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Expert Opinion Report

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINIOS
URBANA DIVISION

Case No. 17-cv-2300

Benjamin Mann and
Samantha M. Wade, PLAINTIFFS,

v.

City of Urbana Police Department, the City of Urbana and the
Board of Trustees of the University of Illinois, DEFENDANTS.

Prepared By	Date Completed
Jon B. Blum	April 1, 2019

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I. Case Materials

All case materials were provided by defense counsel or gathered by me before April 1, 2019. Opinions herein were formed after reviewing all items in the table below and applying my combined 27 years of experience as a sworn law enforcement officer and trainer. See attached resume and case vitae. Should additional information relevant to my opinion be discovered at a later date, I respectfully request an opportunity to review same and amend this report if needed.

#	Case Materials	Notes	Pages
1	Complaint; Amended Complaint Responses	Plaintiff & Defense	62
2	Police Report; Incident # UU1701259	Urbana Police Dept.	44
3	Personnel File	Officer Seth King	27
4	In-Car Camera Video	2 hours; 13 minutes	1
5	Use of Force Guidelines	IL Training & Standards	13
6	PTI Use of Force Training Manual	University of Illinois	8
7	PTI Arrest & Control Tactics Manual	University of Illinois	55
8	Deposition + Exhibits	MANN, Benjamin	328
		TOTAL	**538**

II. Incident Summary

Around 7:00 p.m. on March 19, 2017, Mr. Benjamin Mann (Plaintiff) was driving his black Dodge Stratus in the Town & Country Apartments parking lot in Urbana, Illinois. Ms. Samantha Wade (Plaintiff) and her 9-year old son, Evin Smith, were passengers inside Mr. Mann's car. Ms. Wade, her son and Mr. Mann lived at 810 Oakland Avenue, apartment #201.

At the same time Mr. Mann was driving through the parking lot, Ms. Koraysia Pierce was leaving after visiting some friends who lived near building 810. As Ms. Pierce was backing her black Pontiac out of a parking space to leave, Mr. Mann drove directly behind her causing a near miss.

After Mr. Mann parked his Dodge near building 810, Ms. Pierce got out of her car and confronted Mr. Mann about his driving. Ms. Pierce did not know, and had never seen Mr. Mann or Ms. Wade before. The conversation between Ms. Pierce and Mr. Mann was heated. Ms. Pierce stopped her car behind Mr. Mann's Dodge. Ms. Pierce said she stopped so she could write down Mr. Mann's license

plate and report the incident to police. Mr. Mann got into his Dodge, intentionally backed-up and crashed into the rear passenger side of Ms. Pierce's Pontiac.[1]

Mr. Mann and Ms. Pierce got out of their respective cars. Mr. Mann, 35, ran up to Ms. Pierce, 25, and had a physical altercation. Mr. Mann said he "*pushed*"[2] Ms. Pierce. Ms. Pierce said Mr. Mann punched her in the face and head twice.[3]

The following information was called into the Urbana Police Department about the events involving Mr. Mann, Ms. Wade and Ms. Pierce:

- domestic assault in progress
- masked man with a gun*
- multiple persons involved*
- lots of screaming and yelling in background
- someone was being attacked*

***Provided by Mr. Mann to 911 dispatchers**

At 7:29 p.m., at least 5 officers responded priority or with lights and siren to the apartment complex. Officer Seth King and Sergeant Jennifer Difanis were the first to arrive. Mr. Mann and Ms. Wade were walking in the parking lot, pointing south and yelling at police for letting the suspects get away.[4]

Because a gun was allegedly involved, Sergeant Difanis explained to Mr. Mann and Ms. Wade that police needed to make sure they were not armed while other responding officers looked for fleeing suspects. Sergeant Difanis instructed Mr. Mann and Ms. Wade at least three times to keep their hands up and visible.[5] Mr. Mann told Sergeant Difanis to "*shut the fuck up*"[6] because he was the victim.

Because Ms. Wade refused to follow repeated instructions, she was handcuffed and frisked by Officer King and Sergeant Difanis. Ms. Wade had a very strong odor of alcoholic beverage coming from her breath.[7]

While Ms. Wade was being handcuffed, Mr. Mann approached and refused Officer King's instructions to stay back. Mr. Mann got so close that Officer King had to put his left hand out and on Mr. Mann's chest to keep him back.[8] By now,

[1] Incident report (DIFANIS, Jennifer)
[2] Deposition (MANN, Benjamin)
[3] Incident report (DIFANIS, Jennifer)
[4] Incident Report (KING, Seth; DIFANIS, Jennifer)
[5] Incident Report (DIFANIS, Jennifer)
[6] Incident Report (DIFANIS, Jennifer)
[7] Incident Report (DIFANIS, Jennifer)
[8] Incident Report (KING, Seth)

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Sergeant Jay Loschen was on the scene to help and frisked Mr. Mann for weapons, but did not find any.

Mr. Mann said he was the one who called the police and reported that two unknown black men approached him with Ms. Pierce. Mr. Mann said one suspect was wearing a white handkerchief around his face and holding a gun. Mr. Mann was vague and unable to provide suspect clothing descriptions, direction of travel, or method of travel.[9] Mr. Mann said he had tunnel vision and only focused on the gun.[10] When talking to police, Mr. Mann was cooperative one minute, then would explode in anger yelling and accuse police of not trying to find the real offenders.[11]

Ms. Wade told police that Ms. Pierce and two unidentified black men approached Mr. Mann in the parking lot. Ms. Wade said the one suspect wearing a ski mask told Mr. Mann, *"you're dead"*[12] and struck her on the left side of her face. Officers did not see any visible injuries on Ms. Wade.

After preliminary interviews were completed by police, Ms. Wade and Mr. Mann returned to their apartment. While canvassing the area for witnesses, Sergeant Difanis was flagged down by Ms. Pierce. Ms. Pierce had remained in the area until police arrived. Ms. Pierce was crying and visibly shaken.[13] Ms. Pierce said Mr. Mann had rammed her car and attacked her.[14] Ms. Pierce had the following head/face injuries:[15]

- a red lump on left ear lobe
- abrasion behind left ear
- swelling to left cheek

Sergeant Difanis found a large dent on the passenger side of Mr. Pierce's Pontiac. Damage to Ms. Pierce's Pontiac was recent and consistent with paint transfer damage found on the rear end of Mr. Mann's Dodge.

When questioned, Ms. Pierce had *"no idea"*[16] about the other suspects (e.g., two black men; ski mask; gun etc.) described by Mr. Mann and Ms. Wade. Officer Sarah Links spoke with Timothy Seaton, a third-party witness who lived in building 810. Mr. Seaton said he heard, then saw Mr. Mann and Ms. Pierce

[9] Incident Report (KING, Seth; LOSCHEN, Jay)
[10] Incident Report (KING, Seth)
[11] Incident Report (KING, Seth)
[12] Incident Report (LOSCHEN, Jay)
[13] Incident Report (DIFANIS, Jennifer)
[14] Incident Report (DIFANIS, Jennifer)
[15] Incident report (DIFANIS, Jennifer)
[16] Incident Report (DIFANIS, Jennifer)

arguing in the parking lot from his apartment window.[17] Shortly after the argument began, Mr. Seaton saw three more people arrive on foot from different directions. He believed two of the people were men and they may have been friends of Ms. Pierce.[18]

Given physical and testimonial evidence collected by police, the decision was made to charge Mr. Mann with aggravated battery for assaulting Ms. Pierce and reckless driving. Mr. Mann was also charged for not having the required insurance on his Dodge.

Officer King and Officer Colby Wright went to apartment #201 to arrest Mr. Mann. There was a large dog in the apartment and Mr. Mann refused to come outside. After Ms. Wade contained the dog in another room, she invited Officers King and Wright into the apartment. When officers entered the apartment, Mr. Mann walked away and toward a rear bedroom. To prevent Mr. Mann from possibly escaping or gaining access to a weapon, Officers grabbed Mr. Mann by both arms, or one officer per arm. Mr. Mann resisted by flexing his upper body muscles and pulling away.[19] When ordered to *"Stop resisting!"*[20] Mr. Mann pulled his left arm away from Officer King's grasp, looked down at his pants pockets, and reached toward his waistband.[21] To stop Mr. Mann from gaining access to a possible weapon from his pants pockets or waistband, Officer King pushed Mr. Mann down into a prone position on the floor. A nearby glass shelf/table inside the living room was broken while pushing Mr. Mann to the floor. Additional charges for resisting a peace officer were filed against Mr. Mann.

Note: Mr. Mann admitted to reaching for his pants during arrest, but it was to put a prosthetic tooth he was holding into his pocket.[22] Mr. Mann said his prosthetic tooth was knocked out when the aforementioned suspect carrying a gun punched him in the mouth.[23] Following his arrest, Mr. Mann also told Officer King that, "*If I would have resisted, you would have been on your ass.*"[24]

[17] Incident Report (LINKS, Sarah)
[18] Incident Report (LINKS, Sarah)
[19] Incident Report (LOSCHEN, Jay; KING, Seth; WRIGHT, Colby)
[20] Incident Report (KING, Seth)
[21] Incident Report (KING, Seth; LOSCHEN, Jay)
[22] In-Car Video
[23] In-Car Video
[24] Incident Report (KING, Seth)

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III. Opinions

A. **Non-deadly force used by Officer King to stop Mr. Mann's active resistance was reasonable**.

"The test of reasonableness under the 4th Amendment is not capable of a precise definition or mechanical application. Its proper application requires careful attention to the facts of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the officer or others and whether or not he is actively resisting arrest or attempting to evade arrest by flight. The calculus of reasonableness must embody 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."[25]

The following facts made it reasonable for Officer King to use non-deadly force to stop Mr. Mann's *active* resistance and make the arrest as quickly as possible:

1. Mr. Mann had previously demonstrated both verbal and physical resistance toward officers in the previous 20-30 minutes prior to arrest. Examples include refusing to follow officer instructions and physical interference with handcuffing of Ms. Wade.

2. Mr. Mann physically assaulted Ms. Pierce, a stranger.

3. Mr. Mann's strength. This included his ability to prevent two officers (one holding each arm) from applying handcuffs and pulling his left arm out of Officer King's grasp.

4. Lack of officer knowledge about the apartment and its contents compared to Mr. Mann's. This included potential weapons, escape routes, and location of large dog.

5. Mr. Mann's intentional decision to pull his left arm away from Officer King, then reach toward his pants waist band / front pocket. Pant pockets and waist band are commonly used by suspects to hide weapons. Although Mr. Mann had previously been frisked by Sergeant Loschen, he had returned to the apartment without continuous monitoring by police.

[25] PTI Arrest & Control Tactics Manual; Graham v. Connor, 490 U.S. 386 (USSC; 1989)

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6. Distance between fixed and unfixed objects within the apartment. The glass table/shelf damaged suggests limited space for officers to maneuver. Thus, the longer it took officers to stop Mr. Mann from resisting, the greater likelihood of unnecessary injury to Mr. Mann, officers, Ms. Wade or 9-year old Evin.

B. **Force used by Officer King was consistent with his training and law enforcement industry best practices.**

To be a law enforcement officer in the State of Illinois, Officer King successfully completed the mandated Basic Law Enforcement Course at the Police Training Institute (University of Illinois) in September 2015. Officer King completed the 480-hour curriculum which included written and practical skills testing on the use of force.

1. Use of Force Performance Objectives[26]

Because of potential harm to citizens and serious civil or criminal consequences, use of force is treated separately from other search and seizure aspects of arrest. Officer King successfully completed training that covered the following performance objectives:

a) Recognize circumstances that justify a peace officer's use of force in making an arrest.

b) Recognize circumstances that justify a peace officer's use of force in defending self or others.

c) Recognize circumstances that justify use of force to prevent escape.

2. Peace Officer's Use of Force Making an arrest

Officer King was trained to understand that "a peace officer…need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to arrest. He is justified in the use of any force which he *reasonably* believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself from bodily harm while making an arrest."[27]

[26] PTI Use of Force Training Manual
[27] PTI Arrest & Control Tactics Manual

3. Active Resistance

Officer King was trained to recognize different levels of suspect resistance. Mr. Mann's conduct was consistent with "*active resistance*, which occurs when an offender exhibits resistive movement to avoid physical control or presents a credible threat to the officer through an agitated demeanor or verbal threats or words intent or *ability* to use violence or resistance." [28]

"The potential to create injury by an actively resistant offender is greatly increased. This is due to the nature of the person's actions, which are in affect attempts to avoid control. This could be attempted by mere muscular tension or actual movement (slight evasive movement of the arm, flailing or full flight). An active resister could create the same types of injuries as a passive resister. However, the likelihood of injury is greatly increased, due to the dynamic movement involved. Potential for injury to both suspect and officer include, but are not limited to the following:

- muscular injury
- joint injury
- ligament injury
- abrasions
- lacerations"[29]

4. Officer Response[30]

Officer King was trained to respond to resistance using specific control tactics. To stop an *active resister*, Officer King was trained to use any of the following:

a) stunning techniques

b) take downs*

c) chemical agents

d) control instrument techniques

[28] PTI Use of Force Training Manual
[29] PTI Use of Force Training Manual
[30] Use of Force Guidelines; Illinois Law Enforcement Training and Standards Board

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e) Canine

f) electro-muscular disruption device (e.g., Taser®)

***Officer King used a non-weapon take down to stop Mr. Mann's active resistance.**

5. Objective Reasonableness & Totality of Circumstances

The U.S. Supreme Court imposed an *objective reasonableness* standard to govern police decision making when using force to seize a person (i.e., 4th Amendment). Decisions by officers to use force must also be based on the *totality of the circumstances* and how they are evolving at the time of the incident. Officer King was trained to evaluate the *totality of circumstances* when using force.

Objective reasonableness is not determined by any particular force option(s), but rather all of the surrounding circumstances that caused the officer to make the decision on the force option(s). Moreover, what one officer may perceive as a threat, another may not, due to any number of factors. This means that when the officer's reasonableness is questioned, <u>we must place ourselves in the position of that officer at the moment of decision</u>.

Objective reasonableness elements based on the officer's perception of the suspect's actions include the following:

a) <u>Ability/Capability</u>: The suspect must be able to carry out the action or threat. This must be a logical perception.

b) <u>Opportunity</u>: The suspect must be in a position in which they can use their ability/capability to carry out the act or threat.

c) <u>Intent</u>: The suspect must initiate an overt act (words or deeds) in furtherance of a crime or threat.

Officer King was trained to understand that the overriding test for all use of force is whether it is *objectively reasonable* under the *totality of circumstances* <u>at the time the force was used</u>. Officer King's perception and decision to use force and stop Mr. Mann's resistance quickly was reasonable because:

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- Mr. Mann demonstrated the *ability* and was *capable* of carrying out the action. For example, Mr. Mann had the strength to resist physical handcuffing by two officers and break free from Officer King's grasp.

- Mr. Mann had the *opportunity* and was in a position to use his *ability* to carry out the act. For example, When Mr. Mann forcibly broke free from Officer King's grasp, it was reasonable to believe Mr. Mann may be trying to facilitate escape by fleeing, assaulting, or obtaining a weapon.

- Mr. Mann *intentionally* (a) refused to follow Officer King instructions to *"stop resisting";* (b) flexed his arm and shoulder muscles to prevent handcuffing; (c) broke free from Officer King's grasp; and (d) Officer King did not know why or what Mr. Mann was reaching for with his left hand.

6. Split-Second Decision Making

"The calculus of reasonableness must embody 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."[31]

In addition to other circumstances described above, Officer King had seconds to evaluate the following factors when deciding to use force against Mr. Mann:

- Mr. Mann's strength, skill level and possible intentions
- Mr. Mann's recent assault against Ms. Pierce
- location of Ms. Wade, her 9-year old son and dog
- distance between fixed and unfixed objects in apartment
- Officer King's past experience with resisting suspects
- location and position of Officer Wright and other officers

7. Tactic Used

The weaponless take-down tactic used by Officer King was consistent with his training and industry best practices. Forcing or pushing Mr. Mann to floor immediately was effective and a reasonable first option. Fully releasing or letting go of Mr. Mann to

[31] PTI Arrest & Control Tactics Manual; Graham v. Connor, 490 U.S. 386 (USSC; 1989)

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use a weapon (e.g., pepper spray, Taser, etc.) could have made it easier for Mr. Mann to escape, resist more effectively, or obtain a weapon.

In summary, "the facts and circumstances known to [Officer King] at the time were such as to cause an ordinary and prudent person with similar training and experience to act or think in a similar way under similar circumstances."[32]

IV. Authorship

I, Jon B. Blum, spent a total of 22.5 hours reviewing case materials in Section I and authoring this report at a rate of $175.00 per hour. See attached fee schedule.

Signature: _____

Date: April 1, 2019

End of Report

[32] PTI Arrest & Control Tactics Manual; Graham v. Connor, 490 U.S. 386 (USSC; 1989)

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