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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of March – 2018

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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Gary Wilson v. City of Evansville et al., 2018 WL 746092, February 7, 2018

This is a case dealing with the use of force by several police officers attempting to arrest a suspect.

FACTS: Two Officers were on patrol when they smelled an active methamphetamine laboratory. As the Officers approached the front of the house containing the lab, Wilson took off out the back door. Two other Officers spotted Wilson and attempted to detain him. Wilson fled down an alley. The Officers caught up to Wilson and order him to drop to the ground. The Officers then attempted to handcuff Wilson. According to Wilson, he complied with the commands of the Officers. According to the Officers, he did not. One Officer struck Wilson twice in the head area to get him turned onto his stomach. Another Officer struck Wilson in the face with his hand in an attempt to gain compliance. Without giving a warning, a third Officer deployed his taser after Wilson's hand went underneath his body and was not visible to officers. The taser did not appear to have any effect on Wilson who was wearing thick clothes. Consequently, the Officer discharged the taser a second time. That Officer also struck Wilson with his hand in the brachial plexus (neck area and known as a pressure point) after the unsuccessful taser deployments. After both of Wilson's hands were in handcuffs the force ended. Wilson subsequently sued the Officers for using excessive force.

***ISSUE*:** Should Federal District Court find in favor of the Officers? **ANSWER: Yes.**

FINDINGS: Before the District Court, the Officers argued that the force used against Wilson was reasonable and that they were entitled to immunity from liability for their conduct. The Court noted that in judging whether an Officer's use of force was reasonable, courts must balance the risks of bodily harm in apprehending a fleeing suspect that the Officer's actions poses in light of the threat to the public that the Officers were trying to eliminate. In considering this balance, the court considers the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight. The court views the circumstances "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision hindsight." Wilson argued that the Officer's use of hits, strikes, kicks, and deployment of a taser twice constituted excessive force. The Officer's argued that they used reasonable force in order to effectuate Wilson's arrest as he was fleeing and resisting arrest. The Court noted that by his own admission, Wilson sought to elude the police by cutting through an alley and running away. In fact, Wilson was out of breath when the Officer caught up to him. Although Wilson explained that he was out of breath due to either walking or a prior medical condition, the Court accepted these facts as true, while viewing the circumstances—*i.e.* Wilson cutting through an alley, jogging and being out of breath—from the perspective of a reasonable officer on the scene. Accepting Wilson's explanation as true, the Court held that a reasonable officer could have concluded that Wilson was fleeing from the police. Wilson did not dispute the officers' suspicions that methamphetamine activity was occurring at his residence. Although there was no allegation that Wilson was in fact carrying a weapon on him on the night in question, he admitted that he sometimes carried a pocketknife on him, a fact that was known by police *before* pursuing Wilson. Accepting as true, the facts alleged by Wilson, the Court concluded that the officers could reasonably conclude, at the time, that he was engaged in methamphetamine activity, was attempting to flee, and posed a threat to the officers' safety based on the information the Officers had received that Wilson was unfriendly to

police and carried a pocketknife. Only facts known to a reasonable arresting officer at the time of the alleged Fourth Amendment violation are relevant. Under the totality of the circumstances, the Court concluded that the Officers could reasonably conclude that force would be necessary to effectuate Wilson's arrest. When viewing the evidence in a light favorable to Wilson, the Court ruled that no reasonable jury could find that the Officers' use of force was unreasonable or excessive under the totality of the circumstances. As previously noted, a reasonable officer could have perceived Wilson's admitted eluding as fleeing the scene where an active methamphetamine lab was observed by officers. Wilson was known to law enforcement and was identified in their system as unfriendly to police and someone who carried pepper spray or a knife. It was dark on the night in question and Wilson went into an alley, admittedly to evade the officers. One of Wilson's hands remained uncuffed throughout the time that the officers used force on him. As acknowledged by Wilson, an Officer told him several times to "quit resisting." Concerning the Officer's act of deployed his taser twice" the Court held that a reasonable officer, under these circumstances, might make the decision to deploy a taser a second time where it seemed to have no effect in apprehending a resisting suspect wearing thick clothes. Thus, looking at the totality of the circumstances, the force employed arresting Wilson's arrest was not excessive. For these reasons, the Court found in favor of the Officers and dismissed Wilson's excessive use of force case.

QUIZ QUESTIONS FOR THE MONTH OF MARCH - 2018

Gary Wilson v. City of Evansville et al., 2018 WL 746092, February 7, 2018

1. The excessive use of force by a police officer while attempting to make an arrest violates the suspect's Fifth Amendment right to be free from unreasonable searches and seizures.
   a. True.
   b. False.

2. When considering what amount of force might be reasonable when apprehending a fleeing suspect, do the courts consider the severity of the offense the suspect is suspected of committing?
   a. Yes.
   b. No.

3. In this case, did the District Court conclude that the Officers properly decided that force would be necessary to arrest Wilson?
   a. Yes.
   b. No.

4. The Officer twice used his taser on Wilson. The District Court held that a reasonable Officer, under these circumstances, could not have reasonably believed that multiple uses of the taser was authorized.
   a. True.
   b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF MARCH - 2018

Gary Wilson v. City of Evansville et al., 2018 WL 746092, February 7, 2018

1. The excessive use of force by a police officer while attempting to make an arrest violates the suspect's Fifth Amendment right to be free from unreasonable searches and seizures.

   b. False. The Fourth Amendment, not the Fifth Amendment, guarantees this right.

2. When considering what amount of force might be reasonable when apprehending a fleeing suspect, do the courts consider the severity of the offense the suspect is suspected of committing?

   a. Yes. In considering this balance, the court considers the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight. *Graham v. Connor*, 490 U.S. 386, 396 (1989).

3. In this case, did the District Court conclude that the Officers properly decided that force would be necessary to arrest Wilson?

   a. Yes. The Court said: "Accepting as true, the facts alleged by Wilson, officers could reasonably conclude, at the time, that he was engaged in methamphetamine activity, was attempting to flee, and posed a threat to the officers' safety based on the information (the Officers) had received that Wilson was unfriendly to police and carried a pocketknife." "Under the totality of the circumstances, the officers could reasonably conclude that force would be necessary to effectuate Wilson's arrest."

4. The Officer twice used his taser on Wilson. The District Court held that a reasonable Officer, under these circumstances, could not have reasonably believed that multiple uses of the taser was authorized.

   b. False. The Court held: "A reasonable officer might make the decision to deploy a taser a second time where it seemed to have no effect in apprehending a resisting suspect wearing thick clothes."

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of March - 2018 - ALTERNATIVE

People v. Julio Chairez, 2018 WL 746092, February 7, 2018

Chairez was convicted of unlawfully possessing a firearm within 1,000 feet of a park.

FACTS: Chairez pled guilty to possessing a firearm within 1000 feet of a park. He then filed a petition, seeking to vacate his conviction on the basis that the statute was unconstitutional under the Second Amendment. At the hearing, Chairez argued that an individual who is barred from carrying a firearm within 1000 feet of the many locations listed in section 24-1(c) (1.5) of the UUW statute was essentially barred from carrying a firearm in public. Therefore, the statute was more closely akin to a blanket prohibition than a restriction on carrying a gun in certain sensitive places. In response, the People argued that the firearm restriction is not an unconstitutional blanket prohibition because it prevents people from carrying firearms only in certain proscribed areas. The trial court agreed with defendant and declared the statute unconstitutional. This appeal before the Illinois Supreme Court followed.

***ISSUE*:** Was the subsection of the weapons statute unconstitutional? **ANSWER: Yes.**

FINDINGS: Initially, the Supreme Court noted that in holding a portion of the UUW statute unconstitutional, the trial court found the offense of possessing a firearm within 1000 feet of a public park (720 ILCS 5/24-1(a)(4), (c) (1.5) violated Chairez's right to keep and bear arms, as guaranteed by the Second Amendment. The People argued that the conduct of possessing a firearm within 1000 feet of a public park was unprotected by the Second Amendment because the prohibition falls within the Court's declaration that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" do not violate the Second Amendment rights of those prosecuted under such laws." Chairez, on the other hand, maintained that regardless of whether a public park qualifies as a sensitive place, the 1000-foot firearm restriction surrounding a public park falls outside of the Court's presumptively lawful restrictions. He argued that the preposition "in," which precedes "sensitive places" in the Court's statement, makes the list of presumptively lawful regulations limited to the actual sensitive place, not an exclusion zone around the particular place. To resolve this argument, the Court ruled that the statute in question does, to some degree, restrict the Second Amendment rights of persons who are within 1,000 feet of a park. Therefore, the question before the Court was whether this restriction was constitutional. Chairez argued for the Court to apply strict scrutiny to the 1000-foot firearm restriction around a public park. He maintained that, since the Court has declared the right to bear arms in self-defense to be a fundamental right and extended that right outside of the home and onto the public ways, the right to possess a firearm for self-defense outside the home is infringed when the 1000-foot firearm restriction around a public park extends onto public ways. Such a firearm restriction, he contended, directly impacted the Second Amendment protection of self-defense in public. The People urged the Court to use intermediate scrutiny to uphold the statute's ban on possessing a firearm within 1000 feet of a public park. They argued that the challenged restriction was substantially related to an important government objective in preventing harm to children and other vulnerable populations. The Supreme Court adopted the Federal Seventh Circuit's sliding scale approach. It ruled that if the People could not provide evidence establishing both the law's strong public-interest justification and the restriction's close fit to this end, the law must be held unconstitutional. Here the Court ruled

that the People provided no evidentiary support for their claims that prohibiting firearms within 1000 feet of a public park would reduce the risks it identified. Without specific data or other meaningful evidence, the Court found no direct correlation between the information the People provided and their assertion that a 1000-foot firearm ban around a public park protects children, as well as other vulnerable persons, from firearm violence. According to the Court, the People merely speculated that the proximity of firearms within 1000 feet threatens the health and safety of those in the public park. The lack of a valid explanation for how the law actually achieves its goal of protecting children and vulnerable populations from gun violence, according to the Court, amounted to a failure by the People to justify the restriction on gun possession within 1000 feet of a public park. Therefore, the Court declared Section 24-1(a)(4), (c) (1.5) unconstitutional.

COMMENTS: A criminal conviction based upon an unconstitutional statute is void. A defendant convicted of such an offense can successfully move to have his or her convicted vacated. Further, this can be done at any time; even years after his or her conviction. In this case, Chairez could not be convicted of his charged offense, possessing a firearm within 1,000 feet of a park, based upon this Court's ruling. Also, he could not be tried for any other offenses, such as unlawful possession of a firearm on a public way (a Class A misdemeanor) because by the time this case was decided, the statute of limitations had run on that offense. Chairez walked away with no convictions resulting from his illegal conduct. Also note that Subsection (1.5) also includes other "sensitive places." This case does not cover those places; but additional challenges will most surely follow.

QUIZ QUESTIONS FOR THE MONTH OF MARCH – 2018 - ALTERNATIVE

People v. Julio Chairez, 2018 WL 746092, February 7, 2018

1. A citizen's right to keep and bear arms is guaranteed by the Second Amendment of the United States Constitution.
   a. True.
   b. False.

2. Section 24-1(a)(4) of the Illinois Criminal Code provides that it is illegal to carry a concealed firearm upon a public way. Can a suspect legally carry a concealed firearm upon a public way in Illinois without violating this statute?
   a. Yes.
   b. No.

3. In this case, Chairez argued that the statute prohibiting carrying a concealed firearm within 1,000 feet of a park violated his Second Amendment rights. Did the Illinois Supreme Court agree with this argument?
   a. Yes.
   b. No.

4. 720 ILCS 5/24-1(a)(4), (c) (1.5) provides that it is illegal to carry a concealed firearm within 1,000 of various "sensitive" areas. These areas include: "the real property comprising any school, public park, courthouse, public transportation facility, or residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed-income development ***." The Supreme Court in this case declared that the statute prohibiting carrying a concealed firearm within 1,000 feet of any of these various "sensitive" areas violated the Second Amendment.
   a. True.
   b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF 2018 - ALTERNATIVE

People v. Julio Chairez, 2018 WL 746092, February 7, 2018

1. A citizen's right to keep and bear arms is guaranteed by the Second Amendment of the United States Constitution.

   a. True. The second amendment to the United States Constitution provides that "[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed." U.S. Const., amend. II. Through the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV), this right is "fully applicable to the States." McDonald v. City of Chicago, 561 U.S. 742, 750 (2010).

2. Section 24-1(a)(4) of the Illinois Criminal Code provides that it is illegal to carry a concealed firearm upon a public way. Can a suspect legally carry a concealed firearm upon a public way in Illinois without violating this statute?

   a. Yes. Section (a) (4) does not apply to or affect transportation of weapons that meet one of the following conditions: (i) are broken down in a non-functioning state; or (ii) are not immediately accessible; or (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card[.] *** (iv) are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act.

3. In this case, Chairez argued that the statute prohibiting carrying a concealed firearm within 1,000 feet of a park violated his Second Amendment rights. Did the Illinois Supreme Court agree with this argument?

   a. Yes. The Court did indeed find that 720 ILCS 5/24-1(a)(4), (c) (1.5) violated Chairez's right to keep and bear arms, as guaranteed by the Second Amendment.

4. 720 ILCS 5/24-1(a)(4), (c) (1.5) provides that it is illegal to carry a concealed firearm within 1,000 of various "sensitive" areas. These areas include: "the real property comprising any school, public park, courthouse, public transportation facility, or residential property owned, operated, or managed by a public housing agency or leased by a public housing agency as part of a scattered site or mixed-income development ***." The Supreme Court in this case declared that the statute prohibiting carrying a concealed firearm within 1,000 feet of any of these various "sensitive" areas violated the Second Amendment.

   b. False. The Court limited the finding of this case only to carrying within 1,000 feet of a park. It has not yet declared to other offenses unconstitutional.