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Confrontation, Commands, and Consequences: The Eleventh Circuit Considers Force in Howard v. DeKalb County

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Confrontation, Commands, and Consequences: The Eleventh Circuit Considers Force in *Howard v. DeKalb County*

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The Eleventh Circuit considered a heated encounter between DeKalb County Police Officer Jordan Vance and Kenneth Howard, who, amidst a tense standoff involving a knife, was shot three times by Officer Vance. Howard survived the shooting and brought 42 U.S.C. § 1983 claims for excessive force against Officer Vance and DeKalb County.

The case of *Howard v. DeKalb County* arose after DeKalb County Police Officer Jordan Vance found himself in a tense confrontation with Kenneth Howard, who was experiencing a mental health episode outside a QuikTrip gas station early in the morning. Officer Vance arrived at the scene in response to a call indicating that Howard had been observed pacing outside the gas station, displaying behavior that concerned the staff and customers. Officer Vance decided to observe Howard from his vehicle for a couple of minutes, during which Howard had no direct interaction with anyone, despite the steady flow of customers. The situation escalated when Officer Vance, about to enter the gas station, informed Howard that he needed to leave the premises or face consequences. When Officer Vance went inside the store, one employee immediately shared that Howard had removed his pants; that she had told him to put his pants on and asked him to leave; and that Howard had put his pants on in response, but then remained in the same spot. The officer exited the store and approached Howard, directing him twice to take his hands out of his pockets. Howard turned toward Vance, took his right hand out of his pocket and put it behind his back. The body camera footage was consistent with showing Howard holding an object in his right hand. Howard's pants were hanging loosely on his hips; twice, he used both hands to hike them up, and both times, he returned his right hand — still holding something — behind his back and out of the officer's view.

Officer Vance distanced himself from Howard and confirmed with a QuikTrip employee that Howard had previously lowered his pants. As they spoke, Howard interjected, asked if they wanted to see, then revealed what appeared to be a knife. In response to the threat, Officer Vance drew his weapon, aiming it at Howard, who then awkwardly moved towards him with the knife raised and his pants around his ankles. Throughout the encounter, Howard challenged Vance's commands and approached menacingly, despite Vance's attempts to de-escalate and maintain a safe distance by continuing to move back from Howard. Each time Vance commanded, Howard refused. The officer kept his firearm

pointed at Howard and communicated over his radio that Howard was armed and acting aggressively. Despite Vance's repeated warnings, Howard persisted. Eventually, as Howard got closer, Vance fired three shots, wounding but not killing him. Howard fell to the ground, was disarmed, and arrested by arriving officers.

In the aftermath of this incident, Howard filed suit against Officer Vance and DeKalb County, alleging excessive use of force in violation of the Fourth Amendment. The district court granted the defendant officers' motion to dismiss the case because Officer Vance's use of force against Howard was justified. On appeal, Howard focused solely on the dismissal of his excessive force claim against DeKalb County. He argued that that the County's "use of force, de-escalation, and mental illness training" caused Officer Vance to violate Howard's Fourth Amendment rights.

The crux of this case revolves around the application of excessive force under the Fourth Amendment, which is judged by the "reasonableness" standard. This standard involves balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the governmental interests at stake. When determining the reasonableness of force used, courts consider the specifics of each situation, evaluating the severity of the crime, whether the suspect poses an immediate threat to anyone's safety, and whether they are resisting or attempting to flee. Significantly, the use of deadly force is considered constitutionally acceptable if an officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others. The presence of a deadly weapon ready for use further emphasizes the officer's right to protect themselves and the public, even if it means not waiting until the weapon is actively used against them.

The Eleventh Circuit affirmed the dismissal of Howard's claim against DeKalb County, as there was no underlying constitutional violation by Officer Vance. In conducting the use of force analysis here, the Court found that Officer Vance's use of deadly force was reasonable under the circumstances. The Court based this finding on several factors, relying on Howard's erratic behavior, his refusal to comply with commands, and his advancing toward Officer Vance with a knife in hand. Despite Howard's claim that alternatives to deadly force existed, the court highlighted that Vance had attempted to de-escalate the situation and had repeatedly asked Howard to put down the knife.

The court noted that the necessity of using deadly force is evaluated based on the immediate threat posed at the time, not on whether other less-lethal options could have been employed. In line with precedent, the court emphasized that an officer facing a serious threat of harm is not required to exhaust all possible alternatives before resorting to deadly force.

This case underscores the importance of clear protocols, rigorous training in de-escalation tactics, and the handling of individuals experiencing mental health crises. The Court's finding rendering the Officer's use of force as reasonable, was grounded in its' evaluation of the events leading up to the shooting. Specifically, Howard's erratic behavior, his refusal to comply with police commands, and his advance towards Officer Vance with a knife. The court's analysis emphasizes the immediacy of the threat posed by Howard as a determining factor in the use of deadly force, rather than the potential availability of less-lethal options.

Importantly, this decision reaffirms the principle that law enforcement officers are not required to exhaust all alternative options before resorting to deadly force when faced with an immediate threat of serious physical harm. The presence of a weapon, the suspect's actions, and the potential danger to the officer and others are essential considerations in these high-stakes situations.

For officers, this case highlights the necessity of adherence to training, especially regarding de-escalation techniques and the management of individuals experiencing mental health crises. It also underscores the critical role of the officer's situational awareness when evaluating the need for force.

Howard v. DeKalb County, et al. (11th Cir., 2024)

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