



COMMANDER'S LOG

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An Inmate's Insults and Verbal Attacks Are Not a License to Use *Excessive Force*

QUESTION: Are an inmate's insulting words and defiance of lawful orders justification for the use of excessive force?

ANSWER: No. *Excessive* force is never justified, including in response to mere insults or steadfast refusal to obey lawful orders. In circumstances where force must be used, it must be reasonably applied in a good faith effort to maintain or restore discipline, and not to inflict punishment or harm.

CASE: *Brian Sawyer v. Jim R. Asbury, et al.*, U.S.C.A (Fourth Circuit)
Decided August 13, 2013

This case concerns events that took place at the Wood County Detention Center in West Virginia in October 2009 while Brian Sawyer was detained following his arrest in connection with a domestic disturbance. Sawyer had been arrested at his home by Deputy Sheriff Jim Asbury and Sawyer admitted that he had consumed a couple of Klonopin and a couple of beers. When the deputy tried to place Sawyer under arrest, Sawyer attempted to kick him. Deputy Asbury avoided the kick and Sawyer kicked the front door. Deputy Asbury put Sawyer in his patrol car and drove to the detention center. During the drive, Sawyer was "running his mouth," essentially challenging the deputy to a fight and saying that he knew where the deputy lived. Sawyer also said that he was going to "kick the deputy's ass" and spoke disparagingly about the deputy's wife. Sawyer's stream of invective continued all the way to the detention center. Other than "running his mouth," however, Sawyer engaged in no physical misconduct.

Deputy Asbury escorted Sawyer into the detention center's processing room. Unknown to him there was a closed circuit surveillance camera in the room. Once inside, Sawyer complied with Sergeant Kearns' directive to sit on a cement bench attached to the wall. Sawyer was then instructed to stand so that Deputy Asbury could remove his handcuffs. Again, Sawyer complied. Next, Sawyer was compliant during the pat-down conducted by Deputy Asbury. However, during all of these events, Sawyer continued to "run his mouth" against the deputy.

The video recording showed that, during the pat-down, Sawyer turned his head to look back at Asbury and to speak to him. At all times, though, he kept his hands on the wall. All officers on the scene later characterized Sawyer's actions as a "target glance," which, based upon their training was a danger cue indicating that the suspect may be about to attack an officer. Nothing more occurred, however, and the frisk was completed.

After the frisk, Sawyer again sat on the bench. This time, he crossed his arms and legs, a posture described by Deputy Asbury and Sergeant Kearns as "defiant." Sawyer and Deputy Asbury then engaged in a heated verbal argument that lasted half a minute. Both men were gesticulating with their hands. And both admitted they were using inappropriate language. Deputy Asbury said that, during the exchange, he repeatedly told Sawyer to stand so that he could be fingerprinted and photographed

but that Sawyer refused to budge. On the video, the deputy is seen repeatedly pointing at his badge. At this point, Sawyer said that he would take Deputy Asbury's "badge off and shove it up his ass." Deputy Asbury then lunged at Sawyer, who was still seated. He grabbed Sawyer's arm and throat and forced him back against the wall, pushing back and up on Sawyer's neck. At this point, Sergeant Kearns and Lieutenant Massey, who was also in the room, walked to either side of the two men. Deputy Asbury drew his hand back as if to strike a blow, but what he actually did with his hand could not be seen on the video because it skips at that point. A moment later, the video shows the deputy drawing his fist back a second time and striking Sawyer in the face. During these events, the deputy continued to hold Sawyer by the throat. Sawyer was then pulled to the ground and restrained by the three deputies in the room. The deputies then left the room for several minutes leaving Sawyer unattended. Sawyer pulled himself to a seated position and leaned against the wall.

Sawyer sustained a broken nose, bruising to his face and extremities. He sued Deputy Asbury for using excessive force. Based upon the video, the trial judge found in Sawyer's favor, concluding: "[A] pretrial detainee's words do not justify an officer's use of such force." Deputy Asbury appealed.

The federal appeals court (Fourth Circuit) upheld the lower court. It did so even under the elevated standard for excessive under the Fourteenth Amendment applicable to pretrial detainees. Under this standard, a plaintiff must show that the defendant inflicted unnecessary and wanton pain and suffering upon the detainee. The proper inquiry is whether the force applied was in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm. The video provided the compelling evidence of excessive force and overcame the testimony of Deputy Asbury and the others in the room who denied that excessive force had been used. In other words, "visible fact" overcomes "visible fiction."

NOTE: This case shows the importance of video evidence, which, in most instances, can be used to the benefit of correctional officers.

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