

THE LOCAL GOVERNMENT LIABILITY BEAT



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Eleventh Circuit Discusses Closed-Fist Strikes and Excessive Force

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On February 4, 2019, the Eleventh Circuit Court of Appeals decided *Baker v. Clements et al.*,¹ in which the court examined whether an officer used excessive force under the Fourth Amendment when he used closed-fist strikes (punches) on a suspect who was actively resisting officer's efforts to place him in handcuffs. The relevant facts of *Baker*, taken directly from the case, are as follows:

Officer Clements initiated the traffic stop after observing Plaintiff driving a car at night with no tag light illuminating the license plate and with cracks in each tail light. The encounter between Plaintiff and Defendant Officers was captured on a dash camera video and audio recording.

The facts pertinent to this appeal are as follows. During the traffic stop, Officer Clements and Plaintiff walked to the back of Plaintiff's car so Plaintiff could see the broken tag light. Officer Clements conducted a brief pat-down search of Plaintiff's person and found no weapons or contraband. Plaintiff – who had marijuana in his possession –



says he “got nervous.” Meanwhile, Officer Dwyer arrived on the scene as routine backup.

Officer Clements asked for Plaintiff’s consent to search the car. Plaintiff provided no verbal response and, instead, started to walk away. Officer Clements told Plaintiff to “come here” and to sit on the front bumper of the police car, which Plaintiff did. Officer Clements asked again for Plaintiff’s consent to search the car. Plaintiff turned his head away from Officer Clements and provided no verbal response.

Seconds later, Plaintiff started to run away. Officer Clements grabbed Plaintiff’s shirt and brought Plaintiff to the ground. As Officer Clements and Plaintiff struggled, both officers ordered Plaintiff to get on the ground and to give Officer Clements his hands. At one point, Officer Dwyer also tased Plaintiff.

Defendant Officers pinned Plaintiff face down on the ground as Plaintiff continued to struggle. Defendant Officers issued repeated orders for Plaintiff to stop resisting and for Plaintiff to give Officer Clements his hands. Officer Clements was able to handcuff Plaintiff’s left hand, but Plaintiff’s right hand remained free. The video shows that

Defendant Officers both struggled to get ahold of Plaintiff’s right arm while also ordering Plaintiff repeatedly to give them his hand. At that point, Defendant Officers delivered a series of closed-fist strikes to Plaintiff’s right side. Officer Clements ultimately succeeded in handcuffing Plaintiff’s right hand about 40 seconds after handcuffing Plaintiff’s left hand. After Plaintiff was fully handcuffed, Plaintiff continued to move around on the ground. Defendant Officers held Plaintiff still, but used no further fist strikes or other force.

Plaintiff was charged with two counts of tag violations, two counts of obstructing a police officer, and one count of marijuana possession. Plaintiff entered a plea agreement and served twelve months’ probation.ⁱⁱ

Although Baker pled guilty, he subsequently filed suit in federal court and alleged that the officers used excessive force under the Fourth Amendment by using closed-fist strikes as they attempted to handcuff him. The district court held that no Fourth Amendment violation occurred and granted summary judgment in favor of the officers. [Note: This article will not discuss the state law claim.]

Baker appealed the dismissal of his case to the Eleventh Circuit Court of Appeals. The court of appeals examined the legal principles relevant to this case. The court first noted that when an officer has the legal right to make an arrest (probable cause) or the legal right to conduct an investigatory detention (reasonable suspicion), the officer is entitled to use reasonable force to effect that arrest or detention. Specifically, the court stated:

Although suspects have a right to be free from force that is excessive, they are not protected against a use of force that is necessary in the situation at hand.” *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010) (quotations omitted). “[T]he



right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). An officer’s use of force is unconstitutionally excessive only if the force used was “objectively [un]reasonable in light of the facts and circumstances confronting” the officer. *Id.* at 397 (quotations omitted).ⁱⁱⁱ [emphasis added]

The court also stated

In determining the reasonableness of the force applied, we look at the fact pattern from the perspective of a reasonable officer on the scene with knowledge of the attendant circumstances and facts, and balance the risk of bodily harm to the suspect against the gravity of the threat the officer sought to eliminate.” *McCullough v. Antolini*, 559 F.3d 1201, 1206 (11th Cir. 2009). We consider, among other things, [1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396.^{iv} [emphasis added]

The court then set out to apply the legal principles stated above to the facts of Baker’s case. The court noted that the only aspect of the officers use of force that Baker alleged to be excessive force under the Fourth Amendment was the use of the closed-fist strikes, or punches, while he was face-down on the ground.

First, the court noted that, at the time the officers punched Baker, he had refused multiple commands to get on the ground and stop resisting. Second, one of Baker’s hands was handcuffed, but Baker physically, actively resisted the officer’s attempt handcuff the other hand. The court stated that it is not unreasonable for officers to believe that Baker could have used the handcuff that was on one hand

as a weapon against the officers. Specifically, the court stated:

[W]e have said that an arrestee with only one hand handcuffed may pose a danger to officers because “without both hands shackled, the single handcuff could be used as a weapon.” See *Hoyt v. Cooks*, 672 F.3d 972, 979 (11th Cir. 2012).^v [emphasis added]

Third, the court considered that Baker’s resistance to arrest was, active and aggressive resistance, such that it constituted “obstruction of a law enforcement officer,” a criminal offense under Georgia law.

Fourth, the court noted that the officers had to make a “split second decision” on what type of force to use while faced with a “tense, uncertain, and rapidly evolving” situation.^{vi}

Fifth, the court noted that Baker argued that he was unable to put his loose hand behind his back because of a pre-existing shoulder injury. However, there was no evidence that the officers knew about this injury at the time of the arrest. As such, the court stated that it was reasonable for the officers to perceive Baker’s failure to put his hand behind his back for handcuffing as a sign of intentional resistance.

Therefore, in light of the above factors, the court of appeals reasoned

[A]n objective officer under the circumstances could have concluded reasonably that the use of fist strikes was necessary to complete Plaintiff’s arrest.^{vii}

Therefore, the court of appeals affirmed the grant of summary judgment to the officers in this case.

Citations

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|------|---|------|-------------------|
| i. | No. 18-12724 (11th Cir. Decided February 4, 2019 Unpublished) | iv. | <i>Id.</i> at 6-7 |
| | | v. | <i>Id.</i> at 8 |
| ii. | <i>Id.</i> at 2-4 | vi. | <i>Id.</i> |
| iii. | <i>Id.</i> at 6 | vii. | <i>Id.</i> |



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This Issue...

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