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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of May – 2023

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Joel Mercado v. Delante Greer, et al., No. 1:20-CV-07793, 2023 WL 2745511, March 31, 2023.

CASE: An Officer shot and wounded a family dog. Could the Officer and his Village employer be held liable.

FACTS: Two officers travelled to a house to serve a municipal-ordinance citation on a person they believe lived at that address. Officer One knocked on the front door and a young girl answered. After the girl opened the door, Officer One let her know that he needed to talk to her brother (the person to receive the citation) to give him a piece of paper. Suddenly, as the Officer and the girl talked, the family's pit-bull Glizzy ran up from inside the house, passed on the right of the girl's legs, and went out the front door where the Officer was standing. (This was caught on a body camera.) As the dog ran out, someone inside the house exclaimed "hey!" The Officer also exclaimed something in surprise, jumped back, tried to shut the screen-door on the dog, and then retreated into the front-yard area where Glizzy followed him, bounding in the Officer's direction for about a second before turning to his left, where Officer Two was standing. Officer Two unholstered his taser as Glizzy approached him. The dog was wagging his tail. But Glizzy also barked a couple of times as he approached. Glizzy hopped for a couple of seconds around Officer Two, who pointed his taser down at the dog with his right hand while holding out his left arm. Officer Two did not fire. Glizzy, still barking, then turned back toward Officer One, who had been observing with his right hand by his gun. After the dog turned away from him, Officer Two re-holstered his taser.

It did not take more than two seconds for Glizzy to re-approach Officer One, who unholstered his gun, pointed it downward, and shot Glizzy almost as soon as the dog got close, all of which happened within two to four seconds from Glizzy leaving Officer Two's space. After being shot in the mouth, Glizzy retreated into the house, whimpering on his way back. As the dog returned home, Officer One pointed his activated taser at him without firing. From the moment Glizzy left the house, the Officers shouted repeatedly for the family to call or hold the dog back. The whole incident lasted no more than 15 seconds from when Glizzy left the house to retreating inside. After the shooting, members of the family left the front-door threshold, came out onto the stoop, and repeatedly yelled that Glizzy does not bite. Hearing that, Officer One apologized, saying that he did not know that the dog did not bite. In the end, Glizzy survived and no one else was physically hurt.

The family sued the Officers and their employer, the Village, alleging that the officers illegally seized their property (that is, the dog) in violation of the Fourth Amendment. The family also alleged that the Village should be held liable for allegedly failing to train its officers and, separately, for state law indemnification. The Officers and the Village moved to dismiss.

ARGUMENT: The Officers and the Village argued that the District Court should grant their motion to dismiss.

ISSUE #1 Illegal Seizure: Officer Two. Officer Two argued that he should not be held liable for the illegal seizure of the family dog (by shooting it) because he only pointed his taser at the dog and did not fire.

THE LAW: It is clearly established law in the Seventh Circuit that an officer cannot kill a person's pet unnecessarily. What's more, the Fourth Amendment "provides a remedy when a citizen's property is unreasonably damaged during a search." "Domestic animals are 'effects' within the meaning of the Fourth Amendment." So it is also clearly illegal for an officer to unreasonably injure a pet. Indeed, "the use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable." With respect to injuring a person's pet, however, the issue would be whether the conduct of the Officer constituted an illegal taking; not whether the Officer used excessive force. Use of force against a family pet cannot constitute the use of "excessive force."

FINDINGS: The District Court held that it was undisputed that Officer Two did not injure Glizzy. Still, the family argued—without much explanation—that Officer Two's pointing of his taser at their dog constituted an unreasonable seizure under the circumstances. The Court noted, however, that they did not identify any authority to support what would constitute a novel legal holding: that an officer's mere pointing of a weapon—a gun or a taser—specifically at a pet constitutes an illegal seizure of that pet under the Fourth Amendment. Simply put, the killing or injuring of a pet can constitute an illegal seizure; not so the act of just aiming a weapon at one. Because it was undisputed that Officer Two did not actually injure Glizzy, summary judgment was granted in favor of Officer Two on the family's illegal-seizure claim against Officer Two.

ISSUE #2: Illegal Seizure: Officer One and the Village. Officer One and the Village argued that Officer One's act of shooting the dog was objectively reasonable, so he was entitled, at the very least, to qualified immunity.

THE LAW: Qualified immunity protects government officials from civil liability if “their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” “Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” To defeat qualified immunity, a plaintiff must establish that (1) “the official violated a statutory or constitutional right” and (2) “the right was clearly established at the time of the challenged conduct.” A right is “clearly established” if the conduct is so clearly prohibited that a “reasonable official would understand that what he is doing violates that right.” The Court is free to decide which prong to address first; if either inquiry is answered in the negative, the defendant official is entitled to qualified immunity.

FINDINGS: The District Court noted that Officer One and the Village conceded that the prohibition against unreasonably killing or injuring a person's pet was clearly established at the time of the Officer's shooting of Glizzy. So the Court decided only to consider the first element of the qualified immunity test at summary judgment: whether a jury could find that Officer's shooting of the family pet dog was unreasonable, thus violating the family's Fourth Amendment rights. If so, summary judgment must be denied. The Court held that giving reasonable inferences to the family, a jury could reasonably find that Glizzy did not approach Officer One with an aggressive intent. Again noting that the use of deadly force against a pet is reasonable only when the animal poses an immediate danger making the use of force unavoidable the Court held that the body-camera videos showed Glizzy wagging his tail before being shot; the dog also did not bare his teeth or growl (though the dog did leap about and bark). At no point during the time that Glizzy was outside of the house did the dog nip or attempt to bite the Officers. Instead, the videos showed Officer One becoming agitated very quickly. When he saw the dog, he exclaimed in surprise and jumped back, attempting to shut the screen door on Glizzy. Then, when the dog approached him a second time, Greer shot him almost immediately, within two seconds of Glizzy turning back to him.

The Court held that the fact that Officer One shot the dog so quickly, especially after observing Glizzy bouncing around Officer Two without attacking, suggested to the Court that Greer overreacted and pulled the trigger impulsively, in the absence of an imminent danger and without the benefit of seeing what the dog meant to do upon reaching him. The Court noted that it was also relevant that Officer Two, who found himself in nearly identical circumstances, did not tase Glizzy. What's more, when Glizzy was occupied with Officer Two, Officer One had some seconds to recover from his initial surprise and yet still decided to use his gun instead of reaching for his less lethal taser. The Court also noted that, of course, Officer One was right that an officer does not need to wait to be attacked to defend himself, and police officers do have to make split-second judgments in tense circumstances. But the record, the Court held, including the body-camera videos, could allow a jury to reasonably find that the shooting was an unreasonable over-reaction. Relatedly, the Court noted that it was undisputed that Officer Two had not, at the time of the shooting, received training on how to deal with dogs from the Village. In the opinion of the Court, that fact was favorable to the family because it suggested that Officer One was unprepared to deal with the situation he faced. In all, the Court held that it would be reasonable for a jury to conclude that Officer One panicked and acted unreasonably. Conversely, the Court noted that there are other facts favorable to Officer One—like Glizzy's barking and the beware-of-dog sign on the front window, among others—but those, the Court concluded, were not enough to grant summary judgment given that the family should get the benefit of all reasonable inferences. The Court concluded that there was a genuine issue of material fact on whether Glizzy posed an immediate danger. Therefore, the Court ruled that summary judgment would be denied as to the illegal seizure claim against Officer Two.

ISSUE #3: Illegal Seizure: Should the Village be held liable for the failure to train?

FINDINGS: The District Court also noted that establishing liability on the part of the Village based on evidence of inadequate training or supervision requires proof of ‘deliberate indifference’ on the part of the local government.” This, in turn, required proof of a “(1) failure to provide adequate training in light of foreseeable consequences; or (2) failure to act in response to repeated complaints of constitutional violations by the [Village] officers.” The family failed to produce any evidence that the Village officers had frequent contact with domestic animals before Glizzy's shooting, nor that there had been repeated constitutional violations relating to the shooting of pets, nor any evidence that Officer One specifically had ever *previously* injured or killed a domestic animal. The family only pointed to *a later* incident in which Officer Two shot another dog. But otherwise there was no record evidence of deliberate indifference by the Village in the face of foreseeable consequences or a failure to act based on prior constitutional violations by its officers or by Officer One specifically *before* Glizzy's shooting. Therefore, the Court granted the Village's motion to dismiss on this issue.

CONCLUSION: The District Court dismissed the illegal seizure complaint against Officer Two and against the Village, but declined to dismiss the complaint against Officer One. A jury must decide if Officer One is to be held liable.

QUIZ QUESTIONS FOR THE MONTH OF MAY – 2023

Joel Mercado v. Delante Greer, et al., No. 1:20-CV-07793, 2023 WL 2745511, March 31, 2023.

1. Federal courts have declared that an Illinois law enforcement officer cannot legally kill a person's pet unnecessarily.
 - a. True.
 - b. False.

2. In order for an Officer to legally injure or kill a family pet, must the Officer be able to prove that the pet posed an immediate danger and the Officer's use of force was unavoidable.
 - a. Yes.
 - b. No.

3. An Officer who unreasonably injures or kills a family pet will be accused of using "excessive force" in violation of the Fourth Amendment.
 - a. True.
 - b. False.

4. The Court, in this case, noted that Officer One had never received training on how to handle a dog and that this lack of training strengthened the Family's case against the Officer. Does Illinois statutory law require that Illinois Law Enforcement Officers are to be provided with training on the humane handling of dogs.
 - a. Yes.
 - b. No

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF MAY – 2023

Joel Mercado v. Delante Greer, et al., No. 1:20-CV-07793, 2023 WL 2745511, March 31, 2023.

1. Federal courts have declared that an Illinois law enforcement officer cannot legally kill a person's pet unnecessarily.
 - a. **True.** As this Court held, “It is clearly established law in the Seventh Circuit that an officer cannot kill a person's pet unnecessarily. Viilo v. Eyre, 547 F.3d 707, 711 (7th Cir. 2008)”
2. In order for an Officer to legally injure or kill a family pet, must the Officer be able to prove that the pet posed an immediate danger and the Officer's use of force was unavoidable.
 - a. **Yes.** As the Court declared: “So it is also clearly illegal for an officer to unreasonably injure a pet.” Indeed, “the use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable.” Viilo v. Eyre, 547 F.3d 707, (7th Cir. 2008)
3. An Officer who unreasonably injures or kills a family pet will be accused of using “excessive force” in violation of the Fourth Amendment.
 - b. **False.** An Officer's act of unreasonably injuring or killing a family pet will constitute an unconstitutional seizure of the pet in violation of the Fourth Amendment; not an act of the excessive use of force.
4. The Court, in this case, noted that Officer One had never received training on how to handle a dog and that this lack of training strengthened the Family's case against the Officer. Does Illinois statutory law require that Illinois Law Enforcement Officers are to be provided with training on the humane handling of dogs.
 - a. **Yes.** Section 10.14 of the Illinois Police Training Act states: “The Illinois Law Enforcement Training Standards Board shall conduct or approve a training program in animal fighting awareness and humane response for law enforcement officers of local government agencies.” Within that provision, the following is provided, “This training shall also include a humane response component that will provide guidelines for appropriate law enforcement response to animal abuse, cruelty, and neglect, or similar conditions, *as well as training on canine behavior and nonlethal ways to subdue a canine.*” (50 ILCS 705/10.14)