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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of July – 2024

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Charles Brumitt v. Sam Smith, No. 23-1321, 102 F.4th 444, May 20, 2024.

THE CASE: An Officer found Brumitt lying in a bar parking lot. He was very intoxicated. When the Officer sought to ascertain Brumitt's identity, Brumitt struck the Officer in the face. The Officer responded by striking Brumitt in the face four times. Brumitt was knocked unconscious and suffered numerous injuries. Brumitt then sued the Officer for using excessive force. Will a jury be allowed to decide if the Officer will be held liable for his actions?

FACTS: Officer Smith encountered Charles Brumitt around 3 am while patrolling in his police car. The Officer entered the parking lot of a bar and spotted Brumitt lying down. He left his car to check on Brumitt's wellbeing and to see if there were any warrants for Brumitt's arrest. [The Officer's body camera recorded the incident.] Assuming that Brumitt (who was lying on his side) was drunk, Smith asked if he was okay. Brumitt mumbled, "No," and stopped talking. Smith told Brumitt to talk to him, that he was a police officer, and that he wanted to make sure Brumitt was okay. Still in a muffled voice, Brumitt said he could be "passed out wherever [he] want[s]." Smith disagreed, saying he could "take [him] to jail." Brumitt challenged Smith, "Take me, motherf***er. Take me." Smith responded, "Take you to jail?" [Because of the angle of the parties' bodies in front of the camera, the recording did not fully capture what happened next.] Smith thought he saw a debit card sticking out of Brumitt's pocket (which might have had information needed to check for warrants), he said, "Let's see your ID," and reached for the card. Brumitt began to rise and snarled, "Don't you reach in my butt, damn it. God damn it, don't reach in my butt." Smith responded, "I'll tell you what," and Brumitt insisted, "Damn it, don't do this shit." Suddenly, the clash turned physical. While seated, Brumitt swung his arm at Smith, and his open hand hit Smith's face in a roundhouse swing. Brumitt then slurred, "Get the f*** off me, motherf***er." Having never been hit while on duty, the attack startled but did not injure Smith. Smith grabbed Brumitt's shirt and punched Brumitt's face four times over (at most) four seconds, and saying, "You don't hit me." He described his response as "purely instinctual" and likely based on his training as a competitive fighter. (Smith holds several black belts.). Sometime during the four seconds, Brumitt lost consciousness. Smith did not realize or process that Brumitt was unconscious until after the fourth punch. Brumitt lay still for several minutes while Smith called an ambulance and handcuffed Brumitt, who suffered an acute fracture of his eye socket, a broken nose, and lacerations that required surgery. Brumitt later pleaded guilty to misdemeanor battery and public intoxication.

Brumitt sued Smith and the City that employed him, alleging that Smith violated his Fourth Amendment rights. Smith moved for summary judgment, arguing that he was entitled to qualified immunity because precedent did not put him on clear notice that his actions were unconstitutional. Brumitt replied that Smith's force, enhanced by his martial-arts training, was grossly disproportionate to the threat that Brumitt posed while drunk, and it needlessly continued after Brumitt was unconscious and subdued. The law, Brumitt added, clearly established that an officer may not continue to use force against a person who is subdued; therefore, qualified immunity was inappropriate.

The district court denied the motion for summary judgment. It accepted that Brumitt threatened Smith. But it found that a reasonable jury could decide (as the court itself did) that Smith's use of force was undue because he had no reason to believe that Brumitt was armed, and his threat was "mitigated by [his] apparent intoxication, drowsiness, and lack of coordination." A jury could also find, the court added, that Smith continued to use force on Brumitt after he was unconscious and that, between punches, a reasonable officer would have "see[n] Brumitt with his arms at his sides and his head tilted to the side" and stopped punching. Regarding qualified immunity, the court stated that the right Brumitt asserted—"to be free from force once subdued"—was clearly established. Moreover, the Court added, the parties genuinely disputed whether "Brumitt was unconscious, and thus subdued, after Sergeant Smith's second or third strike" and whether a "reasonable officer would have perceived him as unconscious and had time to recalibrate his use of force." Therefore, the court concluded, it could not determine whether Smith was entitled to immunity. This appeal followed.

ISSUE: Was the Officer entitled to qualified immunity from liability for the force he used against Brumitt?

THE LAW: An excessive-force claim under the Fourth Amendment is governed by the objective reasonableness standard. This standard requires assessing the totality of the circumstances facing the Officer and balancing "the nature and quality of the intrusion on the suspect's Fourth Amendment interests against the countervailing governmental interests at stake. Relevant factors include whether the suspect posed a threat to the Officer, resisted arrest, or tried to flee, as well as the severity of the crime of which he was suspected. However, even if under this standard the Officer used objectively

unreasonable force, he is entitled to qualified immunity if the suspect cannot “demonstrate that the right to be free from the particular use of force under the relevant circumstances was ‘clearly established’”.

SMITH’S ARGUMENTS: Smith argued that the district court erred in framing Brumitt’s right, which it said was clearly established, as the right to be free from force once subdued. Framing the right this way, he maintained, impermissibly viewed the incident with 20/20 hindsight. It also, Smith suggested, wrongly assumed that precedent clearly required reasonable police officers to repeatedly reconsider the use of force throughout an encounter lasting only a few seconds to guarantee that the officers know and react to the precise moment that a suspect becomes unconscious.

CONCLUSIONS AND REASONING: The Court of Appeals agree with Smith that Brumitt had not met his burden of showing that Smith violated a clearly established right. The Court reasoned that when reviewing force for reasonableness, it assess the “facts and circumstances that confronted the officer,” without “20/20 hindsight.” The Court held that the facts in this case were (1) when Brumitt appeared intoxicated, Smith asked if he was okay and sought his identification; (2) Brumitt dared Smith to take him to jail, cursed at him, and although he was drowsy and uncoordinated, hit Smith in the face with his hand; and (3) Smith responded to that surprise attack with substantial force—four quick punches in four seconds. The Court noted that it would assume that Smith could have interrupted his delivery of force to see Brumitt appear limp. But to conclude that Smith clearly violated Brumitt’s right to be free from excessive force, it must assume that a reasonable officer in Smith’s position would know instantaneously that Brumitt was unconscious and react accordingly within less than four seconds. The Court held that Brumitt had not, however, identified a case establishing that an officer must do so and must cease force at the precise second a suspect acquiesces. To the contrary, the Court declared that it must “give considerable leeway to a law enforcement officers’ assessments about the appropriate use of force in dangerous situations.”

Further, the Court decided that Smith also correctly argued that framing Brumitt’s right as the right to be free from force once subdued was impermissibly broad. It reiterated that a right is clearly established only if it is clear that “the officer’s conduct in the particular circumstances before him” is prohibited. This rule, according to the Court, applied to excessive-force cases. The Court held that although Brumitt was not required to point to an identical case, “every reasonable officer must have understood that” Smith’s conduct was unlawful. The Court declared that the principle that officers may not use force on a subdued suspect does not clearly establish that officers must repeatedly reevaluate their use of force throughout an encounter lasting a few seconds to avoid applying extra units of force immediately after a suspect submits. Likewise, the other broad principle that Brumitt invoked—force must be proportionate to a threat—did not put Smith on notice that four fast punches in response to a suspect’s unprovoked blow to the officer’s face was disproportionate to that blow.

BRUMITT’S ARGUMENTS: 1. Brumitt argued that whether Smith had the chance, during his four-second use of barehanded force, to recalibrate it after Brumitt lost consciousness was a factual question that must be decided by a jury.

CONCLUSIONS AND REASONING: The Court responded by noting that even if a jury resolved this question in Brumitt’s favor, the problem remained that no clearly established law required Smith to recalibrate the force throughout a quick, four-second response to a suspect’s surprise attack to his face.

2. Second, Brumitt contended that were the Court to conclude that Smith was entitled to qualified immunity, it would establish “a bright-line rule that any assault that takes place within a short period of time be treated as a single use of force.”

CONCLUSIONS AND REASONING: The Court of Appeals disagreed. According to the Court, Officers must cease their use of force once a suspect is “known to be subdued.” Yet they are entitled to reasonable leeway to permit them time to perceive that the threat level has diminished.

3. Finally, Brumitt argued that “facts ... could support the conclusion that the blows Smith delivered were *on-the-spot punishment*, not reasonably adapted to obtain or keep control” and thus violated clearly established law.

CONCLUSIONS AND REASONING: The Court noted that Brumitt did not explain what those facts were. The Court theorized that it was possible that Brumitt believed that a reasonable jury might discredit Smith’s testimony that he perceived Brumitt to be a threat after Brumitt hit him, implying that any force was excessive. However, the Court of Appeals noted that the district court concluded that Brumitt unquestionably posed a threat to Smith by swinging at him, and Brumitt did not challenge the validity of that conclusion.

RESULT: The Court of Appeals concluded that, because Smith’s conduct did not violate Brumitt’s clearly established Fourth Amendment rights, it must reverse the district court’s decision denying the Officer qualified immunity.

QUIZ QUESTIONS FOR THE MONTH OF JULY – 2024

Charles Brumitt v. Sam Smith, No. 23-1321, 102 F.4th 444, May 20, 2024.

1. The “objective reasonableness” standard is used in considering allegations of the excessive use of force by police officers.
 - a. True.
 - b. False.
2. An Officer should not legally continue to use force against a suspect who has been subdued.
 - a. True.
 - b. False.
3. In this case, the Court of appeals listed three factors to be used in determining whether an Officer’s use of force was excessive. Which one of the following was ***not*** one of those factors.
 - a. Whether the suspect posed a threat to the Officer.
 - b. Whether the suspect resisted the efforts of the Officer.
 - c. Whether the suspect had a significant criminal history.
 - d. The severity of the crime the person is suspected to have committed.
4. In this case, Brumitt argued that the Officer improperly delivered “on-the-spot punishment” by striking him four times in the face. Does Illinois now prohibit an Officer from using force to “punish” a suspect?
 - a. Yes.
 - b. No.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF JULY – 2024

Charles Brumitt v. Sam Smith, No. 23-1321, 102 F.4th 444, May 20, 2024.

1. The “objective reasonableness” standard is used in considering allegations of the excessive use of force by police officers.

a. True. Brumitt's excessive-force claim under the Fourth Amendment is governed by the objective reasonableness standard. *Plumhoff v. Rickard*, 572 U.S. 765, 774, 134 S. Ct. 2012, 188 L. Ed.2d 1056 (2014). This standard requires assessing the totality of the circumstances facing Smith and balancing “the nature and quality of the intrusion on [Brumitt's] Fourth Amendment interests against the countervailing governmental interests at stake.” *Strand v. Minchuk*, 910 F.3d 909, 914 (7th Cir. 2018) (quoting *Plumhoff*, 572 U.S. at 774, 134 S. Ct. 2012).

2. An Officer should not legally continue to use force against a suspect who has been subdued.

a. True. If the facts and circumstances show that an individual who once posed a threat has become “subdued and complying with the officer's orders,” the officer may not continue to use force. See *Johnson v. Scott*, 576 F.3d 658, 660 (7th Cir. 2009).

3. In this case, the Court of appeals listed three factors to be used in determining whether an Officer’s use of force was excessive. Which one of the following was not one of those factors.

c. Whether the suspect had a significant criminal history.

4. In this case, Brumitt argued that the Officer improperly delivered “on-the-spot punishment” by striking him four times in the face. Does Illinois now prohibit an Officer from using force to “punish” a suspect?

a. Yes. Section 7-5.5(e)(i) of the Criminal Code now provides that a Peace Officer shall not “use force as punishment or retaliation.” The *SAFE-T Act* added this provision in 2021.

[Editor’s Note: It is interesting to note that the Officer’s body camera recorded him saying, “You don’t hit me,” immediately after he struck Brumitt four times in the face. Could the Officer’s words be used to prove that he was “punishing” Brumitt or “retaliating” against him? NEW RULE: Be careful what you say when a body camera is recording.]