LAW ENFORCEMENT OFFICER
TRAINING CASE OF THE MONTH

By Don Hays

Month of October – 2023 - ALTERNATIVE

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THE CASE: Two Officers used excessive force against Conforti. Could each Officer be held liable for failing to intervene to prevent the other Officer from using excessive force while they, themselves, were using excessive force?

FACTS: Conforti and two friends were out socializing when one of the friends began choking. As a result, the friend was taken to a nearby hospital. At the hospital, the friend became “unruly,” and the police were called. While the Officers were dealing with the friend, Conforti, who had accompanied his friend to the hospital, also became “unruly.” After Conforti stepped outside of the hospital following his confrontation with the hospital staff, two Officers approached him.

According to the plaintiff, by the time the officers were looking for him, he was standing outside, about 40 feet away from the hospital entrance. He was vaping and had just used his phone to request an Uber ride home. According to the officers, when they exited the hospital, they saw Conforti standing near the hospital door with his back turned to them. He was the only person in the area. The officers approached Conforti and noticed that his hand was in his pocket. The Officers claimed that they announced themselves as police officers and asked Conforti to remove his hand from his pocket. Conforti denied that the officers said they were officers and claimed that the first thing he heard was a command to remove his hand from his pocket. Conforti stated that, in response to the command to remove his hand from his pocket, he asked “why” and turned around to face the officers. The parties agree that, at this point, Officer One grabbed Conforti’s left arm and Officer Two grabbed his right arm. Conforti began shouting and became tense. In response, Officer One removed his TASER from its holster and told the plaintiff that he would be tased if he did not stop resisting. The parties agree that, once Conforti was warned about the TASER, he stopped resisting and allowed the officers to handcuff him.

What happened next was disputed. Conforti contended that, once he was handcuffed and under control, the officers violently forced him towards their police cruiser and slammed his face and body against its side. He claimed that he saw stars, moved in and out of consciousness, chipped a tooth, lacerated the inside of his mouth, and lost his glasses. Conforti alleged that, at this point, the officers threw him face-first onto the ground and pummeled him with as many as twenty knee strikes and punches to the head. Eventually, a “spit shield” was placed on the plaintiff's head, and he was placed into the back of the police cruiser. The officers then pulled him out of the cruiser, threw him back on the ground, and continued attacking him. Eventually, they brought him to a sidewalk and waited for other officers to bring a device known as “the wrap” to the scene. This is a device that officers use to restrain a subject’s legs if the officers think the subject will kick them. Once the wrap arrived, the officers placed the plaintiff in it, put him in a wheelchair, and brought him back into the hospital to receive treatment for his wounds.

The Officers told a different story. They contended that, once Conforti was handcuffed, they escorted him towards the squad car. At the car, Conforti pulled away from them, turned around, and spit on Officer One’s face. In response, the officers performed a “takedown maneuver” on Conforti to prevent him from spitting on them again. Once he was on the ground, the plaintiff began flailing his legs, attempted to roll over, and attempted to kick and spit on the officers. Officer One told the plaintiff to stop resisting, but the plaintiff did not relent. The Officer therefore “directed one knee-strike to [Conforti’s] lower quadrant to gain compliance,” but Conforti continued to resist. At the same time, Officer Two also directed “one or two” knee-strikes “to the right rib cage area” because Conforti continued to resist. While this was occurring, an Officer placed the spit shield on Conforti's face, and the officers brought him to the squad car and attempted to place him in the back seat. But once the plaintiff was on the backseat he rolled over on his side and kicked Officer One in the groin or thigh area. In response, the officers removed Conforti from the vehicle and put him back on the ground. They called for “the wrap” and placed the plaintiff in it when it arrived to prevent the plaintiff from continuing to kick them. Once the plaintiff was in the wrap, he was brought inside the hospital for treatment. Evidently, no video of the incident was made.

In the present suit, Conforti alleged that the actions of the Officers violated the Fourth Amendment by using excessive force after they handcuffed him. He further contended that each officer is liable for failing to intervene to prevent the other officer from using excessive force after the handcuffing.

ISSUE #1: Summary Judgment. Should the District Court dismiss Conforti’s complaint against the Officers?
ARGUMENT: Before the District Court, the Officers conceded that genuine disputes of material fact prevented entry of summary judgment on Conforti’s claims for excessive force following the handcuffing. However, they contended that they were entitled to summary judgment on the plaintiffs’ claims for failure to intervene. Specifically, both Officers argued that they could not legally be found liable for failing to intervene because Conforti had alleged that they both used excessive force against him. In short, the Officers argued that when an Officer is alleged to have used excessive force against a suspect, that Officer cannot be also liable for failing to intervene to stop a fellow Officer from also using excessive force.

THE LAW: “An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know: (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official; and the officer had a realistic opportunity to intervene to prevent the harm from occurring.” A “realistic opportunity to intervene” may exist whenever an officer could have “called for a backup, called for help, or at least cautioned [the excessive force defendant] to stop.”

FINDINGS: In the present case, the District Court noted that the Officers contended that they could not have been liable for failing to intervene because Conforti alleged that they both directly participated in the alleged uses of excessive force. In response, the District Court declared that it could see no reason why an officer who uses excessive force cannot also be liable for failing to intervene to prevent another officer from using excessive force. According to the Court, there are only two elements to a failure-to-intervene claim: (1) the officer must have reason to know that excessive force is being used; and (2) the officer must have had a realistic opportunity to intervene to prevent the excessive force from occurring. An officer who uses excessive force on a suspect could know that another officer is also using such force and could have a realistic opportunity to prevent that officer from continuing to use that force. Indeed, the Court noted that under Conforti’s version of the facts, that is what happened here. Under his version, both officers threw him on the ground while he was handcuffed and docile and then jointly administered a series of twenty kicks and punches to his body. The Officers conceded that there is a genuine factual dispute over whether this happened, and they did not dispute that, if it did happen, they both used excessive force. The Court held that if both Officers used excessive force, a jury could reasonably find that they each failed to intervene to prevent the other officer from kicking and punching the plaintiff, for an officer who actively kicks and punches a suspect has a realistic opportunity to prevent the other officer from simultaneously kicking and punching the same suspect. Simply put, instead of joining in the use of force, the officer could have restrained his partner “or at least cautioned [him] to stop.” Thus, the Officers could each be liable for both the injuries that Conforti suffered from his own use of force and the injuries Conforti suffered from the other officer’s use of force. Thus, the case should not be dismissed.

ISSUE #2: Qualified Immunity? Were the Officers entitled to qualified immunity from liability?

ARGUMENT: The Officers contended that they are entitled to qualified immunity “because there was no clearly established law indicating that officers may be held liable for failing to intervene in the alleged conduct when they directly participated in the conduct.”

THE LAW: Qualified immunity shields government officials from civil liability for conduct that “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” In evaluating a law enforcement officer's entitlement to qualified immunity, a court asks whether the officer's conduct violated a constitutional right and, if so, whether that right was clearly established at the time of the alleged violation.

FINDINGS: In response, the Court noted that it had already determined that each officer’s failure to intervene would amount to a constitutional violation if the jury resolved the material factual disputes in Conforti's favor, and so the only remaining issue was whether the law was clearly established. With respect to that issue, the District Court concluded that the Officers had failed to cite to any binding Opinion which held that Officers could not be held liable for failing to intervene if they were alleged to have themselves used excessive force against a suspect. Moreover, the Court doubted that any of the cases the Officers cited could reasonably be interpreted to mean that, if an officer has a realistic opportunity to intervene to stop another officer's use of excessive force, and instead of intervening the officer decides to use excessive force of his own, then he is not liable for the injuries inflicted by the other officer. According to the Court, such an interpretation would lead to perverse results. For example, an officer who fails to intervene to prevent his partner from repeatedly striking a suspect in the head with a baton could avoid liability for the suspect's resulting head injuries by striking the suspect's leg and causing a small bruise. The Court held that this could not have been the result the other courts had in mind. For these reasons, the Officers were not entitled to qualified immunity from liability.

CONCLUSION: The District Court concluded that the defendants are not entitled to summary judgment on the plaintiff's failure-to-intervene claims and could not argue that they were entitled to qualified immunity from such liability.
QUIZ QUESTIONS FOR THE MONTH OF OCTOBER – 2023 - ALTERNATIVE


1. Under certain circumstances, an Officer may be held liable if that Officer has reason to know that a suspect has been unjustifiably arrested and fails to intervene to stop that arrest.
   a. True.
   b. False.

2. Does Federal Law provide that Officers may be required to intervene to prevent the use of excessive force against a suspect.
   a. Yes.
   b. No.

3. Illinois now has a statute that provides that Law Enforcement Officers have a duty to intervene if they believe that excessive force is being used against a suspect?
   a. True.
   b. False.

4. The Officers argued that they could not be held liable for failing to intervene to prevent the use of excessive force if they, themselves, were accused of using excessive force during that incident. Did the District Court agree with this argument?
   a. Yes.
   b. No.
1. Under certain circumstances, an Officer may be held liable if that Officer has reason to know that a suspect has been unjustifiably arrested and fails to intervene to stop that arrest.

   a. **True.** As the court in this case concluded, “An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know: (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official; and the officer had a realistic opportunity to intervene to prevent the harm from occurring.” Yang v. Hardin, 37 F.3d 282, 285 (7th Cir. 1994).

2. Does Federal Law provide that Officers may be required to intervene to prevent the use of excessive force against a suspect.

   a. **Yes.** As the court in this case concluded, “An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know: (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official; and the officer had a realistic opportunity to intervene to prevent the harm from occurring.” Yang v. Hardin, 37 F.3d 282, 285 (7th Cir. 1994).

3. Illinois now has a statute that provides that Law Enforcement Officers have a duty to intervene if they believe that excessive force is being used against a suspect?

   a. **True.** Section 7-16 of the Criminal Code provides: “(a) A peace officer, or any other person acting under the color of law who has an opportunity to intervene, shall have an affirmative duty to intervene to prevent or stop another peace officer in his or her presence from using any unauthorized force or force that exceeds the degree of force permitted, if any, without regard for chain of command.” 720 ILCS 5/7-16 (a)

4. The Officers argued that they could not be held liable for failing to intervene to prevent the use of excessive force if they, themselves, were accused of using excessive force during that incident. Did the District Court agree with this argument?

   b. **No.** The Court rejected this argument and concluded that Officers could be held liable for failing to intervene to prevent the use of excessive force by a fellow officer even if they, themselves, were also accused of using excessive force.