



Santa Clara Police

Training Flash



PRE-SHOOTING CONDUCT & 5150 TYPE INCIDENTS

Legal Brief of Hayes v. County of San Diego (United States Court of Appeals for the Ninth Circuit 736 F. 3d 1223 (2013))

Facts:

Deputies were dispatched to a domestic disturbance call involving Geri Neill and her boyfriend, Hayes. Neill advised Deputy King that she and Hayes had been arguing about his attempt that night to commit suicide by inhaling exhaust fumes from his car. There had been no domestic violence assault, and she was instead concerned about Hayes harming himself, indicating that he had attempted to do so on prior occasions. Deputy King did not ask Neill about the manner of Hayes's prior suicide attempts and was unaware that he had previously stabbed himself with a knife. Although Neill advised Deputy King that there were no guns in the house, she made no indication that Hayes might be armed with a knife.

The deputies decided to enter the house to check on Hayes's welfare. Deputy King had not asked Neill whether Hayes was under the influence of drugs or alcohol. Although the deputies had been sent a notification that Hayes was intoxicated, neither deputy was aware of this information before entering the house. Additionally, the deputies had not checked whether there had been previous calls to the residence, and they were unaware that Hayes had been taken into protective custody four months earlier in connection with his suicide attempt involving a knife.

After entering the home, the deputies located Hayes in a room, approximately eight feet away from them. Hayes's right hand was behind his back when Deputy King first saw him, so Deputy King ordered Hayes to "show me his hands." While taking one to two steps towards Deputy King, Hayes raised both his hands to approximately shoulder level, revealing a large knife pointed tip down in his right hand. Deputy King immediately drew his gun and fired two shots at Hayes, striking him while he stood roughly six to eight feet away. Deputy Geer simultaneously pulled her gun as well, firing two additional rounds at Hayes. Neither deputy had ordered Hayes to stop.

Neill witnessed the shooting from behind Deputy Geer and testified that Hayes was walking towards the deputies with the knife raised at the time the shots were fired. She stated that Hayes was not "charging" at the officers and had a "clueless" expression on his face at the time, which she described as "like nothing's working upstairs."

- **First and Third Graham Factors Applied – No Crime at Issue; No Actual Resistance**
 - Hayes had committed NO crime, and there is no evidence suggesting that Hayes was "actively resisting arrest or attempting to evade arrest."
- **NO warnings Given or Less Intrusive Alternatives were Employed or Considered.**
- **Mere Possession of a Weapon is not justification to Use Deadly Force.**
- **Bare Fear is not Sufficient to Justify the Use of Deadly Force... There must also be a Threatening Act**
- **Deputies Violated Agency Policy: No Warning was Given even though it may have been Feasible.**

Under California law, the deputies' duty to act reasonably when using deadly force extends to their pre-shooting conduct.

An officer's **pres shooting conduct** is properly "included in the totality of circumstances surrounding [his] use of deadly force, and therefore the officer's duty to act reasonably when using deadly force extends to **pres shooting conduct**."

Conclusion:

Seen in the light most favorable to Appellant, Hayes was complying with Deputy King's order when he raised the knife and posed no clear threat at the time he was shot without warning. Accordingly, we reverse the district court's first conclusion: that the deputies' use of force was objectively reasonable as a matter of law.

For the entire case see:

https://scholar.google.com/scholar_case?case=2783880918424603276&q=hayes+v+county+of+san+diego&hl=en&as_sdt=2003

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