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## ***LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH***

**By Don Hays**

Month of February – 2025

# LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

## Month of February - 2025

### Manery v. Lee, No. 24-1292, 2025 WL 40282, January 7, 2025.

**THE CASE:** A Deputy fired nine shots into a suspect car. Could the deputy be held liable?

**FACTS:** At approximately 3:36 p.m., on the day in question, a Deputy Sheriff Lee heard a dispatch request to execute an out-of-state arrest warrant for William Manery. The Sheriff's Office had tracked Manery to a local apartment complex. According to the warrant, the out-of-state authorities wanted Manery for aggravated assault with a vehicle, evasion of arrest, and violation of probation. The dispatch relayed these warrants and noted that Manery might be armed, was a flight risk, and had previously threatened "suicide by cop." Deputy Lee joined the warrant team. The team proceeded to an apartment complex where, according to information received from the out-of-state authorities, they would find Manery. In the parking lot, the team discovered the Jeep that the out-of-state authorities suspected Manery was driving. Two members of the team parked their vehicles on either side of the Jeep to block it. One Deputy approached the driver's side of the Jeep while Deputy Lee approached the passenger's side. They found Manery sleeping in the car. With his service revolver and flashlight drawn, a Deputy woke Manery by yelling repeatedly, "Show me your hands" and "Do not move." Deputy Lee struck the passenger window with his service revolver. Manery put his hands in and out of his pockets, then started the Jeep. He placed the Jeep in reverse and, despite hitting a Deputy's car, continued to reverse. Deputy Lee pursued him on foot. The Jeep hit a curb, stopped briefly, and then moved forward. In this forward trajectory, the Jeep then hit a second Deputy's car. Within seconds of this second collision, Deputy Lee opened fire. He fired five shots, paused briefly, then fired four more through the driver's side door. He hit Manery in the arm, hip, chest, and stomach. The entire encounter unfolded in less than a minute.

Having survived Deputy Lee's nine shots, Manery sued Deputy Lee and argued that Lee's excessive and unreasonable use of deadly force had violated his Fourth Amendment rights. Deputy Lee filed a summary judgment motion in which he argued that he was entitled to qualified immunity from liability that arose as a consequence of his interaction with Manery. The district court denied his request. It acknowledged that, at the time of the encounter, Deputy Lee knew that Manery was wanted for aggravated assault with a vehicle and other crimes. The court further acknowledged that Deputy Lee reasonably believed that Manery was armed and previously had threatened "suicide by cop." However, in the court's view, genuine issues of material fact remained, precluding summary judgment. The court expressed concern that deadly force may no longer have been justified once Manery hit the second car. Addressing the requirements of qualified immunity, the court first assumed without deciding that Deputy Lee had violated Manery's constitutional rights. It then concluded that the inquiry into whether the law was clearly established was "intertwined with factual disputes concerning threat level" at the time Deputy Lee discharged his firearm. These factual disputes, concluded the district court, had to be resolved by the jury.

**THE LAW:** "A police officer's use of deadly force is a seizure within the meaning of the Fourth Amendment and accordingly must be reasonable." Determining whether the force used to affect a seizure is reasonable requires a balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." A court must consider the severity of the underlying crime, whether the suspect posed an immediate threat to the officers' or others' safety, and whether the suspect was resisting arrest or fleeing. "Deadly force may be used if the officer has probable cause to believe that the armed suspect (1) 'poses a threat of serious physical harm, either to the officer or to others,' or (2) 'committed a crime involving the infliction or threatened infliction of serious physical harm' and is about to escape." The Court assesses the totality of the circumstances "from the 'perspective of a reasonable officer on the scene,' " not with the benefit of hindsight. To do so, it must consider "the information known to the officer at the time of the encounter; the duration of the encounter; the level of duress involved; and the need to make split-second decisions under intense, dangerous, uncertain, and rapidly changing circumstances." The Court must remember that field encounters often require law enforcement officers to make split-second decisions in quickly unfolding, highly stressful situations.

Qualified immunity protects public officials "from undue interference with their duties and from potentially disabling threats of liability". Just as importantly, the doctrine gives officials "breathing room to make reasonable but mistaken judgments about open legal questions." An official will be protected by qualified immunity "unless the plaintiff shows: '(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.' " The second prong of the qualified immunity analysis ensures that a government official is held liable only when the contours of the right allegedly violated are "sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." In the context of excessive force claims, a plaintiff can meet "this burden

either by identifying a ‘closely analogous case that established a right to be free from the type of force the police officers used on him’ or by showing ‘that the force was so plainly excessive that, as an objective matter, the police officers would have been on notice that they were violating the Fourth Amendment.’” Although a plaintiff need not put forth “a case directly on point,” settled authority “must have placed the statutory or constitutional question beyond debate.” Furthermore, the constitutional right at issue must not be defined at too high a level of generality.

**ARGUMENT:** Manery maintained Deputy Lee used excessive force in attempting to apprehend him. Therefore, Deputy Lee violated his Fourth Amendment rights. Further, Manery argued that it was clearly established that “deadly force cannot be used when there is no longer an imminent threat of danger.” Consequently, Deputy Lee was not entitled to qualified immunity.

**ISSUE:** Did the District Court correctly determine that a jury must decide whether Deputy Lee would be entitled to qualified immunity from liability for shooting Manery? [In order to be successful in a federal Civil Rights action, the plaintiff must show both that his or her constitutional rights were violated, and it was clearly established that the conduct of the defendant violated that constitutional right. In cases such as this, the Court must consider both issues. However, the order in which these issues are considered is up to the Court. The Court in this case chose to consider the issue of whether the alleged constitutional violation was clearly established.]

**FINDINGS:** The Court of Appeals first noted that Manery contended that it was clearly established that “deadly force cannot be used when there is no longer an imminent threat of danger.” The Court held that in doing so, Manery defined the constitutional right which was violated at too high a level of generality. The Court concluded that Manery was required to specifically identify the “clearly established” right. The Court held that because the inquiry into whether an officer used excessive force was highly fact-dependent, “police officers are entitled to qualified immunity unless existing precedent ‘squarely governs’ the specific facts at issue.” Therefore, according to this Court, Manery was therefore required to cite cases that “squarely governed” the issues in this present case.

**SUPPORTING PRECEDENT:** To support his “clearly established” claim, Manery cited two specific cases. First, Manery cited *Scott v. Edinburg*, 346 F.3d 752 (7th Cir. 2003). In *Scott*, a suspect reversed his vehicle toward an officer, then began to drive away. The precise moment at which the officer shot was unclear, but the Court determined that the officer's claim of self-defense “would be significantly weakened” if he fired while the suspect was driving away. This Court noting that “(u)nlike *Scott*, Manery did not maintain that he was driving away from Deputy Lee when Lee fired, but that his vehicle had come to a stop. Therefore, this case was not “closely analogous” to the present case. Additionally, Manery relied upon the case of *Estate of Starks v. Enyart*, 5 F.3d 230 (7th Cir. 1993). In *Starks*, a suspect attempting to flee reversed to maneuver around a utility pole. He then drove forward, after which point an officer jumped in front of the quickly moving vehicle and opened fire. The Court held that if the officer “unreasonably created the encounter that ostensibly permitted the use of deadly force to protect him,” then his use of force was unreasonable. This Court noted that unlike *Starks*, Deputy Lee did not create the danger that permitted his use of force; he pursued a reversing car that then began to drive forward. And, far from jumping in that vehicle's path, he moved to the side. Therefore, the Court concluded that Manery failed to provide any cases that Deputy Lee’s violation of his rights was “clearly established.”

Further, the Court noted that the record in this demonstrated that Deputy Lee was in a position where he had to determine immediately whether Manery continued to pose a threat. Deputy Lee did not know whether Manery might well continue his escape attempt, either in the automobile or on foot, and whether any further resistance would include the use of the weapon which Deputy Lee had been advised Manery possessed. Deputy Lee also had been informed that Manery might well attempt “suicide by cop.” Deputy Lee did not have to take the “apparent surrender at face value, a split second after” Manery's vehicle stopped. Finally, Deputy Lee had to take into consideration not only his own safety but that of the other officers accompanying him on this dangerous task. According to the Court, a government officer in Deputy Lee's position must have “breathing room to make reasonable but mistaken judgments about open legal questions.” A reasonable officer in Deputy Lee's position would not have known that the use of deadly force could run afoul of Manery's Fourth Amendment rights.

**CONCLUSION:** Since it was not clearly established that Deputy Lee's use of deadly force was unreasonable, the Court concluded that Deputy Lee was entitled to qualified immunity. For this reason, the judgment of the District Court denying Deputy Lee’s motion to dismiss based upon qualified immunity was reversed.

**NOTE:** One Justice disagreed with the opinion of the majority in this case and argued that too many factual issues remained unsettled to grant qualified immunity. A jury should decide whether Deputy Lee would be entitled to qualified immunity.

## QUIZ QUESTIONS FOR THE MONTH OF FEBRUARY – 2025

Manery v. Lee, No. 24-1292, 2025 WL 40282, January 7, 2025.

1. An Officer's use of deadly force is considered to be a "seizure" for purposes of the Fourth Amendment and, therefore, must be reasonable.
  - a. True.
  - b. False.
  
2. The Court in this case listed three factors to be considered when determining whether an Officers use of deadly force was reasonable. Which of the following is not one of those factors?
  - a. the severity of the underlying crime.
  - b. the prior criminal history of the suspect.
  - c. whether the suspect posed an immediate threat to the officers' or others' safety.
  - d. whether the suspect was resisting arrest or fleeing.
  
3. An Officer who receives "qualified immunity" is protected from threats of liability as a consequence of the Officer's conduct in enforcing the law.
  - a. True.
  - b. False.
  
4. In this case, the District Court concluded that the Deputy could not be granted qualified immunity because too many unanswered questions remained concerning the conduct of the Deputy. Did the Court of Appeals agree with this finding?
  - a. Yes.
  - b. No.

## QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF FEBRUARY – 2025

### Manery v. Lee, No. 24-1292, 2025 WL 40282, January 7, 2025.

1. An Officer's use of deadly force is considered to be a "seizure" for purposes of the Fourth Amendment and, therefore, must be reasonable.

**a. True.** This Court held: "A police officer's use of deadly force is a seizure within the meaning of the Fourth Amendment and accordingly must be reasonable." *Muhammed v. City of Chicago*, 316 F.3d 680, 683 (7th Cir. 2002) (citing *Tennessee v. Garner*, 471 U.S. 1, 7, 105 S. Ct. 1694, 85 L.Ed.2d 1 (1985)).

2. The Court in this case listed three factors to be considered when determining whether an Officers use of deadly force was reasonable. Which of the following is **not** one of those factors?

**b. the prior criminal history of the suspect.**

3. An Officer who receives "qualified immunity" is protected from threats of liability as a consequence of the Officer's conduct in enforcing the law.

**a. True.** "Qualified immunity protects public officials "from undue interference with their duties and from potentially disabling threats of liability." *Harlow v. Fitzgerald*, 457 U.S. 800, (1982))

4. In this case, the District Court concluded that the Deputy could not be granted qualified immunity because too many unanswered questions remained concerning the conduct of the Deputy. Did the Court of Appeals agree with this finding?

**b. No.** A majority of the Court of Appeals concluded that the District Court erred in refusing to grant the Deputy qualified immunity in this case.