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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of December – 2024

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Marrio Murrell v. City of Oak Creek, Case No. 23-CV-1216-SCD, 2024 WL 4415314, October 3, 2024.

THE CASE: The arresting Officer pulled Murrell over for a minor traffic violation. Without being asked by the Officer, Murrell indicated that he possessed a firearm. The Officer seized the firearm and investigated its legal status prior to completing the traffic stop. Did the Officer violate the Fourth Amendment rights of Murrell by seizing and investigating the status of the firearm and if a constitutional violation did, in fact, occur, could the Officer be held liable for damages arising from this constitutional violation?

FACTS: On the evening in question, an officer was on patrol when he discovered a vehicle traveling 39 miles per hour in a 25-mph zone. After briefly following the vehicle, the officer activated his emergency lights, and the vehicle pulled over. The Officer spoke with the driver, Marrio Murrell, who handed over his driver's license and two other cards. The Officer told Murrell to stay in his vehicle, and returned to his squad car. Once back in the squad, the Officer confirmed that Murrell's driver's license was valid and that his vehicle was properly registered. The Officer also examined the two other cards Murrell had provided: CCW permits for two states. After confirming that the CCWs were valid, the Officer re-approached Murrell's vehicle and asked Murrell if he was armed. After Murrell admitted that he was carrying a weapon, the Officer asked Murrell to exit his car. Murrell responded, "Sure." The Officer then declared that he would secure the firearm and run the "ID on it to make sure it's all good." To this information, Murrell responded, "Okay." A passenger in Murrell's car then asked the Officer why this was happening and the Officer explained that it was because Murrell admitted to having a gun inside the vehicle. Murrell then exited the vehicle with his arms raised and asked, "Who's taking it off me?" The Officer indicated that he would take the weapon, lifted Murrell's vest, and removed the loaded firearm and its holster. The Officer then informed Murrell that he was going to pat Murrell down to check for other weapons. In response, Murrell said, "I'm good." The frisk revealed no other weapons.

The Officer explained that it was common practice to temporarily seize firearms from CCW permit holders, pat them down, and run a check on their gun. The entire stop lasted about twenty minutes. The Officer then removed the firearm from its holster and asked dispatch to run a check on the gun's serial number. After dispatch confirmed that there were no "wants" on the firearm—which the officer expected to be the case—the officer returned Murrell's licenses and gun and gave Murrell a warning for speeding.

Thereafter, Murrell filed a complaint alleging that the officer violated his constitutional right to be free from unreasonable searches and seizures. The Department declined to take any action against the Officer. Consequently, Murrell filed a complaint in federal court against the Officer. The Officer then moved to dismiss the complaints against them.

ARGUMENT: Before the District Court, Murrell argued that the Officer violated his Fourth Amendment right to be free from unreasonable searches and seizures. In response, the Officer maintained that Murrell (1) consented to the officer's actions, (2) that the officer did not deprive Murrell of his constitutional rights, and (3) that, even if Murrell's constitutional rights had been violated, qualified immunity shielded the officer from liability.

THE LAW: Federal Law provides that "[a] party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "Material facts" are those that, under the applicable substantive law, "might affect the outcome of the suit." A dispute over a material fact is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." To determine whether a genuine issue of material fact exists, the court must review the record, construing all facts in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor.

"Section 1983 of Title 42 authorizes a federal cause of action against any person who, acting under color of state law, deprives another of rights secured by federal law or the United States Constitution."

FIRST QUESTION: *Did Murrell consent to the actions of the Officer?* ["The Fourth Amendment, made applicable to the States through the Fourteenth Amendment, protects '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' " "Although a warrant is often required to make a search reasonable, certain warrantless searches are also reasonable, including those conducted with ... consent." "Consent may be express or implied, verbal or nonverbal, but it must be voluntarily given." "Whether [an individual] consented to a search

[or a seizure] is a question of fact” to be determined from the totality of the circumstances. “The consent inquiry focuses on ‘what is reasonably apparent to a reasonable inquiring officer.’ ” “In civil actions under Section 1983, the Seventh Circuit has adopted a burden-shifting approach to analyze voluntary consent to warrantless searches [and seizures].” The defendants bear the initial burden of presenting evidence that the plaintiff consented to the search or seizure. This burden “is not satisfied by showing a mere submission to a claim of lawful authority.” If the defendants present evidence of consent, the burden shifts to the plaintiff to prove “that he never consented or that the consent was invalid because it was given under duress or coercion.”]

CONCLUSIONS AND REASONING: The Officer argued that he did not need a warrant to seize Murrell's firearm, pat him down, or run a check on his gun because Murrell affirmatively consented to their actions and acted in a manner consistent with consent. The District Court disagreed and declared that a careful review of the body-cam video shows that Murrell did not consent to the seizure of his firearm or the gun check. The Officer did not ask Murrell to exit the vehicle or for permission to remove the firearm from his person; rather, he told Murrell that he had to get out so the police could disarm him and check to see if the gun was stolen or used in a crime. According to the Court, the Officer's use of declarative language conveyed an order, not a request. Thus, Murrell's comments of “sure” and “okay” and raising of his arms constituted acquiescence to police authority rather than agreement. The Court held that compliance does not equal consent under those circumstances.

SECOND QUESTION: *Could a Jury find that the Officer violated the constitutional rights of Murrell?* Specifically, Murrell challenges the length of the stop, arguing that the officer should have let him leave after confirming that his CCW permit was valid. Therefore, his Fourth Amendment rights were violated when the Officer unreasonably extended the duration of his stop. Conversely, the Officer maintained that he did not unreasonably extend the stop beyond the time necessary to address the traffic violation and the safety concerns presented by Murrell's admitted possession of a concealed weapon.

CONCLUSIONS AND REASONING: In response to the Officer’s arguments, the District Court noted that the Officer seem to believe that the presence of the firearm alone warranted a reasonable fear for the officers’ safety and justified the actions of the Officer with respect to the firearm. In other words, if the police reasonably suspect an individual is “armed,” they necessarily (or automatically) suspect he is also “dangerous.” However, the District Court noted that because neither the Supreme Court nor the Seventh Circuit had adopted an “automatic frisk rule” for lawfully stopped individuals who happen to possess firearms, and because the Officer presented no other evidence suggesting that Murrell was dangerous, the Officer was not justified in extending the duration of Murrell’s detention to seize and investigate Murrell’s firearm. Further, the Court concluded that even if the Officer acted reasonably in temporarily seizing Murrell's firearm during the traffic stop, the Officer presented no justification for asking dispatch to run a check on the gun's serial number. Here the Officer stated that he needed to check the gun to confirm that it wasn't stolen or used in a crime. However, the purpose of a protective search for weapons was officer safety, not investigating a crime. Thus, the Court declared that the Officer appeared to have violated Murrell's Fourth Amendment rights when he prolonged the stop to run the gun check, as the mission of the stop was already complete at that point.

THIRD QUESTION: *Was this Officer entitled to qualified immunity from liability in this case concerning Murrell's Fourth Amendment claims?* [“To overcome a defendant's invocation of qualified immunity, a plaintiff must show: (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct.”]

CONCLUSIONS AND REASONING: The District Court concluded that, as noted above, a jury could reasonably have found that the Officer violated the constitutional right of Murrell by unreasonably extending the duration of this traffic stop by investigating the status of the firearm he possessed. However, in this case, the Officer would be entitled to qualified immunity from liability if the rights Murrell complained were violated were not clearly established when the Officer acted. The Court then noted that Murrell failed to identify any published opinion in which an officer acting under similar circumstances to those in this case was held to have violated the Fourth Amendment, nor did he argue that the violations alleged in this case were “obvious.”

CONCLUSION: In sum, the District Court concluded that Murrell failed to carry his burden of showing that the law was clearly established at the time of the traffic stop. The officers therefore were entitled to qualified immunity on Murrell's Fourth Amendment claims.

QUIZ QUESTIONS FOR THE MONTH OF DECEMBER – 2024

Marrio Murrell v. City of Oak Creek, Case No. 23-CV-1216-SCD, 2024 WL 4415314, October 3, 2024.

1. A federal civil rights action may be brought against any person who, under color of state law, deprives another of rights secured by federal law or the United States Constitution.
 - a. True.
 - b. False.

2. The arresting officer in this case claimed that he did not violate Murrell's Fourth Amendment rights by seizing and inspecting Murrell's firearm because Murrell consented to these acts. Can a person consent to an officer's conduct that would otherwise violate that person's Fourth Amendment rights?
 - a. Yes.
 - b. No.

3. Murrell argued that a jury could have found that the Officer's act of seizing and investigating the status of his firearm during this traffic stop violated his Fourth Amendment rights. Did the District Court agree with this argument.
 - a. Yes.
 - b. No.

4. Murrell admitted carrying a firearm when questioned by the Officer. Because of the danger a firearm creates, this admission automatically justified the Officer's frisk of Murrell to make sure he did not possess other weapons.
 - a. True.
 - b. False.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF DECEMBER – 2024

Marrio Murrell v. City of Oak Creek, Case No. 23-CV-1216-SCD, 2024 WL 4415314, October 3, 2024.

1. A federal civil rights action may be brought against any person who, under color of state law, deprives another of rights secured by federal law or the United States Constitution.
 - a. True.** “Section 1983 of Title 42 authorizes a federal cause of action against any person who, acting under color of state law, deprives another of rights secured by federal law or the United States Constitution.” Wollin v. Gondert, 192 F.3d 616, 621 (7th Cir. 1999).

2. The arresting officer in this case claimed that he did not violate Murrell’s Fourth Amendment rights by seizing and inspecting Murrell’s firearm because Murrell consented to these acts. Can a person consent to an officer’s conduct that would otherwise violate that person’s Fourth Amendment rights?
 - a. Yes.** “Although a warrant is often required to make a search reasonable, certain warrantless searches are also reasonable, including those conducted with ... consent.” United States v. \$304,980.00 in U.S. Currency, 732 F.3d 812, 819 (7th Cir. 2013) (citing Illinois v. Rodriguez, 497 U.S. 177, 183–84, 110 S. Ct. 2793, 111 L.Ed.2d 148 (1990)).

3. Murrell argued that a jury could have found that the Officer’s act of seizing and investigating the status of his firearm during this traffic stop violated his Fourth Amendment rights. Did the District Court agree with this argument.
 - a. Yes.** The District Court held that because the conduct of the Officer in seizing and investigating the status of the firearm, a jury could have found that the conduct of the Officer unreasonable extended the duration of the traffic stop and, thereby, violated Murrell’s Fourth Amendment rights.

4. Murrell admitted carrying a firearm when questioned by the Officer. Because of the danger a firearm creates, this admission automatically justified the Officer’s frisk of Murrell to make sure he did not possess other weapons.
 - b. False.** The District Court held that neither the United States Supreme Court nor the Seventh Circuit Court of Appeals has adopted the “automatic frisk rule” which allows for frisks of persons merely because that person happens to be carrying a firearm.