



The Seventh Circuit refuses to reconsider its prior ruling and, instead, re-affirms that a law enforcement officer's use of excessive force does not constitute grounds for suppressing evidence obtained through the use of alleged excessive force



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In *United States v. Collins*, 714 F.3d 540 (7th Cir. 2013), Defendant Johnnie C. Collins asked the United States Court of Appeals for the Seventh Circuit to reconsider its Opinion in *United States v. Watson*, 558 F.3d 702 (7th Cir. 2009). Specifically, Collins asked the Seventh Circuit to reconsider its holding in *Watson* that the use of excessive force during an arrest is not a basis for suppressing evidence. Collins based his argument on appeal on the following facts that were obtained from three law enforcement officers' testimony at a hearing on Collins' motion to suppress.

On the night in question, Fort Wayne, Indiana, Police Officer Stephen Ealing stopped Collins for speeding. Collins stepped out of his car, and when Officer Ealing instructed him to get back inside, Collins sped away through red lights and stop signs in a residential neighborhood. Officer Ealing gave chase, but his lieutenant eventually ordered him to abandon his pursuit. At about the same time, Collins crashed into a stop sign. Collins then ran from the scene and, within a few seconds, threw a small bag into the bushes. Officer Ealing pursued Collins on foot, and Collins repeatedly disregarded the officer's instructions to stop.

When Officer Ealing finally caught up to him, Collins continued to resist arrest. Trying to subdue him, Officer Ealing elbowed him in the neck and back. Collins still did not submit, and so, Officer Ealing discharged pepper

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spray in Collins' face. A fight then ensued; Collins swung at Officer Ealing who responded with more pepper spray and repeated kicks to the stomach and groin. Collins still resisted and ignored commands to get on the ground. At that point Officer Kenneth Johnson arrived and saw Collins fighting with Officer Ealing. Officer Johnson announced that he possessed a Taser, but Collins would not surrender and get on the ground. Officer Johnson then deployed the Taser, and Collins fell to the ground but still refused to put his hands behind his back. Only after Officer Johnson deployed the Taser again were the officers able to gain control over Collins and handcuff him.

After the arrest, the police officers retrieved the bag that Collins had thrown into the bushes during the foot chase. A field test was positive for cocaine and later analysis confirmed that the bag contained 28.8 grams of powder cocaine and 44.8 grams of crack. In addition, the officers searched Collins and discovered a wad of cash in his pocket. Medics on the scene determined that Collins's vital signs were normal, and hospital staff later gave him a tetanus shot as a precaution.

Thereafter, Collins was indicted on one count of possession of crack with intent to distribute and one count of possession of powder cocaine with intent to distribute. Collins moved to suppress the drugs and the money on the theory that this evidence was discovered only after he was arrested through the use of excessive force.

The District Court denied Collins' motion to suppress. Citing *United States v. Watson*, 558 F.3d 702 (7th Cir. 2009), the District Court noted that the use of excessive force in making an arrest cannot be remedied by suppression of evidence. And even if suppression were an available remedy, the District Court continued that Collins would not be entitled to relief because he discarded the drugs before any force was applied and because the money would have been seized during a search incident to arrest, negating any causal connection between the discovery of evidence and the use of force. Collins later entered a conditional plea of guilty, reserving the right to challenge the suppression ruling on appeal. The District Court sentenced Collins to 70 months' imprisonment, and Collins timely appealed.

On appeal, Watson asked the Seventh Circuit to overturn its holding in *Watson*. However, the Seventh Circuit refused to do so and called Collins' argument in support of reversing *Watson* "meritless."

The Seventh Circuit noted that Collins conceded that his disagreement with *Watson* gets him nowhere unless there is a "causal nexus" between the use of force and the discovery of the drugs and money. Collins also acknowledged that the District Court's conclusion that no causal connection existed because the drugs were abandoned before any force was applied and the money would have been discovered during a search incident to arrest. The flaw in the District Court's reasoning, Collins argued, was in identifying when the excessive force began. According to Collins, Officer Ealing subjected him to the use of excessive force merely by giving chase on foot after the police lieutenant said to abandon the vehicular pursuit.

The Seventh Circuit was not persuaded by this argument. Instead, the Seventh Circuit explained that a claim that excessive force was used by the police against a citizen is analyzed under the Fourth Amendment's prohibition of unreasonable seizures of the person, and Collins had not yet been seized at the point when he abandoned his drugs by tossing the bag into the bushes. No seizure occurs until force is applied or the suspect submits to the officer, and the moment of seizure does not relate back to an initial show of authority that was ignored.

Furthermore, the Seventh Circuit opined that it does not matter that Collins was seized previously during the brief traffic stop because "[a] seizure is a single act, and not a continuous fact." *California v. Hodari D.*, 499 U.S. 621, 625-26 (1991). The minute that Collins fled from the scene of the traffic stop, that brief period of custody ended.

In short, the Seventh Circuit noted that, after *Watson*, there has been no appellate decision holding that the exclusionary rule can serve as a remedy for excessive force collateral to a search or seizure. As a result, the Seventh Circuit re-affirmed that not every constitutional violation results in the exclusion of evidence.

Specifically, the fact that law enforcement officers may have used excessive force in order to obtain evidence against a criminal defendant does not mean that the evidence should be excluded from being used as evidence against the criminal defendant. Instead, the criminal defendant's relief, if any, lies in a civil suit for monetary damages against the officer who used excessive force against him in violation of his Fourth Amendment rights.

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.*