



The Seventh Circuit holds that an officer's use of handcuffs did not violate the Defendant's Fourth Amendment rights.



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In *Howell v. Smith*, ___ F.3d ___, 2017 WL 1314935 (7th Cir. Apr. 10, 2017), the United States Court of Appeals for the Seventh Circuit reversed the District Court's denial of Defendant Officer Shawn Smith's motion for summary judgment. In so doing, the Seventh Circuit held that Officer Smith's decision to place Plaintiff Thom D. Howell in handcuffs and to keep him in handcuffs until the officers were satisfied that Howell was not a threat did not violate Howell's Fourth Amendment rights. Accordingly, the Seventh Circuit held that Officer Smith was immune from Howell's suit based upon the doctrine of qualified immunity. The Seventh Circuit based its opinion and holding upon the following facts.

Prior to the incident that formed the basis for this lawsuit, Howell, who was in his early sixties, had undergone multiple shoulder surgeries, including a complete replacement of his right shoulder. Also prior to the encounter at issue, Howell could stretch his right arm, could write on a blackboard, and could lift five or six pounds with his right arm. Howell's left shoulder was in better condition, and he usually could place his left arm behind his back.

The stop at issue took place on May 15, 2011. While Officer Smith was on routine patrol in the Town of Highland, Indiana, a dispatcher advised him of a reported road rage incident. According to the dispatcher, the victim had reported that the driver of a tan Trailblazer ahead of him on the road had fired at him while the two vehicles were traveling northbound on Kennedy Avenue in Griffith, Indiana. The dispatcher described the suspect driver as being alone in the vehicle and as a white male with facial hair. The dispatcher further stated that the vehicle had an older Indiana blue license plate. Officer Smith later encountered a vehicle and a driver matching this description, and so, he activated his patrol car's overhead lights and stopped the car.

Officer Smith treated this stop as a "high-risk traffic stop." After stopping Howell's vehicle, Officer Smith ordered Howell to step out of his vehicle, to place his hands on his head, to walk backwards toward him, and to kneel on the ground. Howell complied with all of Officer Smith's orders. While Howell was kneeling, Officer Smith handcuffed Howell's hands behind his back. Officer Smith, then,

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asked Howell whether he had been involved in a road rage incident. Howell denied any involvement, and Officer Smith placed Howell in the back of the squad car.

Officer Smith and Howell disagree as to what, if anything, Howell next told Officer Smith. According to Officer Smith, Howell “did not complain of any pain in his shoulders or arms nor did he complain of any pain, soreness or injuries to his shoulders at any time.” On the other hand, Howell maintained that he told Officer Smith that “I can’t stretch my arm behind my back that way” and that he “had just had surgery with [his] shoulder.” Howell additionally contends that he later told an officer (other than Officer Smith) that he was “sore” or in “pain,” but Howell was inconsistent on the exact language that he used and was unclear as to when this conversation took place, other than stating that it was with a Griffith police officer.

Thereafter, Officer Smith radioed Sergeant Banasiak, who was with the victim at a nearby shopping center or strip mall. Officer Smith asked whether the stopped vehicle was the one from which a shot had been fired. The victim “replied that it sounded like it.” When Sergeant Banasiak and the victim arrived at the scene sometime later, the victim confirmed that Howell was the one with whom he had had the road rage incident.

Officer Smith searched Howell but did not find a weapon on his person. Howell then provided consent to search his vehicle, but a search failed to locate a firearm in Howell’s vehicle either. Throughout this time, the victim remained adamant about his identification of Howell and advised both Sergeant Banasiak and Officer Smith that Howell was the individual who had shot at him in Griffith. Attempting to explain the absence of a firearm, the victim suggested that Howell must have thrown his weapon out of his vehicle.

Once the officers ascertained these facts, which involved removing Howell from the car several times, Sargent Dawes of the Griffith Police Department, in whose jurisdiction the offense would have taken place, decided to release Howell. The entire detention lasted approximately thirty minutes. At no point did Officer Smith feel threatened in any way by Howell. Howell maintained that, since his detention, he has suffered mental anguish and has undergone multiple shoulder-related surgeries.

Initially, Howell filed this suit against Officer Smith in state court. Because Howell alleged that Officer Smith exerted excessive force in violation of his federal constitutional rights, Officer Smith removed the case to federal court where the case proceeded on his excessive force claim under 42 U.S.C. § 1983 and his three state law claims: battery, intentional infliction of emotional distress, and negligent infliction of emotional distress. Shortly after removing the case to federal court, Officer Smith moved for summary judgment, arguing that he was immune from the suit based upon the doctrine of qualified immunity.

The District Court denied Officer Smith’s motion for summary judgment. In so doing, the District Court concluded that Officer Smith’s knowledge of Howell’s injury precluded the defense of qualified immunity and noted that there was a question of fact as to whether the force used by Officer Smith was excessive. This appeal followed.

The Seventh Circuit began its consideration of the case by explaining that qualified immunity shields federal and state officials from money damages unless a plaintiff demonstrates that the official violated a statutory or constitutional right and that the right was clearly established at the time of the

challenged conduct. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). A right is clearly established when existing precedent has “placed the statutory or constitutional question beyond debate.” *Reichle v. Howards*, 566 U.S. 658, 664 (2012). To meet his burden on the second prong, a plaintiff must “show either a reasonably analogous case that has both articulated the right at issue and applied it to a factual circumstance similar to the one at hand or that the violation was so obvious that a reasonable person necessarily would have recognized it as a violation of the law.” *Chan v. Wodnicki*, 123 F.3d 1005, 1008 (7th Cir. 1997). This requirement does not mean that a plaintiff must be able to point to a case “on all fours” with the defendant officer’s misconduct, but there must be settled authority that would cause him to understand the illegality of the action. *Mullenix v. Luna*, ___ U.S. ___, 136 S. Ct. 305, 308 (2015).

In order to provide guidance to police officers in the future, the Seventh Circuit addressed the first prong of the qualified immunity analysis and found that Officer Smith did not deprive Howell of his Fourth Amendment rights by keeping him in handcuffs for thirty minutes while he investigated the alleged road rage incident. The Seventh Circuit noted that Howell correctly based his claim upon the Fourth Amendment’s reasonableness standard. This standard governs whether law enforcement officers employed excessive force during an arrest, during an investigatory stop, or during any other type of seizure. The nature and extent of the force that may be used depends on the circumstances including the severity of the crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Courts are to measure an officer’s conduct against a standard of objective reasonableness, i.e., from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight.

In the instant case, the Seventh Circuit reiterated its previous holding that “[a] person has the right to be free from an officer’s knowing use of handcuffs in a way that would inflict unnecessary pain or injury, if that person presents little or no risk of flight or threat of injury.” *Rooni v. Biser*, 742 F.3d 737, 742 (7th Cir. 2014). The Seventh Circuit noted that, from his perspective at the time of the incident, Officer Smith had very limited information to evaluate whether keeping Howell in handcuffs during the investigation would constitute the infliction of unnecessary pain or injury. Notably, Howell conceded that Officer Smith was not overly forceful in placing the handcuffs on him.

On the other hand, Officer Smith had to consider that he was dealing with an individual suspected of committing a felony involving the discharge of a firearm on a public street. Officer Smith did not locate a firearm on Howell’s person, and Officer Smith had the right to protect himself and the duty to protect others from a possibly irate and irrational suspect, especially one who had been confronted by the alleged victim who identified Howell as the individual who had discharged a firearm at him in a fit of road rage. Because the victim identified Howell as the perpetrator, Officer Smith was justified in keeping Howell in handcuffs during the investigation while the officers thoroughly searched Howell’s vehicle for a firearm.

In sum, the Seventh Circuit opined: “[a]lthough a person has the right to be free from an officer’s knowing use of handcuffs in a way that would inflict unnecessary pain or injury, that right is tempered by the attendant risk of flight or threat of injury. Here, although Officer Smith had a duty to consider the information that Mr. Howell had given him about his condition, he had very little information to evaluate. That information, moreover, clearly did not outweigh the very concrete information about the crime and the circumstances under which it was allegedly committed. Officer Smith’s decision did

not violate the Fourth Amendment.” Howell, ___ F.3d ___, 2017 WL 1314935, at * 5 (internal quotations omitted). Accordingly, the Seventh Circuit held that the District Court erred in denying summary judgment for Officer Smith.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*