fact, she was so intoxicated that the “officers knew they were dealing with an arrestee of diminished capacity.” Indeed, it was “clear that Phillips was never actively resisting arrest.” Nonetheless, from 40 to 50 feet away, an officer shot her with an impact weapon that had “force

equivalent to a .44 magnum pistol.” The Court of Appeals granted Phillips judgment as a matter of law, reversing the district court and found that the officers used excessive force and were not entitled to qualified immunity.

ISSUE #1: Does Phillips support Davis’s argument that the Officers in this case were not entitled to qualified immunity from liability? In response to this question, the Court of Appeals declared that *Phillips* was nothing like this case. As to the first shot (or all four shots taken together), the Court held that the analysis was simple. The officers had good reason not to want Davis to go back into the house, perhaps out of fear that he would go back to grab a weapon. [See *Brooks v. City of Aurora*, 653 F.3d 478, 487 (7th Cir. 2011) (“An officer, faced with a suspect fleeing toward his home and ignoring police commands, is not obliged to give that suspect an opportunity to retreat into his home and, perhaps, to fortify himself or to escape before the officer employs reasonable means of incapacitation.”)]. The Court noted that this issue wasn’t present in *Phillips*, where it said that “any threat [Phillips] presented had already been substantially contained.” Further, the Court declared that even separating the last three shots from the first one, Davis’s arguments failed. Davis complained that the district court inappropriately distinguished his level of incapacitation from Phillips’s. Yet, the Court held that Davis’s incapacitation differed both in degree and in kind. Phillips was “very drunk” and had “very little memory of the incident.” And the officers testified “repeatedly” that they knew Phillips was drunk and initially suspected that she was “passing in and out of consciousness.” In short, she did not obey commands precisely because she was so incapacitated. Davis, on the other hand, was responsive to the officers, walking around, and even behaving in what he categorized as a verbally abusive manner.

Davis also argued that his broken arm incapacitated him in the same way that Phillips was incapacitated by alcohol. The Court rejected this argument by noting that intoxication was entirely different from having a broken arm. Additionally, Davis argued the district court inappropriately distinguished the severity of his crime from that of Phillips’s. Again, the Court of Appeals declared that the district court did not err. According to the Court, the police in *Phillips* believed they were dealing with car theft, but after Phillips’s vehicle didn’t match the reported stolen vehicle, that belief quickly became objectively unreasonable. So, at the time they shot Phillips, the officers were only dealing with a suspected drunk driver. In this case, the Court noted that the officers were told that Davis had threatened his ex-wife with a rifle. That his ex-wife later said that Davis said he was joking doesn’t mean that the officers should have felt they were looking to arrest a suspect for a crime like drunk driving. [See *Graham v. Connor*, 490 U.S. No. 25-1299 7386, 396–97 (1989) (remarking that not all actions, even if they “later seem unnecessary in the peace of a judge’s chambers, violate the Fourth Amendment”). Since the excessive force analysis requires a Court to consider the reasonability of the officers’ actions in “proportion to the threat posed,” the distinction, according to this Court, was enough to show that the officers’ actions in this case were not clearly established as unconstitutional. Relatedly, the Court noted that, unlike in this case, Phillips was no threat to the officers, to herself, or to anyone else. In that case, the Court highlighted that she “never exhibited any sort of aggressive behavior toward the officers before or after they located her car, nor did she make any attempt to escape.” In response, the Court noted that even if Davis did not specifically threaten the officers, he exhibited aggressive behavior toward them, and he even admitted that he was verbally abusive toward them. As the Supreme Court explained “reasonableness must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight and the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.” From the officers’ perspective, Davis had made threats with a gun earlier in the day, had knives during the standoff, had threatened suicide, and had made threats to the officers. Taken together, this Court held that *Phillips* did not clearly establish that the officers acted unconstitutionally.

ISSUE #2: Does the use of non-lethal impact weapons (plastic ammunition) automatically constitute an excessive use of force? The only other Supreme Court or in-circuit case Davis pointed the Court to was *Omdahl v. Lindholm*, 170 F.3d 730 (7th Cir. 1999) which dealt with the use of impact weapons. However, the Court noted that Davis only used that case to stand for the proposition that the use of impact weapons, in certain contexts, might be considered a “higher level of force along a ladder of escalating force.” At no point did he argue or explain why that case showed that the officers in this case should have known beyond debate that their actions were unconstitutional. Therefore, the Court held that *Omdahl* did not hold that the mere use of impact weapons automatically constituted the excessive use of force.

ISSUE #3: Was the conduct of the officers in using impact weapons against this defendant so plainly excessive that they would have been on notice that they were violating the Fourth Amendment? The Court of Appeals noted that for this argument to succeed, Davis “must show that a general constitutional rule already identified in the decisional law applies with obvious clarity to the specific conduct in question.” According to the Court Davis identified no constitutional rule with any specificity at all. Therefore, Davis did not show that the conduct of the Officers was “so egregious and unreasonable” that no reasonable officer could have thought he was acting lawfully.

CONCLUSION: In this case, holding the officers accountable without any clearly established case law would risk punishing the officers for violating “extremely abstract rights.” Therefore, the officers were entitled to qualified immunity.

QUIZ QUESTIONS FOR THE MONTH OF SEPTEMBER – 2026

Davis v. City of Elgin, Illinois, No. 25-1299, July 9, 2026

1. As a general rule, qualified immunity offers police officers a shield from civil liability.
 - a. True.
 - b. False.

2. Qualified Immunity does not shield a police officer from civil liability if that Officer (1) violates a Constitutional or federal statutory right of a person, and (2), the Officer's conduct is clearly established as unlawful.
 - a. True.
 - b. False.

3. Can the use of non-lethal impact weapons (such as plastic bullets) still constitute the excessive use of force?
 - a. Yes.
 - b. No.

4. Davis cited the case of Phillips v. Community Ins. Corp., 678 F.3d 513 (7th Cir. 2012) to support his argument that the Officers in this case were not entitled to qualified immunity. Did this court find that Phillips supported a finding that the Officer's used of plastic bullets in this case against Davis constituted excessive force and, therefore, the officers were not entitled to qualified immunity?
 - a. Yes.
 - b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF SEPTEMBER – 2026

Davis v. City of Elgin, Illinois, No. 25-1299, July 9, 2026

1. As a general rule, qualified immunity offers police officers a shield to civil liability.

a. **True.** Qualified immunity offers police officers a shield to civil liability when they do “not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” City of Tahlequah v. Bond, 595 U.S. 9, 12, 142 S. Ct. 9, 211 L.Ed.2d 170 (2021)

2. Qualified Immunity does not shield a police officer from civil liability if that Officer violates the Constitutional or federal statutory right of a person and (2) the Officer’s conduct is clearly established as unlawful.

a. **True.** As this court held, “The shield is pierced when (1) officers violate the Constitution or a federal statutory right and (2) their conduct is clearly established as unlawful. District of Columbia v. Wesby, 583 U.S. 48, 62–63, 138 S. Ct. 577, 199 L.Ed.2d 453 (2018).

3. Can the use of non-lethal impact weapons (such as plastic bullets) still constitute the excessive use of force?

a. **Yes.** This Court analyzed the case of Phillips v. Community Ins. Corp., 678 F.3d 513 (7th Cir. 2012). In Phillips, an officer shot an intoxicated suspect with an impact weapon that had “force equivalent to a .44 magnum pistol.” Under the facts of Phillips, the Court concluded that the Officers used excessive force. Based upon this finding, the Officers in Phillips were denied qualified immunity.

4. Davis cited the case of Phillips v. Community Ins. Corp., 678 F.3d 513 (7th Cir. 2012) to support his argument that the Officers in this case were not entitled to qualified immunity. Did this court find that Phillips supported a finding that the Officer’s used of plastic bullets in this case against Davis constituted excessive force and, therefore, the officers were not entitled to qualified immunity?

b. **No.** The Court concluded that the facts in Phillips were different from the facts in this case. Therefore, the Court held that Phillips did not support a finding that the Officers in this case were not entitled to qualified immunity from liability.