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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of April – 2018

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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People v. Chad B. Hayes, 2018 IL App (5th) 140223, February 15, 2018

This case deals with the ability to use the results of a blood test against a defendant following a vehicle accident.

FACTS: Hayes struck a boy with his vehicle when the boy rode his bicycle in front of Hayes's vehicle. An officer investigating the accident requested that another officer drive Hayes to the hospital to provide blood and urine samples for drug testing. The tests revealed the presence of THC and amphetamine. After receiving these results, an Officer placed Hayes under arrest for DUI. An assistant state's attorney then spoke with the Officer. She told him that she was concerned about the fact that the Officer did not read Hayes the warning to motorists before the blood and urine samples were taken. She also expressed concern about the fact that no traffic citation had been issued to Hayes. Thereafter, the Officer issued two traffic citations to Hayes for failing to exercise due care and failing to reduce speed to avoid an accident. The defendant was then charged with aggravated DUI. Following his conviction, Hayes brought this appeal.

***ISSUE*:** Was Hayes properly convicted of Aggravated DUI? **ANSWER: No.**

FINDINGS: The issue in this case was whether the results of the drug tests should have been excluded because they were obtained in violation of the Fourth Amendment. The appellate court noted that compulsory blood testing is a search within the meaning of the Fourth Amendment. Since no warrant was obtained to justify obtaining a sample of Hayes' blood, the People had to explain why this warrantless search was reasonable.

(1) The People first argued that exigent circumstances justified obtaining a blood sample. The Court noted that a warrantless search based on exigent circumstances must also be supported by probable cause. In this case, the arresting Officer never testified that he suspected (let alone had probable cause to believe) that Hayes was DUI prior to obtaining the blood sample. Therefore, exigent circumstances did not justify this blood draw.

(2) Alternatively, the People argued that Hayes voluntarily underwent the blood test. Hayes noted that no evidence was introduced to show that he consented to the search or was even *asked* to consent. The People argued that the Hayes unambiguously consented to the search through his conduct of getting into the police car. The People further argued that his consent was voluntary because there was no evidence that Hayes objected to the request that he submit to the test. Concerning this issue, the Court noted that the record contained no evidence at all concerning how the test was presented to Hayes or how he responded. Under these circumstances, the Court refused to find that Hayes consented to the blood draw simply by entering the police car.

Moreover, the Court held that even assuming Hayes unambiguously conveyed consent, the consent was not voluntary. He was transported to the hospital for the test by a uniformed police officer. The officer remained with him at all times, even when he went to the restroom to provide a urine sample. The Officer had the defendant's vehicle towed from the scene of the accident to be stored until the Officer completed his investigation. The Court held that it did not believe that a reasonable person confronted with these circumstances would feel free to leave the hospital or refuse to take the test. Therefore, the People failed to prove that Hayes consented to the blood draw.

(3) Finally, the People argued that the Illinois implied consent statute justified the blood draw. The Court noted that Section 11–501.6(a) of the Illinois Vehicle Code provides that any motorist "shall be deemed to have given consent" to drug testing if the motorist is "arrested as evidenced by the issuance of a Uniform Traffic Ticket for any violation of the Illinois Vehicle Code ***."

The Court held that the statute, by its express terms, applied only if Hayes had been arrested for a violation of the Illinois Vehicle Code when asked to submit to testing. There was no dispute in this case that the Officer did not issue any traffic citations to Hayes until two days after the test.

The People argued, however, that although traffic citations are evidence of an arrest, they are not the only such evidence, and a citation is not a prerequisite to an arrest for a violation of the Illinois Vehicle Code. As such, the People argued that the implied consent provision was applicable if an officer arrests a defendant before requesting that a motorist submit to drug testing even if the officer does not issue a citation until later. The People further argued that Hayes was under arrest prior to the drug tests because a reasonable person in his position would not have felt free to leave. This was the definition of an arrest for purposes of triggering the Fourth Amendment's protections against unreasonable seizures. The People thus asked the Court to find that Hayes was under arrest for a violation of the Illinois Vehicle Code when he was transported to the hospital for testing.

This the Court refused to do. It held that before a motorist may be found to have impliedly consented to a blood draw, he must be under arrest *for* a violation of the Illinois Vehicle Code; not just under arrest. The Court held that the fact that Hayes was under arrest within the meaning of the Fourth Amendment coupled with a decision to by the People to issue tickets one to two days after the fact, as occurred in this case, was not sufficient to meet this standard.

For this reason, the Court held that the implied consent statute did not justify this blood draw and for these reasons, Hayes' conviction for DUI was reversed.

QUIZ QUESTIONS FOR THE MONTH OF APRIL - 2018

People v. Chad B. Hayes, 2018 IL App (5th) 140223, February 15, 2018

1. The compulsory testing of a suspect's blood is not considered to be a search under Illinois law.
   a. True.
   b. False.

2. In this case, the People argued that Hayes consented to his blood test when he voluntarily accompanied a police officer to a hospital in order to take the test. Did the trial and appellate courts agree that Hayes consented to giving a blood sample?
   a. Yes.
   b. No.

3. In this case, did the police have probable cause to require Hayes to submit to a blood test?
   a. Yes.
   b. No.

4. Hayes was involved in an accident while he was driving his car. Thereafter, he was placed under arrest by an Officer and transported to a hospital so that a blood sample could be obtained. Under these circumstances, the Courts properly concluded that the Illinois implied consent statute authorized the testing of Hayes' blood following his accident.
   a. True.
   b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF APRIL - 2018

People v. Chad B. Hayes, 2018 IL App (5th) 140223, February 15, 2018

1. The compulsory testing of a suspect's blood is not considered to be a search under Illinois law.

   b. False. The compulsory testing of a defendant's blood or other bodily fluids is a search within the meaning of the fourth amendment. *Missouri v. McNeely*, 569 U.S. 141, 148, (2013). Indeed, it is a particularly intrusive type of search. *McNeely*, 569 U.S. at 148, (explaining that "[s]uch an invasion of bodily integrity implicates an individual's 'most personal and deep-rooted expectations of privacy'" (quoting *Winston v. Lee*, 470 U.S. 753, (1985).

2. In this case, the People argued that Hayes consented to his blood test when he voluntarily accompanied a police officer to a hospital in order to take the test. Did the trial and appellate courts agree that Hayes consented to giving a blood sample?

   b. No. The Court ruled: "Acquiescence to apparent authority is not the same thing as consent. *Bumper v. North Carolina*, 391 U.S. 543, (1968)." "Here, the record contains no evidence at all concerning how the test was presented to the defendant or how the defendant responded. We do not know whether (the Deputy) asked the defendant to take the test or demanded that he do so. We do not know whether (the Deputy) told the defendant that he had no right to refuse the test. We do not know whether the defendant agreed to take the test, objected, or merely acquiesced." Therefore, the Court refused to find that Hayes consented to the test.

3. In this case, did the police have probable cause to require Hayes to submit to a blood test?

   b. No. The Court ruled: "We also agree that the July 25 test was not supported by probable cause."

4. Hayes was involved in an accident while he was driving his car. Thereafter, he was placed under arrest by an Officer and transported to a hospital so that a blood sample could be obtained. Under these circumstances, the Courts properly concluded that the Illinois implied consent statute authorized the testing of Hayes' blood following his accident.

   b. False. In this case, the Court held that while Hayes may have been under arrest when he was transported to the hospital for testing, he had not been placed under arrest for a Vehicle Code violation. Therefore, the Court ruled: "We merely hold that the State cannot rely on the implied consent provision unless the defendant has been arrested for a non-equipment violation of the Illinois Vehicle Code."

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of April - 2018 - ALTERNATIVE

Horton v. Pobjecky, 2018 WL 1061677, February 27, 2018

This case deals with a botched armed robbery attempt and the shooting death of one of the robbers.

FACTS: As an unarmed off-duty police officer waited for the pizza he ordered at a local store, in walked four men. Three of the men approached the Officer and the fourth man, the lookout, kept watch. One of the three men pulled a firearm and demanded money. The owner of the store, who was armed, grabbed for the robber's firearm and struggled with the robber. The Officer then grabbed the owner's firearm and shot all four of the robbers. The lookout at the door died and his estate sued the Officer for the excessive use of force. The district court granted summary judgment for the Officer on all claims and concluded that the Officer's use of deadly force was reasonable and justified and did not violate the Fourth Amendment. The estate then brought this appeal before the Court of Appeals.

***ISSUE*:** Did the district court err in finding in favor of the Officer? **ANSWER: No.**

FINDINGS: The Court of Appeals noted that an Officer may constitutionally use deadly force to defend himself in certain situations. It held that when an individual threatens a police officer with a deadly weapon, the officer is permitted to use deadly force in self-defense. An officer does not violate the Fourth Amendment by firing at a suspect when the officer "reasonably believed that the suspect had committed a felony involving the threat of deadly force, was armed with a deadly weapon, and was likely to pose a danger of serious harm to others if not immediately apprehended." As a form of defense of others, a police officer also may sometimes constitutionally use deadly force to prevent escape.

The Court held that the test for determining whether the conduct of the Officer was justified was whether the Officer's use of force was reasonable. This reasonableness test "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

The operative question in excessive force cases is whether the totality of the circumstances justifies the force the Officer used. The test is objective reasonableness.

A plaintiff must show the officer's use of force was objectively excessive (unreasonable) from the perspective of a reasonable officer on the scene under the totality of the circumstances. The Courts evaluate excessive-force claims for objective reasonableness based on the information the officers had at the time. What is important is the amount and quality of the information known to the officer at the time he fired the weapon when determining whether the officer used an appropriate level of force. The actual officer's subjective beliefs and motivations are irrelevant. An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional. The Court must consider the totality of the circumstances, including the pressures of time and duress, and the need to make split-second decisions under intense, dangerous, uncertain, and rapidly changing circumstances.

Further, the calculation of reasonableness must include an allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. In this case, the relevant question was whether the Officer reasonably believed the lookout posed a threat of death or serious bodily injury based on the information the Officer had during the robbery.

Here the incident lasted only about 45 seconds from the moment the first assailant entered the pizzeria to the moment the Officer shot the lookout. After approaching the struggle for a loaded gun, the lookout advanced toward the Officer generally from behind, in close quarters, as other assailants occupied various positions. The Officer immediately shot him. The Officer had limited time to react to four assailants attempting to commit an armed robbery. He had to react to a struggle over a loaded gun. After one robber made threats with a gun, the Officer reasonably assumed the three other assailants, including the lookout, might be armed. The Court could not consider the fact that it turned out the lookout was unarmed because the Officer did not know that, and had no reasonable way to know that, at the time. As long as the assailants were moving inside the pizzeria, they posed a threat.

Consequently, the Court ruled that considering the totality of the circumstances, the four assailants placed the lives of the Officer and others in objectively grave danger, and that the Officer's response with deadly force was reasonable. The lookout participated in an armed robbery. The Officer objectively had reason to think the lookout was armed and dangerous and posed an imminent threat of death or serious bodily harm to him. Under immense pressure, and with limited time, the Officer responded to the robbery with reasonable, appropriate, and justified force, in compliance with the Fourth Amendment. The Court held that no reasonable jury could find otherwise. Calling the lookout's death “tragic,” the Court concluded that the tragedy was caused by the robbers, not the Officer. This finding is supported by the fact that the three surviving robbers were convicted of felony murder based upon the death of the lookout. Therefore, the Court of Appeals affirmed the dismissal of the case against the Officer.

QUIZ QUESTIONS FOR THE MONTH OF APRIL – 2018 - ALTERNATIVE

Horton v. Pobjecky, 2018 WL 1061677, February 27, 2018

1. Pursuant to the Fourth Amendment, an Officer can use deadly force to seize a suspect. In order to be legal, this deadly force must be reasonable under the circumstances confronting the Officer.
   a. True.
   b. False.

2. In this case, the Officer shot the lookout three times in the back while the lookout was crawling for the door of the store in an apparent attempt to escape. An Officer, under appropriate circumstances, can legally use deadly force to prevent the escape of a suspected felon.
   a. True.
   b. False.

3. In this case, the Officer never identified himself as a police officer nor did he give any warning that he was going to fire the weapon he obtained from the owner. What the Officer required to identify himself and warn the robbers before firing the owner's firearm?
   a. Yes.
   b. No.

4. The Officer was not held responsible for the death of the lookout. Were the three surviving robbers held responsible?
   a. Yes.
   b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF APRIL – 2018 - ALTERNATIVE

Horton v. Pobjecky, 2018 WL 1061677, February 27, 2018

1. Pursuant to the Fourth Amendment, an Officer can use deadly force to seize a suspect. In order to be legal, this deadly force must be reasonable under the circumstances confronting the Officer.

   a. True. Sometimes a police officer's use of deadly force is reasonable and therefore constitutional. A police officer's use of deadly force on a suspect is a seizure within the meaning of the Fourth Amendment, so the force must be reasonable to be constitutional. *Scott v. Edinburg*, 346 F.3d 752, 755 (7th Cir. 2003).

2. In this case, the Officer shot the lookout three times in the back while the lookout was crawling for the door of the store in an apparent attempt to escape. An Officer, under appropriate circumstances, can legally use deadly force to prevent the escape of a suspected felon.

   a. True. As a form of defense of others, a police officer also may sometimes constitutionally use deadly force to prevent escape. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. *Tennessee v. Garner*, 471 U.S. 1, 11–12, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985).

3. In this case, the Officer never identified himself as a police officer nor did he give any warning that he was going to fire the weapon he obtained from the owner. Was the Officer required to identify himself and warn the robbers before firing the owner's firearm?

   b. No. The Court said: "Horton also argued below, and on appeal, that (the Officer) never gave any warnings before shooting. But the district court correctly observed that *Garner* requires an officer to warn "where feasible" but does not require an officer to warn under all circumstances. *Garner*, 471 U.S. at 11–12, 105 S. Ct. 1694. Given the desperate circumstances (The Officer) faced, and the limited time he had, no reasonable juror could conclude he should have stopped to identify his office or warn the assailants before shooting them to defend himself and others."

4. The Officer was not held responsible for the death of the lookout. Were the three surviving robbers held responsible?

   a. Yes. They were all convicted of felony murder.