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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of February – 2023 – ALTERNATIVE

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of February – 2023 - ALTERNATIVE

Henry Shirley v. Lee Rabensteine, et al., No. 22-2147, 2023 WL 129432, January 9, 2023.

Shirley, a suspect in a shooting, fled from the police in a car and on foot. The police finally cornered Shirley in the attic of a home he had invaded to avoid capture by the police. After using tear gas and stun grenades and after impacting Shirley's body with bean-bag shotgun rounds and Tasers Shirley was finally subdued. Should the Officers be held liable for their excessive use of force against Shirley?

FACTS: A police officer pulled over Shirley's car for a traffic stop. The officer knew that Shirley had an outstanding arrest warrant for unlawfully possessing a firearm as a felon, and that he was a suspect in a recent home invasion and shooting. Shirley sped away from the stop in his car. When he later began to flee on foot, the pursuing officer saw a gun fall out of Shirley's car. Shirley then broke into a stranger's house to hide. He hid in the attic of the house and resisted arrest. He lay across drywall between wood beams. For two hours, police unsuccessfully tried to get Shirley to leave: first they called his cell phone (he did not answer); then they used a loudspeaker to order him to leave; and finally they used tear gas and flashbangs (stun grenades that produce loud bangs and flashing lights). Eventually, as the defendants—members of the SWAT team—entered the house, Shirley's leg fell through the ceiling as drywall cracked under his weight. Shirley asserted that shortly after his leg broke through the ceiling he announced “I give up.” (The officers disputed this.)

After Shirley's leg broke through the ceiling, the police used significant force. An officer fired a “beanbag” round (ammunition that is less likely than bullets to kill) that hit Shirley's exposed leg, and others ordered Shirley to surrender. Shirley withdrew his leg back into the attic, and the officer then fired four more beanbag rounds at Shirley's hip, at which point the ceiling gave way and he dropped onto the floor. Shirley maintained that the fall rendered him unconscious, and he remembered nothing else. The officers asserted that Shirley writhed on the ground, making the arrest difficult. They also feared that he might have another gun. To arrest him safely, two officers used a Taser twice on Shirley (one time hitting him in the face) while another Officer kicked him in the leg three times. According to the Officers, at that point Shirley was finally subdued. Shirley was taken immediately to the hospital, where he received treatment for his injuries. Shirley was charged with unlawful possession of a handgun and resisting arrest. He pleaded guilty and received a prison sentence of five years.

Shirley then brought this civil rights action, alleging that the police officers violated his Fourth Amendment rights. The defendants moved for summary judgment, arguing that the use of force was reasonable and that the officers were entitled to qualified immunity. Based on the record cited to the judge, he concluded that the officers used reasonable force, were entitled to qualified immunity, and therefore deserved summary judgment. Shirley then brought this appeal.

ISSUE: Should the District Court have granted summary judgment to the Officers?

ARGUMENTS: On appeal, Shirley argues that because he said “I give up” when his leg broke through the ceiling, and became unconscious (and thus, he contends, passive) after he fell, the beanbag rounds, kicks, and use of the Tasers that he received upon falling reflect excessive force. The officers responded that because Shirley had actively resisted arrest for hours, and they reasonably feared he had a gun (because of the outstanding warrant and the gun they saw fall from Shirley's car), the force was reasonable.

THE LAW: A claim for excessive force under § 1983 invokes the Fourth Amendment's protection against unreasonable seizures. The standard is objective, “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” It requires a fact-intensive inquiry into the totality of the circumstances, including the severity of the crime, potential threats to the safety of officers or bystanders, and whether the plaintiff was actively resisting arrest. The question whether the use of force during an arrest is proper

under the Fourth Amendment depends on the objective reasonableness of the officer's actions, judged on the basis of the conditions the officer faced. In order to assess objective reasonableness, the court must consider all the circumstances, including notably “[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight.” However, using potentially deadly force against a passively resisting suspect who makes no attempt to flee is excessive.

FINDINGS: The Federal Court of Appeals determined that, based on the undisputed facts found in this case, at the time that the officers used significant force, their actions were reasonable under the circumstances. The Court held that at that time, the officers knew that Shirley—a felon wanted on charges of unlawful possession of a gun, suspected in a recent shooting, and observed earlier that day with a gun—had fled from the police by car and on foot and had broken into a home's attic to hide. Moreover, the Court noted that for two hours, entreaties from the Officers to surrender and their use of lesser force (teargas and flashbangs) had failed to quell his resistance. Finally, when the officers saw Shirley's leg break through the ceiling's drywall, followed by his entire body dropping to the floor, they could reasonably fear that he would continue his active flight and resistance, potentially with a gun. The Court declared that that reasonable fear permitted the Officers to respond with the significant force they used. This included the Officer's use of “less than lethal” force such as bean-bag shotgun rounds, kicks, and Tasers.

The Court then conceded that it was true that using potentially deadly force against a passively resisting suspect who makes no attempt to flee is excessive and in this case it considered Shirley's assertion that he said, “I give up” and became unconscious when he fell to the floor. However, the Court then declared that even when it considered this testimony, the norm that Officers should not use deadly force against a subdued suspect did not help Shirley because it “depends critically on the fact that the suspect is indeed subdued.” In the case of *Johnson v. Scott*, 576 F.3d 658, 660 (7th Cir. 2009), the Court explained that officers reasonably properly used violent force against a fleeing suspect, even though he suddenly said, “I give up,” because they could not readily determine if the suspect's apparent surrender mid-chase was sincere.

Likewise, in this case, the Court noted that the officers had ample reason to doubt that Shirley—who had actively resisted arrest for hours by car, by foot, and by hiding, who was suddenly dropping onto them from the ceiling, and who might be armed—was sincere. Further, the Court held that even if Shirley was unconscious after he fell, the officers' unrebutted testimony that he continued thrashing on the ground suggests that a reasonable officer would perceive that Shirley was still resisting arrest. Thus, the Court held that even under Shirley's version of the events, the use of force was not unreasonable under the circumstances.

CONCLUSION: The Court therefore found that the District Court properly ruled in favor of the Officer's motion for Summary Judgement and dismissed Shirley's case against the Officers.

QUIZ QUESTIONS FOR THE MONTH OF FEBRUARY – 2023 - ALTERNATIVE

Henry Shirley v. Lee Rabensteine, et al., No. 22-2147, 2023 WL 129432, January 9, 2023.

1. The Fifth Amendment protects suspects from the excessive use of force by polices while attempting to make an arrest.
 - a. True.
 - b. False.

2. Under the Fourth Amendment, may a police officer continue to use force against a suspect who is subdued and complying with the officer's orders?
 - a. Yes.
 - b. No.

3. Shirley argued that the Officers used excessive force against him when they struck his body with beanbag rounds and kicks and twice tased him after he yelled out “I give up,” and then lost consciousness. Did the Court of Appeals disagree with this argument?
 - a. Yes.
 - b. No.

4. **KEY CASE:** A suspect in a shooting, fled from officers in a vehicle and on foot. After encountering a fence too high for him to jump over, the suspect turned toward the Officer, put his hands in the air and said, “I give up.” A second or less later the pursuing officer and his dog arrived, resulting in Johnson being bitten by the K-9 and being struck by the Officer. The suspect sued the Officer and alleged the excessive use of force. The Court of Appeals held that the Officer was liable for using excessive force against the suspect after the suspect had surrendered to the Officer.
 - a. True.
 - b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF FEBRUARY – 2023 - ALTERNATIVE

Henry Shirley v. Lee Rabensteine, et al., No. 22-2147, 2023 WL 129432, January 9, 2023.

1. The Fifth Amendment protects suspects from the excessive use of force by polices while attempting to make an arrest.
 - b. **False.** As the Court held: “A claim for excessive force under § 1983 invokes the Fourth Amendment's protection against unreasonable seizures.”
2. Under the Fourth Amendment, may a police officer continue to use force against a suspect who is subdued and complying with the officer's orders?
 - b. **No.** “It is well established that a police officer may not continue to use force against a suspect who is subdued and complying with the officer's orders. See, e.g., Dye v. Wargo, 253 F.3d 296, 298 (7th Cir.2001); Priester v. Riviera Beach, 208 F.3d 919, 927 (11th Cir.2000).”
3. Shirley argued that the Officers used excessive force against him when they struck his body with beanbag rounds and kicks and twice tased him after he yelled out “I give up,” and then lost consciousness. Did the Court of Appeals disagree with this argument?
 - a. **Yes.** The Court held: “Thus, even under Shirley's version of the events, (the Officers’) use of force was not unreasonable under the circumstances.”
4. **KEY CASE:** A suspect in a shooting, fled from officers in a vehicle and on foot. After encountering a fence too high for him to jump over, the suspect turned toward the Officer, put his hands in the air and said, “I give up.” A second or less later the pursuing officer and his dog arrived, resulting in Johnson being bitten by the K-9 and being struck by the Officer. The suspect sued the Officer and alleged the excessive use of force. The Court of Appeals held that the Officer was liable for using excessive force against the suspect after the suspect had surrendered to the Officer.
 - b. **False.** In the case of Johnson v. Scott, 576 F.3d 658, 660 (7th Cir. 2009), the Court held that the Officer's use of force, including his police dog, to subdue suspect was objectively reasonable given that two serious crimes were at issue, that the officer reasonably believed the suspect might be armed, and that the suspect had clearly been attempting to evade arrest. According to the Court, the officer was not required to take the suspect's apparent surrender at face value a split second after it occurred and could reasonably think that use of the dog was necessary to avoid giving the suspect the time he might have needed to retrieve and use a weapon.

Mandated In-Service Police Training IL Law Enforcement Training and Standards Board

Month of February - 2023

Braun v. Village of Palatine, No. 20-3227, 2022 WL 17985707, December 29, 2022.

CASE: Braun suffered a seizure and crashed his car. Officers believed his was DUI and arrested him. Tests proved that Braun had no trace of alcohol or illegal drugs in his system. Were the Officers liable for false arrest and failing to provide Braun with medical treatment?

Key Law Update Guidelines

In order to assist law enforcement agencies in accessing the widest possible variety of in-service mandated **Law Update** Training (P.A. 99-352), the Training Board has outlined the types of in-service training that would meet the mandate.

Any certified training course that contains any of the following **Law Update** Guidelines would be eligible to comply with the mandate:

- Recent Illinois Statutes that affect law enforcement

- Additions to the Illinois Criminal Code
 - Additions to the Illinois Vehicle Code

- Recent Federal or State Case law decided that affects law enforcement

- Constitutional Issues

- Search and Seizure

- Procedural and substantive legal issues important to patrol officers and investigators

- Civil Liability and Qualified Immunity

Mandated In-Service Police Training
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- Additions to the Illinois Criminal Code
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 - Police Community Relations Improvement Act

- Recent Federal or State Case law decided that affects law enforcement

- Constitutional Issues

- Search and Seizure
 - Exclusionary Rules

- Procedural and substantive legal issues important to patrol officers and investigators

- Civil Liability and Qualified Immunity